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**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**



**THE HIMACHAL PRADESH  
LAW DEPARTMENT  
MANUAL**

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FOR OFFICIAL USE ONLY

**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**



**THE HIMACHAL PRADESH  
LAW DEPARTMENT MANUAL**

**COLLECTION AND DIGEST OF RULES, ORDERS AND  
INSTRUCTIONS RELATING TO THE MANAGEMENT  
OF LEGAL AFFAIRS OF THE HIMACHAL PRADESH  
GOVERNMENT**

*May, 2006*

*Compiled by:*

**Sh. Surinder Singh Thakur,**  
Legal Remembrancer and Principal Secretary (Law)  
to the Government of Himachal Pradesh

*and*

**Sh. D. S. Parihar**  
Assistant Legal Remembrancer-cum-Under Secretary  
(Law-Legislation) to the Government of Himachal Pradesh

*This Manual and the Hand Book on preparation and passing of the Bills are  
available on Web site ://himachal.nic.in.*

## FOREWORD

The Law Department of the State has brought out the Law Department Manual containing the matters regarding civil and criminal nature for and against the State Government and also given the procedure to handle these matters for quick disposal to avoid unnecessary objections. Further it also contains the important instructions issued on various matters, therefore, this Compendium which is the result of hard labour put by the Law Department under the guidance of Shri Surinder Singh Thakur, Legal Remembrancer-*cum*-Principal Secretary (Law), would benefit all in the working of the Government.

I congratulate the whole team of the Law Department involved in the completion of this work and hope that all concerned would make best use of this Manual.

(Virbhadra Singh)  
*Chief Minister*  
*Himachal Pradesh.*

SHIMLA:  
*20th April, 2006.*

## INTRODUCTION

The State Law Department under the guidance of Legal Remembrancer-*cum*-Principal Secretary (Law) has made excellent attempt to bring out the Law Department Manual which is much in need for the smooth working of the various departments on legal matters. This manual contains precisely the matters of criminal business relevant to this Department and Civil business which is controlled by the Law Department of the State. This book is also a compendium of instructions issued by the Law Department from time to time. It will help all departments of the Government to deal with such matters promptly and logically.

I must congratulate all the Officials, Officers and Shri Surinder Singh Thakur, Legal Remembrancer-*cum*-Principal Secretary (Law) to the Government of Himachal Pradesh for taking pains to streamline the working of Law Department and I am also quite confident that all concerned will make best use of this manual.

(Kaul Singh Thakur)  
*Law Minister*  
*Himachal Pradesh*

SHIMLA:

18th April, 2006.

## P R E F A C E

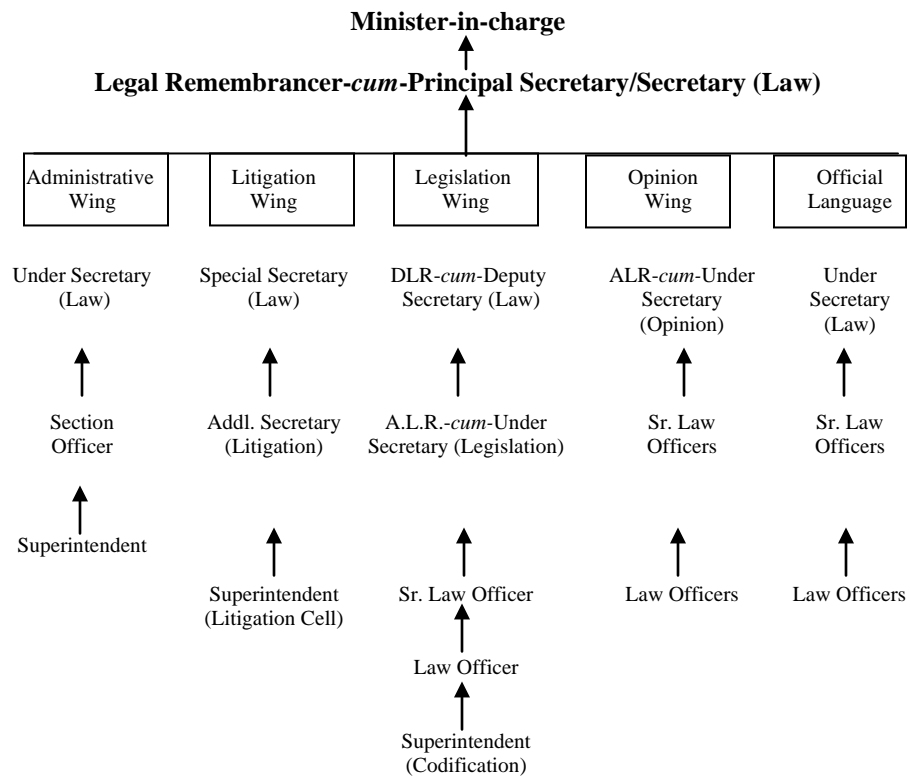
The Law Department Manual is the result of hard Labour put by each of us, as even for guidance, we could not get it even from the neighbouring State of Punjab and Haryana, as they were also relying upon the pre-partition Law Manual (Lahore Print). We have tried to assimilate the procedure in the civil/criminal matters (relevant to this department) for and against the Government and its Officials to avoid any conflict or ambiguity. Further we have also added the instructions relevant to the topics issued by the State Law Department from time to time alongwith the necessary information under the Right to Information Act, 2005. This Compendium is now a comprehensive book, which will serve the need of all the Secretaries and Head of the Departments of the State while processing such matters.

I trust that all the concerned would find this Manual quite useful and interesting while processing the matters.

**(Surinder Singh Thakur)**  
*Legal Remembrancer-cum-Principal Secretary (Law)*  
*to the Government of Himachal Pradesh.*

SHIMLA:  
10th April, 2006.

### Hierarchy of the Law Department



**[Officers and Official of the Law Department designated as Appellate Authority, Public Information Officers and Assistant Public Information Officers under the Right to Information Act, 2005 (Act No. 22 of 2005)]<sup>1</sup>**

Designation 1	Office Address 2	E-mail Address 3	Telephone No. 4	Annexure "K" 5
L.R.-cum- Pr. Secretary (Law)	Room No. E-232, H.P. Secretariat, Shimla-2.	lawbr6-hp@ nic.in	2621544 2880632	

**Information Officers:**

Additional Secretary (Law).	Room No. A-111, H.P. Secretariat, Shimla.	lawbr6-hp@ nic.in	2626359 2880641
Deputy Secretary (Law-Legislation).	Room No. E-302, H.P. Secretariat, Shimla-2.	-do-	2628487 2880558

**Assistant Public Information Officers :**

Under Secretary (Law-Opinion).	Room No. A-326, H.P. Secretariat, Shimla-2.	-do-	2628489 2880443
Sr. Law Officer (English).	Room No. E-303	-do-	2880539
Under Secretary (Law).	Room No. A-301, H.P. Secretariat, Shimla-2.	-do-	2628478 2880670
Section Officer (Law).	E-312	-do-	2880439
Under Secretary	Room No. A-313,	-do-	2622425

1. Annexure—"K".

(Law-Legislation). H.P. Secretariat, Shimla-2.			2880441
Sr. Law Officer (Hindi).	Room No. E-307	-do-	2880578
Superintendent (Litigation).	Room No. E-314	-do-	2880554

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**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

NOTIFICATION

*Shimla-2, the 3rd May, 2006*

**No. LLR-E(9)-5/2006-Leg.**—The Governor, Himachal Pradesh is pleased to repeal the Punjab Law Department Manual, 1934, in its application to the State of Himachal Pradesh, with effect from 15th May, 2006, provided that such repeal shall not affect the previous operations of said Manual or anything done or action taken thereunder.

The Governor is further pleased to notify the 15th May, 2006, as the date from which the provisions of the Himachal Pradesh Law Department Manual, 2006 shall come into force.

By order,

(SURINDER SINGH THAKUR),  
*LR-cum-Principal Secretary (Law)*  
*to the Government of Himachal Pradesh.*



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(Published in H. P. Rajpatra (Extra ordinary) dated 3-5-2006 pages, No. 859 & 860.

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**Officers Empowered to execute Contracts and Assurances of property made in  
exercise of the Executive Power of the Government**

**LAW DEPARTMENT**

NOTIFICATION

*Shimla-2, the 25th January, 1971*

**No. LR. 107/468/54-III.**—In exercise of the powers conferred by clause (1) of Article 299 of the Constitution of India, the Governor of Himachal Pradesh, hereby directs that the under mentioned contracts and assurances of property made in the exercise of the executive power of the Government of Himachal Pradesh may be executed on its behalf as follows :—

**I.** In the case of all Departments of the Government of Himachal Pradesh including their attached and subordinate offices, Himachal Pradesh Public Service Commission, Himachal Pradesh Vidhan Sabha Secretariat and Governor's Secretariat :—

**A.** 1. Contracts and other instruments relating to advances granted to Government servants for the purchase of motor cars, motor cycles, cycles, or houses or for building houses, or for medical attendance and treatment or for festivals, marriages, funerals or other ceremonies or for relief against floods, etc. or advances of pay and travelling allowance on transfer and tour, or advances of pay to persons proceeding on deputation abroad, or advances in respect of the Travel Concession Scheme during regular leave; **by the authority sanctioning the advance.**

2. Contracts and other instruments in respect of accommodation provided in rented buildings (i) for catering in hostels and tiffin rooms (ii) for the protection of conveyances belonging to the staff working in such rented buildings and (iii) for co-operative stores/societies/banks/canteens run by employees associations/societies; **by the Head of Department/Office which is in occupation of the building and is responsible for the payment of municipal taxes etc.**

3. Indemnity bonds relating to conveyance and transport at Government expense of families and personnel effects of Government servants who die while in service, by the Head of Officer under whom the deceased Government servant last served.

4. Contracts and other instruments relating to the—

(i) payment of advance subscriptions for the purchase of newspapers, magazines, periodicals etc.;

(ii) purchase, supply and conveyance or carriage of materials, store and machinery;

**by the Head of Office concerned.**

**B. 1. Surety bonds relating to the grant or pension to Government servants or provisional pension to displaced Government servants, by the authorities sanctioning the pension or provisional pension.**

2. Security bonds of Cashiers and other Government servants and/or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof, **by the Head of office concerned.**

**C. Pledge and release of Postal Savings Certificate and Post Office Savings Bank Accounts as security ; by only those Gazetted Officers of the Himachal Pradesh Government who for due performance of their duties, are required to accept and release securities.**

**D. All instruments appointing Attorneys and Counsel, by the Officers empowered to authenticate orders and other instruments under clause (2) of Article 166 of the Constitution.**

**II. As regards contracts etc., not hereinbefore specified :—**

1. All deeds and instruments relating to matters other than those specified in item 2 to <sup>1</sup>[11] below by a Secretary to the Himachal Pradesh Government.

<sup>2</sup>[2. Contracts and other instruments relating to matters connected with the administration of forests and the business of the Forest Department, but not relating to the purchase or sale or permanent acquisition of land; by the Conservator of Forests irrespective of the amount or value.]

<sup>3</sup>[3. XX]

4. In the case of the Public Works Department <sup>4</sup>[(including the Department of Multipurpose Projects and Power)].

- (a) All instruments relating to purchase, supply and conveyance or carriage of materials, stores, machinery etc.;
- (b) all instruments relating to the execution of works of all kinds connected with buildings, bridges, roads, canal, tanks, reservoirs, and embankments and instruments relating to the construction of water works and the execution of machinery ;
- (c) bonds of auctioneers and security bonds for due performance and completion of works ; and
- (d) security bonds for the performance of their duties by Government servants whom the officers specified below have power to appoint;

**by Chief Engineer, Superintending Engineers, Divisional Officers, Sub-Divisional officers, Assistant Executive Engineers, Assistant Elect. Engineers**

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1. Subs. for the figure '10' *vide* Not. No. LR.107/468/54-III, dated 3-8-1974 and subsequently subs. for the figure "11" *vide* Noti. No. LLE-E(9)2/76, dated 22-8-1989, published in R.H.P. dated 8-9-1990, p. 1038.

2. Subs. *vide* Noti. No. LLR-E(9)2/76, dated 16-8-1982, published in R.H.P., dated 28-8-1982, p. 710.

3. Deleted *vide* Noti. No. LR. 107/468/54-III, dated 16-5-1974, published in R.H.P., dated 1-6-1976, p. 921.

4. Ins. and shall be deemed always to have been ins. *vide* Noti. No. LR-107/468/54-III, dated 6-5-1971, published in R.H.P., dated 5-6-1971, p. 589.

**and Assistant Engineers.**

<sup>5</sup>[4-A. Contracts and other instruments relating to auction of fruit crops of the Government orchards of Horticulture Department, Himachal Pradesh :—

(a) if the amount or value does not exceed Rs. 5,000 **by the Horticulture Department Officer or any other Gazetted Officer-in-charge of the District of Horticultural work ;**

(b) if the amount or value does not exceed Rs. 25,000 **by the Deputy Director Horticulture, Himachal Pradesh ;**

(c) if the amount or value exceeds Rs. 25,000 but does not exceed Rs. 50,000 **by the Director of Horticulture.]**

5. (a) Contracts and other instruments connected with ferries, dues for grazing cattle on places other than forests, fisheries, nazul, buildings, spontaneous products and minerals, execution of minor works not under the Public Works Department ; and for the supply of necessary depots ;
- (b) Contracts and other instruments in matters connected with the lease or sale of land ;
- (c) Contracts relating to any matters falling within his ordinary jurisdiction ;
- (d) Instruments of free grants of proprietary rights in land ;
- (e) Instruments whereby property is mortgaged to the Government as security for a loan ; and
- (f) Instruments of exchange of land ;

**by the Deputy Commissioner concerned or a Secretary or an Under Secretary to the Government of Himachal Pradesh.**

6. Contracts for the supply of articles for use in jails; or regarding the sale of articles manufactured in Jails; **by the Inspector General of Prisons, Himachal Pradesh.**

7. Contracts and other instruments for the supply of stores, clothing etc., **by the Heads of Departments concerned.**

8. Contracts for banking premises and engagement of private vehicles; **by the Regional Managers of Himachal Pradesh Government Transport.**

9. Contracts and other instruments relating to matters connected with their respective departments (including mining leases); **by the Head of the Department concerned.**

10. Contracts and instruments relating to lease of premises for office purpose when the annual rent does not exceed Rs. 50,000; **by the Head of Office.**

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5. Inst. *vide* Noti. No. LR.-107/468/54-III, dated 4-7-1974, published in R.H.P., dated 3-8-1974, p. 1299.

<sup>6</sup>[11. Lease deeds in respect of plots in the Industrial area in Himachal Pradesh; **by the** <sup>7</sup>[(**Director of Industries**)].

<sup>8</sup>[12. Contracts and execution of instruments of leases relating to Government land by the Agriculture Department :

Whereas any Government land has been leased out or handed over by the Agriculture Department to the Himachal Pradesh Agriculture Marketing Board or to a Market Committee in the State of Himachal Pradesh for setting up a regulated market, marketing yard or sub yard, the Secretary (Agriculture) to the Government of Himachal Pradesh shall, for and on behalf of the Government of Himachal Pradesh,—

- (a) authorise the functionary of the said Board, or as the case may be, of the Market Committee, to further lease out the plots in such a regulated market, marketing-yard or sub-yard and to execute all instruments and contracts in respect of such plots, and
- (b) issue special power of attorney in favour of any functionary of the said Board, or as the case may be, of the market committee, to pursue and defend cases relating to such land in courts.]

**III.** Notwithstanding anything hereinbefore contained, any contract or assurances of property relating to any matter whatsoever may be executed by a Secretary or a Joint Secretary or a Deputy Secretary or an Under Secretary to the Government of Himachal Pradesh in the appropriate Department and in the case of Vidhan Sabha Secretariat; **by the Secretary or Under Secretary , Himachal Pradesh Vidhan Sabha** and in the case of Himachal Pradesh Public Service Commission; **by the Secretary of the Commission** and in the case of Governor's Secretariat; **by the Secretary to the Governor.**

**IV.** Where any business of any department is, by virtue of reorganisation otherwise, transferred to any other department, whether existing or new, references in this notification to the department from which such business is transferred, shall, in relation to such business, be construed as references to the department to which it has been transferred.

*Explanation.*—In this paragraph “Department” means any Department, Secretariat or Office of the Government of Himachal Pradesh.

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(R.H.P., dated 6-3-1971, p. 347-348)

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- 6. Added *vide* Noti. No. LR.-107/468/54-III, dated 3-8-1974, published in R.H.P., dated 17-8-1974, p. 1407.
  - 7. Subs. for the words ‘District Industries Officers’ *vide* Noti. No. LLR-E(9)2/76, dated 24-1-1976, published in R.H.P., dated 7-2-1976, p. 164.
  - 8. Item No. 12 ins. *vide* Noti. No. LLR-E (9) 2/76, dated 22-8-1990, published in R. H. P., dated 8-9-1990, p. 1038-1039.

**GOVERNMENT OF HIMACHAL PRADESH****LAW DEPARTMENT**

## NOTIFICATIONS

*Shimla-2, the 25<sup>th</sup> January, 1971*

**No. LR-107-420/54.**— In exercise of the powers vested in him under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, and all other powers enabling him in this behalf, the Governor, Himachal Pradesh is pleased to authorise all the Collectors of Districts in Himachal Pradesh, all Secretaries, Joint Secretaries Deputy Secretaries, Under Secretaries, Heads of Departments of Himachal Pradesh and also the Conservators of Forests and Superintending Engineers in Himachal Pradesh to act for the State of Himachal Pradesh, to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings. This notification shall not effect any act already done on the basis of the previous notifications and all such acts done under previous notification shall be deemed to have been done under this notification.

Sd/-  
(JOSEPH DINA NATH)  
*Under Secretary (Judicial) to the  
Government of Himachal Pradesh.*

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*Shimla-2, the 3rd July, 1978*

**No. LLR-E(9)2/76.**—In exercise of the powers conferred by clause (1) of Article 299 of the Constitution of India, the Governor, Himachal Pradesh hereby directs that agreements/ contracts made with the firms for the supply of stores in various Government Departments, in exercise of the executive powers of the Government of Himachal Pradesh, may be executed on his behalf by the Additional Controller of Stores, H. P. Shimla.

Sd/-  
(J. C. MALHOTRA)  
*Secretary (Law) to the  
Government of Himachal Pradesh.*

शिमला—171 002, 1 फरवरी, 1980

**सं० एल० एल० आर०—ई (९)२/७५.**—भारतीय संविधान के अनुच्छेद 299 के खण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश एतद्वारा निर्देश देते हैं कि हिमाचल प्रदेश की कार्यकारी शक्ति का प्रयोग करते हुये, उद्योग विभाग के जिला उद्योग केन्द्रों के महाप्रबन्धकों द्वारा, इकरारनामों/पट्टा विलेखादि राज्यपाल महोदय की ओर से अपने-अपने क्षेत्राधिकार में निष्पादित किये जायेंगे ।

हस्ताक्षरित /—  
(जय चन्द मल्होत्रा)  
सचिव (विधि),  
हिमाचल प्रदेश सरकार।

\_\_\_\_\_  
(R.H.P., dated 22-3-1980, p. 371)

\_\_\_\_\_  
*Shimla-2, the 3rd December, 1980*

**No. LLR-E(9)2/76.**—In exercise of the powers conferred by clause (1) of Article 299 of the Constitution of India and all other powers enabling him in this behalf, the Governor, Himachal Pradesh is pleased to declare that all deeds out-sides India shall be executed on behalf of the State of Himachal Pradesh by the Indian Ambassador/Economic Minister in United States of America and in other countries by the Indian Ambassadors, Charged Affairs or High Commissioners only in countries where they have been accredited.

Sd/-  
(J. C. MALHOTRA)  
*Secretary (Law) to the  
Government of Himachal Pradesh.*

\_\_\_\_\_  
(R.H.P. Extra., dated 10-12-1980, p. 1406)

\_\_\_\_\_  
*Shimla-2, the 7th August, 1982*

**No. LLR-E(9)2/76.**—In exercise of the powers conferred by clause (1) of Article 299 of the Constitution of India, the Governor, Himachal Pradesh is pleased to authorise All Divisional Forest Officers, Soil Conservation Divisions/Assistant Soil Conservation Officers in the Department of Soil Conservation, Himachal Pradesh to execute agreements/instruments relating to the Soil Conservation Schemes, with their respective jurisdiction, to be made in exercise of the executive powers of the State Government of Himachal Pradesh.

This supersedes the Himachal Pradesh Government Notifications Nos. LLR-E(9)2/76, dated 22nd September, 1976, LLR-E(9)2/76, dated 22nd January, 1977 and LLR-E(9)2/78, dated 4th February, 1981.



**LAW DEPARTMENT**

## NOTIFICATION

*Shimla-2, the 27<sup>th</sup> August, 1987*

**No. LR-107-420/54.**—In continuation of this department notification of even number dated 25<sup>th</sup> January, 1971, and in exercise of the powers vested in him under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, 1908 and all other powers enabling him in this behalf, the Governor, Himachal Pradesh is pleased to authorise the Additional Conservators, Himachal Pradesh to act for the State of Himachal Pradesh, to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings.

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(Issued and published in Hindi in R.H.P., dated 3-7-1999, p. 1098).

**LAW DEPARTMENT**

## NOTIFICATION

*Shimla-171002, the 11th June, 1999*

**No. LLR-E(9)-2/76.**—In continuation to this department notification No. LR-107/420-54, dated 27-8-1987 and in exercise of powers vested in her under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, the Governor, Himachal Pradesh is pleased to authorise the Chief Conservator of Forests (Project), Himachal Pradesh, Director, Indo-German Changar Project, Director, IWDP (Hills), Kandi and Director, H. P. State Land Use Board to act for the State of Himachal Pradesh, to sign and verify plaints and written statements in any suit by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceeding.

Sd/-  
(RAMESHWAR SHARMA)  
*Secretary (Law) to the  
Government of Himachal Pradesh*

-----  
(R.H.P., dated 3-7-1999, p. 1098)

**LAW DEPARTMENT**

## NOTIFICATION

*Shimla-2, the 14<sup>th</sup> March, 2000*

**No. LLR-E(9)-2/76.**—In continuation to this department notification No. LR-107/420-54 dated 25-1-1971, and in exercise of powers vested in him under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, the Governor, Himachal Pradesh is pleased to authorise the State Geologist and the

Geologists of the Industries Department of Himachal Pradesh to act for the State of Himachal Pradesh, to sign and verify plaints and written statements/replication/rejoinder etc. in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings especially when the Director of Industries, Himachal Pradesh is not a respondent in cases pertaining to Geological Wing of the State.

By order,  
(RAMESHWAR SHARMA)  
*Secretary (Law) to the  
Government of Himachal Pradesh.*

\_\_\_\_\_  
(R.H.P., dated 1-4-2000, p. 648)

\_\_\_\_\_  
**LAW DEPARTMENT**

**NOTIFICATION**

*Shimla-171002, the 10th January, 2001*

**No. LLR-E(9)-2/76.**—In continuation of this Department Notification No. LR-107/420/54, dated 25-1-1971, and in exercise of the powers vested in him under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, the Governor, Himachal Pradesh is pleased to authorise the Joint Directors and Deputy Directors of Animal Husbandry and <sup>9</sup>[Technical Education, Vocational and Industrial Training Departments] to act for the State of Himachal Pradesh to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh in respect of any judicial proceedings in the courts up to the District level only.

By order,  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

\_\_\_\_\_  
(R.H.P., dated 28-4-2001 p.120)

\_\_\_\_\_  
**LAW DEPARTMENT**

**NOTIFICATION**

*Shimla-2, the 6th May, 2002*

**No. LLR-E(9)-2/76.**—In continuation of this department notification No. LR-107/420/54, dated 25-1-1971 and in exercise of the powers vested in him under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, the Governor of

\_\_\_\_\_  
9 . Subs. For the words “Science and Technology” vide Noti. No. LLR-E(9)2/76, dated 8-3-2001.

Himachal Pradesh is pleased to authorise all the Chief Medical Officers in Himachal Pradesh to act for the State of Himachal Pradesh and to sign and verify the plaint/written statement or reply in suits by or against the State of Himachal Pradesh before the law courts upto district level only in the cases relating to the Districts of their posting.

By order,  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

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(R.H.P., dated 15-6-2002, p. 461)

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*[Authoritative English text of this Department Notification No. LLR-E (9)-2/76 dated 21<sup>st</sup> April, 2003 as required under clause (3) of Article 348 of the Constitution of India].*

**GOVERNMENT OF HIMACHAL PRADESH**

**LAW DEPARTMENT**

**NOTIFICATION**

*Shimla-171002, the 21<sup>st</sup> April, 2003*

**No. LLR-E (9)-2/76.**—In continuation of this Department Notification No. LR-107/420/54 dated 25-1-1971 and in exercise of the powers vested in him under Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, the Governor, Himachal Pradesh is pleased to authorise S.D.O. (Civil-Rural)-*cum*-Settlement Officer (Sales), Shimla and S.D.O. (Civil)-*cum*-Settlement Officer (Sales) Kangra to act for the State of Himachal Pradesh to sign and verify the plaints/written statements in suits by or against the State of Himachal Pradesh in various civil and revenue courts upto District level in the cases relating to Evacuee properties falling under their respective jurisdiction.

By order,  
(J. L. GUPTA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

*[Authoritative English text of this Department Notification No. LLR-E(9)-2/76 dated 19-1-2005 as required under clause (3) of Article 348 of the Constitution of India].*

**GOVERNMENT OF HIMACHAL PRADESH**

**LAW DEPARTMENT**

**NOTIFICATION**

*Shimla-171 002, the 19<sup>th</sup> January, 2005*

**No. LLR-E(9)-2/76.**—In continuation of this Department Notification No. LR-107/420/54 dated 25-1-1971 and in exercise of the powers vested in him under Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, 1908 as amended from time to time, the Governor, Himachal Pradesh is pleased to authorise the Deputy Director of Agriculture Department and District Agriculture Officers of Shimla and Solan districts of Himachal Pradesh to act, make the statement, sign and verify the plaints/written statements, applications, replies or execute Vakalatnamas in the Suits by or against the State of Himachal Pradesh before the Hon'ble High Courts and the Courts subordinate thereto in the following pending cases:—

1. CMP No. 179/2004 titled Sh. Daulat Ram Verma Vs. State of H. P. and another.

1. Arbitration case titled State of H. P. Vs. Sh Anant Ram Negi
2. Arbitration case titled State of H. P. Vs. Jai Co-operative Society
3. Arbitration case titled State of H. P. Vs. Karam Chand
4. Arbitration case titled State of H. P. Vs. Krishna Devi
5. Arbitration case titled State of H. P. Vs. Salig Ram

By order

(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

[Authoritative English text of this Department Notification No. LLR-E(9)-2/76, dated 8th August, 2005 as required under clause (3) of Article 348 of the Constitution of India].

**GOVERNMENT OF HIMACHAL PRADESH**

**LAW DEPARTMENT**

**NOTIFICATION**

*Shimla-171 002, the 11<sup>th</sup> August, 2005*

**No. LLR-E(9)-2/76.**—In continuation of this Department Notification of even number dated 19-1-2005 and in exercise of the powers vested in him under Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, 1908 as amended from time to time, the Governor, Himachal Pradesh is pleased to authorise the Deputy Director of Agriculture Department and District Agriculture Officer of Shimla district of Himachal Pradesh to act, make the statement, sign and verify the complaints/written statements, applications, replies or execute Vakalatnamas in the suits by or against the State of Himachal Pradesh before the Courts upto District level only in pending Arbitration case titled State of H. P. *Versus* Ganesh Dutt, with immediate effect.

By order,  
(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**Most Immediate**

**No. LLR-E(6)1/86-A  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Secretaries/Joint Secretaries/  
Deputy Secretaries/Under Secretaries,  
to the Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.

*Shimla-2, the 28<sup>th</sup> June, 1989*

*Subject.*—Conduct of cases before the Arbitrators by Government Pleaders.

Sir,

In continuation of this Department Memo. of even number, dated the 2<sup>nd</sup> June, 1989 to the address to all District Attorneys/Asstt. District Attorneys-cum-Public Prosecutors/Asstt. Public Prosecutors, Lahaul & Spitti/Kinnaur, on the

subject cited above, I am directed to say that some time representatives of the concerned Administrative Departments/Heads of Departments contact the Government pleaders for appearance before the arbitrator hardly one or two days before the date is fixed for hearing in the court of Arbitrator with the result that the Government pleaders are facing difficulties in representing the interest of the State Government for want of sufficient time to study the facts of the case thoroughly.

2. You are, therefore, requested that whenever a case is referred to Arbitrator for arbitration you should contact the Government pleader alongwith relevant record/documents immediately in order to brief him in the matter and to place the case of the Government before the Arbitrator.

Yours faithfully,

Sd/-

(J. S. RANA)

*Under Secretary (Law) to the  
Government of Himachal Pradesh.*

No. LLR-E(6)1/86-A  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. The District Attorney-cum-Public Prosecutors,  
Shimla/Mandi/Nahan/Una/Kangra at Dharamshala/  
Hamirpur/Chamba.
2. Assistant District Attorney-cum-Public Prosecutors,  
Solan/Bilaspur/Kullu.
3. The Assistant Public Prosecutors,  
Lahaul & Spiti at Kullu/Kinnaur.

*Dated Shimla-2, the 30<sup>th</sup> April, 1991*

*Subject.*— Defence of Government of India cases in the courts.

MEMORANDUM

Continuation of this department's memo. of even No. dated 27-12-1988, on the subject cited above.

2. It has again come to the notice of this department that some of the District Attorneys/A.D.A's do not put in appearance in the concerned Court on behalf of the Union of India, when asked to do so by the department concerned for want of permission of this department in this behalf. Consequently the Union of India is not represented on the date of hearing and its interests are adversely

affected as a result of non-appearance on its behalf . You are, therefore, again instructed to undertake the defence of the cases on behalf of the Union of India as and when asked to do so by the department concerned and should not insist for instructions as such from this department.

3. On the conclusion of the cases, copies of the judgments and decrees should invariably be sent direct to the concerned department of Central Government well in time under intimation to this department. While forwarding counsel fee bill to this department for the assessment of the fee on the conclusion of each case, the nature of the case, jurisdictional values of the case and the quantum of the work done by you may also be intimated to this department and should be supported with the attendance certificates of the concerned court.

Yours faithfully,

Sd/-

(A. L. VAIDYA)

Secretary (Law) to the  
Government of Himachal Pradesh.

अत्यावश्यक

सं०: एल० एल० आर०-ई (९)५/९०  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित

समस्त जिला न्यायवादी/सहायक जिला न्यायवादी/सहायक लोक  
अभियोजक, लाहौल व स्पिति, कुल्लू/किन्नौर, हिमाचल प्रदेश ।

शिमला-171 002, 01 मई, 1991

विषय.—दिवानी मामलों में विभिन्न न्यायालयों में राज्य सरकार की ओर से समझौते की प्रक्रिया में अधिकार।

ज्ञापन:

हाल ही में अधोहस्ताक्षरित के नोटिस में लाया गया है कि दिवानी मामलों में जहां समझौते की प्रक्रिया (Compromise) न्यायालयों में की जाती है और ऐसे मामलों में सरकार एक पक्ष हो तो बहुधा यह पता नहीं चलता कि सरकार की ओर से किस

अधिकारी को समझौता करने का अधिकार होगा ताकि समझौता वार्ता यदि सफल हो तो समझौता निर्णय कानूनी तौर पर लागू किया जा सके।

2. ऐसे मामलो में जब कभी भी समझौता वार्ता का निर्णय लिया जाता है तो अक्सर सम्बन्धित प्रशासनिक विभाग के सचिव को वित्त विभाग तथा विधि विभाग की सलाह लेने के उपरान्त ही कोई निर्णय लेना होता है कि किस प्रकार का समझौता राज्य सरकार की ओर से न्यायालय में प्रस्तुत किया जाए ताकि सफलता मिलने पर समझौता कानूनन लागू किया जा सके।

3. अतः भविष्य में जब भी किसी न्यायालय में सरकार की ओर से समझौते की प्रक्रिया का प्रस्ताव हो तो किसी भी ऐसे अधिकारी को समझौता न्यायालय के पक्ष प्रस्तुत न किया जाए जब तक कि उसके पास लिखित रूप में समझौते करने का अधिकार प्रशासनिक विभाग के सचिव द्वारा उपलब्ध न हो।

4. कृपया अपने अधीनस्थ समस्त जिला न्यायावादी/सहायक लोक अभियोजकों को इस सम्बन्ध में आवश्यक निर्देश जारी करें।

5. कृपया पावती भेजें।

सं०: एल० एल० आर०-ई (९)५/९०

दिनांक शिमला-२, ०१ मई, १९९१

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित की जाती है :-

1. समस्त सचिव, हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष, हिमाचल प्रदेश।
3. समस्त उपायुक्त, हिमाचल प्रदेश।
4. महाधिवक्ता, हिमाचल प्रदेश।
5. संयुक्त निदेशक (अभियोजन) हिमाचल प्रदेश, शिमला-२ को उनके पत्र सं० जे.डी.पी.आर. (Inspection) /९०-८८१, दिनांक ११-३-१९९१ के सन्दर्भ में प्रेषित।

हस्ता/-  
(ए० एल० वैद्या)  
सचिव (विधि),  
हिमाचल प्रदेश सरकार।



Personal Attention

**No. LLR-E(9)5/90**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The Chief Secretary,  
to the Government of Himachal Pradesh

To

1. All the Financial Commissioners  
to the Government of Himachal Pradesh.
2. All the Commissioners-*cum*-Secretaries  
to the Government of Himachal Pradesh.
3. All the Secretaries to the Government of Himachal Pradesh.

*Shimla-2, the 24<sup>th</sup> July, 1991*

*Subject* .—Conduct of State Cases in various courts.

MEMO

As you are aware, various types of litigation, *i.e.* civil, criminal, revenue or miscellaneous in nature against and by the Government is pending in various courts of the State. It has come to the notice of the Government that many a times, because of default on the part of the Administrative Departments, the Government Counsel defending in various courts have to cut a sorry figure in the court while defending the State interest and oftenly the concerned Administrative Department does not follow properly proceedings pending in the court, resulting in not only less but un-necessary adverse orders against the State which can easily be avoided. The filing of pleadings on behalf of the State invariably is delayed for lack of proper co-operation and sometimes on account of this slackness on the part of the Administrative Department, the evidence on behalf of the State is not examined in time and in such circumstances the State is burdened with un-necessary costs. There are number of instances where defence has been struck off for not filing the written statement and reply and further non-production of the record and witnesses and that sometimes State cases are dismissed in default or *ex parte* orders are passed for want of proper co-operation by the concerned Administrative Department. All these shortcomings can easily be avoided in case the Administrative Department takes interests in rendering the necessary co-operation to the Government Counsel.

2. You are, therefore, directed that whenever a notice is received by the Administrative Department from a court of law or Administrative Department has to move a court of law in any case, a responsible officer who is well conversant with the record and facts of the case should be made responsible and entrusted with the entire cases who alone should contact the Government Counsel and brief him not only at the very onset of the case but can every hearing till final disposal of the case.

3. You are, further directed that in case such an officer of the Administrative Department was found wanting in discharge of his aforesaid duties he should be made personally liable for any lapse committed in this behalf.

4. The above said directions be brought to the notice of all the Heads of Department under our control for strict compliance under intimation to the undersigned, at the earliest.

5. The receipt of this letter be also acknowledged.

Sd/-  
(M. S. MUKHERJEE)  
Chief Secretary  
to the Government of Himachal Pradesh.

सं० एल० एल० आर०-ई (९)३/८६  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित:

1. जिला न्यायवादी,  
शिमला/मण्डी/नाहन/उना/कांगड़ा स्थित धर्मशाला/हमीरपुर/चम्बा।
2. उप जिला न्यायवादी, सोलन/बिलासपुर/कुल्लू।
3. सहायक जिला न्यायवादी,  
लाहौल व स्पिति स्थित कुल्लू /किन्नौर स्थित रिकांगपिओ।

दिनांक शिमला-171 002, जनवरी, 1992

विषय.--विभिन्न न्यायालयों में राज्य सरकार से सम्बन्धित चल रहे मुकद्दमों  
बारे।

ज्ञापन:

मुझे उपरोक्त विषय पर, मुख्य सचिव, हिमाचल प्रदेश सरकार के पत्र संख्या:  
एल० एल० आर० ई०(९) 5/90, दिनांक 24 जुलाई, 1991, जो कि समस्त प्रशासनिक  
सचिवों, हिमाचल प्रदेश सरकार आदि को प्रेषित है, की प्रतिलिपि आपको सूचनार्थ एवं  
आवश्यक कार्यवाही हेतु भेजने का निदेश हुआ है।

2. इस प्रसंग में आपको सूचित किया जाता है कि हाल ही में सचिव (विधि)  
के नोटिस में यह शिकायत आई है कि सम्बन्धित विभागों के अधिकारी दीवानी मामलों में  
विधि अधिकारियों को पूर्ण सहयोग नहीं दे रहे हैं जिसके परिणामस्वरूप न्यायालयों में  
सरकार के सम्बन्धित मामलों में विकट स्थिति उत्पन्न हो रही है। अतः यह बात सुनिश्चित

की जाए कि भविष्य में आप विभाग को पूर्ण सहायोग दें और यदि किसी मामले में सम्बन्धित विभाग का जिम्मेवार अधिकारी पूर्ण सहयोग नहीं देता है तो तुरन्त उसकी सूचना मुख्य सचिव, हिमाचल प्रदेश सरकार या सचिव (विधि), हिमाचल प्रदेश सरकार को दें ताकि सम्बन्धित अधिकारियों के विरुद्ध अनुशासनात्मक कार्यवाही की जा सके। इसके अतिरिक्त यह भी सुनिश्चित करें कि दीवानी मामलों में सम्बन्धित विभाग को जिम्मेवार अधिकारी प्रत्येक सुनवाई के दिन तथा अंतिम निर्णय तक विधि अधिकारी के साथ न्यायालय में उपस्थित रहेगा।

यदि सरकार के आदेशों की अहवेलना की गई तो ऐसा अधिकारी व्यक्तिगत रूप से जिम्मेवार होगा।

3. कृपया इन हिदायतों को अपने अधीनस्थ समस्त विधि अधिकारियों के ध्यान में लाया जाए।

4. कृपया इस पत्र की पावती भेजें।

हस्ता/—  
उप सचिव (विधि),  
हिमाचल प्रदेश सरकार।

IMMEDIATE

—————  
**No. LLR-E(9)3/88**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

A. L. Vaidya,  
LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries  
to the Government of Himachal Pradesh.
2. All the Head of Departments, Himachal Pradesh.

*Dated Shimla-2, the 17<sup>th</sup> June, 1992*

*Subject.*—Defending of State Government cases in the Supreme Court of India—  
instructions reg.

Sir,

I am directed to say that it has come to the notice of the State Government that most of the departments are not attending properly to the cases pertaining to litigation in the Supreme Court of India to safeguard the interest of the State Government. This requires lot of improvement and regular attention of Government

Departments. It has been observed that the record of cases in which Special Leave Petitions are to be filed, are not being sent in time to the D. A. Legal Cell, New Delhi by the Departments concerned and generally the record is received by the said office after the expiry of limitation period with the result that for filing Special Leave Petition in the Supreme Court, an application for condonation of delay has to be filed. The Supreme Court of India has taken serious note of this lapse and some time does not condone the delay.

2. The Home Department is especially requested that they should not send affidavit on Cyclostyle papers as photo copy prints of these affidavits are always subject to objection by the Supreme Court of India. This is the main and genuine difficulty which the Legal Cell is facing.

3. While sending the record of the case to the Legal Cell, the Administrative Departments should also send the comments/brief history of the cases.

4. In service matters, tax matters and other important cases in which Special Leave Petition are to be filed, the Administrative Departments are requested to send their Senior Officers well conversant with the facts of such cases and discuss with the D. A. Legal Cell/Advocate concerned. Clerks/Asstt. who are not conversant with the facts of such cases need not be sent to Delhi un-necessary.

5. The above instructions may kindly be brought to the notice of all concerned for strict compliance in future.

Yours faithfully

Sd/-

(A. L. VAIDYA)

*LR-cum- Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(9)3/86**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. The District Attorney-cum-Public Prosecutors,  
 Shimla/Mandi/Nahan/Una/Kangra at Dharamshala/  
 Hamirpur/ Chamba.
2. Assistant District Attorney-cum-Public Prosecutors,  
 Solan/Bilaspur/ Kullu.
3. The Assistant Public Prosecutors,  
 Lahaul & Spiti at Kullu/Kinnaur at Peo.

*Dated Shimla-2, the 27<sup>th</sup> June, 1992*

*Subject.*—Representation in State Government cases before the Hon'ble District Consumer Redressal Forum.

MEMO :

Instances have come to the notice of the undersigned that the representation in State Government cases is not being made by the District Attorney and Deputy District Attorney properly before the District Consumer Redressal forum, and sometime they are seeking the consent of this Department as to whether State Government Departments are to be represented in the cases before the said Forum or not.

2. As you know that State Government interests can be adversely affected as a result of non-appearance on its behalf before the District Consumer Redressal Forum, you are, therefore, advised that in future State Government cases should invariably be conducted/defended properly without waiting for any instructions as such from this department. In case you are already engaged in Court cases or you are not able to appear before the said Forum due to certain reasons then you must specially give in writing to the department concerned as to why you can not conduct/defend the case before the said Forum so that arrangement of a private lawyer could be made by the department concerned with prior permission of this department.

These instructions should be adhered to strictly.

Please acknowledge the receipt.

Yours faithfully,

Sd/-

(A. L. VAIDYA)

*LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.*

सं० एल० एल० आर० लिट. (6) 4/92  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित :

1. समस्त प्रशासनिक सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष, हिमाचल प्रदेश।
3. समस्त उपायुक्त, हिमाचल प्रदेश।

दिनांक शिमला-2, 15 अक्टूबर, 1992

विषय.—सर्वोच्च न्यायालय में मुकद्दमों की पैरवी करने बारे।

महोदय,

उपरोक्त विषय पर मुझे यह कहने का निदेश हुआ है कि किसी भी मामले में उच्चतम न्यायालय में अपील करने से पूर्व प्रशासनिक विभाग को विधि विभाग की राय लेनी होगी कि क्या ऐसे मामलों में अपील करना सरकार के हित में होगा और जब कभी भी ऐसा मामला इस विभाग से उठाना हो तो उनको यह भी सुनिश्चित करना होगा कि न्यायालय का निर्णय किस सीमा तक सरकारी अनुदेशों/नीति की अवेहलना करता है।

सरकार के ध्यान में आया है कि उच्चतम न्यायालय से सम्बन्धित मामलों में प्रशासनिक विभाग माननीय मुख्य मन्त्री महोदय के अनुमोदन के बिना ही अपीलें दायर करते हैं, जो कि उचित नहीं है क्योंकि उच्चतम न्यायालय में पैरवी करने में सरकार पर काफी आर्थिक बोझ पड़ता है और यह भी पाया गया है कि उच्चतम न्यायालय में जनहित का मामला न होने पर भी पैरवी करनी पड़ रही है।

अतः सभी से अनुरोध है कि उच्चतम न्यायालय में अपील दायर करने से पूर्व माननीय मुख्य मन्त्री महोदय का अनुमोदन माननीय प्रभारी मन्त्री जी के माध्यम से प्राप्त करना होगा। ऐसा न होने की स्थिति में उच्चतम न्यायालय के अधिवक्ता की फीस के बिल की अदायगी इस विभाग द्वारा नहीं की जाएगी।

भवदीय,

हस्ताक्षरित /—

उप विधि परामर्शी एवं प्रारूपकार,  
हिमाचल प्रदेश सरकार।

सं० एल० एल० आर० ई० (९)३/८८  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित :

1. समस्त प्रशासनिक सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष, हिमाचल प्रदेश।

दिनांक शिमला-2, 14 दिसम्बर, 1992

विषय.—उच्चतम न्यायालय में टैक्स व सर्विस सम्बन्धी मामलों की पैरवी बारे।

महोदय,

मुझे उपरोक्त विषय पर यह कहने का निदेश हुआ है कि कर तथा सर्विस सम्बन्धी मामले ( Tax & Service Matters) में उच्चतम न्यायालय के न्यायाधीश अक्सर मामले की अंतिम सुनवाई के समय आपत्तियां (Queries) उठाते हैं जिसके फलस्वरूप सम्बन्धित अधिवक्ता को सम्बद्ध नस्तियों/दस्तावेजों की अनुपस्थिति में आपत्तियों का उत्तर देने में कटिनाई पेश आती है।

2. अतः राज्य सरकार जनहित में निर्णय लिया है कि सम्बन्धित प्रशासनिक सचिव/विभागाध्यक्ष भविष्य में कर तथा सर्विस सम्बन्धी मामलों में उच्चतम न्यायालय में अंतिम सुनवाई (Final arguments) के समय किसी अधिकारी को सम्बद्ध नस्तियों/दस्तावेजों के साथ अधिवक्ता के साथ उपस्थित रहने के आदेश जारी करें ताकि अधिवक्ता को उत्तर देते समय किसी भी कटिनाई का सामना न करना पड़े।

3. कृपया पावती भेजें।

भवदीय,

हस्ताक्षरित/—  
उप सचिव (विधि),  
हिमाचल प्रदेश सरकार।

सं० एल० एल० आर० ई० (९)५/९०  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित :

1. समस्त प्रशासनिक सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष, हिमाचल प्रदेश।

दिनांक शिमला-2, 18-3-1993

विषय.—उच्चतम न्यायालय में अधिवक्ता नियुक्त करने बारे।

महोदय,

इस विभाग के नोटिस में आया है कि उच्चतम न्यायालय में राज्य सरकार की ओर से पैरवी करवाने हेतु नियुक्त किए गए उच्चकोटि के अधिवक्ताओं की फीस इत्यादि पर भारी खर्चा हो रहा है। राज्य सरकार के वित्तीय संकट को मध्यनजर रखते हुए आपको सुझाव दिया जाता है कि भविष्य में उच्चतम न्यायालय में केवल विशेष मामलों में ही उच्चतम न्यायालय के अधिवक्ता माननीय सलाहकार (के०), हिमाचल प्रदेश/वित्त विभाग की पूर्व सहमति से ही पैरवी करवाने हेतु नियुक्त किया करें। राज्य सरकार के हिमाचल प्रदेश उच्च न्यायालय स्तर के मामले महाधिवक्ता, हिमाचल प्रदेश व उनके सहायकों द्वारा ही निपटाए जाने चाहिए व जहां तक उच्चतम न्यायालय में हिमाचल प्रदेश सरकार से सम्बन्धित मामलों का सम्बन्ध है, ये मामले एडवोकेट-ऑन-रिकार्ड व वरिष्ठ अधिवक्ता, जो कि हिमाचल प्रदेश सरकार द्वारा उच्चतम न्यायालय में राज्य सरकार के मामले निपटाने हेतु नियुक्त किए गए हैं, के माध्यम से ही निपटाए जाने चाहिए।

भवदीय,

हस्ताक्षरित /—  
(ए० एल० वैद्या)

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।



सं० एल० एल० आर० ई० (९)-३/८८-भाग-१  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शी एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित:

1. समस्त प्रशासनिक सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष,  
हिमाचल प्रदेश।

दिनांक शिमला-171 002, 9 जून, 1993

विषय.—उच्चतम न्यायालय में राज्य सरकार से सम्बन्धित मामलों की ठीक ढंग से पैरवी करने बारे।

महोदय,

इस विभाग के नोटिस में लाया गया है कि उच्चतम न्यायालय में राज्य सरकार से सम्बन्धित मामलों की पैरवी ठीक ढंग से नहीं हो रही है, क्योंकि अन्तिम सुनवाई के समय सम्बन्धित विभागों के प्रतिनिधि मामलों से सम्बन्धित दस्तावेजों/नस्तियों के साथ न्यायालय में उपस्थित नहीं होते हैं। फलस्वरूप उच्चतम न्यायालय में अधिकतर मामले राज्य सरकार के विरुद्ध निर्णीत होते हैं चूंकि सम्बन्धित अधिवक्ता को सम्बद्ध नस्तियों/दस्तावेजों के बिना उत्तर देने में कठिनाई पेश आती है।

2. अतः राज्य सरकार ने जनहित में निर्णय लिया है कि सम्बन्धित प्रशासनिक सचिव/विभागाध्यक्ष भविष्य में राज्य सरकार से अपने विभागों से सम्बन्धित मामलों की उच्चतम न्यायालय में अन्तिम सुनवाई के समय किसी अधिकारी को सम्बद्ध नस्तियों/दस्तावेजों सहित अधिवक्ता के साथ उपस्थित रहने के आदेश जारी करें ताकि अधिवक्ता को उत्तर देते समय किसी कठिनाई का सामना न करना पड़े तथा न्यायालयों द्वारा पारित आदेशों की प्रति अधिवक्ता के माध्यम से आगामी कार्रवाई हेतु प्राप्त करें।

3. कृपया पावती भेजें।

भवदीय,

हस्ताक्षरित/  
उप सचिव (विधि),  
हिमाचल प्रदेश सरकार।

सं० एल० एल० आर० ई० (९)-५/९०  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

मुख्य सचिव,  
हिमाचल प्रदेश सरकार।

प्रेषित :

1. समस्त प्रशासनिक सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष,  
हिमाचल प्रदेश।

दिनांक शिमला-171 002, 5 अगस्त, 1993

विषय.—राज्य सरकार से सम्बन्धित विभिन्न न्यायालय मामलों में अधिवक्ता नियुक्त करने बारे।

महोदय,

राज्य सरकार के नोटिस में आया है कि विभिन्न न्यायालयों में राज्य सरकार की ओर से पैरवी करने हेतु अधिवक्ताओं को छोड़कर (विभिन्न प्रशासनिक विभागों के स्तर पर फीस इत्यादि की टर्मज एण्ड कन्डीशनज) (Terms and conditions) तय किए बिना व सक्षम अधिकारी व विभाग की पूर्व सहमति लिए बिना ही नियुक्त किया जाता है। उक्त तथ्यों को मध्यनजर रखते हुए आपको सुझाव दिया जाता है कि भविष्य में राज्य सरकार से सम्बन्धित विभिन्न मामलों की पैरवी करने हेतु अधिवक्ता नियुक्त करने की यदि आवश्यकता हो तो कथित अधिवक्ता से अपने स्तर पर सर्वप्रथम फीस इत्यादि की टर्मज एण्ड कन्डीशनज तय करने के पश्चात् सक्षम अधिकारी की स्वीकृति लेकर तदोपरान्त विधि विभाग की सहमति ली जाए।

भवदीय,

हस्ताक्षरित /  
उप सचिव (विधि),  
हिमाचल प्रदेश सरकार।

**No. LLR-E(6)16/86-II  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries  
to the Government of Himachal Pradesh,  
Shimla-2.
2. All the Heads of Departments,  
Himachal Pradesh, Shimla.
3. All the Deputy Commissioners,  
in Himachal Pradesh.

*Dated Shimla-2, the 7<sup>th</sup> October, 1993*

*Subject.*—Non-filing of replies to the Writ Petitions within the time granted by the Court.

Sir,

I am directed to say that the Advocate General, Himachal Pradesh has brought to the notice of the Government that the replies to the Writ Petitions are not being filled by the departments concerned within the time granted by the Court. For the non-filing of reply, Hon'ble High Court has decided some cases *ex-parte*. This not only result in embarrassment to the Government but public interest too suffers. I am directed to request you to ensure that the reply to the Writ Petitions is filed invariably within the period granted by the Court so that the interest of the Government does not suffer. Any lapse in this regard will be viewed seriously.

2. The above instructions may please be adhered strictly to avoid any complication at later state.

The receipt of this communication may be acknowledged.

Yours faithfully,

Sd/-  
*Deputy Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(9)1 /88-II**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-*cum*-Secretary(Law)to the  
Government of Himachal Pradesh.

To

The Advocate General,  
State of Himachal Pradesh,  
Shimla-171001.

*Dated Shimla-2, the 13<sup>th</sup> October, 1993*

*Subject.*—Litigation of Supreme Court.

Sir,

I am directed to say that the Government of Himachal Pradesh has withdrawn the instructions issued *vide* this department letter No. LLR-E(9)1/88-Vol.II, dated the 16<sup>th</sup> February, 1993. The Supreme Court litigation, henceforth, shall be dealt with in accordance with the Rules in the Law Department. The cases to the senior and other Advocates on the panel for the Supreme Court shall be assigned by the Law Department.

2. No Advocate outside the panel shall be appointed for any case by any department of the Government. Any important case, which required the appointment of a counsel, outside the panel, for a particular case shall be appointed by the Law Department after taking the approval of His Excellency the Governor.

3. The cases of routine nature, which have not been assigned by the Law Department to a particular Advocate, shall be assigned by the Resident Commissioner, New Delhi, under intimation to the Law Department.

Yours faithfully,

Sd/-  
*Deputy Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(9)3/88**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The Chief Secretary, to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh (by name).
2. All the Managing Directors of all the State Corporations/Boards.

*Dated Shimla-2, the 3<sup>rd</sup> November, 1993*

*Subject.*—Litigation of Departments/Boards/Corporations/ Autonomous Bodies in Supreme Court of India.

Sir,

It has come to the notice of the Government that some of the Departments/Boards/Corporations/Autonomous Bodies are not utilising the services of the Advocates brought on panel by the State Government for conduct/defence of cases in the Hon'ble Supreme Court of India. It has also come to the notice of the Government that the Senior Advocate are being engaged by the Boards/Corporations/ Autonomous Bodies for minor matters and huge amounts are being expended on this account .

2. It has been decided by the State Government that invariably no Advocate shall be appointed by any Department/Board/ Corporation & Autonomous Body outside the panel of Advocates. However, any case involving grave constitutional matter or issue of policy, which requires engagement of top level Advocates of Supreme Court outside the panel, the same shall be appointed through the Law Department after Chief Secretary's clearance and approval. In emergent cases, telephonic/Telex approval may be taken from Secretary (Law) and the file put up to Chief Secretary for *ex-post-facto* approval.

3. The above instructions shall be adhered to strictly.

4. The receipt of the letter may be acknowledged to the Secretary (Law) by name.

Yours faithfully,

Sd/-  
 (S. K. CHAUHAN)  
 Chief Secretary to the  
 Government of Himachal Pradesh.

सं० एल० एल० आर० ई० (९)-३/८८  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित:

समस्त प्रशासनिक सचिव/  
विभागाध्यक्ष, हिमाचल प्रदेश।

दिनांक शिमला-२, 26 फरवरी, 1994

विषय.—उच्चतम न्यायालय में राज्य सरकार की ओर से पैरवी करने हेतु पैनल अधिवक्ता नियुक्त करने बारे।

महोदय,

इस विभाग के ध्यान में आया है कि उच्चतम न्यायालय में कई विभाग जो कि उच्चतम न्यायालय के विभिन्न मामलों में वादी/प्रतिवादी होते हैं, उच्चतम न्यायालय में राज्य सरकार की ओर से नियुक्त पैनल अधिवक्ताओं की विधि विभाग की सहमति के बिना ही अपने स्तर पर पैरवी करने हेतु नियुक्त कर लेते हैं। अतः आपसे अनुरोध है कि अपने विभाग से सम्बन्धित प्रत्येक मामले, जिसमें राज्य सरकार प्रतिवादी हो, में उच्चतम न्यायालय के पैनल अधिवक्ताओं को विधि विभाग की सहमति से ही नियुक्त करें व सीधे अपने स्तर पर उच्चतम न्यायालय से सम्बन्धित मामलों की पैरवी करने हेतु अधिवक्ता नियुक्त न करें।

कृपया पावती भेजें।

भवदीय,

हस्ताक्षरित/

(के० सी० सूद),

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

सं० एल० एल० आर० ई० (६)-१५/८६  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित:

समस्त जिला न्यायवादी, हिमाचल प्रदेश।

दिनांक शिमला-२, 03-06-1994

विषय.—दूरसंचार विभाग के मामलों की पैरवी करने के सन्दर्भ में।

ज्ञापन:

ऐसा देखने में आया है कि दूरसंचार विभाग से सम्बन्धित मामलों में दूरसंचार विभाग के स्तर पर न्यायालयों में पैरवी करवाने हेतु सीधे ही जिला न्यायवादियों को आग्रह

करने के उपरान्त पैरवी हेतु नियुक्त कर लिया जाता है, जो कि प्रक्रिया के विपरीत है। अतः निर्देश दिए जाते हैं कि ऐसे मामलों में जब तक इस विभाग द्वारा निर्देश जारी नहीं किए जाते तब तक दूरसंचार विभाग की ओर से सम्बन्धित न्यायालयों में पैरवी न करें अन्यथा ऐसे मामले, जिनमें इस विभाग द्वारा निर्देश जारी नहीं किए होंगे कोसिल फीस निर्धारित नहीं की जाएगी।

हस्ताक्षरित /—  
उप सचिव (विधि),  
हिमाचल प्रदेश सरकार।

**No. LLR-E(9)5/90**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries/Add. Secretaries/Special Secretaries/ Joint Secretaries/Deputy Secretaries,/Under Secretaries, to the Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners, Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated Shimla-2, the 31<sup>st</sup> January, 1995*

*Subject.*—Contempt Petition (Civil) No. 57/93—titled court on its own motion Vs. Tilak Raj Mista & another—Instructions thereon.

Sir,

I am directed to forward a copy of judgment dated 16-11-1994 delivered by the Hon'ble High Court of Himachal Pradesh in the Case titled as court on its own motion Vs. Tilak Raj Mishta & another and to say that the Advocate General, Himachal Pradesh was approached by the Administrative Department to defend the case in the Hon'ble Himachal Pradesh Administrative Tribunal/High Court of Himachal Pradesh on behalf of the contemnners. It has now been decided that whenever any contempt proceedings are filed against any officer/official while discharging his official duties, the Advocate General will not defend the officer/official concerned and the said officer/official shall have to engage his own advocate after obtaining the sanction of the Government for defence at public expenses. The Government while according such sanction has to examine whether the act of the officer/official was committed in good faith and in exercise of his official duty. The Government will reimburse the fee to the officer/official concerned after conclusion of the case in accordance with the instructions issued by this department letter No. LLR-E(10)3/93, dated 28-7-1994.

**Copy of judgement of Hon'ble High Court of Himachal Pradesh, dated 16<sup>th</sup> November, 1994 in the contempt Petition (C) No. 57 of 1993 titled as Court on its own motion Versus Tilak Raj Mista and other.**

BHAWANI SINGH, J (ORAL).  
C.M.P.(M) No. 181 of 1993,

Shri Hira Singh Thakur Vs. Shri Bali Ram and others, was admitted on 14-5-1993—Accordingly, notices were issued for the service of the respondents, namely Shri Bali Ram, Shri Khushi Ram, Financial Commissioner (Revenue and Appeals), to the Government of Himachal Pradesh, Shimla, and Shri Roop Singh.

Process-servers, Smt.Ramdei and Shri Pradeep Aggarwal, from the Court of Senior Subordinate Judge, Shimla, were entrusted the notices for service on respondents Nos. 3 and 4. Process-server Sh. Pradeep Aggarwal reported that respondent No. 2 (Shri Roop Singh) did not accept the notice and asked him to go back to the place from where he had come. The report of the Process Server does not state any kind of intemperate remarks uttered by this repentant against this court. In any case, Shri G.C. Gupta learned counsel appearing for him submits that this respondent is genuinely represent of the development and seeks mercy for his client. He has also tendered unconditional apology with an undertaking to be careful in future.

Refusal to accept the process of the court causes obstruction in the discharge of judicial functions and amounts to contempt. No one can forward to witness the refusal by this respondent with the result that no witness has signed this report. However, looking to the unconditional apology tendered by this respondent, no punishment is awarded and notice issued to him is discharged.

So far as respondent No. 1 Shri Tilak Raj Mista is concerned, process was to be served by Process Server Smt. Ram Dei. In her report she has stated that she went to the Secretariat for serving the process on this respondent at about 1 P.M. There, she found Shri Tilak Raj Mista, Private Secretary to Financial Commissioner (Revenue and Appeals), Government of Himachal Pradesh and she showed him the notice, Shri Tilak Raj Mista took the notice and the copy of petition. Thereafter, when she asked him to write that notice was received with copy, he stated that it was not his duty to do so. He also stated that in future summons be not brought to him. He also said that “what will your High Court do”.

When this matter came to the notice of this Court on 22-7-1993, show cause notices were issued to the contemnors. They were asked to file their replies on affidavits with supporting documents, if any, and state as to why they be not held guilty of contempt of court and punished accordingly.

Reply of respondent Shri Tilak Raj Mista has been examined. He has made crude and curious attempt to answer to allegation against him. It is absolutely clear from his reply that he is trying to make a false defence against the complaint of the Process Server. As a matter of fact, his reply clearly demonstrates that the incident had taken place and he had shown total disrespect not only to the process



of the this Court but also to the lady Process Server who was assigned the work to serve the process on this respondent. Holding a responsible post with the Highest Revenue Officer of the State, his action is highly deplorable and condemnable. There is no reason why the version of lady Process Server be disbelieved. Accordingly, respondent Tilak Raj Mista is held guilty of committing the contempt of this court. Apology tendered by him is not genuine and it is rejected.

Now, the question arises, what punishment should be awarded to him. The contempt is of serious nature. It calls for exemplary punishment. Therefore, respondent Tilak Raj Mista is sentenced to undergo simple imprisonment for four months and to pay a fine of Rs. 2000/-. Failing to deposit the fine, he will suffer further simple imprisonment for one month.

Before parting with the case, I would like to deal with another serious aspect of the case. This contemner Shri Tilak Raj Mista is being represented by the learned Advocate General. The learned Advocate General has appeared personally in this case. He points out that the difficulty has arisen on account of the Govt. order No. Contempt Pet.(C) No.57 of 1993, directing him to appear in this case. I would have proceeded to make serious remarks against the State Government's attempt helping those who have committed the contempt of the court and directing the office of the Advocate General to appear for them and defend them. Since the learned Advocate General has restrained me to do so, I leave the matter at that to be attested to in any other case if the present situation continues.

A copy of this order be supplied to the learned Advocate General free of cost.

Sd/-  
(BHAWANI SINGH)  
16<sup>th</sup> Nov., 1994.

K. C. SOOD  
LR-cum-Secretary (Law)

Government of Himachal Pradesh  
DO. No. LLR-E(9)3/86  
Dated Shimla 30<sup>th</sup> March, 1995.

*Subject.*—Litigation of Supreme Court—Engagement of counsel.

My dear

Kindly refer to this Department letter No. LLR-(E) 24/88 dated 1st October, 1999 addressed to the Advocate General, H. P. and copy endorsed to all the Administrative Secretaries amongst other regarding entrustment of cases to the Advocate in the Supreme Court cases.

Instances have come to the notice of the State Government that most of the Departments are engaging Advocates for conducting criminal/civil cases in the Hon'ble Supreme Court of India at their own level without obtaining the prior

permission from the Law Department, which is against the above instructions issued by the Government. It has again now been decided that no department shall henceforth entrust the case at its own level to the Advocate without prior permission of the Law Department. The violation of these instructions will be viewed seriously and the payment of fee will not be made by this Department in such cases.

I shall be grateful if these instructions are brought to the notice of all concerned working under your control for strict compliance.

With regards.

Yours sincerely,

Sd/  
(K. C. SOOD)

All the Administrative Secretaries  
to the Government of Himachal Pradesh.

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**No. LLR-E(9)3/86-II**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

To

1. All the District Attorney, Himachal Pradesh.
2. All the Deputy District Attorney, Himachal Pradesh.
3. All the Assistant District Attorney, Himachal Pradesh.

*Dated Shimla-2, the 25<sup>th</sup> May, 1995*

*Subject.*—Land reference cases—instruction thereof.

MEMORANDUM:

Instances have come to the notice of LR-cum-Secretary (Law) to the Government of Himachal Pradesh that the certified copies of the judgement/order are not supplied to the department concerned immediately. As the result of this in certain cases the period of limitation expired and the judgement/order of the Court become final, which directly put the State Government in an awkward position and sometimes resulted in heavy financial loss. It has now been decided that the Incharge of the case shall apply for the copy of the judgement/order on the same day on which the judgment/order is delivered/made by the Court and as and when the copy of the judgement/order is supplied by the copying agency, the same must be sent to the concerned department for appropriate action at once.

2. The above instruction should be adhered to strictly failing which it will be viewed seriously and the defaulter will be processed departmentally

Please acknowledge the receipt.

Sd/-  
*Joint Secretary (Law) to the  
Government of Himachal Pradesh.*

Immediate.

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**No. LLR-B(14)23/92-III  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From:

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the  
Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.

*Dated Shimla-2, the 17<sup>th</sup> November, 1995*

*Subject.*—Appointment of Advocates for the conduct/defence of State litigation in the Supreme Court—instructions thereof.

Sir,

Instances have come to the notice of the undersigned that the lawyers so engaged for the conduct/defence of the case in the Supreme Court by the Law Department are changed by the representative of the Administrative Department concerned without the prior approval of the; Law Department, which is against the instructions issued by this Department from time to time.

2. While referring the matter for the engagement of a Counsel in a particular case, keeping in view of the importance, should specifically indicate whether the lawyer is required to be engaged out of the panel of the lawyers so maintained in the Law Department and if the Administrative Department intend to engage a particular lawyer in a particular case then it should specifically state the name of that advocate indicating the interest involved of the State Government in that case so that necessary approval are taken well in time. If the representative of any Administrative Department engages any lawyer without the approval of the Law Department, the Officer who engaged such lawyer, will be personally responsible and the Law Department will not make the payment of fees to such lawyer.

3. The above instructions may be brought to the notice of all concerned for strict compliance.

Yours faithfully,

Sd/-  
(K. C. SOOD)  
*Secretary (Law) to the  
Government of Himachal Pradesh.*

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**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

*Dated: Shimla-2, the December, 1995*

**NOTIFICATION**

**No. LLR-B(14)-23/92-II.**—The Government of Himachal Pradesh is pleased to amend the provisions of para 25.1 and 25.2(1) of the Punjab Law Department Manual as applicable to the State of Himachal Pradesh as under :—

*The ordinary scale of fee for Law Officers:*

**25.1** The ordinary fee payable to the Law Officers for cases conducted by them throughout pertaining to suits for recovery of property, breach of contract of damages, will be calculated as follows:—

- (a) If the amount or value of property, debt or damages shall not exceed Rs. 25,000/- at 10 percent.
- (b) If the amount or value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/- on Rs. 25,000/- at 10 percent and on the remainder at 8 percent.
- (c) If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. One lakh, on Rs. 50,000/- as above and on the remainder at four percent.
- (d) If the amount or value shall exceed Rs.1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 percent.

- (e) If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one percent.

**25.2** (1) The fee calculated according to the table above shall be subject to a maximum limit of Rs.10,000/- for any one case, provided that in any case of great importance making an unusual demand on the time and energy of the Law Officer as it considers a suitable remuneration may be granted, not exceeding the fixed percentage rate upto maximum of Rs. 20,000/-

By order,  
(K. C. SOOD)  
*Secretary (Law) to the  
Government of Himachal Pradesh.*

Endst. No. LLR-B(14)-23/92-II dated: Shimla 1995.

Copy forwarded to :—

1. The Director of Prosecution, H.P. Craig Garden, Shimla-2.
2. All District Attorneys in Himachal Pradesh.
3. The Controller, Printing and Stationery Department, Ghora Chowki, Shimla-5 for publication in the Himachal Pradesh Rajpatra.

Sd/-  
*Joint Secretary (Law) to the  
Government of Himachal Pradesh.*

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**No. LLR-E(9)5/90  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of H.P.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, 9<sup>th</sup> July, 1996*

*Subject.—Regarding defence of Contempt Petitions—instructions thereon.*

Sir,

I am directed to say that a meeting was held under the Chairmanship of the Chief Secretary on 18-5-1996 in connection with Contempt Cases pending in various Courts against the officer(s) of the Government. The matter was discussed in all its ramifications and Advocate General agreed that in all cases where show

cause notice/Contempt Petition is issued to an officer in that case Advocate General shall defend the officer, however, in cases where contempt proceedings are initiated, the concerned officer shall be defended by a Counsel/Advocate engaged by him as per present practice.

2. The above instructions may please be brought to the notice of all concerned.
3. The above instructions supersede the earlier instructions to the extent.
4. Please acknowledge its receipt.

Yours faithfully,

Sd/  
*Joint Secretary (Law) to the  
 Government of Himachal Pradesh.*

PERSONAL ATTENTION

**No. LLR-E(9)5/90  
 GOVERNMENT OF HIMACHAL PRADESH  
 LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 13<sup>th</sup> August, 1996*

*Subject.*—Regarding defence of Contempt Petitions—instructions thereon.

Sir,

I am directed to invite your attention to this department letter of even number dated 9-7-96 on the subject cited above and to clarify that Law Officers cannot appear in contempt proceedings against the officers who are proceeded

against by name due to some legal implications. It is further made clear that in show cause notice/contempt petitions the Advocate General/Law Officer of the State will appear on behalf of the officer who is being proceeded against in contempt proceedings in official designation.

2. This may please be brought to notice of all concerned.

Yours faithfully,

Sd/-  
Joint Secretary (Law) to the  
Government of Himachal Pradesh.

सं० एल० एल० आर० ई० (९)-१/८८-१  
हिमाचल प्रदेश सरकार  
विधि विभाग

प्रेषक :

विधि परामर्शदाता एवं सचिव (विधि),  
हिमाचल प्रदेश सरकार।

प्रेषित:

1. समस्त प्रशासनिक सचिव/संयुक्त सचिव/उप सचिव/ अवर सचिव,  
हिमाचल प्रदेश सरकार।
2. समस्त विभागाध्यक्ष, हिमाचल प्रदेश।
3. समस्त उपायुक्त, हिमाचल प्रदेश।

दिनांक शिमला-2, 5 जून, 1997

**विषय.**—उच्चतम न्यायालय में सिविल अपील दायर करने बारे।

महोदय,

इस विभाग के नोटिस में आया है कि कुछ विभागों द्वारा उच्चतम न्यायालय में सिविल मामलों में अपील दायर करने बारे जिला न्यायवादी, नई दिल्ली से सीधे आग्रह किया जाता है कि उच्चतम न्यायालय में एडवोकेट-ऑन-रिकार्ड के माध्यम से तुरन्त अपील दायर की जाए जो कि उचित पद्धति नहीं है। ऐसे मामले जिनमें राज्य सरकार ने उच्चतम न्यायालय में अपील में जाना होता है के बारे उचित माध्यम से सर्वप्रथम विधि विभाग (लिटिगेशन कक्ष) हिमाचल प्रदेश सचिवालय शिमला-2 से कि मामला अपील के लिए फिट है अथवा नहीं के बारे अनुमोदन प्राप्त करना अनिवार्य है। यदि मामला अपील दायर करने हेतु फिट (Fit) है तो प्रशासनिक विभाग अपने स्तर पर अपने विभाग से सम्बन्धित मन्त्री महोदय का अनुमोदन प्राप्त करने के उपरान्त विधि विभाग से अधिवक्ता नियुक्त करवाने बारे प्रस्ताव भेजते हैं तदोपरान्त विधि विभाग जिला न्यायवादी नई दिल्ली को अपील दायर करने हेतु/अधिवक्ता नियुक्त करने हेतु निर्देश जारी करता है जिसकी प्रति प्रशासनिक विभाग को भी आगामी आवश्यक कार्रवाई हेतु पृष्ठांकित की जाती है।

2. अतः आपसे आग्रह है कि भविष्य में यदि किसी भी सिविल मामले में उच्चतम न्यायालय में अपील दायर करनी हो तो लिटिगेशन विभाग तथा प्रभारी मन्त्री का अनुमोदन उचित माध्यम से प्राप्त करने के उपरान्त अपील दायर करने हेतु मामला इस विभाग से उठाएं व सीधे जिला न्यायवादी, नई दिल्ली से अपने स्तर पर अपील दायर करने बारे आग्रह न करें। कृपया ध्यान रहे कि इस सन्दर्भ में यदि कोई भी विलम्ब होगा तो उसके लिए विभाग स्वयं ही उत्तरदायी होगा। कृपया इन निर्देशों को अपने अधीनस्थ विभागों के नोटिस में भी लाएं।

3. कृपया उक्त आदेशों की कड़ाई से अनुपालना सुनिश्चित करें।

भवदीय,

हस्ताक्षरित /—  
(सुरेन्द्र सिंह ठाकुर)  
सचिव (विधि),  
हिमाचल प्रदेश सरकार।

**Immediate**  
**PERSONAL ATTENTION**

**No. LLR-E(9)5/90**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, 30<sup>th</sup> September, 1997*

*Subject.*—Regarding defence of Contempt Petitions—instructions thereon.

Sir,

I have been directed to say that instances have come to the notice of Government that various departments of the Pradesh do not take prior permission relating to the Defence of Contempt Petition in the court(s) resultantly refer the cases to this Department for obtaining “ex-post-facto” sanction, which is against the prescribed/approved policy of Government. In order to avoid this practice, the



Government has decided that in future no “ex-post-facto” sanction will be accorded in any shape. Henceforth prior permission of the Law Department shall be necessary.

2. These instructions be adhered to strictly and brought to the notice of your subordinate offices.

3. Please acknowledge the receipt.

Yours faithfully,

Sd/-  
(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

\_\_\_\_\_  
**Immediate**  
**PERSONAL ATTENTION**

**No. LLR-E(9)5/90.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 4<sup>th</sup> October, 1997*

*Subject.—Regarding defence of Contempt Petitions—instructions thereof.*

Sir,

In continuation to this department letter of even number, dated 30-9-1997 on the subject cited above, I am to state if any case pertaining to “ex-post-facto” sanction is still lying pending in your department then the same be submitted to this department for appropriate sanction by 30<sup>th</sup> October, 1997 positively, otherwise it would be presumed that no such case is lying pending in any department and

henceforth no "ex-post-facto" sanction shall be accorded by this department at any cost, as already mentioned in this department letter referred to above.

Yours faithfully,

Sd/-  
(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

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**No. LLR-E(12)3/93  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From:

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries/Additional Secretaries/ Special Secretaries/ Joint Secretaries/Deputy Secretaries/Under Secretaries to the to the Government of Himachal Pradesh, Shimla-2.
2. All Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 29<sup>th</sup> October, 1997*

*Subject.*—Regarding assessment of fee in respect of private advocate engaged for the self defence on public expenses in favour of Officers/Officials— instructions thereof.

Sir,

In continuation of this department letter of even number, dated 28-7-1994 on the subject cited above, it has been decided that the amount of Rs. 1,000/- ( as journey & boarding charges in addition to the fees as assessed in the aforesaid letter) will be payable only to Shimla based lawyers who are engaged for self defence at public expenses for attending hearings outside Shimla and no additional charges will be payable for hearing at Shimla except the fee. It is also made clear that the amount of Rs. 1,000/- (Rupees one thousand) only will be as a lump sum payment for the case irrespective of the number of hearings.

2. It is, therefore, requested that the above information may please be brought to the notice of all Officers/Officials working under your control for compliance.

Yours faithfully,

Sd/-  
(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(9)5/90**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

To

1. All the Administrative Secretaries/Additional Secretaries/ Special Secretaries/Joint Secretaries/ Deputy Secretaries/Under Secretaries to the Govt. of H.P.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in H.P.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 2<sup>nd</sup> July, 1998*

*Subject.—Regarding defence of Contempt Petitions—instructions thereof.*

Sir,

It has been decided by the Government in view of the judgement dated 9-12-1997 delivered by the Hon'ble Supreme Court of India AIR(Feb. 1998) S.C. 685 in case titled as Commissioner, Agra. & Ors. Vs. Rohtas Singh & Ors. That the Advocate General, Himachal Pradesh or any other Government Advocate is authorised to defend the officer(s)/ official(s) where contempt of court are issued either by name or by designation while discharging the official duties.

2. The above instructions may please be brought to the notice of all concerned.

3. The above instructions supersede the earlier instructions to this extent.
4. Please acknowledge its receipt.

Yours faithfully,

Sd/  
 (SURINGER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.*

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**No. LLR-E(9)5/90**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary(Law)to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries/Additional Secretaries/Special Secretaries/Joint Secretaries/Deputy Secretaries/Under Secretaries to the Govt. of H.P., Shimla-2.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 29<sup>th</sup> July, 1998*

*Subject.*—Matters concerning litigation in H.P. Courts/Administrative Tribunal, Instructions/Guidelines.

Sir,

I have been directed to say that it is a matter of serious concern to the Government that in large number of cases, filed before the Courts/Tribunal, the concerned departments have not cared to file the replies to the Suits/applications for a pretty long time. However, it is noticed that in some cases, the delay in filing replies has gone inasmuch as even, more than 10 years. The Tribunal in particular is obviously concerned about this laxity and lack of response on the part of the Government. Further more, it has also been observed that in some cases the Courts/Tribunal have ordered the payment of costs to the litigant(s).

2. Keeping in view these lapses, the State Government have viewed this matter with all seriousness and it has been decided that the concerned departments shall ensure that there should not be any delay in filing the replies at all and the

costs wherever ordered to be paid in the Court/Tribunal in such cases, are not to be paid by the Government or from the Government funds, but shall be paid by the individual, responsible for this delay and such responsibility shall be immediately fixed by the Secretary concerned.

3. These instructions be adhered to strictly and be brought to the notice of all subordinate offices/officers under your control.

4. Please acknowledge its receipt.

Yours faithfully,

Sd/-  
(SURINDER SINGH THAKUR)  
LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh

हिमाचल प्रदेश सरकार  
विधि विभाग  
अधिसूचना

शिमला-171 002, 11 जून, 1999

**संख्या एल0 एल0 आर0-ई0(9)-2/76.**—हिमाचल प्रदेश की राज्यपाल, इस विभाग की अधिसूचना संख्या: एल0एल0आर0-107/420-54 तारीख 27-8-87 के क्रम में सिविल प्रक्रिया संहिता के आदेश XXVII के नियम 1 और 2 द्वारा शक्तियों का प्रयोग करते हुए, मुख्य अरण्यपाल वन (परियोजना) हिमाचल प्रदेश, निदेशक इण्डो जर्मन चंगर परियोजना, निदेशक आई0डब्ल्यू0डी0पी0, (हिल्ज) कण्डी और निदेशक, हिमाचल प्रदेश राज्य भूमि प्रयोग बोर्ड को, हिमाचल प्रदेश राज्य की ओर से कार्य करने हेतु हिमाचल प्रदेश राज्य के द्वारा या विरुद्ध किसी भी वाद में वाद पत्रों या लिखित कथनों को हस्ताक्षरित और सत्यापित करने और किसी भी न्यायिक कार्यवाही की बाबत हिमाचल प्रदेश राज्य की ओर से कार्य करने के लिए भी प्राधिकृत करती हैं।

आदेश द्वारा,  
हस्ताक्षरित/-  
(रामेश्वर शर्मा)  
सचिव (विधि),  
हिमाचल प्रदेश सरकार।

पृष्ठांकन सं0 एल0एल0आर0-ई0(9)-2/76 तारीख शिमला-2,11 जून,1999.

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:-

1. समस्त प्रशासनिक सचिव/विशेष सचिव/अतिरिक्त सचिव/संयुक्त सचिव और उप- सचिव हिमाचल प्रदेश सरकार, शिमला-2.
2. सचिव वन हिमाचल प्रदेश सरकार को उनके पत्र संख्या वन-1(बी) 1-1/92 दिनांक 3-3-99 के सन्दर्भ में सूचनार्थ।
3. हिमाचल प्रदेश के समस्त विभागाध्यक्ष।

4. रजिस्ट्रार जनरल, हिमाचल प्रदेश उच्च न्यायालय शिमला-1
5. हिमाचल प्रदेश के समस्त समाहर्ता (क्लैक्टर्ज)।
6. प्रधान मुख्य अरण्यपाल, हिमाचल प्रदेश, शिमला-1
7. मुख्य अरण्यपाल वन (परियोजना) हिमाचल प्रदेश, शिमला।
8. निदेशक आई0डब्ल्यू0डी0पी0 (हिल्ज) कण्डी, सोलन, हिमाचल प्रदेश।
9. निदेशक, हिमाचल प्रदेश भूमि प्रयोग बोर्ड, खलीनी, शिमला-2
10. निदेशक, इण्डो जर्मन चंगर परियोजना, पालमपुर जिला कांगड़ा, हिमाचल प्रदेश।
11. हिमाचल प्रदेश के समस्त वन अरण्यपाल।
12. सहायक विधायी प्रारूपकार (हिन्दी) हिमाचल प्रदेश सचिवालय, शिमला-2.
13. हिमाचल प्रदेश के समस्त जिला एवं सत्र न्यायाधीश।
14. हिमाचल प्रदेश के समस्त जिला न्यायवादी/उप-जिला न्यायवादी तथा सहायक जिला न्यायवादी।
15. वित्तायुक्त, हिमाचल प्रदेश के कोर्ट क्लर्क, हिमाचल प्रदेश सचिवालय, शिमला-2
16. नियन्त्रक, हिमाचल प्रदेश मुद्रण एवं लेखन विभाग शिमला को राजपत्र में प्रकाशन हेतु।

हस्ता/-  
अवर सचिव विधि  
हिमाचल प्रदेश सरकार।

**Immediate**

**Court case.**

**No. LLR-E(9)1/88-III  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Govt. of H.P.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.

*Dated: Shimla-2, the 24<sup>th</sup> January, 2000*

*Subject.*—Delay in filing replies in various Original Applications, pending in the H.P. Administrative Tribunal.

Sir,

In continuation to this Department letter of even number dated 30-11-1999, I am directed to say that it has been brought to the notice of the Hon'ble Chief Minister that the various H.P. Govt. Departments are not filing replies in time and are also not producing record in the cases pending before the Hon'ble H.P. Administrative Tribunal. The Hon'ble Chief Minister has viewed it

very seriously and has passed the following orders for strict compliance in this behalf with immediate effect:—

- (i) That the replies in the cases before the H.P. Administrative Tribunal may be filed within the stipulated period and the record so required be produced as and when desired by the Hon'ble Tribunal.
- (ii) That if the replies are not filed in time or the record is not produced at the directions of the Hon'ble Tribunal, departmental action should be initiated against the concerned Officer/Official and he/she shall personally be liable for the negligence and the lapses in his/her official duty and if any cost is imposed by the Hon'ble Tribunal, the concerned Officer/Official who has caused the delay in filing the reply shall personally be liable to pay the said cost from his/her own pocket.

2. You are, therefore, requested to bring these instructions to the notice of all Officers/Officials of your Department and ensure strict implementation.

3. The receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

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**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT (LEGISLATION)**

From :

The LR-*cum*-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the District Attorneys in H.P. (with ten spare copies).

*Dated: Shimla-2, the 22<sup>nd</sup> July, 2000*

*Subject.*—Courts of H.P. by the District Attorneys/ADAs—re-fixation of Counsel fee thereof.

Sir,

I am directed to State that the matter regarding enhancement of Counsel fee rates being paid to the District Attorneys etc. in respect of civil cases of other State Govts./U.Ts. being defended by them in the Courts of this State was under active consideration of the State Govt. for some time past as the existing fee rates of Rs.300/- for the entire case fixed long back had become impracticable with the present times.

It has, therefore, now been decided by the Govt. to revise the fee payable to District Attorneys/Dy.Distt.Attorneys/Assistant Distt.Attorneys as follows:—

<b>Courts.</b>	<b>Fee for conducting the entire case</b>
1. Courts at Sub Divisional level, such as the court of Sr.Sub-Judge, Chief Judicial Magistrate, Court of Assistant Commissioner, Ist Grade, Sub-Divisional Collector, Sub-Divisional Magistrate ,Tehsildar or such equivalent courts.	Rs. 50/- per case.
2. Courts of District Judge, Session Judge, Addl. Distt. Judge, Addl. Session Judge, MACT, Distt. Collector, Divisional Commissioner, Distt. Consumer Forum established under the Consumer Protection Act, 1986 and Labour and Industrial Tribunal set up under the Industrial Disputes Act, 1947 or such equivalent courts.	Rs.1250/- per case.

The 1/3 rd share of fee in each case will be deposited by the concerned District Attorneys etc. in the Govt. Treasuries as State share as per provisions of the H.P.F.R.Vol.I as per the practice already in vogue.

The fee bills may, therefore, be sent to this Department for verification accordingly by the concerned District Attorneys.

The aforesaid orders of enhancement of fee will take effect from the date of issue of this communication.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA),  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*



**No. LLR-B(14)-4/99**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT (LEGISLATION)**

From :

The LR-*cum*-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the Administrative Secretaries to the  
Government of Himachal Pradesh,  
Shimla-171002.

*Dated: Shimla-2, the 31<sup>st</sup> August, 2000*

*Subject.*—Submission of cases to the Law Department—Instructions regarding.

Sir/Madam,

I am to bring to your notice that the Administrative Departments send various proposals to this Department for examination/vetting which are either incomplete or contain some lacunae resulting in avoidable delay in their clearance/vetting by the Law Department. In most of the cases sent to Law Department, the A.D. do not indicate clearly the point on which the advice/opinion of the Law Department is required and sometimes only vague information is available and vital facts are not available on file which results in avoidable delay in tendering the advice. All out efforts are being made to finalise the cases in the Opinion/Legislation/Litigation Wings of this Department at the earliest possible but sometimes because of the submission of incomplete documents/information of the case, results in avoidable delays.

2. The matter has, therefore, been discussed in the monthly departmental meeting to review/monitoring the efficiency in administration and to improve the functioning of the Law Department. In such a meeting held on the 24<sup>th</sup> of August, 2000 it was decided that to tackle the above situations effectively, the Law Department (Opinion/Legislation/Litigation Wings) would not return the cases received from the A.D. with observations immediately but would request the Branch Officer to depute some responsible officer well conversant with the case personally same day or the next day so that the position is discussed in detail and the information /documents are authoritatively obtained to form a candid opinion/ advice on the case expeditiously aiming at the qualitative improvement in the functioning of the Law Departments Wings as well as the mode of submissions of the cases by the A.D. In the cases where above remedy fails to achieve the desired results, the concerned wing of the Law Department would before returning such cases with the observations to the A.D. apprise the Secretary (Law) of the position who may also like to contact telephonically the Secretary concerned of the A.D. of the efforts made by this Department to secure the relevant documents/information

from the departmental officers of the A.D., thereby obviating the avoidable delay in the disposal of the case in this Department.

3. I am, therefore, to request you to please instruct all the Officers concerned under your administrative control to follow the above instructions while sending the proposals concerning your department for examination/vetting to this Department.

Kindly acknowledge receipt of this communication.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

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**No. LLR-E(2)1/94-II.(Loose)**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Govt. of H.P.
2. All the Heads of Departments in Himachal Pradesh.
3. Sh Rakesh Bharti, Additional Advocate General, Tribunal Cell, Shimla-2.
4. Sh. R.K Sharma, Additional Advocate General, Tribunal Cell, Shimla-2.
5. The Director (Prosecution), S.D.A. Complex, Kasumpti, Shimla

*Dated: Shimla-2, the 1<sup>st</sup> February, 2001*

*Subject.*—Expeditious disposal of cases by Himachal Pradesh Administrative Tribunal.

Sir/Madam,

In response to the anxiety expressed by the Hon'ble Chief Minister in his address to the Secretaries in the meeting dated 30-12-2000, I have studied the problem in great details and have also talked to most of the Administrative Secretaries and concerned Additional Advocate Generals. I have proposed a mechanism for effective prosecution and disposal of Government cases by Himachal Pradesh Administrative Tribunal. The proposed mechanism has been

approved by the worthy chief Secretary and the Hon'ble Chief Minister. Therefore, I am directed to circulate the following guidelines/instructions for implementation and necessary action on the part of all the concerned:

1. The Government Advocates, while appearing in a newly instituted case, before State Administrative Tribunal, may and rather should accept the service of notice and receive the copy of application etc. from the Tribunal. However, on the first date of hearing at the time of receipt of notice, the Government Advocate should not waive of the service of notice in the case and should invariably insist upon the Tribunal by making a request to allow them some time for consulting the Government Departments and for obtaining their version before hearing them as per provision of section 24(b) of the Administrative Tribunal Act. In case such time and opportunity is allowed by the Tribunal before passing an interim order, the Government Advocate should invariably contact Administrative Secretary/Head of Department or any other responsible Officer of the department concerned so as to obtain the reply/version of the department within limited time of adjournment before arguing the case in the Tribunal. In the event of Tribunal passing an interim injunction order on first date of hearing without waiting for Government reply, as it can legitimately do in urgent cases, the Government Advocate should insist upon the Tribunal to record its reasons for passing the interim injunction order as is the requirement of the law. In such cases, the Government Advocate may also insist upon the Tribunal to record in its order the request for grant of time and opportunity for obtaining the Government version.

In the event of Tribunal passing an injunction order with or without recording reasons on the first date of hearing, the Government Advocate should immediately convey such orders to the concerned department and should invariably advise the department if it is to file a writ before the Hon'ble High Court challenging the order of the Tribunal or should file the reply and request the Tribunal to finally dispose of injunction application within the stipulated period of 14 days, for which the interim injunction order passed by Tribunal may remain validly in force.

2. On receiving of information/communication from the Government Advocate with regard to the institution of case/passing of injunction order against it, or for fixing of a date for filing the reply by the department, the concerned department should make all out efforts to ensure that the reply is filed within the period of adjournment and request made to the Tribunal for expeditiously disposing of the injunction application. If the interim injunction orders are not vacated or confirmed by the Tribunal by finally disposing of application within a period of one month from the date of issuance

of such order, in that case, the department may bring it to the notice of Law Secretary who, in turn, may request the Government Advocate for expeditious disposal of injunction application by the Tribunal or in the alternative, for taking appropriate steps to move the superior courts.

On other hand, if the Government Department do not file its reply etc. before the Tribunal despite receiving communication/information from Government Advocate within a period of one month, the Government Advocate may also bring such situations to the notice of the Law Secretary, who, shall approach the concerned department to do the needful immediately. The Law Secretary may seek the intervention of the Chief Secretary or the Hon'ble Chief Minister, if the need be.

3. Some of the important Government departments like Excise, PWD and Secondary Education etc., having a large number of court cases, are already having a District Attorney/Dy. Distt. Attorney or Asstt. Distt. Attorney posted with them as Law Officer for rendering legal advice to these departments. These Government attorneys can be utilized by the concerned department in a more positive, fruitful and responsible manner, rather than being utilized for giving legal opinion alone in departmental cases. These Government Attorneys do have a practice licence and can appear and represent the State cases of lesser importance,. In cases of serious nature, where the government cases are represented by the Advocates or Additional Advocate Generals, such Government Advocates appointed with the department should be invariably asked to attend the courts with the Advocate General and assist them by supplying factual situation and legal view points. Such District Attorneys should be also made responsible for keeping a comprehensive record of all the pending court cases of their department and should invariably inform concerned Secretary/Head of Department with regard to the progress of the each case. If the District Attorney is made responsible for keeping track of the departmental cases, I doubt if any case may remain pending before the Tribunal without meaningful progress.

In some other departments like Health, I&PH and Primary Education etc. the arrangements are being made for posting of one District Attorney/Dy. Distt. Attorney having not less than five years experience. Such an agreement may meet the requirement of the departments to engage the private advocates and no private advocate need to be engaged by the Department except in very rare cases.

4. In addition to the Distt. Attorney/Dy. Distt. Attorney where they are already posted or where they are to be posted in accordance with proposal No.. (3) above, the departments, without having the post of District Attorney with them may designate one responsible officer not below the rank of a Superintendent for dealing with court cases. This designated Officer like District Attorney of the department, where they have one, should be responsible for maintaining a register of litigation wherein each and every case instituted by or against the department should be registered. This Officer should also record the progress of the case in this register on each and every date of hearing and should apprise his Secretary/Head of Department about the progress of the case after every date of hearing.
  
5. This has been a genuine complaint of the Advocates representing Government cases in various courts and Tribunals that departmental representative often do not reach to them on the date of hearing in the Court and the record of such cases is not made available to the Government Advocates well in advance. It is very strongly recommended that each department should depute its Distt. Attorney/Dy. Distt. Attorney or Designated Officer to appear in the Court with the government Advocate on each and every date of hearing for assisting the Government Advocate with factual material and by supporting record of the case. The Government Advocate may be requested to bring it to the notice of the concerned Secretary/Head of Department if the departmental representative, do not contact them well in advance in connection with the hearing of a case.

The above guidelines/instructions, if implemented faithfully and sincerely by all concerned, may go a long way in providing the effective prosecution of Government cases before the Himachal Pradesh Administrative Tribunal. It is earnestly hoped that all concerned shall implement the guidelines in true spirit.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(9)1/88-III**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**DEPARTMENT OF LAW**

From:

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the Administrative Secretaries to the Govt. of H.P.,  
Shimla-2.

*Dated: Shimla-2, the 19<sup>th</sup> February, 2001*

*Subject.*—Submission of files to the Law Department for seeking legal opinion.

Sir,

Of late, it has been observed that some of departments, while submitting a case to the Law Department for seeking legal opinion, have fixed a deadline for tendering of opinion by the Law Department. While this department appreciates the urgency of the departments in seeking opinion in some cases, the departments should also appreciate that the Law Department has to do a special type of job involving lot of research and study before tendering its opinion. Therefore, it is neither possible nor permissible for the departments to comprehend the time to be taken by the Law Department in giving opinion to a particular case. In any case, the Law Department has its own priorities in dealing with the cases at a given time and it is not acceptable to this department that any other departments should meddle with the colander fixed by the Law Department for its working.

In these circumstances, it is requested that the Administrative Departments, while seeking legal opinion of this department, should refrain themselves from fixing any deadline for tendering of opinion by this department. Of course, the departments are always at liberty to highlight their urgency in a given case or discuss the matter directly with the Law Secretary in case of any emergency. However, to avoid any controversy or unsavoury situation, it is requested that no definite deadline be fixed in such cases.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the*  
*Government of Himachal Pradesh.*

**Immediate**

**No. LLR-E(2)1/94-II  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

The Addl. Advocate General,  
Tribunal Cell, Shimla-2.

*Dated: Shimla-2, the 12<sup>th</sup> April, 2001*

*Subject.*—Expeditious disposal of cases by Himachal Pradesh Administrative Tribunal.

Sir,

In response to our letter of even Nil. dated 1-2-2001 on the subject cited above, various Departments/boards & Corporations of the State Government have supplied the list of cases (consolidated list enclosed on which the interim stay had been granted by the Hon'ble HPAT and though replies have been filed by the Departments but the cases have not yet been taken up for hearing by the Hon'ble Tribunal for a considerable long time resulting continuation of interim stay.

I am, therefore, direct to say that you may kindly approach the Hon'ble Tribunal for expeditious disposal of these cases and for the decision of stay applications.

Yours faithfully,

Sd/  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

Encls. As above

**No. LLR-B(14)3/99**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the Administrative Secretaries to the Govt. of H.P.

*Dated: Shimla-2, the 8<sup>th</sup> August, 2001*

*Subject.*—Constitution of various Committees and the Meetings held by the  
Administrative Departments.

Sir,

It is being observed that the Administrative Departments while constituting certain committees include the LR-cum-Secretary (Law) as a Member of such Committees. Quite often, the LR-cum-Secretary (Law) is also required to attend the departmental meetings held by various Administrative Departments. Eventually, the findings/decisions of such Committees and meetings are normally sent to Law Department for vetting. Therefore, at occasions, it becomes difficult and embarrassing for LR-cum-Secretary (Law) to dispassionately analyse or to differ with the proposals of such Committees where he himself was a party in such meetings/committees.

Otherwise also, a considered legal opinion is difficult to be given at the spur of the moment without proper study. Therefore, the presence of Law Secretary, in such meetings of committees, is not of much importance.

Consequently, it is requested that the Administrative Departments should ordinarily avoid to include the LR-cum-Secretary (Law) while constituting such committees or holding meetings by them for taking a departmental decision which is ultimately to be vetted by the Law Department. Unless it is statutorily required to associate the LR-cum-Secretary (Law), the departments may associate the Special Secretary (Law) or Additional Secretary (Law) in such committees/meetings where the presence of Law Officer is considered necessary.

Of course, the LR-cum-Secretary (Law) shall be readily available for consultations to any department of the Government as and when considered necessary by Department to do so.

Yours faithfully,

Sd/-  
(RAMESHWAR SHARMA)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*



**No. LLR-E(10)2/81  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the District Attorneys,  
in Himachal Pradesh.

*Dated: Shimla-2, the 6<sup>th</sup> February, 2003*

*Subject.*— Non-supply of legal opinion by the District Attorneys alongwith the certified copies of court Awards/Judgement.

Sir,

It has been brought to the notice of this Government by the Director, Prosecution and Additional Secretary to the Government of Punjab on the cited subject that many times certified copies of the judgments/awards passed by the various courts alongwith your legal opinion are not being supplied well in time to the concerned departments/State Governments which cause delay for filing further appeals.

Keeping in view the above position, it has not been decided that in future after the delivery of judgment/award of the case, the concerned District Attorney will immediately collect the copy of judgment/award and send the same alongwith his legal opinion to the quarter concerned.

This may be given TOP PRIORITY.

Yours faithfully,

Sd/-

*Deputy Secretary (Law) to the  
Government of Himachal Pradesh.*

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**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

**OFFICE ORDER**

*Dated: Shimla-2, the 13<sup>th</sup> March, 2003*

**No. LLR-E(9)-1/88-iii(Loose).**—It has been decided by the Government that Shri J.S. Attri, Advocate will also represent the State of H.P. in the Hon'ble Supreme Court of India as Advocate-on-record both for Civil and Criminal Cases on the terms and conditions as contained in this department office Order of even No. dated 9-7-1998, with immediate effect.

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E (10) 2/81**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*-Secretary (Law ) to the  
Govt. of Himachal Pradesh.

To

1. LR & Secretary to Govt., Haryana,  
Law & Legislative Deptt. SCO No. 15,  
Sector-11, Panchkula.
2. Director Prosecution & Litigation and Additional Secretary to Govt.,  
Punjab at Chandigarh.

*Dated Shimla-171002, the 17th April, 2003*

*Subject*—Non supply of legal opinion by the District Attorneys alongwith the  
certified copies of court awards/ judgement.

Sir,

It has been brought to the notice of this department by the District Attorney of this State, on the subject cited above that in the H.P. Civil and Criminal Courts ( preparation and supply of copies of records) Rules, 2000 there is no provision to supply the certified copies of judgement/Awards free of costs to the State/ District Attorneys. The copying agencies of judicial courts are issuing certified copies at the minimum cost of about Rs. 50/- and even more keeping in view the number of pages. Besides this, it is also intimated by the District Attorneys that the representatives of the concerned departments are not coming forth to assist the District Attorney and to arrange for the court fee etc. on the successive dates of hearings as well as on the date of judgement.

1. Keeping in view the above position, this Govt. has decided that you may kindly issue necessary directions to all concerned departments of your State that in future representatives of the Departments who is well conversant with the case may attend their cases on the successive dates of hearings as well as on the date of judgement to assist the district attorney concerned and to arrange the necessary court fee etc.

Yours faithfully,

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary ( Law ) to the  
Government of Himachal Pradesh.*

**MOST IMMEDIATE**

**No. LLR-E (2)1/94-Vol-II.  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-*cum*-Secretary (Law ) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Govt. of H.P.
2. All the Heads of Departments, Himachal Pradesh.
3. All the Deputy Commissioners, Himachal Pradesh.
4. All the Chairmen/ Managing Directors/Registrar of Boards/ Corporations/ Universities in Himachal Pradesh.

*Dated Shimla- 171002, the 26<sup>th</sup> April, 2003.*

*Subject.*—Delay in filling replies in a large number of important court matters pertaining to High Court/ H.P. Administrative Tribunal.

Sir,

I am directed to say that it has come to the notice of the Hon'ble Chief Minister that in a large number of important court cases of Supreme Court/High Court/ H.P. Administrative Tribunal and other courts replies are not being filed by various departments/ Corporations and boards of the State Government within the time granted by the Courts, on account of which Hon'ble Supreme Court/ High Court/ Tribunal have decided some cases *ex-parte*. This not only result in embarrassment to the Govt. but public interest too suffers and also causing huge loss to the Government. This act has been viewed seriously by the Hon'ble Chief Minister.

In view of the above, you are requested to ensure that the reply to the court cases is filed invariably within the stipulated period so that the interest of the Govt. does not suffer. Any lapse in this regard will be viewed seriously and defaulting officers will be held personally responsible for such delays.

This may be treated as most urgent.

The receipt of this communication may be acknowledged.

Yours faithfully,

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary (Law ) to the  
Government of Himachal Pradesh.*

**No. LLR-E (2) 1/94-Vol-II.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*- Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the administrative Secretaries to the  
 Government of Himachal Pradesh, Shimla-171002.
2. All the Heads of Departments, Himachal Pradesh.
3. All the Deputy Commissioner/ Superintendents of Police, Himachal  
 Pradesh.
4. All the Chairmen/ Managing Directors/ Registrar of Boards/  
 Corporations/ Universities in H.P.

*Dated Shimla-171002, the 10<sup>th</sup> November, 2003*

*Subject.*—Proper defence of court cases in various courts.

Sir/ Madam ,

The Hon'ble Chief Minister has expressed concern on high percentage of acquittal in criminal cases. He pointed out that the Government is suffering loss of crores of rupees because of negligence and inefficient handling of civil cases. In this context, the instructions have been issued by this department on 26-4-2003 and 19-5-2003, these instructions be observed in letter and spirit by all the concerned so that better results could be obtained in the state.

2. The criminal cases fail interalia, because of faulty investigation. In cases where there is proper investigation, the cases may fail because the witnesses either turn hostile or are not in position to give correct version of the facts before the courts. For avoiding faulty investigation, Secretary (Home-Prosecution) may ensure that the proper training be imparted to the investigating officers. Periodical refresher courses should also be organised to keep the investigating officers acquainted with the latest technology of investigation. The Secretary ( Home-Prosecution) should thoroughly peruse the judgements of criminal courts and the infirmities pointed out in the investigation of criminal cases should be brought to the notice of public prosecutors so that the Public Prosecutors get the defects of investigation removed before the challan is put in the court. If any infirmity is noticed in the conduct of cases by a Public prosecutor, suitable action be taken against him.

With respect to statement of witness, the Investigating Officer should be directed not to record the statements of witnesses in difficult language because the witnesses may not be able to properly reproduce their statements before the court. The statements should be recorded in a simple language so that witness may reproduce as to what he has witnessed. With respect to hostile witnesses, the Investigating Officer should keep a watch on the witnesses so that they do not

change their statements because of the fear or influence of the accused party and Investigating Officer should invariably remain present specially during the trial of serious cases. To achieve better result, Investigation Officers should not ordinarily be transferred to other wings of police. Where there is paucity of Public Prosecutors, sub-section(4) of section 24 of Criminal Procedure Code be invoked by the respective District Magistrates.

In civil cases, the department concerned has to swing into action from the date a notice under section 80 C.P.C. is received. A reply to a notice under section 80 C.P.C. must ordinarily be given. If the claim is found genuine, the matter must be settled to avoid litigation, costs and interest. If matter is not to be settled, the department should start collecting the material relating to the case. The official nominated under para 7 of this department letter of even No. dated 19-5-2003, should make an entry to this effect in the register and submit his report to the Head of the department for taking further action.

In case, it is found that Public Prosecutors/District Attorneys or Advocate General, etc. do not co-operate the Department or authorities, the matter should immediately be brought to the notice of this department

In Land acquisition cases, the court are awarding interest @ 15% per Annum whereas the bank rates are quite less. Hence, Secretary(Revenue) should initiate the process of amending the relevant provisions of Land Acquisition Act.

It has also be observed that only land Acquisition Collector is made party in land reference cases but the Department acquiring the land is not made party. In such the District Attorney should make an application to the court for making the acquiring Department also a party so that the interest of the Department is watched.

To monitor proper handling of Government cases in the various courts, the respective Deputy Commissioners along with Superintendent of Police and District Attorney will held quarterly meetings and progress achieved therein be intimated to this department.

State level meeting will be held quarterly under the Chairmanship of Secretary (Law) along with Ld. Advocate General and Director of Prosecution wherein the progress of Civil & Criminal cases will be monitored.

Yours faithfully,

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E (2) 1/94-Vol-II.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-cum- Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the administrative secretaries to the  
the Government of Himachal Pradesh, Shimla-171002.
2. All the Heads of Departments, in Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.
4. All the Chairmen/ Managing Directors/ Registrar of Boards/  
Corporation/ Universities in H.P.

*Dated Shimla-171002, the 8<sup>th</sup> December, 2003*

*Subject.*—Filing of reply/written statement within stipulated period *i.e.* 30 days  
from the service of summons as per the Amended provision of Rule I of  
Order 8 C.P.C.

Sir,

I am to say that the Advocate General, Himachal Pradesh has brought to  
the notice of the Govt. that the concerned Departments are not filing the written  
statement within stipulated period as provided under Rule 1 Order 8 CPC after the  
service of summons, for one or the other reason resulting thereby loss of huge  
exchequer to the Government. This lapse occurs due to the fault of Department and  
their officers.

According to the amended provision of CPC the reply or written statement  
on behalf of the Government is to be filed within 30 days from the service of  
summons upon the Government as well as their officers as provided in Rule I of  
Order 8 CPC and further thereafter 60 days as per the discretion of the court. I am,  
therefore, request you to ensure that reply/written statement is filed within  
stipulated period as provided under Rule 1 Order 8 CPC, so that the interest of the  
Government does not suffer. Any lapse in this regard will be viewed seriously.

The above instructions may please be adhered to strictly.

Please acknowledge the receipt.

Yours faithfully,

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E (10) 5/86-II.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*- Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the District Attorneys,  
in Himachal Pradesh.

*Dated Shimla-171002, the 20<sup>th</sup> December, 2003*

*Subject.*—Counsel fee bills for the defence of other States and Union of India.

Sir,

I am directed to say that it has come to the notice of the Government that the concerned District Attorneys/Deputy District Attorneys/Assistant District Attorneys are sending their Counsel fee bills direct to the other State Governments/U.O.I. The Government pleaders are required to send their counsel fee bills to this Department for necessary sanction. After the sanction of these bills by this Department, the concerned Government Advocates submit their counsel fee bill to the concerned State Government for necessary payments. Out of sanctioned amount 1/3<sup>rd</sup> amount is required to deposit by the Government pleaders into the Government Treasury as per provision of H.P.F.R.Vol. I as State share. You are, therefore, requested to send the details of last three years of counsel fee drawn from the other State Govts./U.O.I. It may also be intimated whether the 1/3<sup>rd</sup> amount of State share in these cases were deposited in Govt. Treasury or not by the concerned Govt. pleaders as per rule under reference. For future all the counsel fee bills in question may kindly be sent to this department for sanction in first instance.

Yours faithfully,

Sd/-  
*Under Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E (2) 1/94-Vol-II**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*- Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the administrative secretaries to the  
the Government of Himachal Pradesh, Shimla-171002.
2. All the Heads of Departments, in Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.

*Dated Shimla-171002, the 1<sup>st</sup> January, 2004*

*Subject.*—Regarding Supreme Court Matters.

Sir,

I am directed to say that Shri J.S. Attri, Additional Advocate General-*cum*-Advocate-on-Record at Delhi has brought to the notice of the Government that there are certain cases which reached to his office after the expiry of period of limitation for filing the Special Leave Petition in the Hon'ble Supreme Court. The period of filing the SLP from the date of judgement of the High Court is 90 days. For the purpose of study, drafting and preparing of Special Leave Petition, he requires at least four weeks, as such, the exercise by the concerned Department for taking opinion of Law Department and decision of the Administrative Department should be done within 60 days from the date of impugned judgment Order. The file should reach immediately to his office enabling him to get sufficient time for study, conference, preparation of SLP and thereafter filing the same in the Hon'ble Supreme court. There are instances that the cases dismissed in High Court on the point of limitation, reach his office much after the expiry of limitation for filing Special Leave Petition. It has also been noticed that there are under lines in the certified copies of orders/judgements issued by Hon'ble High Court , such under lines in the certified copies are not accepted in the Registry of the Hon'ble Supreme Court as it is treated as tempering in certified copy of the judgement/order of the High Court. Besides this, he has also intimated that the officials of some departments have made correspondence with the Registry for filing the documents in the Hon'ble Supreme Court. The State Government has established a regular Legal Cell, in Himachal Bhawan, Delhi as Liaison Office and all the documents are to be filed through the Advocate-on-record, appointed by the Government . Standing of such document directly to the Supreme Court is treated highly objectionable by the Registry of the Supreme Court and such instances are reported



to the Hon'ble Apex court. In order not to repeat such type of lapses/objectionable acts, it has been decided that the following instructions be strictly complied:—

- (1) In cases where SLP/Appeal is required to be filed, all the codal formalities should be completed within 60 days from the date of impugned judgment/order and the file case should reach in the office of the Advocate-on-Record, New Delhi at least four weeks before the expiry of the limitation period.
- (2) No under line or any addition and alteration should be done in the certified copies of orders/judgements issued by the Hon'ble High Court.
- (3) All documents which are required to be filed in any case before the Hon'ble Supreme Court should be filed through the Advocate-on-Record.

I am, therefore, to request you to ensure that the above instructions are adhered to strictly.

Please acknowledge the receipt.

Yours faithfully,

Sd/-

(J. L. GUPTA)

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

Most Immediate.

**No. LLR-E(2)1/94-Vol-II.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the  
 Government of Himachal Pradesh, Shimla-171002.
2. All the Heads of Departments, Himachal Pradesh.
3. All Deputy Commissioners/Superintendents of Police, H.P.
4. All the Chairmen/Managing Directors/Registrar of Boards/  
 Corporations/Universities in H.P.

*Dated Shimla-171002, the 3rd March, 2005*

*Subject.*—Proper defence of court cases in various courts.

Sir/Madam,

I am directed to refer to this Department letter of even number dated 10-11-2003 on the subject cited above and to say that in para 3 of the said instructions it has been provided that where there is paucity of Public Prosecutors, Sub Section(4) of Section 24 of Criminal Procedure code be invoked by the respective District Magistrates.

It has been brought to the notice of State Government that the District Magistrates by invoking the provision of Sub Section (4) of Section 24 of Cr.P.C. are appointing advocates as Public Prosecutors without having regard to the provision of Sub Section(6) of Section 24 of the code. According to said sub Section where exist a regular cadre of Public Prosecutors the State Government can appoint only Public Prosecutors from amongst the persons constituting such cadre. Since in the State of Himachal Pradesh there is a regular cadre of Public Prosecutors, therefore, the provisions of sub Section (4) can not be invoked by the District Magistrates. However, as per proviso to sub Section (6) of Section 24 of Cr.P.C. the State Government can appoint Public Prosecutors only if suitable person is not available in the cadre of Public Prosecutors, but this proviso can be invoked in special circumstances. In view of position explained above the words “where there is paucity of Public Prosecutors, Sub Section (4) of Section 24 Criminal Procedure Code be invoked by the respective District Magistrates” appearing at the end of para 3 of said instructions shall be deleted forthwith.

Further as per provision of Sub Section (3) of section 25 of the Cr.P.C. when no Assistant Public Prosecutor is available for the purpose of any particular case, the District Magistrate has been empowered to appoint any other person to be Assistant Public Prosecutor incharge of that case. No doubt sub Section (3) of Section 25 of Cr.P.C. empowers the District Magistrate to appoint any person to be

Assistant Public Prosecutor but such appointment can not be made as whole time to defend all State cases. Under this sub Section District Magistrate can appoint a person to be Assistant Public Prosecutor for the purpose of a particular case only.

It is, therefore, desirable that the District Magistrates while exercising powers under sub-Section (3) of Section 25 of Cr.P.C. shall keep in view the scope of said sub-Section (3) as explained above.

The instructions dated 10-11-2003 issued by this Department shall be deemed to be amended and supplemented to above extent.

Yours faithfully,

Sd/  
(SURINDER SINGH THAKUR)  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

Most Immediate.

**No. LLR-E(2)1/94-Vol-II  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-171002.
2. All the Heads of Departments, Himachal Pradesh.
3. All the Deputy Commissioners in H.P.
4. All Superintendents of Police, H.P.
5. All the Chairmen/Managing Directors/Registrar of Boards/Corporations/Universities in H.P.

*Dated Shimla-171002, the 8<sup>th</sup> June, 2005.*

*Subject.*—Decision on O.A/C.W.P. treated to be as representation.

Sir,

I am directed to say that Additional Advocate General State of Himachal Pradesh, has brought to the notice of the Government that in several cases, the Original Applications are sent as representation to be decided by the competent authority. In such cases it may be kept in mind that all the representations whether

regarding pension matters/transfer/salary/fixation etc., are decided by way of a detailed, speaking order, giving reasons for the findings arrived at in a time bond manner. The decisions may not be cryptic but may contain adequate reasons so that the second round of litigation could be avoided.

In view of the above, it has been decided by the Government that in future the representations may be decided in detail speaking order, giving reason from the findings arrived at.

The above instructions may please be adhered to strictly and brought to the notice of all concerned.

Yours faithfully,

Sd/-  
Under Secretary (Law) to the  
Government of Himachal Pradesh.

**No. LLR-E(2)/94.Vol-II**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments, Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.
4. All the Superintendents of Police in Himachal Pradesh.
5. All the Chairmen/Managing Directors/Registrar of Boards/Corporations/Universities in Himachal Pradesh.

*Dated Shimla-171002, the 27<sup>th</sup> June, 2005*

*Subject.*—F.A.O.263/96 titled Kehar Singh V/S State of Himachal Pradesh regarding pressurizing the Revenue Officers by the various functionaries of the State.

Sir/Madam,

The Hon'ble High Court in the above titled case has expressed its dissatisfaction and dismay, the manner in which the Revenue Officer was pressurized by the various functionaries of the State by sending demi-official letter for seeking adjournment, while dealing with the matter u/s 163 (3) of the H.P. Land Revenue Act in his capacity as a Civil Court, thereby lowering the prestige of the officer, as if he was subordinate officer to them whereas, he was entrusted with the judicial powers, the State was at best one party or litigant before him. The

Hon'ble High Court has also observed that no litigant is expected to correspond or send letters, make request for adjournment telephonically to the Presiding Officer of a court, all such requests or any other request can only be made by filing application(s) before the court, lest the common public will have no faith in the system by such acts and shall loose trust in the majesty of law, if Officers who are entrusted with judicial powers and who discharge judicial functions are treated like the revenue officer aforesaid. The above observations of the Hon'ble High Court not only reflects the working of the State Govt. or its instrumentalities but also results in embarrassment to the Government and even the public interest too suffers a lot causing loss to the Government. Therefore, this act of negligence has been viewed seriously by the State Government.

2. Thus, against the aforesaid background, I have been directed to convey you that in future when judicial or quasi judicial functions are discharged by administrative officer(s) then the State and its instrumentalities should act like a normal litigant and no such letters, wireless messages or telephonic conversation with regard to the cases shall be exchanged with such officers by any of the officer(s) of the State.

3. Therefore, you are requested to circulate these instructions to all the concerned and to ensure that the above act shall not be repeated by any of the officer in future and any lapse in this regard will be viewed seriously and defaulting officer (s)/official (s) shall be held personally responsible for such a lapse.

The above instructions may please be adhered to strictly by all concerned.

Please acknowledge the receipt.

Yours faithfully,

Sd/  
(SURINDER SINGH THAKUR),  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(2)1/94.Vol-II.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*-Secretary (Law) to the  
Government of Himachal Pradesh.

To

All the District Attorneys/Deputy District  
Attorneys/Assistant District Attorneys in H.P.

*Dated Shimla-2, the 6<sup>th</sup> July, 2005*

*Subject.*—Defending of Court cases in the Labour Court/State Consumer Commission, Distt. Consumer Form and Commissioner Workmen Compensation Courts.

Sir,

I am directed to say that it has been brought to the notice of the Government that oftenly the representation in State Govt. cases is not being made by the District Attorneys/Deputy District Attorneys/Assistant District Attorneys before the Labour Court/State Consumer Commission, District Consumer Form and Commissioner Workmen Compensation Courts for one or the other reasons as a consequence of which it lands the Government in an embarrassing situation besides public interest too suffers. I am, therefore, directed to request you to ensure that in future the State Government cases before the aforesaid courts should invariably be conducted defended properly by the Assistant District Attorneys within their respective jurisdictions. In case they are already engaged in other courts or are unable to appear before the said courts/forum due to certain reasons in that event the District Attorney concerned shall make the local arrangement by deputing one ADA or in the alternative inform the concerned department to make the arrangement of a private lawyer in consultation with the Law Department through their Administrative Department as per rules.

2. These instructions should be adhered to strictly.

Yours faithfully,

Sd/-  
*Deputy Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(2)1/94.Vol-II**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*-Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Deputy Commissioners in H. P.
4. All the Superintendents of Police in H. P.
5. All the Chairmen/Managing Directors/Registrar of Boards/Corporations/Universities in Himachal Pradesh.

*Dated Shimla-171002, the 21<sup>st</sup> July, 2005*

*Subject.*—FAO (WCA) No.438 of 2004 titled Ram Dass *Versus* Secretary Agriculture to the Govt. of H.P. and Another.

Sir/Madam,

The Hon'ble High Court in the above titled case has expressed its dissatisfaction and dismay at the manner in which proceedings are being undertaken by the State Government before different Tribunals/Forums. Besides this the Hon'ble High Court has also observed that no Law Officer was deputed to properly defend the interest of the State. Only departmental representative had been appearing on different hearings throughout the proceedings. It is not the first case where this Court has come across such situation where the case was being dragged on unnecessarily without having any legal defence. It has come to the notice of the Hon'ble High Court in the past also, that even where State could legitimately save money by taking suitable measures, nothing was done not only to save money, but also to ward off litigation in appropriate cases. The above observations of the Hon'ble High Court not only reflects upon the working of the State Govt. or its instrumentalities but also results in embarrassment to the Government and even the public interest too suffers a lot causing financial loss to the Government. Thus against the aforesaid background, I am directed to circulate the following guidelines/ instructions for implementation and necessary action on the part of the all concerned:—

- (1) In Court cases, all the Administrative Departments shall refer the matter to Law Department for legal opinion by presenting full facts of the case, as to see whether the case is fit for appeal or not. After obtaining the opinion of Law Department regarding the desirability of appeal, the Administrative Departments will take decision at the level of competent authority as per Rules of Business of the Government and only thereafter take further steps for filing appeal in the Higher Courts.

- (2) Some of the important Government Departments having a large number of court cases, are already having a District Attorney/Dy. District Attorney/Assistant District Attorney/Sr.Law Officer/Law Officers posted with them for rendering legal advice to these departments. These Government Advocates can be utilized by the concerned department in a more positive, fruitful and responsible manner, rather than being utilized for giving legal opinion alone in departmental cases. These Government Advocates should be invariably asked to attend the courts with the Advocate General/Additional Advocate General as the case may be and assist them by supplying factual position and general view points. Such Government Advocates should be also made responsible for keeping a comprehensive record of all the pending court cases of their department and should invariably inform concerned Secretary/Head of Department with regard to the progress of each case. The Government Advocates be made responsible for keeping track of the departmental cases under their control, and if any case remains pending before the courts without meaningful progress, they shall be held responsible.
- (3) The Departments, which are not having the post of District Attorneys/Deputy District Attorneys/ Sr. Law Officers/Law Officers may designate one responsible officer not below the rank of a Supdt for dealing with court cases. This designated Officer, should be responsible for maintaining a register of litigation wherein each and every case instituted by or against the department should be registered. This Officer should also record the progress of the case in this register on each and every date of hearing and should apprise his Secretary/Head of Department about the progress of the case after every date of hearing.
- (4) It is very strongly recommended that each Department should depute its Distt. Attorney/Dy. District Attorney/Sr. Law Officer/Law Officer or the Designated Officer to assist the Advocate General/Addl. Advocate General as the case may be on each and every date of hearing with factual material and by supporting record of the case.

The above guidelines/instructions may be implemented faithfully and sincerely by all concerned so that Government cases before the various Courts may be prosecuted effectively any failure to do so will be viewed seriously.

Kindly acknowledge receipt of the Communication.

Yours faithfully,

SD/-  
(SURINDER SINGH THAKUR),  
*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*



Most Immediate

**No. LLR-E(2)1/94.Vol-II  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From:

The LR-cum-Pr. Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the  
Government of Himachal Pradesh.
2. All the Heads of Departments,  
Himachal Pradesh.
3. All the Deputy Commissioners,  
Himachal Pradesh.
4. All the Superintendents of Police in  
Himachal Pradesh.

*Dated Shimla-171002, the 25<sup>th</sup> October, 2005*

*Subject.*—Defence of Officers through private Advocates.

Sir,

I am directed to say that the Ld. Advocate General, State of Himachal Pradesh, has brought to the notice of the Government that in some cases, the SDMs/Tehsildars in which they were arrayed as respondents in their official capacity and not in personal capacity, had engaged their own counsel for defending their official acts. In this regard, the Ld. Advocate General, has clarified that these officers had no right to engage their private counsel in such cases as they were not impleaded in their personal capacity (by name) as respondents. Apart from this, no permission from the competent authority (the Government) had been obtained to allow them to be represented by private counsel. This practice of engaging private counsel in Government cases by the concerned officers, when their official acts are challenged in the court apart from being undesirable are also completely unwarranted. No Government officer who is impleaded as respondent in his official capacity has a right to be represented by a private counsel. As a matter of facts such officers are to be defended by the Ld. Advocate General and his team unless they are impleaded in their personal capacity. This is a most unhealthy tendency which is developing in the State and deserves to be put to end at this very stage.

In this regard, it is further clarified that no officer without the prior approval of the Law Department shall engage a private Advocate for his defence or his subordinate even when they are impleaded as respondents/defendants (by name) in their personal capacity. In case, they do so, the State Government would not refund the counsel-fee at any cost.

Therefore, against the above background, you are requested to ensure that no Private Advocate, for the defence of any officer/official be engaged without the prior approval of the Law Department, so that neither State Exchequer is unnecessarily burdened nor the State interest suffers. Thus, it has been decided by the State Government that any lapse in this regard will be viewed seriously and defaulting officers shall be held personally responsible for such lapse. You are also requested to ensure that no counsel fee in those cases to the private counsel should be sanctioned by any of the authorities in their favour, in which approval of Law Department is not obtained.

Please acknowledge receipt of this letter.

Yours faithfully,

Sd/  
(SURINDER SINGH THAKUR)  
*LR-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*

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**No. LLR-E (2) 1/94-Vol-II  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-cum- Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Govt. of H.P.
2. All the Heads of Departments in Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.
4. All the Superintendents of Police in Himachal Pradesh.
5. All the Chairmen/ Managing Directors/ Registrar of Boards/ Corporations/ Universities in H.P.

*Dated Shimla-171002, the 19<sup>th</sup> June, 2004*

*Subject.*—Non-compliance of orders of Hon'ble High Court and no-filing of replies thereof.

Sir,

I am directed to say that the Ld. Advocate General, State of Himachal Pradesh, has brought to the notice of the Chief Secretary to the Government of Himachal Pradesh that in most of the cases, invariably replies are being filed by various Departments/Corporations and Boards of the State Government, within the time granted by the Hon'ble High Court, on account of which the Hon'ble Court has started taking a very serious view for not filing of replies in time and in some case the State has been burdened with heavy costs.

This not only adversely reflects the working of the State Government or its instrumentalities but also results in embarrassment to the Government and even the public interest too suffers a lot causing huge loss to the Government. This act of negligence has been viewed seriously by the State Government.

Therefore, against the above background, you are requested to ensure that the reply in the court case(s) is/are filed within the stipulated time, so that neither State exchequer is unnecessarily burdened nor the State interest suffers. Thus it has been decided by the State Government that any lapse in this regard will be viewed seriously and defaulting officer(s)/official(s) shall be held personally responsible for such lapse and if any cost is imposed by the Hon'ble Court for the negligence that may be recovered from the defaulting officer/official as the case may be.

This may be treated as most urgent.

Please acknowledge receipt of this letter

Yours faithfully,

Sd/-

(SURINDER SINGH THAKUR)

*LR-cum-Secretary (Law) to the  
Government of Himachal Pradesh.*

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**No. LLR(Lit)A(4)1/92  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-*cum*- Secretary (Law) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the  
Government of Himachal Pradesh, Shimla-171002.
2. All the Divisional Commissioners in Himachal Pradesh.
3. All the Heads of Departments in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.
5. All the Superintendents of Police in Himachal Pradesh.
6. All the District Attorneys in Himachal Pradesh
7. All the Deputy District Attorneys in Himachal Pradesh
8. All the Asstt. District Attorneys in Himachal Pradesh

*Dated Shimla-171002, the 2<sup>nd</sup> April, 1992.*

*Subject.*—Conciliation of cases by or against the Government pending in the various courts in Himachal Pradesh.

Sir,

The matter regarding conciliation of cases by or against the Government instituted/pending in the various Courts in H.P. was engaging the attention of the

Government for some time past. After careful examination and consideration of the matter and keeping in view the new legislative policy to minimise the cases in the Courts and ensuring that the litigation comes to an end by way of an amicable settlement of the dispute, the government has decided to constitute District and State Level Committees with powers to settle the dispute amicably on behalf of the State in the Conciliation Courts and in the Lok Adalats. The constitution and function of such committees shall be as under:—

2. The District level committee shall consist of the following members:—

- |  |                   |
|--|-------------------|
| 1. Deputy Commissioner                                 | Chairman          |
| 2. District Attorney/Assistant District Attorney.      | Member            |
| 3. District level Officer of the concerned department. | Member            |
| 4. Assistant Commissioner to Deputy Commissioner.      | Member Secretary. |

3. FUNCTION AND POWERS OF THE DISTRICT LEVEL COMMITTEE :

This Committee will identify the cases pending in any court in the District in which the State of Himachal Pradesh or any department of the State or any Public Officer of the State in his official capacity is a party to the proceedings. It will assess the feasibility of the cases or proceedings or matter for the purpose of conciliation. It shall be the duty of the District Level Officer of the concerned department involved in such litigation to bring such matter to the notice of the Member Secretary who shall as soon as possible place the matter for consideration of the District Level Committee. The District Level Committee shall also consult the opposite party to ascertain his terms of settlement and if both the parties agree on a certain proposal then the same will be referred to the State Level Committee. In case the opposite party does not participate despite of notice District Committee will consider all aspects keeping in view the merit of the case and will consider the proposal made either by the opposite party to the suit or proceeding or by the court where such suit or proceedings is pending and then shall frame its opinion on the proposal. It shall also keep in mind the law, equity and merits of the case or proceedings and submits recommendations to the State Level Committee along with the relevant record for the decision of the case by way of conciliation or natural settlement through its Member Secretary.

4. The State Level Committee will consist of the following members:—

- |                                      |                   |
|--------------------------------------|-------------------|
| 1. Chief Secretary                   | Chairman          |
| 2. Secretary (Finance)               | Member            |
| 3. Secretary of the concerned Deptt. | Member            |
| 4. Secretary (Law)                   | Member Secretary. |

## FUNCTION AND POWERS OF THE STATE LEVEL COMMITTEE:

5. (i) The State Level Committee shall consider the proposal for settlement as recommended by the District Level Committee. Secretary of this Committee shall convene a meeting of the State Level Committee in consultation with the Chairman as soon as possible on receipt of the recommendations and record from the District Level Committee. Thereafter the Committee will take decision on such recommendation and submit a clear cut recommendation for the final approval of the Minister concerned. The decision so approved by the Minister concerned shall be communicated to the District Level Committee through its Member Secretary with a copy to the District Level Officer of the concerned department, who shall then communicates the decision of the State Level Committee to the Court concerned, either personally or through Advocate engaged by the State to defend its interest or through any other Law Officer representing the State.

(ii) The State Level Committee shall also look into the proposal either from the party or the Court concerned for conciliation or settlement by mutual consent of the case or proceeding pending in the State High Court or F.C. (Appeals) or any State Forum or Body. The highest Officer of the concerned department will bring such matter to the notice of Secretary, State Level Committee, who shall then convene meeting of the State Level Committee in consultation with the Chairman to consider the proposal for the settlement and submit a clear cut recommendation for the final approval of the Minister concerned. The decision so approved by the Minister concerned shall be communicated to the Head of the concerned department who shall then communicate the decision to the Court concerned. The State Level Committee shall while taking its decision also be guided by the principles of equity, natural justice and merit of the case.

6. The decision(s) so taken by the State Level Committee with the final approval of the Minister concerned either on recommendation of the District Level Committee or on its motion shall be a decision of the State Government and the Collector of the District, District Attorney, Deputy District Attorney and Assistant District Attorney shall be entitled to give statement on behalf of the State regarding the composition on such terms as may be conveyed to him and such statement shall be binding upon the State.

7. These Committees shall consider the possibility of conciliation of Civil and Revenue Cases in general though the priority shall be given to the civil suits/cases.

8. The above decision of the Government has come into force at once and be strictly followed by all Departments/Officers in future. It shall be responsibility of the concerned Secretary to ensure strict compliance of the decision of the State Government.

The receipt of this communication be acknowledged.

Yours faithfully,

Sd/-

(A. L. VAIDYA)

*LR-cum-Secretary(Law) to the  
Government of Himachal Pradesh.*

**No. LLR-(Lit) A( 4)-1/92**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From

The L.R.-cum-Principal Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-2.
2. All the Heads of the Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.
5. All the Superintendents of Police in Himachal Pradesh.
6. All the District Attorneys in Himachal Pradesh.

*Dated Shimla-2, the 26<sup>th</sup> April, 2006*

*Subject.*—Conciliation of cases by or against the Government pending in the various courts in Himachal Pradesh.

Sir,

I am directed to invite your kind attention to this Department letter of even number dated 2-4-1992 on the subject cited above. In order to minimize the cases in the various courts of law the matter was discussed in the meeting of Committee of Secretaries held on 22-3-2006 under the Chairmanship of Chief Secretary and it was decided to reiterate the aforesaid decision of the Government. The decision of the Government already taken in this behalf is re-produced as under :—

“The matter regarding conciliation of cases by or against the Government instituted/ pending in the various courts in H.P. was engaging the attention of the Government for some time past. After careful examination and consideration of the matter and keeping in view the new legislative policy to minimize the cases in the courts and ensuring that the litigation comes to an end by way of an amicable settlement of the dispute, the Government has decided to constitute District and State Level Committees with powers to settle the dispute amicably on behalf of the State in the Conciliation Courts and in the Lok Adalats. The constitution and function of such committees shall be as under :—

The District Level Committee shall consist of the following members :—

- |  |                  |
|--|------------------|
| 1. Deputy Commissioner                                 | Chairman         |
| 2. District Attorney/Assistant District Attorney       | Member           |
| 3. District Level Officer of the concerned department. | Member           |
| 4. Assistant Commissioner to Commissioner              | Member Secretary |

## FUNCTION AND POWERS OF THE DISTRICT LEVEL COMMITTEE :

This committee will identify the cases pending in any court in the District in which the State of H.P. or any Department of the State or any Public Officer of the State in his official capacity is a party to the proceedings. It will assess the feasibility of the cases or proceedings or matter for the purpose of conciliation. It shall be the duty of the District Level Officer of the concerned Department involved in such litigation to bring such matter to the notice of the Member Secretary who shall as soon as possible place the matter for consideration of the District Level Committee . The District Level Committee shall also consult the opposite party to ascertain his terms of settlement and if both the parties agree on a certain proposal then the same will be referred to the State Level Committee. In case the opposite party does not participate despite of notice District Committee will consider all aspects keeping in view the merits of the case and will consider the proposal made either by the opposite party to the suit or proceeding or by the Court where such suit or proceedings is pending and then shall frame its opinion on the proposal. It shall also keep in mind the law, equity and merits of the case or proceedings and submit its recommendations to the State Level Committee alongwith the relevant record for the decision of the case by way of conciliation or mutual settlement through its Member Secretary.

The State Level Committee will consist of the following members :—

- |  |                   |
|--|-------------------|
| 1. Chief Secretary                       | Chairman          |
| 2. Secretary (Finance)                   | Member            |
| 3. Secretary of the concerned Department | Member            |
| 4. Secretary (Law)                       | Member Secretary. |

## FUNCTION AND POWERS OF THE STATE LEVEL COMMITTEE :

(i) The State Level Committee shall consider the proposal for settlement as recommended by the District Level Committee. Secretary of this Committee shall convene a meeting of the State Level Committee in consultation with the Chairman as soon as possible on receipt of the recommendations and record from the District Level Committee. Thereafter, the Committee will take decision on such recommendations and submit a clear cut recommendation for the final approval of Minister concerned. The decision so approved by the Minister concerned shall be communicated to the District Level Committee through its Member Secretary with a copy to the District Level Officer of the concerned Department, who shall then communicate the decision of the State Level Committee to the court concerned, either personally or through Advocate engaged by the State to defend its interest or through any other Law Officer representing the State.

(ii) The State Level Committee shall also look into the proposal either from the party or the court concerned for conciliation or settlement by mutual consent of the case or proceeding pending in the State High Court or F.C. (Appeals) or any State forum or body. The highest officer of the concerned

department will bring such matter to the notice of Secretary, State Level Committee, who shall then convene meeting of the State Level Committee in consultation with the Chairman to consider the proposal for the settlement and submit a clear cut recommendation for the final approval of the Minister concerned. The decision so approved by the Minister concerned shall be communicated to the Head of the concerned Department who shall then communicate the decision to the court concerned. The State Level Committee shall while taking its decision also be guided by the principles of equity, natural justice and merit of the case.

The decision(s) so taken by the State Level Committee with the final approval of the Minister concerned either on recommendation of the District Level Committee or on its motion shall be a decision of the State Government and the Collector of the District, District Attorney, Deputy District Attorney and Assistant District Attorney shall be entitled to give statement on behalf of the State regarding the composition on such terms as may be conveyed to him and such statement shall be binding upon the State.

These Committees shall consider the possibility of conciliation of Civil and Revenue cases in general though the priority shall be given to the civil suits/cases.

The above decision of the Government has come into force at once and be strictly followed by all Departments/Officers in future. It shall be the responsibility of the concerned Secretary to ensure strict compliance of the decision of the State Government.”

The receipt of this communication be acknowledged.

Yours faithfully,

Sd/-

*L.R.-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*

**Endst. No. LLR(Lit)A(4)-1/92** dated 26<sup>th</sup> April, 2006.

Copy is forwarded for information to :—

1. The Registrar General, High Court of Himachal Pradesh, Shimla-1.
2. The Registrar, H.P. Administrative Tribunal, Shimla-2.
3. The Advocate General, Himachal Pradesh, Shimla-1.
4. All the District & Sessions Judges in Himachal Pradesh.
5. The Sr. Special Private Secretary to the Chief Secretary, H.P. Secretariat, Shimla-2.
6. The Private Secretary to the Hon'ble Chief Minister, H.P. Secretariat, Shimla-2.

Sd/-

*L.R.-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*



**LAW DEPARTMENT**

NOTIFICATION

*Shimla-2, the 1<sup>st</sup> May, 1957*

**No. LR-107-323/56(A).**—In exercise of the powers vested in him under rule 4 of the Notaries Rules, 1956, the Lieutenant Governor, Himachal Pradesh is pleased to designate all District Magistrates in Himachal Pradesh as Competent Authorities for the purposes of the said Rules, for their respective District.

By order,

(SURINDER SINGH THAKUR)  
*LR-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*

**Annexure—“C”**

*[Authoritative English Text of this Department Notification No. LLR-E(9)20/95-Leg. dated 7-10-2005 as required under Article 348(3) of the Constitution of India]*

**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT  
(Legislation)**

NOTIFICATION

*Shimla-2, the 7<sup>th</sup> October, 2005*

**No. LLR-E(9)-20/95-leg.**—In supersession of all previous Notifications issued in this behalf and in exercise of the powers conferred by sub-rule (5) of rule 11 of the Notaries Rules, 1956, the Governor of Himachal Pradesh, is pleased to appoint and authorise the Additional Deputy Commissioners and where there is no Additional Deputy Commissioner, the Additional District Magistrates at District Headquarters, and Sub-Divisional Magistrates at the Sub-Divisional level to inspect the notarial documents/ registers maintained by the Public Notaries appointed in Himachal Pradesh under the Notaries Act, 1952 twice in a year in the month of April and November within their territorial jurisdictions and directed to send reports on the Performa attached in the month of May and December, every year to the LR-cum-Principal Secretary (Law) to the Government of Himachal Pradesh.

The Governor of Himachal Pradesh is further pleased to authorise LR-cum-Principal Secretary (Law)/LR-cum-Secretary (Law) to conduct surprise inspection of Notaries Public either himself or through any other officer of Law Department.

By order,

(SURINDER SINGH THAKUR)  
*LR-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*

**Annexure—“D”**

*[Authoritative English text of this Department Notification No. LLR-E(9)6/2003-Leg. dated 3-7-2005 as required under Article 348(3) of the Constitution of India].*

**LAW DEPARTMENT  
(Legislation)**

**NOTIFICATION**

*Shimla-2, the 3<sup>rd</sup> July, 2005*

**No. LLR-E(9)-20/95.**—In exercise of the powers conferred by section 13(1) of the Notaries Act, 1952, the Governor, Himachal Pradesh is pleased to authorise all the District Magistrates in Himachal Pradesh within their respective jurisdictions to file complaint(s) in the court against the Notaries Public for offence committed by them in exercise of the functions under the Act *ibid*.

By order,

(SURINDER SINGH THAKUR)  
*LR-cum-Principal Secretary (Law) to the  
Government of Himachal Pradesh.*

**Annexure—“E”****RULES FOR REGULATING THE REMUNERATION AND DUTIES OF  
ADVOCATE GENERAL****GOVERNMENT OF HIMACHAL PRADESH****HOME DEPARTMENT****JUDICIAL NOTIFICATION***Shimla-2, the 25<sup>th</sup> May, 1971*

**No. 19-19/71(Home).**—In exercise of the powers conferred by Article 165 of the Constitution, the Governor of Himachal Pradesh is pleased to make the following rules for regulating the remuneration and duties of the Advocate General for the State:—

1. In these rules,—

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

2. The Advocate General will be a whole time servant of the State Government:

Provided that he may engage in such private practice as does not interfere in the discharge of his duties as Advocate General:

Provided further that he will not accept any case against the State of Himachal Pradesh.

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

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

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

- (c) He will appear, or arrange for the appearance of counsel, in the following civil cases :—
  - (i) cases in the High Court to which the State Government is a party; or

- (ii) cases in the High Court to which officers serving under the State Government are parties and which, the State Government has decided to conduct on behalf of such officers;
  - (iii) cases in the High Court in which neither the State Government nor such officers are directly interested, but in which Government consider themselves to be sufficiently interested to render it advisable to conduct the cases on behalf of the some third person.
- (d) Appeals from the cases referred to in clause (c) .
- (e) He will appear personally before the High Court, when so required by Government, in references from subordinate courts to which Government is a party or in cases withdrawn to the High Court from subordinate courts under Article 228 of the Constitution or any other law.
- (f) He will appear himself or arrange for the conduct of civil cases of the nature described above, when so required, in the other civil courts of Shimla.
- (g) He will also be expected to appear in any civil or criminal case outside Shimla whether in courts subordinate to the High Court or in the Supreme Court, or in any other court, when specially desired to do so by the State Government or by the Legal Remembrancer.
- (h) He will take part in the proceedings of the House or Houses of the State Legislature or any Committee of the Legislature of which he may be named as member.
- (i) He shall also discharge the functions conferred on him by or under the Constitution or under any other law for the time being in force.
4. (1) He will be paid such salary as may be determined by the Governor.
- (2) He will be entitled to fees in civil and criminal or quasi-criminal cases, when permission under the rules, according to the scales prescribed therein; but he will not be entitled to fee for :—
- (a) opinion work,
  - (b) participation in the wrok of a House or Houses of the Legislature and any Committee of the legislature of which he may be named as member,
  - (c) appearance in the High Court in criminal cases including cases of contempt of court.

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

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

6. In civil cases the Advocate General will be paid fees in accordance with the following scales:

[6(a) 1% upto first Rs. 1 Lac, Rs. 1000+.05% of amount exceeding Rs. 1 Lac, upto Rs. 10 Lacs, Rs. 5500+ 0.05% of amount exceeding Rs. 10 Lacs subject to a minimum of Rs. 1000/- and maximum of Rs. 10,000 :

Provided that in any case of great importance making an unusual demand on the time and energy of the Advocate General, the State Government may direct such fee as it considers suitable, may be granted not exceeding the percentage rate upto an overall ceiling of Rs. 75,000/- per year.”<sup>10</sup>

(b) In case in any court subordinate to the High Court conducted throughout by the Advocate General, the fee payable shall be to a minimum of Rs. 100/- for each day of attendance.

(c) For appearances in any case not conducted throughout by the Advocate General the fee will be Rs. 1000 for each day of attendance clause (a) above.

(d) Where a single case passes at different stages through more courts than one *e.g.* for original decision, appeal and further appeal for revision, it shall be treated, for the purpose of fees, as separate case at each such stage.

(e) In miscellaneous civil cases, not exclusively covered by these terms, the ordinary fee shall be Rs. 100/- for each day of attendance.

(f) In civil writ cases and in letters patent appeals arising therefrom which shall not be considered as civil miscellaneous cases, the fee shall be 100/- rupees for civil writ or letters patent appeal.

6A. The Advocate General, Himachal Pradesh will be paid fees for his appearance in any civil or criminal case in the Supreme Court of India on behalf of the State Government according to the scale of fees laid down from time to time in the Second Schedule to the Supreme Court Rules, 1966 for leading Counsel or Senior Advocate as the case may be.

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

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10 . Subs. *Vide* Noti. No. Home-B(B)2-2/87, dated 24<sup>th</sup> January, 2003.

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

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

Provided that no halting allowance will be admissible to the Advocate General for the day or days which he appears before a court and for which he is entitled to get fees under rules 6 and 6A.

9. The Advocate General shall not accept appointment as Director in any company without the permission of the Government.

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**GOVERNMENT OF HIMACHAL PRADESH**

**HOME DEPARTMENT (B)**

NOTIFICATION

**No. 19-19/71-Home(B)**

*Shimla-2, the 30<sup>th</sup> August, 1986*

In continuation of this Department Notification No. 19-19/71-Home(B) dated the 13th March, 1980 and in exercise of the powers conferred under Clause (i) of Article 105 of the Constitution of India, the Governor, Himachal Pradesh, is pleased to revise the terms and conditions of appointment of Advocate General, Himachal Pradesh as under :—

1. He will be paid a retainership fee of Rs. 2500/- per month.
2. He will be paid House Rent Allowance on the same pattern as admissible to the State Government employees according to Government rules/instructions.

3. He will be entitled to the same medical facilities as are admissible to Class-I Officers of the State Government .
  4. He will be entitled to the use of staff car with driver at State expenses.
  5. In respect of Civil Writs and L.P.As arising therefrom he shall be paid fee of Rs. 400/- (Rupees four hundred) per writ and L.P.A. as the case may be. For connected cases he shall be paid an additional fee of half the rate permissible in respect of the aforesaid cases.
  6. In respect of Supreme Court cases or any case arising or defended outside the State of Himachal Pradesh or Shimla Capital, he shall be paid fee @ Rs. 1650/- per day for days he is away from in connection with the case. For connected cases, he shall be paid additional fee @ Rs. 550/- per case. Besides it, he shall be paid T.A. & D.A. from Shimla to destination and back at the rates admissible to other Class-I Officers of the State.
2. The above rates will be admissible *w.e.f.* 30-9-1985.
3. As regards duties and other conditions of the Advocate General, Himachal Pradesh the same will be regulated in accordance with the rules issued *vide* Home Department Notification No. 19-19/71-Home, dated 25<sup>th</sup> May, 1971.
4. This issues with the prior concurrence of the Finance Department obtained *vide* their U.O. No. 1786-Fin(C)-B(15)-2/78 dated 28-8-1986.

Sd/-

(A. K. MOHAPATRA)

*Commissioner-cum-Secretary (Home)  
to the Government of Himachal Pradesh.*

**GOVERNMENT OF HIMACHAL PRADESH  
HOME DEPARTMENT**

NOTIFICATION

**No. Home-B(B)2-2/87.**

*Shimla-2, the 13<sup>th</sup> November, 1998*

The Governor, Himachal Pradesh is pleased to approve and enhance the retainership fee/lump-sum fee and fee etc. in respect of Advocate General/Additional Advocate General and Assistant Advocate General, Himachal Pradesh who are presently working as such in the office of Advocate General, Himachal Pradesh from the date of their assumption of charge of the respective posts in the following manner:—

1. Advocate General:

- (i) Retainership fee [Rs. 16000/- p.m.]<sup>11</sup>

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11 . Retainership fee for Advocate General revised/enhanced from Rs. 3500/- to Rs. 16000/- *vide* Noti. No. Home-B(B)2-2/87, dated the 9<sup>th</sup> June, 2004.



(ii) Fee for Civil revisions/writs/IPAs	Rs. 1100/- per case
(iii) Fee for Supreme Court cases (for the day he is away from Shimla in connection with the case).	Rs. 2000/- per day
(iv) Fee for connected/covered cases	Rs. 1000/- per case
(v) TA/DA/Medical facilities/Telephone etc.	As admissible to Class- I Officers.
(vi) H.R.A.	Government accommodation or Rs. 6000/- per month.

2. Additional Advocate General :

(a) Retainership fee p.m.] <sup>12</sup>	[Rs. 13000/-
(b) Lump-sum fee	<u>Rs. 18000/- p.m.</u>
Total . .	<u>Rs. 31000/- p.m.</u>

3. Assistant Advocate General :

(a) Retainership fee	Rs. 2000/- p.m.
(b) Lump-sum fee	<u>Rs. 14000/- p.m.</u>
Total . .	<u>Rs. 16000/- p.m.</u>

By order,

ASHA SWARUP,  
*Commissioner-cum-Secretary (Home)*  
*to the Government of Himachal Pradesh*

**No. Home-B(B)2-2/87**

*Shimla-2, the 13<sup>th</sup> November, 1998.*

Copy forwarded to :—

1. All the F.C-cum- Secretaries in H. P.
2. All Administrative Secretaries in H. P.
3. All the Deputy Commissioners in H. P.
4. The Registrar, High Court of H. P. Shimla-171001.
5. The Registrar, State Administrative Tribunal, H. P. Shimla-2.

12 . Retainership fee for Additional Advocate General revised/enhanced from Rs. 3000/- to Rs. 13000/- vide Noti. No. Home-B(B)2-2/87, dated the 9<sup>th</sup> June, 2004.

6. The Advocate General, H. P. Shimla-171 001 for information and necessary action.
7. The Controller, Printing and Stationery, H. P. Shimla-5 for publication in the Rajpatra.
8. Private Secretary to Chief Minister, H. P. Shimla-2.
9. Private Secretary to Chief Secretary , H. P. Government, Shimla-2.
10. The Accountant General, Himachal Pradesh, Shimla -3
11. All the Additional Advocate Generals/Assistant Advocate Generals in the office of Advocate general, H. P.
12. Guard file.

Sd/-  
*Additional Secretary (Home) to the  
Government of Himachal Pradesh.*

**No. LLR-E(10)3/93**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

The LR-*cum*- Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Secretaries/Add. Secretaries/ Special Secretaries/Joint Secretaries/ Deputy Secretaries,/Under Secretaries to the Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners, Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated Shimla-2, the 28<sup>th</sup> July, 1994*

*Subject.*—Regarding assessment of fee in respect of private advocate engaged for the self defence on public expenses in favour of Officers/Officials— instructions thereof.

Sir,

It has been noticed that the Officers/Officials while discharging their duties in good faith are involved in civil/criminal cases by the litigants and the State Government has to issue sanction for their defence at public expenses, where it is considered necessary. The Officers/Officials who are allowed to defend the case at public expenses such Officers/Officials are at liberty to engage private lawyer of their own choice and also entitled for re-imburement of reasonable fees. In such cases, it has been observed that the Officers/Officials who are allowed to engage private lawyer of their own choice they engaged lawyer at exorbitant fees and submit their claim for re-imburement. In order to check the excess payment of fee to lawyer who are engaged by the Officers/Officials for their defence at public expenses, it has been decided that the fees will be issued by the LR-*cum*-Secretary (Law) in the following manner:—

<i>Tier</i>	<i>Expenditure of advocate</i>	<i>Fees payable</i>
1st	The lawyer having less than 10 years experience and advocate after enrolment.	Rs. 1,500.00
2nd	The lawyers having more than 10 years experience and advocate having good reputation at bar.	Rs. 2,500.00
3rd	Senior counsels/lawyers having experience in specific branch of law	Rs. 3, 500.00

Senior counsel means a advocate who have put in 10 years practice in the High Court and having good reputation in the bar.

However, where the work is attended in Writ Petition/Suit/Applications etc. by more than one lawyer, the fees will be reimbursed in the following manner :—

1. Filing of civil suits in the High Court/admission of the application civil writ petition/regular 1<sup>st</sup> appeal/filing of reply in civil suits/CPW/appeal/complaint/ petition etc. 1/3<sup>rd</sup> fees
2. Presentation of evidence and contradicting the evidence of the other parties in civil suit/filing misc. application in L.P.A./ CWP/contempt petition till the final state of argument on behalf of both the parties . 1/3<sup>rd</sup> fees
3. Agrument upto the final decision of the Court . 1/3<sup>rd</sup> fees

*Explanation.*—In case of more than one lawyer appeared in any stage than the 1/3<sup>rd</sup> fees payable for that stage will be paid for the hearing(s) as worked as per hearing of that stage.

I am further to request you that while submitting the claim for reimbursed of the fees the following information should invariably be submitted with the claim in order to enable the LR-cum-Secretary (Law) to assess reasonability of the fees in the case :—

1. Name of the advocate and the date of enrolment in the bar and also state whether he is a Sr. counsel or has obtain experience in specific branch of law.
2. Copy of the reply filed in the case.
3. Copy of the judgment delivered by the court.
4. The effective hearing attended by the lawyer.
5. The works done by the lawyer in such cases.

It is, therefore, requested that the above information may please be brought to the notice of all Officers/Officials working under your control for compliance.

Yours faithfully,

Sd/  
(K. C. SOOD),  
*LR-cum- Secretary (Law) to the  
Government of Himachal Pradesh.*

**No. LLR-E(10)3/93**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT**

From :

LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.

To

1. All the Administrative Secretaries/Additional Secretaries/Special Secretaries/Joint Secretaries/ Deputy Secretaries/Under Secretaries to the Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.
3. All the Divisional Commissioners in H. P.
4. All the Deputy Commissioners in Himachal Pradesh.

*Dated Shimla-2, the 8<sup>th</sup> December, 1995*

*Subject.*—Regarding assessment of Fees in respect of Private Advocates engaged for self defence on public expenses.

Sir,

Correspondence resting with this Department's letter of even number dated the 28<sup>th</sup> July, 1994 on the subject cited above, I am directed to say that it has been decided now that the Administrative Departments shall assess the fees of the Private Advocates which were/are engaged by the Officers/Officials in their defence after obtaining the sanction of the State Government to defend themselves at public expenses on the norms of fees as laid down in the above referred letter, provided that they have acted in discharge of official duty in good faith and the Court has not passed any adverse remarks against the Officer/Officials concerned in the contempt petition/civil suits etc.

2. It is, therefore, requested that in future where the sanction to defend an Officer/Official had been issued by the State Government at public expense, the Administrative Department shall assess the fees of the Private Advocates at their own level strictly in accordance with the norms as laid down in this Department's letter of even number dated 28-7-1994 and pay the same to such Advocate at their level.

3. Please acknowledge the receipt of this communication.

Yours faithfully,

Sd/-

(K. C. SOOD)

*LR-cum-Secretary (Law) to the  
 Government of Himachal Pradesh.*

Annexure —“H”

**Time Bound**  
**Supreme Court Matter**  
**Most Urgent**

**No. LLR-E(9)-2/2004-Leg.**  
**GOVERNMENT OF HIMACHAL PRADESH**  
**LAW DEPARTMENT (LEGISLATION)**

From:

Chief Secretary to the  
Government of Himachal Pradesh.

To

- (1) All the Administrative Secretaries to the  
Government of Himachal Pradesh,  
Shimla-2.
- (2) All the Heads of Departments,  
in Himachal Pradesh.

*Dated Shimla-171002, the 28<sup>th</sup> November, 2005*

*Subject.*—Ref. Salem Advocate Bar Association V/s Union of India decided by the  
Hon'ble Supreme Court on 2-8-2005.

Sir,

Kindly refer to D. O. No. 10(11)/2000-Leg-II dated 22-09-2005 from Shri T. K. Vishwanathan, Secretary, Government of India, Ministry of Law and Justice, Legislative Department, Shastri Bhawan, New Delhi on the subject cited above. The Hon'ble Supreme Court has given certain directions to the State Governments in paras 40, 41 and 75 of the judgment referred above and asked for a report to the Court within four months. Paragraphs 40, 41 and 75 of the judgment are reproduced as under :—

**“40.** Section 80(1) of the Code requires prior notice of two months to be served on the Government as a condition for filing a suit except when there is urgency for interim order in which case the Court may not insist on the rigid rule of prior notice. The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the area of dispute and controversy. Similar provisions also exist in various other legislations as well. Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the Governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The Governments, Government departments or

statutory authorities are defendants in large number of suits pending in various Courts in the country. Judicial notice can be taken of the fact that in large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive. The result is that the object underline section 80 of the Code and similar provisions gets defeated. It not only gives rise to avoidable litigation but also results in heavy expense and cost to the ex-chequer as well. Proper reply can result in reduction in litigation between State and citizen. In case proper reply is sent either the claim in the notice may be admitted on area of controversy curtailed or the citizen may be satisfied on knowing stand of the State. There is no accountability in the Government, Central or State or the statutory authorities in violating the spirit and object of section 80.

**41.** These provisions cast an implied duty on all concerned Governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, **we direct all concerned Governments, Central or State or other authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceeding against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notice under section 80 or similar provisions are sent within the period stipulated in a particular legislation.** The replies shall be sent after due application of mind, the Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the Government and direct it to take appropriate action against the concerned Officer including recovery of cost from him.

**75.** A copy of this judgment shall be sent to all the High Courts through Registrar Generals. Central Government through Cabinet Secretary and State Governments, Union Territories through Chief Secretaries so that expeditious follow up action can be taken by all concerned. Registrar General, Central Government and **State/Union Territories shall file the progress report in regard to the action taken within a period of four months."**

In view of the above directions of the Hon'ble Apex Court, I am to request you to nominate, within a period of 15 days, a nodal officer for your department who shall be made responsible to ensure that replies to notices under section 80 of the Code of Civil Procedure or similar provisions are sent within the period stipulated in a particular legislation including all other important notices issued by the various courts in the States. It is further clarified that the replies of all other important notices issued by the various Courts and Tribunals be also similarly dealt with on priority to avoid any embarrassment to the Government failing which the defaulting Officer/Official shall also be amenable to the disciplinary action in addition to the recovery of cost awarded by the Courts/Tribunals. The replies shall be sent after due application of mind. If the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper

application of mind the Court may award heavy cost against the Government and direct it to take appropriate action against the concerned officer including recovery of cost from him. The directions given by the Hon'ble Apex Court in paragraphs referred to above, be followed strictly and any violation thereof shall be viewed seriously.

The action taken report may be sent to the Principal Secretary (Law) to the Government of Himachal Pradesh on or before 28-12-2005 so that the State Government could file progress report in the Hon'ble Supreme Court.

This may be treated as MOST URGENT.

Yours faithfully,

Sd/-  
(S. S. PARMAR)  
*Chief Secretary to the  
Government of Himachal Pradesh.*



Annexure —“T”

**MOST IMMEDIATE**

**No. LLR-E (2) 1/94-Vol-II.  
GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

From :

The LR-*cum*-Secretary ( Law ) to the  
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the
2. Government of Himachal Pradesh, Shimla-171 002.
3. All the Heads of Departments, Himachal Pradesh
4. All the Deputy Commissioners, Himachal Pradesh
5. All the Chairmen/Managing Directors/ Registrar of Boards/  
Corporations/Universities in Himachal Pradesh.

*Dated Shimla-171 002, the 19<sup>th</sup> May, 2003*

*Subject.*—Expeditious disposal of court cases in various courts/Delay in filing replies in a large number of important court matters pertaining to various courts.

Sir/Madam ,

It has come to the notice of the Government that the Government Departments are not prosecuting the court cases expeditiously in a desired manner and even the replies of the court cases are not being filed by the Departments within the time granted by the courts. Therefore, in order to monitor the court cases on behalf of State or against the State in the various courts, it has been decided to issue the following instructions for strict compliance :—

- (1) It is observed that mostly the concerned Departments contact the Government Pleader for preparing the reply and for appearance hardly two or three days before the date of filing reply or appearance with the result that the Government Pleaders are facing difficulties in preparing the reply or protecting the interest of the State Government for want of sufficient time to study the facts of the case thoroughly. It has, therefore, been decided that whenever a court case is received in the Department, the Department should contact the Government Pleader alongwith relevant record/ documents/proposed reply immediately in order to brief him in the matter and file the reply before the stipulated period.
- (2) Instances have come to the notice of the Government that the certified copies of the judgment/order are not supplied to the department concerned by Government Advocates immediately. As a result of this, in certain

cases the period of limitation expires and the judgment/ orders of the court attain finality, which directly put the State Government in an backward position and sometimes result in heavy financial loses. It has now been decided that the incharge of the case shall apply for the copy of the Judgment/order on the same day on which the judgment/order is delivered/passed by the court and as and when the copy of the judgement/order is supplied by the copying agency, the same must be sent to the concerned department for appropriate action at once.

- (3) Instances have come to the notice of the State Government that record of cases in which Special Leave Petitions are to be filed, are not being sent in time to the District Attorney, Legal Cell, New Delhi by the Departments concerned with the result that for filing Special Leave Petition in the Hon'ble Supreme Court, an application for condonation of delay has to be filed. The Hon'ble Supreme Court of India has taken serious note of this lapse and some time the delay is not condoned. It has now been decided that while sending the record of the case to the Legal Cell, New Delhi, the Administrative Departments should also send the comments/brief history of the case. In service matters, tax matters and other important cases in which Special Leave petition are to be filed, the Administrative Departments are requested to send their senior officer well conversant with the facts of such cases and discuss with the District Attorney, Legal Cell/ Advocate-on-Record or Advocate concerned.
- (4) It has come to the notice of the Government that many a times, due to default on the part of the Administrative Departments, the Government advocates have to cut a sorry figure in the court, resulting in not only loss but un-necessary adverse orders against the State which can easily be avoided. The filing of pleadings on behalf of the State is invariably delayed for lack of proper co-operation and sometimes on account of this slackness on the part of the Administrative Departments the evidence on behalf of the State is not examined and in such circumstances the State is burdened with un-necessary costs. There are number of instances where defence has been struck off for not filing the written statement and reply or non-production of the record and witnesses in time. Sometimes State cases are dismissed in default or *ex party* orders are passed for want of proper co-operation by the concerned Administrative Department. All these short-comings can easily be avoided in case the Administrative Department takes interest in rendering the necessary co-operation to the Government Counsel. It has now been decided that whenever a notice is received by the Administrative Department from a Court of Law or Administrative Department have to move a court of law in any case, a responsible officer who is well conversant with the record and the facts of the case should be made responsible and entrusted with the entire case who alone should contact the Government counsel and brief him not only at the very outset but on every hearing till final disposal of the case.

- (5) Instances have come to the notice of the Government that some Departments are not filing replies despite several opportunities granted by the various courts and exemplary costs are being awarded against the State. It has now been decided that such cases be immediately brought to the notice of Law Department and action should at once be initiated against the concerned Officer/Official and he/she shall personally be liable for the negligence and the cost imposed by the court should be recovered from him/her
- (6) It has also come to the notice of the Government that Government Advocates, while accept the service of notice and receive the copy of application etc. waive-off the service of notice. Now it has been decided that on the first date of hearing or at the time of receipt of notice interim order, the Government Advocate should invariably contact Administrative Secretary/Head of Department or any other responsible officer of the Department/Boards/Corporations/Universities concerned so as to obtain the reply/version of the Departments/Board/Corporations/Universities within limited time of adjournment before arguing the case in the concerned courts. In the event of Court passing an interim injunction order on first date of hearing without waiting for Government reply, as it can legitimately do in urgent cases, the Government Advocate should insist upon the concerned court to record its reasons for passing the interim injunction order as is the requirement of the Law. In such cases, the Government Advocate may also insist upon the Court to record in its order the request for grant of time and opportunity for obtaining the Government version.

In the event of court passing an injunction order with or without recording reasons on the first date of hearing, the Government Advocate should immediately convey such orders to the concerned Departments/Boards/Corporation etc. and should invariably advised the Department /Board, if it is fit to file appeal/ writ petition/SLP's before the concerned court for challenging the order of the lower court or should file the reply and request the concerned courts to finally dispose of injunction order passed by the court may remain validly in force.

- (7) For the proper monitoring of progress of each court case, in various courts, now it has been decided that all the Administrative Departments/ Head of Departments/ Boards/Corporation are required to maintain a register of court cases in the form as given in para 13-1-18 of chapter XIII of the official manual. This register should always be kept updated by making an entry after each day of hearing. In this entry, a brief description of the proceedings/orders of the court is to be made, it should also be mentioned as to what is required to be done on the next date of hearing. Besides this, every Department should nominate one officer, not below the rank of Section Officer or Supdt. Grade-I, as officer-in-charge who shall be responsible for monitoring the court cases at all levels and at all stages,

and he should apprise his Secretary/ Head of department/ M.D's etc. about the progress of the court cases after every date of hearing.

The above instructions should be adhered strictly failing which it would be viewed seriously and any Officer/Official found negligent will be liable to departmental action/ proceedings.

This may be treated as most urgent.

The receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/-

(G. L. GUPTA)

*LR-cum- Secretary ( Law ) to the  
Government of Himachal Pradesh.*

**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

No. LLR-E (9) 1/88-III (Loose).

*Dated Shimla-2, the 9<sup>th</sup> April, 2003*

NOTIFICATION

In supersession of all previous Notifications/Office Orders regarding empanelment of various categories of advocates to represent the State of Himachal Pradesh both in Civil & Criminal cases in the Hon'ble Supreme Court, the Governor, Himachal Pradesh is now pleased to revise the panel of various categories of advocates to represent the State of Himachal Pradesh in the Hon'ble Supreme Court of India as under :—

I. Sr. Advocates ( both for civil & criminal cases) :

1. Shri B. Datta
2. Shri P. N. Nag

Terms and conditions of Fee :

- (i) Rs. 5, 500/- per appearance in miscellaneous hearing
- (ii) Rs. 11, 000/- per appearance in regular

II. Advocate-on-record (both for civil & criminal cases) :

1. Shri Joginder Singh Attri

Terms & conditions of Fee :

- (i) Rs. 1, 100/- per appearance in miscellaneous hearing
- (ii) Rs. 2,000/- per appearance in regular hearing
- (iii) Rs. 1,100 for drafting of Special Leave Petition/ Counter
- (iv) As & when advocate-on-record puts in appearance with the panel advocates in a case then he will be entitled to half fee.

III. Panel Advocates ( both for civil & criminal cases) :

- (i) Ms. Promila
- (ii) Shri V. K. Sharma
- (iii) Shri J. S. Mehta

Terms and conditions of Fee :

- (i) Rs. 1, 100/- per appearance in miscellaneous hearing
- (ii) Rs. 2, 000/- per appearance in regular hearing
- (iii) Rs. 1, 100 for drafting of Special Leave petition/ Counter

2. The above panel of advocates has already come into existence *w e .f.*  
24-3-2003.

3. The above appointments are at the pleasure of the Government and can be terminated at any stage without assigning any reasons.

4. Besides above the following conditions will applicable for Advocate-On-Record and Panel Advocates :—

- (i) The above advocates will not be entitled to any fee for arranging the services of any senior counsel for obtaining advice in State cases and for acting as junior to senior counsel in tendering advice.
- (ii) Where applications, affidavits, replies etc. are to be drafted in a set of similar cases, the set would be considered as one case and they will be entitled to the fee for one case only.
- (iii) The above advocates will not appear/advise or would brief in any case against the State of Himachal Pradesh.
- (iv) The above advocates will not be entitled for any clerkage.
- (v) The Government of Himachal Pradesh has the right to appoint any other lawyer of repute in important cases as and when the occasion would arise.
- (vi) While forwarding the bills for payments, it may invariably be certified that the fees claimed, are in accordance with the scales of fees laid above and the bills must be verified by the District Attorney (Legal Cell ), New Delhi.
- (vii) All the bills of the month should be submitted to the office of District Attorney ( Legal Cell), New Delhi at the end or the first week of the succeeding month to avoid delay of payments.

This has been issued with the prior concurrence of Finance Department obtained *vide* their Dy. No. 293-Fin-F/2003, dated 9-4-2003.

By order,

(J. L. GUPTA),  
*LR-cum- Secretary (Law) to the  
Government of Himachal Pradesh.*

**Endorsement as above.**

dated 9-4-2003.

Copy forwarded for information and necessary action to :—

1. All the Financial Commissioners-*cum*-Secretary/Principal Secretaries/Secretaries to the Govt. of H. P. Shimla.
2. All the Heads of Departments in Himachal Pradesh.
3. The Deputy Secretary (Pros. ) to the Govt. of H. P.
4. All the Deputy Commissioner in H. P.

5. The Advocate General, H. P. Shimla-171 001.
6. The Additional Government Advocate, Govt. of India, Ministry of Law & Justice, Legal Affairs Deptt., Central Law Agency Section, Supreme Court Compound, New Delhi.
7. The Registrar, Supreme Court of India, New Delhi.
8. The Director of Prosecution, Block No. 22 SDA, Complex, Kasumpti Shimla-171 009.
9. The Resident Commissioner, H. P. 27 Sikandra Road, New Delhi.
10. The Controller, Himachal Pradesh, Government Press, Shimla-5 for immediate publication in Extras-ordinary Gazette.
11. The District Attorney ( Legal Cell ), Himachal Pradesh, 27-Sikandra Road, New Delhi-110 001 while forwarding the bills of aforesaid advocates it may be invariably be certified that the fees claimed are in accordance with the aforementioned scale of fees.
12. Shri B. Datta, Senior Advocate, C-38, Neeti Bagh, New Delhi-110 049.
13. Shri P. N. Nag, Senior Advocate, A-64, Sector-39, Noida-201 303.
14. Shri J. S. Attri, Additional Advocate General, H. P. at Delhi, Gopal Cottage E- 119, Chhatarpur Extension, New Delhi-110 074.
15. Ms. Promila, Advocate, 198-A Pocket-1, Mayur Vihar, Phase-1 Delhi-110 091.
16. Shri V. K. Sharma, Advocate, 205-B9, Sector 5, Rohini, Delhi-85.
17. Shri J. S. Mehta, Advocate, Flat No. 7, Plot No. 25/3, Chinar Apartment, Sector-9, Rohini, Delhi-110 085.
18. Guard file.

Sd/-  
*Under Secretary ( Law ) to the  
Government of Himachal Pradesh.*

Annexure —“K”

**GOVERNMENT OF HIMACHAL PRADESH  
LAW DEPARTMENT**

NOTIFICATION

*Shimla-2, the 27<sup>th</sup> October, 2005*

**No. LLR-B(14)-1/2002-II.**—In exercise of the powers conferred by Sub-Section (1) & (2) of section 5 of the Right to Information Act, 2005 (Act No. 22 of 2005), the Governor, Himachal Pradesh is pleased to designate the Officers and Officials of the Law Department as Public Information Officers, Assistant Public Information Officers and Appellate Authority as per Annexure –A attached.

By order,

Sd/-

*L.R.-cum-Principal Secretary (Law) to  
the Government of Himachal Pradesh.*

**Endst. No. As above**

dated Shimla-2, the 27<sup>th</sup> October, 2005

Copy is forwarded for information and necessary action to:—

1. The Principal Secretary (AR) to the Government of Himachal Pradesh, Shimla-2.
2. The Member-Secretary H. P. State Legal Services Authority, Block No.22, S.D.A. Complex, Kasumpti, Shimla-9.
3. The Additional Secretary (Law) to the Government of Himachal Pradesh, Shimla-2.
4. The Deputy Secretary (Law) to the Government of Himachal Pradesh, Shimla-2.
5. The Under Secretary (Law-Opinion) to the Government of Pradesh, Shimla-2.
6. The Under Secretary (Law) to the Government of Himachal Pradesh, Shimla-2.
7. The Under Secretary (Law-Legislation) to the Government of Himachal Pradesh, Shimla-2.
8. The Senior Law Officer (Hindi), H. P. Secretariat, Shimla-2.
9. The Senior Law Officer (English) H .P. Secretariat, Shimla-2.
10. The Superintendent, Litigation Cell H. P. Secretariat, Shimla-2.
11. The Controller, Printing and Stationery Department, Himachal Pradesh Shimla-5 for publication in the Rajpatra and intimate this Department the date of its publication.
12. Guard file.

Sd/-

*Under Secretary (Law) to the  
Government of Himachal Pradesh.*



**Name of the Department/Office : Law Department****Details of proposed PIO, APIO and Appellate Authority**

<b>Designation of Public Information Officers</b>	<b>Complete Office Address</b>	<b>Office Telephone No.</b>	<b>E-mail Address</b>	<b>Jurisdiction/ Units under his control for which he will be rendering information to applicants</b>
Additional Secretary (Law).	Room No. A-111 H. P. Secretariat, Shimla-2.	2626359 2880641	lawbr6 – hp@ nic.in	Law Department
Deputy Secretary (Law-Legislation).	Room No. E-302 H. P. Secretariat, Shimla-2.	2628487 2880558	-do-	Law Department

<b>Designation of Assistant Public Information Officers</b>	<b>Complete Office Address</b>	<b>Office Telephone No.</b>	<b>E-mail Address</b>	<b>Jurisdiction/ Units under his control for which he will be rendering Information to Applicants</b>
Under Secretary (Law-Opinion).	Room No. E-326 H. P. Secretariat, Shimla-2.	2628489 2880443	lawbr6 – hp@ nic.in	Opinion Cell of Law Department, H. P. Secretariat, Shimla-2.
Sr. Law Officer (English).	Room No. E-303.	2880539	-do-	-do-
Under Secretary (Law).	Room No. E-301, H. P. Secretariat, Shimla-2.	2628478 2880670	-do-	Law Branch of Law Department, H. P. Secretariat, Shimla-2.
Section Officer (Law).	Room No. E-312	2880439	-do-	-do-

<b>Designation of Assistant Public Information Officers</b>	<b>Complete Office Address</b>	<b>Office Telephone No.</b>	<b>E-mail Address</b>	<b>Jurisdiction/ Units under his control for which he will be rendering Information to Applicants</b>
Under Secretary (Law-Legislation).	Room No. E-313, H. P. Secretariat, Shimla-2.	2622425 2880441	lawbr6 – hp@ nic.in	Legislation Wing of Law Department, H. P. Secretariat, Shimla-2.
Sr.Law Officer (Hindi).	Room No E-307.	2880578	-do-	-do-
Superintendent (Litigation)	Room No. E-314	2880554	-do-	Litigation Cell

<b>Designation of Appellate Authority</b>	<b>Complete Office Address</b>	<b>Office Telephone No.</b>	<b>E-mail Address</b>	<b>Jurisdiction/ Units under his control for which he will be rendering Information to Applicants</b>
L. R.-cum-Pr. Secretary (Law).	Room No. E-232, H. P. Secretariat Shimla-2.	2621544 2880634	lawbr6 – hp@ nic.in	N. A.

# LAW DEPARTMENT MANUAL

## PART- I

### GENERAL MANAGEMENT AND OPINION WORK

#### Management:

#### 1. Functions assigned to Law Department:

**1.1** In the State of Himachal Pradesh, Law Department has been assigned the following functions:—

- (a) Advice on legal matters;
- (b) Construction of Statutes, Acts, Regulations, Statutory Rules, Orders and Notifications;
- (c) Conveyancing and Drafting of Bills, Ordinances, Rules, Bye-laws, Notifications and Regulations;
- (d) Defence or institution of suits or proceedings filed against or by the Government, except criminal cases in Supreme Court;
- (e) Codification of Laws, Rules and Regulations;
- (f) Law Department Manual;
- (g) Republication of Central Acts in the State Gazette including the work of their translation into Hindi/ Pahari, if so desired by the Government of India;
- (h) Entertainment of summons issued by the Supreme Court, High Court and other Subordinate Courts in civil, criminal or writ cases against Government, except criminal cases in Supreme Court;
- (i) Forwarding of letters of probate and administration and letters of requests and interrogatories to the proper quarter for necessary action;
- (j) Indian Law Reports—Question connected with the printing; distribution, supply, audit, etc.;
- (k) Legal Remembrancer's office—All references relating to establishment and budget etc;
- (l) Official Receivers and Notaries Public—Appointment of;
- (m) State Law Reports and Legal Remembrancer's Library;
- (n) Constitution of India—References relating thereto;
- (o) To collect/compile and pursue the general observations of the Subordinate Legislation Committee;
- (p) Translation of Acts, Ordinances, Bills and Statutory Rules, Orders, Bye-Laws, Regulations into official language;

- (q) Authentication and publication of the Authoritative Hindi version of Acts originally enacted in English; and
- (r) Authentication and publication of English text of Bills, Acts and Ordinances under Article 348(3) of the Constitution of India.]<sup>1</sup>

**1.2** Under the Rules of Business of the Government of Himachal Pradesh, 1971, the following business shall be disposed of by the Law Department:—

- [(a) All Administrative Department shall consult the Law Department on—
  - (i) the construction of Statutes, Acts, Regulations and statutory rules, orders and notifications;
  - (ii) any general legal principles arising out of any case;
  - (iii) the institution or withdrawal of any prosecution at the instance of the Administrative Department; and
  - (iv) the defence or institution of any suit or proceedings, filed against or by the Government.

**1.3** Every such reference shall be accompanied by an accurate statement of the facts of the case and the point or points on which the advice of the Law Department is desired:

Provided that this shall not apply to any rule, bye-law, notification or order of a purely routine nature, for which suitable precedents exists:

Provided further that where any rule, notification or order is of a kind for which there is no suitable precedent, the department making the reference may, instead of framing a draft, indicate clearly and precisely the points to be covered and request the Law Department to frame the draft.

**1.4** Except as hereinafter provided the Law Department is not, in respect of legislation, an originating or initiating department and its proper function is to put into technical shape the projects of legislation of which the policy has been approved and every proposal to initiate legislation shall be considered in, and, if necessary, transferred to the department to which the subject matter of legislation relates and the necessity for legislation and all matters of substance to be embodied in the Bill shall be discussed and subject to these rules, settled in such department.

**1.5** Proposals to initiate legislation shall be treated as a case and shall be disposed of accordingly:

Provided that the case shall not be submitted to the Chief Minister until the department concerned has consulted the Law Department as to—

- (i) the need for the proposed legislation from a legal point of view;
- (ii) the competence of the State Legislature to enact the measure proposed;

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1. See rule 21 of the Business of the Government of Himachal Pradesh (Allocation) Rules, 1971.

- (iii) the requirements of the Constitution as to obtaining the previous sanction of the President thereto; and
- (iv) the consistency of the proposed measure with the provisions of the Constitution, and, in particular, those relating to the Fundamental Rights.

**1.6** After obtaining the opinion of the Law Department on matters referred to in the next preceding paras, and if the proposed legislation involves expenditure from the Consolidated Fund, after a Financial Memorandum has been prepared in consultation with the Finance Department, the proposals shall be submitted to the Council of Ministers in accordance with these rules alongwith a comprehensive Memorandum.

**1.7** If the proposal for the legislation is approved by the Council of Ministers the case shall be sent to the Law Department alongwith the decision of the Council of Ministers and the Explanatory Memorandum for the purpose of preparing a tentative draft of the Bill.

**1.8** The Law Department shall prepare a tentative draft of the Bill and return the case to the department concerned.

**1.9** The Administrative Department shall after consulting such officers and bodies as is deemed necessary, submit the draft Bill to the Council of Ministers alongwith the opinion, if any, of the officers or bodies consulted.

**1.10** If it is decided by the Council of Ministers to proceed with the Bill, with or without amendments, the Administrative Department shall send the case to the Law Department along with the final decision of the Council of Ministers, requesting it to prepare the final draft of the Bill.

**1.11** The Law Department shall then finalize the draft and send a draft Bill to the originating department, indicating at the same time the sanctions, if any, required for the Bill. If any provisions in the Bill involving expenditure from the Consolidated Fund of the State are modified in the finalised draft, the department shall send the finalized draft Bill to the Finance Department for revising, if necessary, the Financial Memorandum.

**1.12** The originating department shall then transfer the final draft Bill to the Law Department with the instructions of the Government thereon, including instructions as to its introduction in the Legislative Assembly, and with copies of such papers underlying the Bill as should be communicated to the Legislative Assembly. After such transfer, the Bill shall be deemed to belong to the Law Department.

**1.13** Measures designed solely to codify and consolidate existing enactments and legislations of a formal character, such as repealing and amending Bills, may be initiated in the Law Department:

Provided that the Law Department shall send a copy of the draft Bill to the department, which is concerned with the subject matter, for consideration as an administrative measure and the department to which it is sent shall forthwith make

such enquiries as it thinks fit and shall send to the Law Department its opinion thereon together with a copy of every communication received by them on the subject.

**1.14** (a) Whenever a private Member of the State Legislature give notice of his intention to move for leave to introduce a Bill, the Law Department shall, forthwith send a copy of the Bill and the statement of objects and reasons for information to the Chief Minister and to the department to which the case belongs.

(b) The Bill shall be dealt with as a case in the first instance by the Law Department where it shall be considered in its technical aspects, such as need for previous sanction of the President and the competence of the State Legislature to enact the measure and then forwarded with its opinion to the department to which the case belongs.

(c) If any provisions of such Bill involve expenditure from the Consolidated Fund of the State the department shall, before it is circulated, prepare in consultation with the Finance Department, the Financial Memorandum in respect of the Bill.

**1.15** The provisions of sub-paras 1.2 to 1.17 of this para shall apply, as far as may be, to amendments of substance recommended by the Select Committee and, also to all amendments, notice of which is given by Members of the State Legislature for being moved during the consideration of a Bill in the Legislature.

**1.16** (a) When a Bill has been passed by the Legislature, it shall be examined in the department concerned and the Law Department and, shall be forwarded to the Governor with—

- (i) a report of the Secretary concerned as to the reasons, if any, why the Governor's assent should not be given; and
- (ii) a report of the Law Secretary as to the reasons, if any, why Governor's assent should not be given or the Bill should not be reserved for consideration of the President.

(b) Where the Governor directs that the Bill should be reserved for the consideration of the President or returned to the Legislature with a message, necessary action in that behalf shall be taken by the Secretary to the Governor in consultation with the Secretary to the Administrative Department concerned and the Law Secretary.

**1.17** After obtaining the assent of the Governor or the President, as the case may be, the Law Department shall take steps for the publication of the Bill in the Official Gazette as an Act of the Legislature.]<sup>1</sup>

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1. See rules 39 to 54 of the Rules of Business of the Government of Himachal Pradesh, 1971.

**General Control and functioning of each Wing:**

**1.18** Law Department consists of four wings, namely:—

- (a) Administrative;
- (b) Opinion;
- (c) Litigation; and
- (d) Legislative,—
  - (i) Legislation;
  - (ii) Codification; and
  - (iii) Official Language.

(a) **Administrative Wing.**—The main function of the Administrative Wing of the Law Department is to sanction counsel fees payable to the Private Advocates, engage Advocates to represent civil cases in various courts in State and to issue necessary instructions in this behalf from time to time (*see* Annexure “A”)<sup>1</sup> and it discharge functions of the Administrative Department in relation to the functioning of—

- (i) The Himachal Pradesh State Legal Services Authority; and
- (ii) The Himachal Pradesh State Law Commission.

It is also responsible to implement the provisions of—

- (i) The Official Trustees Act, 1913;
- (ii) The Administrators General Act, 1963; and .
- (iii) The Legal Services Authorities Act, 1987.

(b) **Opinion Wing.**—The Opinion Cell of the Law Department, apart from tendering opinion in various legal matters received from all the Administrative Departments of the State Government, has also been entrusted with the job of vetting of legal documents, notifications and Recruitment and Promotion Rules.

(c) **Litigation Wing.**—The Litigation Wing is the important limb of the Law Department. The Legal Remembrancer, Himachal Pradesh, except in matters as may be assigned to the Advocate General, and the criminal matters pending in the Supreme court, exercises the control over the entire Government Litigation, whether Civil or Criminal. It examines judgements of various Courts (including that of State Administrative Tribunal, Consumer Forum etc.) involving the Government interest and recommends the desirability of agitating the matter further before the High Court or the Supreme Court by way of appeal/revision etc.; it also examines and approves the plaints, written statements, memorandum of appeals etc. to be filed by or on behalf of the State Government, in various Courts; and also acts as nodal agency for conciliation of cases filed by or against the Government, pending in various courts in the State by

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1 . Annexure “A”.

constituting District Level and State Level Committees. The Law Department is bound to watch the progress in all criminal matters excepting those which are either under the control of the Advocate General, Himachal Pradesh, or which are pending in the Supreme Court. In addition to this, all cases of prosecution sanctions, contempt matters are dealt with in this Wing.

(d) **Legislative Wing.**—The Legislative Wing of Law Department is subdivided into three Sections:—

**Legislation :**

The Legislation Section is entrusted with the work of drafting all Government Bills, Ordinances, Regulations, Statutory Rules, Notifications and Orders etc.

[The preparation of a legislation and setting the legislative programme involves following seven main stages:—

- (a) Approval of legislative programme and formation of Legislative Policy;
- (b) Drafting instructions and preparation of Bills;
- (c) Approval of Bills by Cabinet;
- (d) Formalities respecting Bills before introduction;
- (e) Introduction and printing of Bills;
- (f) Processing and passing of Bills in the State Legislative Assembly and procedure in financial matters—Appropriation Bills; and
- (g) Presentation of Bills for assent and publication as Acts.]<sup>1</sup>

(i) **Legislative Programme.**— [The Administrative Department is required to prepare and forward to the Secretary Parliamentary Affairs Department by the 15th of January in each year, a provisional legislative programme for ensuing budget session. In submitting the programme the Administrative Department should set out—

- (a) the scope and purpose of the Bill;
- (b) the Administrative Department's idea as to whether it will be a Bill of long, short or medium length;
- (c) the urgency of the Bill in relation to the work of the Department and indicating, by numerical sequence where possible, its priority rating compared with other Bills of the Department;
- (d) whether the Bill has yet been approved in principle by the Cabinet;
- (e) whether drafting instructions have been issued to the Legislative Wing, in the Law Department; and
- (f) any other remedies which may enable the Parliamentary Affairs Department to determine its priority rating in request to the programme as a whole.]<sup>2</sup>

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1. See para 1 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 2 of the Hand Book on the Preparation and Passing of the Bills..



**(ii) Acceptance by the Cabinet.**—[The Parliamentary Affairs Department will review the proposals put forward by the Departments, will consult, where necessary, with the Department concerned and will finally draw up a full legislative programme arranged on a priority basis according to the anticipated sittings of the Assembly during the session. This programme will be recommended for acceptance by the Cabinet.]<sup>1</sup>

**(iii) Formation of legislative policy in the preparation of Bills.**—[The first stage in the preparation of a Bill is the formation of a legislative policy. A statute is the formal and legal expression of a legislative policy, and therefore, before the Bill can be drafted the policy sought to be implemented by it must be determined. At this stage administrative, financial or political considerations are more likely to be involved than legal considerations and these have to be dealt with and settled by officials in the Administrative Department concerned.]<sup>2</sup>

**(iv) Reference to Law Department.**—[Once these matters are settled, proposals for legislation are to be referred to the Law Department for advice as to their feasibility from the legal and constitutional point of view. The advice is tendered generally on the necessity or desirability of such legislation in the light of existing laws. The competency of State Legislature to legislate on the subject under the Constitution is also considered at this stage, and the broad lines on which legislation may be undertaken are likewise often indicated. The advice tendered at this stage will have to be of a general character and it is reserved for the legal Draftsman to examine the various provisions in greater details at the drafting stage.]<sup>3</sup>

**(v) Proposals after approval of legislative policy by the Cabinet.**—[Under the Rules of Business, cases involving legislation have to be brought before the Cabinet for decision, and consequently if the Minister-in-Charge of an Administrative Department decides, after consulting the Law Department, that legislation on any particular topic should be sponsored in Assembly. It is essential that the summary to the Cabinet is drafted in such a manner that the case for legislation is fully brought out and that the implications of the proposed legislation are easily understood, but there is no need to attach to the summary a draft of the Bill. In fact, to do so would be to create difficulties for the Draftsman in more ways than one. If the Legislative proposals are not accepted, or are accepted in a modified form, by the Cabinet, much of the valuable time of the Draftsman which he can ill afford to spare would have been wasted in preparation of an unwanted Bill or of unwanted provisions. Where a Draftsman is required to draft a Bill for the purpose of eliciting policy decisions, not only is his work multiplied, but he is very often forced to guess at what the ultimate policy would be and his guesses may not always be right. Further, the Draftsman would have opportunities until the very last movement to improve upon the language of the Bill and this may not always be possible if certain words which have been put into the draft of the Bill submitted to the Cabinet have obtained some sanctity by reason of their acceptances by the Cabinet. It is no doubt conceivable that in exceptional cases draft of

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1. See para 3 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 4 of the Hand Book on the Preparation and Passing of the Bills.

3. See para 5 of the Hand Book on the Preparation and Passing of the Bills.

a Bill may have to accompany the summary to the Cabinet in order to bring out the legislative proposals with greater clarity and precision, but such cases should be few and should in fairness to the Draftsmen, be reduced to the minimum]<sup>1</sup>

*(vi) Drafting Instructions.*—[If approval of the Cabinet for any Legislative proposal has been obtained, the Department initiating action in this behalf is to prepare an office memo indicating with sufficient precision the lines on which it has been decided to legislate and requesting the Law Department in the Legislation Section to take steps for drafting a Bill with a view to its introduction in the Assembly. It is generally found that drafting of a Bill proceeds at the maximum speed and with minimum friction if complete instructions are given to the Draftsman. A great deal depends upon the case and skill with which instructions to the Draftsman are given and acquainted with so much of the background of what is proposed as relevant. The summary of the legislative proposals as submitted to the Cabinet is no substitute for the precise instructions which the Draftsman always requires before undertaking any drafting work, because the summary in most cases would be very general in character and would not have dealt with each of the proposal in detail. Before the Draftsman can begin to put the words on paper, he must understand the legislative proposal and familiarise himself in the subject matter thereof. A Draftsman cannot be expected to be an expert in every field of knowledge and there he has to be educated upto a point, where he will become qualified to deal with the subject matter of the Bill from the legislative point of view. Thus conferences have to be held at various stages before a Bill can be finalised. Thus it is important that the Departmental Officers/ officials who confer with the Draftsman should be of sufficient experience and standing and should give authoritative answers to any questions, which will come up during the process of drafting. These instructions should be a simple statement in clear language of the several points covered by the Bill and should include reference to any relevant legislation or related literature of which the Administrative Department is aware. Such statement is better not prepared in the form of a draft Bill. Occasionally, a draft Bill is prepared by the Administrative Department for submission to the Draftsman in place of the memorandum, but this practice is always discouraged as it is generally a handicap to the Draftsman, as a draft measure prepared by non-Draftsman as a rule will be defective and the Draftsman will have to spend much time in undoing what has been done. His position becomes even more awkward when a draft Bill prepared in this manner has been circulated and discussed before submission to the Draftsman, because it is generally assumed that the final draft will closely resemble the draft of the administrative department, and any attempt on the part of Draftsman to alter the structure of such a Bill may be resisted. The Bill drafting is a laborious process and is essentially a task that ought to be carried out under conditions which allow sufficient time for deliberate thought and research upon the many points that arise. Wherever possible an attempt will always be made to have the first draft prepared by one of the junior Draftsman and it will thereafter be examined and finalised by a senior Draftsman in collaboration with the Draftsman who prepared the first draft. This will reduce mistakes to the minimum. In the case of short Bills, one or two drafts may suffice, but in the case of longer Bill several drafts may have to be made and subjected

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1. See para 6 of the Hand Book on the Preparation and Passing of the Bills.

to criticism both on files and at conferences. In the case of important and complex Bills, the process of drafting may be a long one extending over several months. The process of revising the draft must continue until the sponsors of the Bill and the Draftsman are both satisfied with the form and contents of the Bill.]<sup>1</sup>

**(vii) Preparation of Hindi version of Bill.**—[When a Bill is finalised by the Draftsman, the Official Language Wing attached to Law Department is approached, where it has been finalized in English language, to prepare the text of the Bill in the Official Language i.e. in Hindi, and where it has been prepared in Hindi, to prepare its authoritative text in English Language, so that the legislative proposal may be discussed and approved by the Council of Ministers and processed in the Legislative Assembly, in the Official Language along with its authoritative English text as contemplated in Article 348 of the Constitution of India.]<sup>2</sup>

**(viii) Submission of Bills to the Council of Ministers.**—[After the tentative Bill is finalised and its Hindi version is prepared, the Administrative Department shall, after consulting<sup>1</sup> such officers and bodies as is deemed necessary, submit the Bill to the Council of Ministers in accordance with the Rules of Business of the Government of Himachal Pradesh accompanied by a comprehensive memorandum alongwith the opinion, if any, of officers and bodies consulted. If the proposal for the legislation is approved by the Council of Ministers, the case shall be sent to the Law Department alongwith the decision of the Council of Ministers and the instructions of the Government as to its introduction in the Legislative Assembly and with three accurately and clearly typed copies of the Bill and such papers underlying the Bill as should be communicated to the Legislative Assembly.]<sup>3</sup>

**(ix) Statement of Objects and Reasons.**—[When a Bill is finalised and is approved by the Department sponsoring it, that Department attaches to the Bill a Statement of Objects and Reasons relating thereto, which is to be signed by the Minister who is to be In-charge of the Bill in the Assembly. This Statement has to be drawn very carefully so that it does no more than indicate the intention behind the Bill and the reasons which have led up to it in a calm and judicial tone; very often such statements are drawn in consultation with the Draftsman or are shown to him for approval.]<sup>4</sup>

**(x) Financial Memorandum and Memorandum Regarding Delegated Legislation.**—[The Rules of Procedure of the Legislative Assembly requires that—

- (a) a Bill involving expenditure shall be accompanied by a Financial Memorandum which shall invite attention to clauses involving expenditure and shall also give an estimate of recurring and non-recurring expenditure involved in case the Bill is passed into law;

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1. See para 7 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 8 of the Hand Book on the Preparation and Passing of the Bills.

3. See para 9 of the Hand Book on the Preparation and Passing of the Bills.

4. See para 10 of the Hand Book on the Preparation and Passing of the Bills.

- (b) clauses or provisions involving expenditure from public funds shall be printed in bold type or in italics;
- (c) a Bill involving proposals for delegation of Legislative powers, shall further be accompanied by a Memorandum explaining such proposals and drawing attentions to their scope and stating also whether they are of normal or exceptional character. Financial Memorandum is prepared by the Department sponsoring the Bill and Finance Department (if it is not the sponsoring Department) is always consulted at the appropriate stage. These Memorandums outline the objects on which expenditure is likely to be involved, and furnish an estimate whenever possible of the annual expenditure.
- (d) the Memorandum regarding delegated legislation has to be drawn with same care. While the practice of delegating law-making power is justifiable and even inevitable, the legislature would like to be satisfied that the delegated legislative power does not extend beyond the justifiable limits. Rule 273 of the Rules of Procedure and Conduct of Business in the Assembly requires the Departmentally Related Standing Committees to examine rules made by a delegated authority with a view to consider whether—
  - (i) they are in accord with the general objects of the Constitution or the Act pursuant to which they are made;
  - (ii) they contain matter which in the opinion of the Committee should more properly be dealt with in the Act itself;
  - (iii) they impose any tax;
  - (iv) they directly or indirectly bar the jurisdiction of Courts;
  - (v) they give retrospective effect to any provisions for which there is no justification in the Act or the principal Act does not confer any such power;
  - (vi) they appear to make unusual or unexpected use of the powers conferred by the Act pursuant to which they are made; and
  - (vii) generally, for any reasons, the form or purport of the rules calls for any elucidation.]<sup>1</sup>

**(xi) Statement in connection with Ordinances.**— [Whenever an Ordinance is promulgated or an Ordinance which embodies wholly or partly or with modifications the provisions of a Bill pending before the Assembly, is promulgated, a statement explaining the circumstances which had necessitated legislation by Ordinance is required to be laid on the table at the commencement of the session following the promulgation of the Ordinance. Wherever, a Bill seeking to replace an Ordinance with modification is to be introduced or processed, there shall be placed before the

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1. See para 11 of the Hand Book on the Preparation and Passing of the Bills.

Legislative Assembly alongwith the Bill a statement explaining the circumstances necessitating such modification.]<sup>1</sup>

**(xii) Recommendations of the Governor or previous sanction of the President for certain types of Bills.**—[In respect of certain types of Bills, the Constitution requires a few formalities to be complied with before their introduction in, or consideration by, the Assembly, which are as under:—

- (a) Under Article 207 (1), no Bill which makes provisions for any of the matters specified in sub-clauses (a) to (j) of clause (1) of Article 199 can be introduced in the Assembly except on the recommendations of Governor. These matters are—
  - (i) the imposition, abolition, remission, alteration or regulation of any tax;
  - (ii) the regulation of the borrowing of money or the giving of any guarantee by the State Government or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
  - (iii) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of money into or the withdrawal of moneys from any such Fund;
  - (iv) the appropriation of money out of the Consolidated Fund of the State;
  - (v) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State or the increasing of the amount of any such expenditure; and
  - (vi) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money.

It is however, provided in Article 207 (2) that a Bill shall not be deemed to make provisions for any of such matters by reasons only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

- (b) Under Article 207(2), a Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by the State Legislative Assembly unless the Governor has recommended to the Assembly the consideration of the Bill.

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1. See para 12 of the Hand Book on the Preparation and Passing of the Bills.

- (c) Under Article 304, no Bill or amendment imposing reasonable restrictions on the freedom of trade, commerce or intercourse with or within a State, can be introduced or moved in the Legislature of a State without the previous sanction of the President.
- (d) Prior approval of the Government of India is required to be obtained under the instructions issued by the Union Government *vide* their letter No. 17-23/72-Judl., dated 3-8-1972, before processing the Bills in the Legislative Assembly relating to any of the following matters:—
  - (i) relatable to entries in the Concurrent List in the Seventh Schedule of the Constitution of India, to be reserved for the consideration of the President under Article 254(2) of the Constitution;
  - (ii) attracting the provisions of Articles [31(2)], 31-A(1), 31-C and 288(2) that have to be submitted to the President for his assent under Article [31(3)], proviso to Article 31-A(1), proviso to Article 31-C and 288(2) respectively;
  - (iii) Bills on land reforms;
  - (iv) Bills imposing restrictions on the freedom of trade or commerce under proviso to clause (b) of Article 304 of the Constitution.<sup>1</sup>

**(xiii) Procedure for procuring the prior sanctions of President or the prior approval of Government of India to the Bills.**—[Whenever a Bill falls within one or the other categories, aforesaid, it is for the Administrative Department concerned to obtain such recommendations or previous approval/sanction. All proposals either for procuring the sanction of the President under Article 304(b) or for prior approval of the Government of India, are required to be submitted to the Government of India, in the Ministry of Home Affairs, alongwith six copies of the Bill, with the Statement of Objects and Reasons, (In case the Bill is an amending Bill, six up-date copies of the principal Act, Notes on clauses of the proposed Legislation and a comparative statement showing such relevant clauses as it exists and as it would read after the proposed amendment may also be forwarded).The reference to the Government of India for prior approval or sanction is required to be supported by certificates ( in the prescribed form) that the needed documents (along with six copies of the letter of State Government forwarding the proposed draft legislation are attached therewith). In case of legislation attracting the provisions of Article 254(2) of the Constitution, the extent of repugnancy to existing Central Laws on the subjects enumerated in the Concurrent List is to be clearly explained in the forwarding letter. Such proposals should be sent well in advance before the session of the State Legislative Assembly allowing, a reasonable time of not less than three weeks from the receipt of Bills in the Government of India for the examination of their provisions, in connected Ministries in the Union Government.]<sup>2</sup>

1. See para 13 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 14 of the Hand Book on the Preparation and Passing of the Bills.

**(xiv) Form of order of the Governor granting recommendations to the Introduction of Bills.**—[The order of the Governor granting recommendations to the introduction or consideration of the Bill has to be communicated to the Secretary, Vidhan Sabha by the Minister-in-Charge in writing and following statement is annexed to the Bill:—

“The Governor of Himachal Pradesh, after having being informed of the subject matter of the \_\_\_\_\_, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the aforesaid Bill in the State Legislative Assembly”.

Likewise the order of the President granting sanction to the introduction of the Bill has to be communicated to the Secretary, Vidhan Sabha, by the Minister-in-Charge in writing.]<sup>1</sup>

**(xv) Procedure for obtaining recommendations of the Governor under Article 207.**—[The procedure ordinarily adopted for obtaining the recommendations of the Governor under Article 207 of the Constitution is for the Administrative Department concerned to submit to the Governor, a self contained note on the subject together with a copy of the summary to the Cabinet and the decision of the Cabinet (In case of an amending Bill an updated copy of the principal Act is placed on the file). Such proposal is to be forwarded to the Governor with—

- (a) a report of the Secretary concerned as to the reasons/ circumstances necessitating the proposed legislation; and
- (b) a report of the Law Secretary as to the competency of the State Legislature to enact the proposed legislation and as to whether the Bill, after having been passed by the Legislature can be assented to by the Governor or is to be reserved for the consideration of the President (Where a Bill can be introduced with a Presidential sanction, such sanction has been obtained).

The Governor endorses his recommendation on the file. The order of the Governor, granting or withholding the sanction to the introduction and consideration of the Bill is communicated to the Secretary, Vidhan Sabha by the Minister concerned in writing.]<sup>2</sup>

**(xvi) Notice of introduction.**—[After the Bill is approved by the Council of Ministers and where recommendations of the Governor; and the sanction of the President or the prior approval of the Government of India, for introduction of the Bill in the Legislative Assembly, are required, are received, the Minister-in-Charge desiring to move for leave to introduce a Bill is to give notice in writing of his intention to do so. The period of notice of a motion for leave to introduce a Bill has been seven days, unless the Speaker allows the motion to be made at the shorter notice.]<sup>3</sup>

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1. See para 15 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 16 of the Hand Book on the Preparation and Passing of the Bills.

3. See para 18 of the Hand Book on the Preparation and Passing of the Bills.

**(xvii) Printing of the Bills.**—[When all the foregoing formalities are completed, the Bill, together with its memoranda and Annexure, is sent by the Law Department to the Government Press for printing and proofs obtained are scrutinised by the Draftsman with the assistance of the printing experts in the Legislative Wing of the Law Department and the Bill is then sent to Vidhan Sabha Secretariat. Where in any Bill it is necessary to cite or refer to another Act, its short title is cited in the body and a reference to the number and year thereof is made in the margin. Where two or more Bills seeks to amend the same principle Act and are passed in the same year, the amending Acts are numbered consecutively. Apart from this, care is also taken to number the lines in each page of the Bill to facilitate the references for moving amendments in the Bill. It is expected that the printed copies of the Bill, should be made available to the Vidhan Sabha Secretariat, alongwith the notice of introduction of the Bill. A week's time is generally required before a Bill can be got ready for introduction after the receipt of the Bill from the Administrative Department. The print matter is to be kept pending for use later while publishing the Bills as passed and assented to.]<sup>1</sup>

**(xviii) Inclusion of the agenda and motion for introduction and publication of the Bill.**—[The business of the Legislative Assembly is arranged by the Minister of Parliamentary Affairs and Bills are put down on the agenda for introduction on suitable days. No Bill can be included for the introduction in the List of Business for a day, until copies thereof are made available for the use of Members at least two days before the day on which it is proposed to be introduced. The Appropriation Bills, Finance Bills and such Secret Bills as on the request of the Minister-in-Charge of the Bill are presented by the Speaker to be introduced without making available the copies of the Bills to the Members, may be introduced earlier than two days after its circulation or even without prior circulation. Where the Minister desires that the Bill be introduced earlier than two days after the circulation of copies or even without prior circulation, he is to give full reasons in a memorandum for the consideration of the Speaker explaining as to why the Bill is sought to be introduced without making available to the Members copies thereof in advance. Once it is known that certain Bills are likely to come up for any kind of consideration the Business Advisory Committee comprised of Members of Assembly allot a time limit for each of the Bills and every attempt is made by the House to adhere to the time schedule. On the specified day, the Minister-in-Charge of the Bill moves a motion for leave to introduce the Bill and the motion is not ordinarily opposed. Where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit full discussion thereon. As soon as may be after the Bill has been introduced, it is published in the Official Gazette; but it is possible for a Bill to be published earlier in the Official Gazette, if the Speaker, on a request being made to him, orders the publication of the Bill in the Official Gazette before any motion is made. In such a case it is not necessary to make a motion for leave to introduce the Bill or to publish it again in the Official Gazette.]<sup>2</sup>

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1. See para 19 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 20 of the Hand Book on the Preparation and Passing of the Bills.



**(xix) Motions in relation to Bills.**—[After copies of the Bill have been made available to the House and the Bill is to be introduced, it is open to the Minister-in-Charge to make one of the following motions in respect of the Bill, namely:—

- (a) that it be taken into consideration; or
- (b) that it be referred to a Select Committee of the House; or
- (c) that it be circulated for the purpose of eliciting public opinion thereon.

No motion can be made unless the copies of the Bill have been made available to Members for three clear days before the day on which the motion is to be made.

When any of the above motions is moved, the principle of the Bill and its provisions are discussed generally, but no amendments are moved at this stage. But if the Minister-in-Charge moves the Bill be taken into consideration, any member may move an amendment that it be referred to a Select Committee or that it be circulated for eliciting public opinion. When a Bill is circulated for public opinion the next motion to be made after obtaining public opinion is generally for a Select Committee.]<sup>1</sup>

**(xx) Amendments to Bills.**—[When a Bill comes up before the Assembly for consideration, it is in its second reading stage consisting of clause by clause consideration of the Bill, as introduced or as reported by the Select Committee, as the case may be, and it is open to Members of the Assembly to move amendments. Rule 149 of the Rules of Procedure governs the admissibility of amendments. Broadly speaking, they should be within the scope of the Bill and relevant to the subject matter of the clause to which they relate.]<sup>2</sup>

**(xxi) Third reading of a Bill.**—[When all the clauses, schedules, if any, of the Bill have been considered and voted upon by the House, the Minister-in-charge moves that the Bill be passed with or without amendments. At this stage debate is confined to arguments either in support of the Bill or its rejection, without referring to the details thereof further than is absolutely necessary. Only formal verbal or consequential amendments are allowed at this stage.]<sup>3</sup>

**(xxii) Appropriation Bills.**—[No money can be withdrawn from the Consolidated Fund of the State except under appropriation made by law. Consequently, as soon as the grants have been made by the House, a Bill is introduced to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet the grants made by the House and the expenditure charged on the Consolidated Fund of the State, but not exceeding in any case the amount shown in the statement previously laid before the House.

By convention, Bills are not put for consideration and passing on the same day on which they are introduced in the House. In the case of Appropriation Bills,

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1. See para 21 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 23 of the Hand Book on the Preparation and Passing of the Bills.

3. See para 24 of the Hand Book on the Preparation and Passing of the Bills.

however, the Speaker on request received from the Minister allows Appropriation Bills to be introduced, considered and passed on the same day.]<sup>1</sup>

**(xxiii) Correction of patent errors.**—[After a Bill has been passed by the Legislative Assembly, the Speaker has the power to correct any obvious printing or clerical errors at any stage of a Bill. When a Bill has been passed, the Vidhan Sabha Secretariat sends a copy thereof to the Administrative Department concerned, for scrutiny with a view to assist the Speaker in correcting such patent errors etc. The Draftsman in the Law Department is invariably consulted by the Administrative Department. It is open to the Draftsman to point out mistakes in the Bill, if any, relating to printing, spelling, punctuation, numbering of sections or clauses, or cross-references and marginal headings. As a rule, patent errors pointed out by the Draftsman as well as by the Administrative Department, and accepted by the Speaker, are carried out in the Bills before they are printed for presentation to the Governor for assent.]<sup>2</sup>

**(xxiv) Presentation of the Bills for assent.**—[When a Bill is passed by the Assembly and corrected, if necessary, it is printed on thick or parched paper and authenticated by the Speaker and if it is a Money Bill, certified in the manner prescribed under article 199 of the Constitution. Four authenticated copies are endorsed by the Speaker with a certificate to the effect that the Bill has been passed by the Assembly. It is thereafter presented through the Law Department to the Governor for assent within a period of one month from the date of signing of the Bill by the Speaker. Immediately, on receipt of the reference from the Speaker, Secretary(Law) procures the report of the Administrative Secretary concerned and also records his own report under rule 53 of the Rules of Business of the Himachal Pradesh Government.]<sup>3</sup>

**(xxv) Assent to the Bill.**—[The Governor may either assent to the Bill, withhold his assent, or reserve the Bill for the consideration of the President or return the Bill, if it is not a Money Bill, with a message for consideration of the Bill or any specified provisions thereof, or for consideration of the desirability of introducing any such amendments as he may recommend in his message. Where the Bills are reserved for the consideration of the President, the necessary action to transmit the Bill to the Ministry of Home Affairs, Government of India for procuring the assent of the President, is taken in the Governor's Secretariat, in accordance with procedure laid down in the instructions issued by the said Ministry *vide* their letter no. 17-23/72-Judl., dated 3-8-1972. Such reference is required to be sent with six copies of the Bill as introduced (with Statement of Objects and Reasons) six copies of the Bill as passed, six copies of the letter forwarding the proposal and in case the Bill is an amending, six updated copies of the principal Act, and also a certificate to the extent that all the said copies have been enclosed therewith.]<sup>4</sup>

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1. See para 28 of the Hand Book on the Preparation and Passing of the Bills.
  2. See para 29 of the Hand Book on the Preparation and Passing of the Bills.
  3. See para 30 of the Hand Book on the Preparation and Passing of the Bills.
  4. See para 31 of the Hand Book on the Preparation and Passing of the Bills.

**(xxvi) Custody of assented copies.**—[Out of the four authenticated copies of the Bills, as passed and assented to, one copy is retained in safe custody each by the Governor's Secretariat, Law Department, Vidhan Sabha Secretariat and the Administrative Department. Where a Bill is assented to by the President, fourth copy is retained in the Ministry of Home Affairs in the Government of India.]<sup>1</sup>

**(xxvii) Publication of the Bill as Act.**—[A Bill becomes a law as soon as it is assented to by the Governor or the President, as the case may be. The general rule regarding coming into operation of an enactment is that in the absence of any express provision to the contrary, an Act comes into operation on the day on which it is first published in the Official Gazette, after which it receives the assent. Thus after the Bill is assented to by the President or the Governor, as the case may be, and is assigned the number and year by the Law Department, by making entry in the Register of Acts, the Bill, as assented to, is published as an Act in the Official Gazette.]<sup>2</sup>

**(xxviii) Subordinate Legislation.**—[The essential legislative functions and the ancillary or subordinate legislative functions can be broadly distinguished with sufficient clarity as follows:—

- (a) Essential Legislative functions are ,—
- (i) declaring what the laws shall be in relation to any particular territory or locality;
  - (ii) extending the duration of operation of an Act, beyond the period mentioned in the Act itself; (however this power may be delegated to the Executive, if sufficient guide for the maximum period of extension are laid down in the Act);
  - (iii) repealing or amending the law;
  - (iv) modifying any existing or future law in any essential feature so as to involve a change of policy;
  - (v) power to tax;
  - (vi) power to levy fees;
  - (vii) power to create offences (penalties can be prescribed by rules provided the parent Act contains a specific provision to this effect and the maximum amount of penalty is also laid down in the Act);
  - (viii) power to allow exemptions (after laying down the policy of law and the standards to be applied in the administration, the Legislature may authorise the Executive to make rules or

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1. See para 32 of the Hand Book on the Preparation and Passing of the Bills.

2. See para 33 of the Hand Book on the Preparation and Passing of the Bills.

regulations prescribing classes of cases in which relief or exemption may be granted);

- (ix) expenditure from public revenues, as for instance, appointment of a panel of assessors, payment of fees and travelling allowances to them (Rules may govern these matters provided the Act contains the necessary enabling provision, and adequate indication is given in the Act that expenditure from the public revenues is likely to be incurred on these matters);
- (x) matters affecting the jurisdiction of the Courts;
- (xi) right to appeal (When the entire machinery for taking original decisions is created under the rules, authorised by the enabling provisions of the Act, there may be no objection to provide also by rules, machinery and procedure for appeals against such decisions, but if the original decisions are taken under the specific provisions of the Act and there is no provision of appeal made in the Act, it will not be right to fill the lacuna by making provisions regarding appeals under rules on grounds of natural justice);
- (xii) provisions affecting interest or rights in properties and providing for compensation;
- (xiii) trespassing upon individual rights and liberties (rules may be made affecting interest or rights in properties and providing for compensation therefor or for trespassing upon individual rights and liberties, provided there are specific enabling provisions in the Act and sufficient guides are indicated therein regarding the manner in which and the extent to which these rights, interests and liberties are going to be affected).

(b) The ancillary or subordinate legislative functions are as follows and can be governed by the rules framed by the Executive:—

- (i) all matters of subsidiary or ancillary nature or those which relate to procedure or matters of detail;
- (ii) fees can be prescribed, if there is enabling provisions in the Act, but they should not be out of all proportion to the services rendered so as to be in the nature of impost or tax;
- (iii) as regards taxation, it seems permissible to delegate, the power to carry out certain taxation policy, if the principles of taxation are clearly embodied in the Act. Examples of these may be mentioned as follows:—
  - (iii-a) powers to determine the time when or the manner in which tax should be paid, *i.e.* power to determine

matters of computation, appraisal, adjustment, and such other like powers involving more certainty of details;

- (iii-b) powers to authorise administrative authority to mathematically deduce the rate from facts and events referred to in the taxing measures;
- (iii-c) power to revise rates according to the changing circumstances provided definite standards are laid down to guide the exercise of such powers;
- (iii-d) rate making functions, provided adequate standards are provided to guide the administrative body in rate making process;
- (iii-e) in matters of sales tax, power to prescribe by rules at what single point in series of sales by successive dealers the goods shall be liable to tax;
- (iii-f) discretion as regards the procedure to be followed in the matter of collection or assessment of taxes, provided sufficient guide or standards for the exercise of such discretion is provided;
- (iii-g) power to determine whether a particular article or merchandise is dutiable, after the Legislature had laid down the principles and the rate according to which a duty is to be levied.

*Exemptions.*—The Legislature may authorise the Executive to make rules or regulations prescribing classes of cases in which exemptions would be granted after laying down the policy for the purpose.

- (iv) power to give retrospective effect:—
  - (iv-a) this must flow from the Act itself either by expressed words or by necessary intendment which must be gathered from the provisions of the Act itself;
  - (iv-b) should be given only to confer benefits on subject and not to impose any new obligations or restrictions affecting the existing rights and that too in circumstances which are compelling and the power should be used; and
  - (iv-c) should not be earlier than the date when the Act comes into force unless the Act specifically provides otherwise.]<sup>1</sup>

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1. See para 35 of the Hand Book on the Preparation and Passing of the Bills.

(c) Guidance to Executive and other safeguards.—[While processing the proposal to frame rules, bye-laws etc. should be kept in view that—

- (i) it is couched in simple language;
- (ii) it contains, if it is an amending regulations or rules, adequate references to the principal regulations, rules etc.;
- (iii) it indicates exact statutory authority under which these have been made;
- (iv) it does not involve sub-delegation of legislative power without the authority of the parent Act, or where sub-delegation is authorised, it should not be wide and general without proper safeguards;
- (v) it is not likely to cause any hardship to any citizens on the ground of lack of adequate notice provision;
- (vi) it does not contain provisions whereby the Executive is empowered to issue orders affecting the interest of the citizens, affording them an opportunity of being heard and without the right of appeal; and
- (vii) it does not contain any provision which may result in arbitrary exercise of powers; and that any of its provision is not unjustified on general democratic principles and is not ambiguous.]<sup>1</sup>

(d) Delay in framing rules.—Framing of rules and bye-laws must receive the attention of the Government and their should not be any time gap in between the dates on which an Act received the assent and the date on which rules are framed thereunder. Therefore, stress has been laid that rule making process should be initiated/undertaken immediately on the passing of the Bill in the Assembly, as the rules can be framed under section 21 of the Himachal Pradesh General Clauses Act, 1968, even before the Bill receives the assent or it comes into force. Besides this, all the Administrative Departments must prepare the list of the enactments pertaining to them and to identify the enactments/provisions under which the rules are still required be prepared or are to be laid on the table of the State Assembly. The progress gained in this respect needs to be monitored periodically.

(e) Procedural requirements.—(i) Previous publication.—There is no uniform procedure in India for making subordinate legislation, except in the case of rules or bye-laws made under the Acts which provide for requirement of previous publication. Thus, besides, the cases where the provisions of the General Clauses Act, applies, the procedure for making subordinate legislation depends upon the provisions, if any, of the enabling Act under which it is made. The essentials of the procedure by section 22 of the Himachal Pradesh General Clauses Act, 1968 (which corresponds to section 23 of the General Clauses Act, 1897) are the antecedent publicity of the draft rules or bye-laws in the Official Gazette with a view to give the persons likely to be affected an opportunity of making objections, and consideration of objections, if any, before the rules or bye-laws are finally made.

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1. See para 36 of the Hand Book on the Preparation and Passing of the Bills.

(ii) Requirement of laying.—So far as the laying of rules before the Legislative Assembly is concerned, the formula is now finally well settled. Invariably the rule making section read as under:—

“Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, the Legislative Assembly agrees in making any modifications in the rule, or agrees that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.”

Section 22-A of the Himachal Pradesh General Clauses Act, 1968, makes general provisions that every rule made under the Himachal Act, or under the Central Act, relating to the matters with respect to which the State Legislature has power to make laws for the State of Himachal Pradesh, as soon as may be after it made, is to be laid before the State Legislative Assembly for a period of ten days, which may be comprised in one or more successive sessions. The procedure for laying the rules, etc. is prescribed in the Rules of Procedure for the Internal working of the Committee on Papers Laid on Table annexed to the Directions issued by the Speaker and in rules 340, 341, 342 and 343 of the Rules of Procedure and Conduct of Business in the Legislative Assembly. Where in a particular session if the said period of ten days is not completed, the rules are relaid in the successive session and this process continues till the period of ten days is completed.

(iii) Requirement of Consultation.—In some cases enabling Act contains provisions which lay down the requirement of previous consultation with some named agency. An example of such a provision is the consultation of the State Public Service Commission in framing the service rules of the Government employees, or of the High Court in framing the rules concerning judicial services etc.

(iv) Requirement of prior approval or sanction.—Requirement of prior approval or sanction, if any, prescribed by the enabling Act, is held to be mandatory, subordinate legislation will have to receive the prior approval or sanction prescribed before it can be effective.]<sup>1</sup>

**II. CODIFICATION** : Law Department is also responsible for preparation and revision of State Code (Containing all important notifications/ statutory orders) and to keep them update by bringing Annual Supplements. The existing State Code brought out in the year 1975, has become obsolete and the subsequent amendments/ modifications stand scattered over 24 Annual supplements. The Law Department has undertaken the revision of the State Code. Out of 11 volumes of Revised State Code Volumes I, II, III, IV, X and XI and Annual Supplements upto the year 2001 have been published.

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1. See para 37 of the Hand Book on the Preparation and Passing of the Bills.

Recently in the Union Government the National Informatics Centre (NIC) took up computerization of Legal and Judicial material and has developed, in close co-operation with the Supreme Court Registry and the Legislative Department of Ministry of Law and Justice, the following information system:—

- (a) COURTNIC (the Supreme Court's pending cases Information System) to provide information on the Apex Court to a wide range of users, *i.e.* to Litigant community across the country within the shortest possible time ;
- (b) JUDIS (the Judgment Information System of Supreme Court), provides a complete case law information at our finger tips and is a comprehensive On-Line Case Law Library that contains all reportable Judgments of the Supreme Court from 1950 onwards. It facilitates to find out latest relevant precedents.
- (c) INCODIS (the India Code Information System) enables the users to obtain on INTERNET access to up to date Acts of Parliament, which is otherwise difficult.

Apart from this, the National Informatics Centre is also providing computer facility to the State Law Department to make available upto-date data of State Codes, on INTERNET on the Lines of INCODIS.

**III. OFFICIAL LANGUAGE** In the State of Himachal Pradesh *w.e.f.* 1st June, 1979, Hindi Language stands declared under the Himachal Pradesh Official Language Act, 1975, as the Official Language for the transaction of Legislative Business. Since Hindi is the Official Language for the transaction of the Legislative Business in this State, efforts are made to publish, under the authority of the Governor, as far as possible, simultaneously the authoritative English texts of the Acts/ rules, enacted in Hindi Language, as envisaged under clause (3) of article 348 of the Constitution. The authoritative texts in Hindi of Laws, originally enacted in English language by the State Legislature, are being published, under section 3 of the Himachal Pradesh Official Language (Supplementary Provisions) Act, 1981, by the Official Language Section of the Law Department which processes proposals to secure authentication by the Governor of the translation of State Acts into Hindi.

### MISCELLANEOUS ACTIVITIES OF LEGISLATION SECTION

Apart from the above three major activities, this Wing is also charged with responsibility to—

- (1) implement the provisions of the Himachal Pradesh Advocates Welfare Fund Act, 1996.



- (2) supervise and control the functioning of the institution of Public Notaries in the State. In Himachal Pradesh Public Notaries are functioning at various District and Sub-Divisional Headquarters. [The District Magistrates have been declared as the competent authorities for the purposes of said Act]<sup>1</sup>. For periodical check of functioning of this institution the Secretary (Law), the Special Secretary(Law), Additional Secretary (Law), the Deputy Legal Remembrancer and Assistant Legal Remembrancer have been declared as the Inspecting Officers, apart from these officials, [Additional Deputy Commissioners, and where there is no Additional Deputy Commissioners, the Additional District Magistrates at District headquarters and Sub-Divisional Magistrates and the Sub-Divisional level have been empowered to inspect the notarial documents/registers of the Public Notaries twice in a year in the month April and November within their territorial jurisdictions and to send report on the specified Performa in the month of May and December, every year to the Legal Remembrancer-*cum*-Principal Secretary(Law)]<sup>2</sup>. Further, [the District Magistrates in Himachal Pradesh have been authorised to file complaints in the courts against the Notary Public for any offence committed by them, within their respective jurisdiction]<sup>3</sup>.
- (3) prepare the Law Department Manual, At present Punjab Law Department Manual, framed in the year 1934, is applicable in this State. There has been sea change thereafter and the framing of Law Department Manual is the apparent need of the day, therefore, Law Department has prepared this Manual.

**1.19 Legal Remembrancer.**—The Legal Remembrancer except in such matters as have been assigned to the control of the advocate General either by statute or by the order of the Governor, will exercise control over the entire business of the Department. Subject to the orders of the proper controlling authority he has the general charge of all the legal affairs of Government of Himachal Pradesh and of legal proceedings, of whatever kind, taken by or against, or affecting the Government.

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

**1.21 Legal Remembrancer and Central Departments.**—The provisions of this Manual, unless otherwise specifically stated, relate only to the legal business of the Government of Himachal Pradesh. If the services of the Legal Remembrancer are required, either by any department of the Union Government, or by any other State Government or by any Railway Authority, or by any public undertaking or any autonomous body, this will be subject of special arrangement between the

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1 . Annexure "B".

2 . Annexure "C".

3 . Annexure "D".

Government of Himachal Pradesh and the Department concerned. It must be clearly stated in each case whether the Legal Remembrancer is only to give advice, or is to arrange for defence for conduct of cases on behalf of the Department.

**1.22 Advocate General.**—[The Advocate General is appointed by the Governor under article 165(1) of the Constitution of India. His duties and remuneration are regulated under the rules framed under article 165 of the Constitution and as amended from time to time by the Home Department.]<sup>1</sup>

**1.23. The State Lists/Penal of Counsel.**—List(s)/penal of counsel considered suitable for being given special work on behalf of the State, in civil cases,—

- (a) for High Court of Himachal Pradesh, and
- (b) for each District,

will be maintained in the Office of Legal Remembrancer.

## CHAPTER-2

### REFERENCES AND OPINION

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1. Annexure “E”.

**2.1 Distribution of opinion work between the Legal Remembrancer and the Advocate General.**—Opinion work, which includes, Legal among other things, all references regarding cases not actually instituted or pending and enquiries whether appeals should or should not be instituted against the orders of acquittal in criminal cases, will ordinarily be disposed of by the Legal Remembrancer. In cases instituted or pending in the High Court or the State Administrative Tribunal and enquires as to how proceedings in relation thereto are to be conducted, the Advocate General or the Additional Advocate General, as the case may be, will be consulted.

**2.2 Legal questions arising before Judicial Officers, as such, are not to be referred to the Legal Remembrancer.**—It is no part of the duty of the Legal Advisor of the Government to advise Judicial Officers engaged in administering the general, civil and criminal law in regard to points of law or procedure. The Law Officers are the advisors of the Government in administrative matters as well as in cases in which the Government is or may be likely to be a party to, or affected by, judicial proceedings, and they conduct legal proceedings by or against, or affecting the Government, on its behalf.

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

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

#### **FORM OF REFERENCE**

**2.5 What information is to accompany every reference.**—When a reference is made to the Legal Remembrancer for his opinion or advice, it is incumbent on the department or officer making the reference to give him every possible assistance. Every case submitted to the Legal Remembrancer for opinion or advice should, as enjoined by rule 40 of the Rules of Business of the Government of Himachal Pradesh, be accompanied by a note either stating the facts of the case, or referring, in proper order, to the documents or parts of documents by reading which the facts and points for opinion can be readily ascertained. Any reference in which this direction is not complied with will be returned to the department or officer from whom it was received with a view to rectify the omission. The letter of reference should state the precise points on which opinion or advice is sought. All available documents, or copies thereof, should be sent with the reference.

**2.6** Whenever the opinion of the Legal Remembrancer is required as to the legality or suitability, in form and language, or any new draft of revised rules, the letter of reference should state whether (i) mere criticism from a legal point of view is desired, or (ii) it is open to the Legal Remembrancer to revise, rearrange or re-cast the rules and submit a new draft for the approval of the proper authority. Two copies of the rules on which the opinion is sought should be submitted.

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

### **TO WHOM REFERENCES ARE TO BE MADE**

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

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

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

(2) For references to the Advocate General, *see* paragraph 2.12 of this Manual.

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

**2.11 Opinion by and references to the Advocate General.**—(1) Whenever the Legal Remembrancer records an opinion which, if accepted and acted upon by the Government, would involve an appearance by the Advocate General before the High Court or an appearance by the Additional Advocate General, before the Himachal Pradesh State Administrative Tribunal, he will, as a matter of course, pass it on unofficially to the Advocate General, or as the case may be, to the Additional

Advocate General, in order that the latter may not whether he concurs to such extent as is necessary to enable him to argue the case on the lines indicated. If he does not concur to that extent, the Advocate General, or as the case may be, the Additional Advocate General, will be expected to record his reasons in full. Otherwise it will be unnecessary for him to do more than indicate general assent.

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

**2.12 What references may be addressed to Advocate General.—**

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

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

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

- (b) references relating to Criminal proceedings (Whether original, appellate or revisional) actually pending in the High Court;
- (c) references relating to any other pending criminal proceedings which the advocate General may be actually conducting under proper authority, in any civil court.

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

**2.13 Ordinarily no other opinion work to be made over to Advocate General.**—Advocate General and the Legal Remembrancer will usually correspond, *inter-se*, by unofficial reference or office note.

**2.14 Officers who, except as otherwise provided, may alone make reference to Legal Remembrancer.**—Unless otherwise expressly permitted by any rule, reference to the Legal Remembrancer for opinion may be made by or through the following Officers only :—

- (a) the Chief Secretary and the Secretaries to the Government of Himachal Pradesh; or
- (b) the Financial Commissioner (Revenue), Himachal Pradesh; or
- (c) the Heads of any Department of the Government of Himachal Pradesh *i.e.* by the Administrative Secretary concerned, but in regard to arbitration, attention is drawn to Chapter 15 of this Manual:

Provided that cases of routine nature like vetting of draft orders, notifications, sanctions and arranging for defence of Government employees may be referred to the Legal Remembrancer by the Deputy Secretaries to the Government of Himachal Pradesh and where there is no Deputy Secretary by the Under Secretary to the Government of Himachal Pradesh.

**2.15 References by Central Departments.**—(1) The following Departments of the Central Government can obtain the advice of the Legal Remembrancer :-

- (a) The Defence Department on matters of civil law arising within the limits of Himachal Pradesh.;
- (b) The Postal and Telegraph Department, on matters arising within the limits of Himachal Pradesh or in cases in which a Post or Telegraph Office in Himachal Pradesh is concerned; and
- (c) The Northern Railway, on matters arising in Himachal Pradesh.

(2) The Legal Remembrancer is primarily the legal advisor of the Himachal Pradesh Government and he is permitted to act as legal advisor to the Northern Railway and to certain Central Departments only to such an extent as will not interfere with his work for the Himachal Pradesh Government. In the event of a case in which the Himachal Pradesh Government and the Northern Railway or any of the Central Departments, for which he acts as legal advisor had rival interests, the Himachal Pradesh Government would expect the Legal Remembrancer to act for them, and in any case in which such a conflict of interest is likely to arise it would be the duty of the Legal Remembrancer to inform the Northern Railway or the Central Department concerned that he is unable to advise them.

## PART-II

### CRIMINAL BUSINESS, CRIMINAL PROCEEDINGS BY AND ON BEHALF OF THE STATE GOVERNMENT

#### CHAPTER-3

## AGENCY (GENERAL)

**3.1 Procedure when Advocate General is unable to appear.**—It will rest with the Advocate General to determine whether the State should or should not be represented in any such case, and, if it is to be so represented, to arrange accordingly:

Provided that he shall so arrange—

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

Provided further that if in any case, the Advocate General decided that it should not be represented, he shall, as soon as possible, forward the papers to the Legal Remembrancer stating the reasons for his decision, in civil matters.

**3.2 Quasi-Criminal Proceedings.**—The Advocate General will, in any case in which the State Government may so direct, conduct the prosecution in proceedings held under the provisions of the Public Servants (Inquiries) Act, 1850, or the Advocates Act, 1961 or the Commission of Inquiries Act, 1952. He will also appear in proceedings under the Advocates Act, 1961 or in cases of contempt, when directed to do so by the High Court, unless he considers it necessary to refer to the State Government for orders.

## CHAPTER-4

**PUBLIC PROSECUTORS**

**4.1 Legal Aid to be provided by the State Legal Services Authority.**— Legal Aid to the poor is to be provided by the Himachal Pradesh State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.

**4.2 Criteria for giving legal services.**—[Every person who has to file or defend a case shall be entitled to legal aid if that person is—

- (a) a member of Scheduled Castes or Scheduled Tribes; or
- (b) a victim of trafficking in human beings or beggar as referred to in article 23 of the Constitution; or
- (c) a woman or a child; or
- (d) a mentally ill or otherwise disabled person; or
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- (h) in receipt of annual income less than rupees fifty thousand or other higher amount as may be fixed under rule 17 of the Himachal Pradesh Legal Services Authority Rules, 1995:

Provided that the Legal Services Committee or authority may grant legal aid—

- (i) in a case of great public importance; or
- (ii) in a test case, the decision of which is likely to affect cases of numerous other persons belonging to the weaker sections of the community; or
- (iii) in any case, which for reasons to be recorded in writing, is considered by the Chairman to be deserving of legal aid even where the means test is not satisfied. ]<sup>1</sup>

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1. See regulation No. 16 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.



**4.3 Modes of legal aid.**- [Legal aid may be given in all or any one or more of the following modes, namely:—

- (a) Payment of court-fees, process fees and all other charges payable or incurred in connection with any legal proceedings;
- (b) Representation by a legal practitioner in legal proceedings;
- (c) Obtaining and supply of certified copies of orders and other documents in legal proceedings; and
- (d) Preparation of appeal, paper book including printing and translation of documents, in legal proceedings.]<sup>1</sup>

**4.4 Legal aid not to be given in certain cases.**—[Legal aid shall not be given in the following cases, namely:—

- (a) proceedings wholly or partly in respect of—
  - (i) defamations; or
  - (ii) malicious prosecution; or
  - (iii) a person charged with contempt of court proceedings;
- (b) proceedings relating to any election;
- (c) proceedings incidental to any proceedings referred to in items (a) or (b);
- (d) proceedings in respect of offences where the fine imposed is not more than fifty rupees;
- (e) proceedings in respect of economic offences and offences against social laws, such as the Protection of Civil Rights Act, 1955, and the Immoral Traffic (Prevention) Act, 1956:

Provided that the Chairman may in appropriate cases grant legal aid even in such proceedings for reasons to be recorded in writing.

- (f) Where a person seeking legal aid—
  - (i) is concerned with the proceeding only in official capacity; or
  - (ii) if a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his interest is not likely to be prejudiced on account of the absence of proper representation.]<sup>2</sup>

**4.5 Application for legal aid or advice.**— [(1) Any person desiring legal aid or advice may make an application addressed to the Secretary of the Authority/Committee. But if the applicant is illiterate or not in a position to fill in the particulars required in the application, the Secretary or any other officer of the

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1. See regulation No. 15 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.  
 2. See regulation No. 17 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.

Committee or any legal practitioner whose name appears on the panel of Legal aid lawyer of the Authority/Committee, as the case may be, shall gather the necessary particulars from the applicant and prepare the application on his behalf and after reading it out and explaining it to him, obtain his signature or thumb mark on it.

(2) The Authority/Committee shall maintain a register of applications wherein all applications for legal aid and advice shall be entered and registered and the action taken on such applications shall be noted against the entry relating to each such application.]<sup>1</sup>

**4.6 Disposal of applications.**—[(1) On receipt of an application for legal aid or advice, in the case of High Court Committee or District Authority, the Secretary and in the case of Taluka (Sub-Division) Committee, the Chairman of the Taluka (Sub-Division) Committee shall scrutinise the application for the purpose of deciding whether the applicant is deserving of legal aid in accordance with the provisions of the Himachal Pradesh State Legal Services Authority Regulations, 1996 and for the purpose of arriving at such decision, he may require the applicant to submit further information as may be necessary and also discuss the matter personally with the applicant and in doing so he shall have regard to the fact that the applicant belongs to a weaker section of the community and is required to be assisted even in the matter of obtaining legal aid. The application shall be processed as early as possible and preferably within one week.

(2) The Legal Services Authority/Committee, to which application is made shall consider the application and decide desirability of granting application and its decision to give or refuse legal aid shall be final.

(3) Where it is decided not to give legal aid to an applicant, the reasons for not doing so shall be entered in the Register of applications maintained by the Authority/Committee and information in writing to that effect shall be communicated to the applicant..

(4) No application for legal aid or aid or advice shall be allowed, if the Authority/Committee is satisfied that—

- (a) the applicant has knowingly made false statement or furnished false information as regards his means or place of residence; or
- (b) in a proceeding, other than the one relating to criminal prosecution, there is no *prima-facie* case to institute, or as the case may be, to defend the proceedings; or
- (c) the application is frivolous or fictitious; or
- (d) the applicant is not entitled to the same under regulation 17 or any other provision of the Himachal Pradesh State Legal Services Authority Regulations, 1996; or
- (e) having regard to all the circumstances of the case, it is otherwise not reasonable to grant it.]<sup>2</sup>

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1. See regulation No. 18 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.

2. See regulation No. 19 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.

**4.7 Certificate of eligibility.**—[(1) Where an application for legal aid or advice is allowed, the Secretary of the Authority/ Committee shall issue a Certificate of Eligibility to the applicant entitling him to legal aid or advice in respect of the proceeding concerned.

(2) The Certificate of Eligibility shall stand cancelled if the legal aid is withdrawn and the lawyer to whom the case of the applicant is assigned and also the court before which the case is pending, shall be informed accordingly in writing.]<sup>1</sup>

**4.8 Honorarium payable to Legal Practitioner on the Panel.**—[(1) Subject to the approval the State Authority, Legal Services Authority/Legal Service Committee shall prepare a panel of legal practitioners who are prepared to represent or prosecute the cases on behalf of the legal aided person under the Himachal Pradesh State Legal Services Authority Regulations, 1996. The legal practitioners on the panel shall be paid honorarium as set out in para 4.11:

Provided that where the matter is disposed of in less than five effective hearings, the fee payable shall be 1/3 of the fee prescribed in para 4.11.

(2) No legal practitioner to whom any case is assigned either for legal advice or for legal aid shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.

(3) The legal practitioner on the panel, who has completed his assignment, shall submit a statement showing the honorarium due to him in connection with the legal proceeding conducted by him on behalf of the legally aided person to the Secretary of the Authority/Committee who shall, with the approval of the Chairman and after due scrutiny and counter-signature, place the same before the Authority/Committee for sanction and on such sanction being given by the Authority/Committee the amount shall be paid by the Secretary to the legal practitioner. It will, however, be open to the legal practitioner to waive the honorarium in whole or in part.]<sup>2</sup>

**4.9 Duty of aided person.**—[(1) Every aided person or his representative shall attend the office of the Authority/Committee as and when required by the Authority/Committee or by the legal practitioner rendering legal aid to him and shall furnish full and true information and shall make full disclosure to the legal practitioner concerned and shall attend the Court as and when required, at his own expense.]<sup>3</sup>

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1. See regulation No. 20 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.
  2. See regulation No. 21 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.
  3. See regulation No. 22 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.

**4.10 Cancellation of Certificate of Eligibility.**—[(1) The Authority/Committee may either on its own motion or otherwise cancel the Certificate of Eligibility granted under para 4.7 in the following circumstances, namely:—

- (a) in the event of being found that person was possessed of sufficient means or the Certificate of Eligibility was obtained by misrepresentation or fraud;
- (b) in the event of any material change in the circumstances of the aided person;
- (c) in the event of any misconduct, misdemeanour or negligence on the part of the aided person in the course of receiving legal aid;
- (d) in the event of the aided person not co-operating with the Committee or with the Legal Practitioner assigned by the Committee/Authority;
- (e) in the event of the aided person engaging a legal practitioner other than the one assigned by the Committee /Authority;
- (f) in the event of death of the aided person, except in the case of civil proceedings where the right of liability survives;
- (g) a report has been received from the advocate assigned to the legally aided person that the legally aided is not co-operating with the advocate assigned to him or is guilty of misconduct towards the advocate and such report has been verified by the Chairman of the Legal Services Committee/Authority:

Provided that no such Certificate of Eligibility shall be cancelled without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show cause as to why the Certificate of Eligibility should not be cancelled.

(2) Where the Certificate of Eligibility is cancelled on the grounds set out in clause(a) above, the Authority/Committee shall discontinue legal aid allowed and shall recover from the aided person the amount of legal aid granted to him.]<sup>1</sup>

**4.11 Rates of fees payable.**—[Advocate engaged out of the panel as prepared for to legal aid prosecuting/defending/protecting interest of a person granted free legal aid shall be entitled to the fee other than the High court as under:—

(1) Rs. 850/- per case in any court at Sub-Divisional level, such as the Court of Senior Sub-Judge, Chief Judicial Magistrate, Sub-Judge Judicial Magistrate, Court of Assistant Commissioner 1st Grade, Sub-Divisional Collector, Sub-Divisional Magistrate, Tehsildar.

(2) Rs.1250/- per case at District level, such as the Courts of District Judge, Sessions Judge, Additional District Judge, Additional Sessions Judge, District

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1. See regulation No. 23 of the Himachal Pradesh State Legal Services Authority Regulations, 1996.

Collector, Divisional Commissioner, District Consumer Forum established under the Consumer Protection Act, 1986 and Labour and Industrial Tribunal set up under the Industrial Disputes Act, 1947.

(3) Rs. 3000/- maximum payable after disposal of the case at the High Court level including the State Consumer Forum established under the Consumer Protection Act, 1986 and the Court of Financial Commissioner (Appeals).

(4) Fee payable to a panel lawyer under the Himachal Pradesh State Legal Services Authority Regulations, 1996 shall be made in two instalments as under:—

- (i) ½ of the fee, on engagement of the lawyer, payable, after first hearing of the case; and
- (ii) remaining fee payable after the final decision of the case (*see* Himachal Pradesh State Legal Services Authority Regulations, 1996.)<sup>1</sup>

## CHAPTER-5

### DEFENCE OF GOVERNMENT SERVANTS

**5.1 Defence of Government Servant.**—The Himachal Pradesh Government has laid down the following principles as to the conditions in which it will pay the cost of defending its Government servants in criminal proceedings, and the procedure to be followed by such Government servants to secure the assistance of Government in their defence:—

- (a) Where the proceedings are initiated by the Government against any Government servant in respect of matters connected with the official duties or position of the Government servant, the Government will not give any assistance to a Government servant for his defence in any proceedings. However, in the proceedings conducted in favour of the Government, the Government may entertain his claim for reimbursement of cost incurred by him for his defence and if satisfied from the facts and circumstances of the case that he was subjected to the strain of the proceeding without proper justification, it may consider whether the whole or any reasonable proportion of the expenses incurred by such Government servant for his defence be reimbursed to him.
- (b) Where the proceedings in respect of the matters not connected with the official duties or the position of the Government servant, the Government will not give any assistance to the Government servant.

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1. *See* Schedule appended to the Himachal Pradesh State Legal Services Authority Regulations, 1996.

- (c) Where the proceedings are instituted by a private party against a Government servant in respect of matters connected with his official duties or position, the Government will consider as follow :—
- (i) If the Government on the consideration of the facts and the circumstances of the case considers that it will be in the public interest that Government should itself undertake the defence of the Government servant in such proceedings and if the Government servant agrees to such a course, the Government servant shall be required to make a statement in writing and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings have been instituted against the Government ; and
  - (ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings concluded in his favour. In determining the amount or cost to be so reimbursed, Government will consider how far the court has vindicated the acts of the Government servant. The conclusion of the proceeding in favour of the Government servant will not by itself justify reimbursement.
- (d) To enable the Government servant to meet the expenses of his defence, the Government may sanction, at its discretion, an interest free advance not exceeding Rs. 500/- or the Government servant's substantive pay for three months, whichever is greater, after obtaining from the Government servant a bond. The amount of advance would be subject to adjustment against the amount, if any, to be reimbursed as above.

The Government servant may be granted an advance from any provident fund to which he is a subscriber not exceeding three months pay or 1/2 of the balance standing to his credit, whichever is less. This advance will be repayable in accordance with the Provident Fund Rules.

- (e) Where proceedings are instituted by a Government servant on his being required by the Government to vitiate his official conduct in a court of law, the Government may consider on the conclusion of the proceeding to what extent the court has vindicated the act of the Government servant the proceeding in order to determine the amount of cost to be reimbursed to him. Conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.
- (f) When it comes to the notice of the Government servant that a criminal case has been filed against him he shall report the fact through the usual channel, to the District Executive head of the Department in which he is serving, or if he is himself the Executive head, to his

superior head stating the full facts of the case as well as that the criminal proceedings brought against him for acts arising out of the performance of public duty and he has acted in good faith and the complaint/proceedings have been instituted against him in order to harass him. He shall similarly report the result of the case on the conclusion of the same.

- (g) If a Government servant applies to be defended at public expense, or if his superior officer considers that he should be so defended, the case shall be reported forthwith, through the normal channel, to the Head of the Department with suitable recommendation. The Head of Department will examine at its own level that whether the Government servant has acted in good faith and in discharge of his official duty for which he has been prosecuted and if he comes to the conclusion that the Government servant has acted in good faith and in discharge of his official duties then he will recommend the case to the concerned Administrative Department for according the sanction to defend him at public expense. The Administrative Department will accord the sanction in the matter. Whenever sanction is accorded to the defence of an officer or official being found to have acted otherwise than in good faith, he shall be liable to refund to the Government, the amount spent by the State Government on his defence :

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

- (h) Where compensation is awarded to a Government servant in any case which has been defended at public expense, he will be liable to refund the expenditure incurred by the Government in his defence upto the limit of the compensation awarded.
- (i) If in any case a Government servant is convicted and seeks the help of the Government in prosecuting an appeal against the decision, the procedure to be followed will be similar to that laid down above in connection with original prosecution.
- (j) The maximum amount which may be reimbursed by the Government to a Government servant will be as assessed by Legal Remembrancer in the following manner:—

<i>Tier</i>	<i>Experience of Advocate</i>	<i>Fees payable</i>
1st	The lawyer having less than 10 years experience as Advocate after enrolment.	Rs. 1,500.00
<i>Tier</i>	<i>Experience of Advocate</i>	<i>Fees payable</i>

2nd	The lawyer having more than 10 years experience and having good reputation at bar.	Rs. 2,500.00
3rd	Senior counsels/ lawyers having experience in specific branch of law.	Rs. 3,500.00

*Note.*—Senior counsel means an advocate who have put in 10 years practice in the High Court and having good reputation in the bar.

However, where the work is attended in Writ Petition /Suit/Applications etc. by more than one lawyer, the fee will be reimbursed in the following manner :—

- (i) Filing of civil suits in the High Court/admission of the civil writ petition/regular 1st appeal/Filing of reply in civil suits/CWP/ appeal/ contempt petition etc. . .1/3rd fees.
- (ii) Presentation of evidence and contradicting the evidence of the other parties in civil suit/filing misc. application in L.P.A./ CWP/contempt petition till the final stage of argument on behalf of the both the parties . . .1/3rd fees.
- (iii) Argument upto the final decision of the court . . .1/3rd fees.

*Explanation.*—In case of more than one lawyer appeared in any stage than the 1/3rd fees payable for that stage will be paid for the hearing(s) as worked as per hearing of that stage. While submitting the claim for re-imburement of the fees the following information should invariably be submitted with the claim in order to enable the LR-cum- Secretary (Law) to assess reasonability of the fees in the case :—

- (1) Name of the advocate and the date of enrolment in the Bar and also state whether he is a Senior Counsel or has obtained experience in specific branch of law;
- (2) Copy of the reply filed in the case;
- (3) Copy of the judgment delivered by the court;
- (4) The effective hearing attended by the lawyer; and
- (5) The works done by the lawyer in such cases.]<sup>1</sup>

*Note.*—The Government will not itself appoint Counsel for the conducting defence. Every accused person is entitled to be defended by an Advocate of his own choice. If the Government servant who is to be defended so desires, the Legal Remembrancer will be ready, on a reference from the Administrative Department, to suggest the names of suitable counsels and to give advice as to the line of defence; but it should be clearly understood that any suggestions which he may make are in the nature of advice and that the ultimate decision as to the particular counsel to be engaged must rest with the Government servant himself.

When a Deputy Commissioner receives such a reference, he should normally select a suitable lawyer from the District after following the above procedure. It is not

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1. Annexure "F".



desirable that the Public Prosecutor should be briefed for the defence of a criminal case in which a Government servant is accused.

**5.2** [The Administrative Departments concerned shall access the fees of the private Advocates which were/are engaged by the Officers/officials in their defence after obtaining the sanction of the State Government to defend themselves at public expenses of the norms of fees as laid down above, provided that they have acted in discharge of official duty in good faith and the Court has not passed any adverse remarks against the officer/official concerned in the contempt petition/civil suit etc.

Further where the sanction to defend an officer/official has been issued by the State Government at public expense, the administrative department shall assess the fees of the private Advocates at their on level strictly in accordance with the norms as laid down in this department's letter of even number dated 28-7-1994 and pay the same to such Advocate at their level.]<sup>1</sup>

Clause (d) of Article 320(3) of the Constitution of India requires consultation with the Himachal Pradesh Public Service Commission on any claim by a Government servant for the reimbursement of the cost incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duties. In other cases the consultation with the Himachal Pradesh Public Service Commission is not obligatory.

### PART-III

## SUIT RULES—CIVIL BUSINESS

### CHAPATER-6

## AGENCY (GENERAL)

### **6.1 Legal Remembrancer responsible for conduct of civil litigation.—**

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

**6.2 Advocate General to appear in the High Court.—**The Advocate General will ordinarily appear or arrange for appearance in the High Court for the Himachal Pradesh Government in civil suits, appeals and proceedings affecting it.

**6.3** The Legal Remembrancer, Advocate General, Deputy Advocate General, Assistant Advocate Generals, District Attorneys, Assistant District Attorneys-*cum*- Public Prosecutors and the Assistant Public Prosecutors have been appointed Government Pleaders' for purposes other than those specified in Order XXVII, Rule 4 of the Code of Civil Procedure.

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1. Annexure "G".

**6.4. Conduct of Civil Proceedings in District and Subordinate Courts.—**

In regard to civil suits, appeals and proceedings other than those falling under para 6.2, the Legal Remembrancer will proceed in the following manner:—

- (a) in cases which he deems to be of sufficient importance (whether in respect of amount at stake, or of legal principles or public interests involved, or of the intricacy of the proceedings), he will, with the previous sanction of the Government, make over the conduct of the case to the Advocate General; and
- (b) in other cases, he will ordinarily employ the Government Pleader to conduct the proceedings on behalf of the State under his general supervision.

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

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

**6.7 Duty of Legal Remembrancer in connection with Civil Court Business.—**The Legal Remembrancer is required to supervise the entire conduct of every civil case for which he is responsible. He will furnish to the legal practitioner or the Government Pleader appointed to conduct or defend the civil suit on behalf of the State, his instructions, which will include—

- (a) the Departmental statement of the case;
- (b) the opinion of the Legal Remembrancer; and
- (c) the order of the appropriate authority, to sue or defend.

**6.8 Local Agency.—**The local agency in Civil and Revenue matters comprises—

- (a) The Deputy Commissioner, as a 'Government Pleader', for the purposes of Order XXVII, Rule 4 of the Code of Civil Procedure, for his district;
- (b) The Deputy Commissioner or the General Assistant to Deputy Commissioner empowered by him in that behalf, or, in the absence of the Deputy Commissioner, Senior most Assistant Commissioner, at the headquarters as their recognised agents' of Government, forward the same, with a brief report to that effect, to the controlling authority, by whom arrangements will be made for the defence of the suit upon the ground for want of notice.
- (c) the Government Pleader or any local legal practitioner specially instructed and authorized by the Legal Remembrancer;

- (d) District Nazirs, Assistant District Nazirs, and the Assistant attached to the offices of Sub-Divisional Officers.

*Note-1.*—The Deputy Commissioner of each district is appointed to be the Government Pleader, for the purposes of Order XXVII, Rule 4 of the Code of Civil Procedure for the district.

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

(ii) In the absence of the Deputy Commissioner from his headquarters, the General Assistant to the Deputy Commissioner, the Senior most Assistant Commissioner, present, is authorised to exercise the power conferred on the Deputy Commissioner.

*Note-3.*—Attention is drawn to the provisions of Order XXVII of the Code of Civil Procedure, relating to suits by or against the Government. Every notice of suit under section 80 of the Code of Civil Procedure must be left with the Deputy Commissioner or a Secretary to Government. Summons, notices and other processes under the Code must, to have effect in law, be served on the Deputy Commissioner as the Government Pleader for that purpose.

*Note-4.*—Under Order XXVII, Rule 1 and 2 of the Code of Civil Procedure, 1908, the Governor, Himachal Pradesh has authorized all the Collectors of Districts in Himachal Pradesh, all Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries, Heads of Departments of Himachal Pradesh Government and also the Conservators of Forests and Superintending Engineers in Himachal Pradesh to act for the State of Himachal Pradesh, to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings. (Himachal Pradesh Government Notification No. LLR-107-420/54, dated the 25th January, 1971, published in R.H.P. dated 20-2-1971, p. 269).

*Note-5.*—All the District Nazirs and Assistant District Nazirs have been appointed to be Government Pleaders for the purpose of filing and prosecuting execution petitions in the civil districts to which they are attached.

*Note-6.*—In pursuance of clause (a) of rule 8 B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, the Central Government has appointed the following District Attorneys/Assistant District Attorneys-cum-Public Prosecutor and Assistant Public Prosecutors to be Government Pleaders for all courts in the State for the purposes of the said Order in relation to any suit by or against the Central Government other than a suit relating to—

- (i) The Central Railway,
- (ii) Eastern Railway,

- (iii) North Eastern Railway,
- (iv) North East Frontier Railway,
- (v) The Northern Railway,
- (vi) South Eastern Railway,
- (vii) The Southern Railway,
- (viii) The Western Railway,
- (ix) The Chittaranjan Locomotive Works, Chittaranjan,
- (x) The Integral Coach Factory, Perambur,
- (xi) The Indian Railways Locomotive Component Works, Varanasi,
- (xii) The Railway Electrification, Calcutta,
- (xiii) The Dandakaranya\_\_\_\_\_ Eblangir\_\_Kiriburu Railway Project, Waltair, or against a Public Officer in the service of the Central Government in any court specified in the First Column of the said Schedule:—
  - (a) District Attorney, Mandi, Kangra at Dharamshala, Hamirpur, Nahan and Shimla.
  - (b) Assistant District Attorneys-*cum*-Public Prosecutors, Mandi, Kangra at Dharamshala, Hamirpur, Shimla, Una, Solan, Kudu, Combe and Bilaspur.
  - (c) Assistant Public Prosecutor, Kalpa and Keylong.

(Central Govt. Notification No. G.S.R.1412 dated the 25th November,1960 and 12th November,1980).

*Note-7.*—Assistants attached to the Offices of the Sub-Divisional Officers have been appointed to be Government Pleaders for the purpose of filing and prosecuting execution petitions in the civil courts at the Headquarters of the Sub-Division.

**6.9 Government pleaders may act without power of attorney.**—Under Rule 2 of Order XXVII of the Code of Civil Procedure, all Government Pleaders are authorized to act for Government without a power of attorney.

**6.10 Legal Remembrancer may appear on behalf of Central Government.**—The Legal Remembrancer has been authorized to conduct civil proceedings on behalf of the Central Departments mentioned in para 2.15, and may act on behalf of other Central Departments when so authorized by the Central Government.

## CHAPTER-7

### GOVERNMENT PLEADERS FOR DISTRICTS

**7.1 Area.**—Government Pleaders are to be appointed for such districts or groups of districts as the Himachal Pradesh Government may determine.

**7.2 Appointment of Public Prosecutors as Government Pleaders.**—The District Attorneys, Assistant District Attorneys-*cum*-Public Prosecutors and the Assistant Public Prosecutors may be appointed to be the Government Pleaders for the same district /local area comprising the whole of the State of Himachal Pradesh.

**7.3 Duties.**—District Attorneys, Assistant District Attorneys-*cum*-Public Prosecutors and the Assistant Public Prosecutors as Government Pleaders are required to conduct all civil suits and civil proceedings by or against or on behalf of or affecting the Himachal Pradesh Government. They may also be required by the Legal Remembrancer to undertake other civil work for other States, or corporate bodies or Union of India.

Whenever a Government Pleader receives instructions to institute or defend a suit, it is always his duty to make a thorough examination of the administrative report and the documents sent therewith, in order to see that all the facts have been correctly represented and that all the necessary evidence has been received before the plaint or written statement is put into court. If any facts have been wrongly stated, or if any evidence is missing, this should at once be reported to the Legal Remembrancer.

**7.4 Consultation by Local Officers.**—Government Pleaders may be consulted by Local Officers after securing the necessary authority from their departments. They will appear in court on behalf of the Himachal Pradesh Government, however, only under the instructions of the Legal Remembrancer.

**7.5 No advice or appearance against Union of India/Railway Administration etc.**—The District Attorneys, Assistant District Attorneys-*cum*-Public Prosecutors and the Assistant Public Prosecutors as Government Pleaders, shall not, without the previous permission of the Himachal Pradesh Government, appear or advise in any civil proceedings against the Union of India, the Railway Administration, other State Government or any corporate body.

## CHAPTER-8

### SUIT RULES—DEFINITIONS

**8.1 Definitions.**—Throughout the Suit Rules (Chapters 6 to 13) the expression—

- (a) "controlling authority" means an officer empowered to authorize,—
  - (i) the institution of a suit on behalf of the State,
  - (ii) the defence of any threatened suit to which the State has been made a party,
  - (iii) intervention by the State in any suit in which the State is interested, or
  - (iv) the institution or defence of a suit by or against a public officer in his public capacity:

Provided that in those class of cases for which no officer is specifically empowered to act as "controlling authority" these functions will be discharged by Government which will itself be regarded as the controlling authority;

- (b) "Head of Department" shall be deemed to mean the authority specified in Appendix D of the Himachal Pradesh Budget Manual, in all cases to which the Himachal Pradesh Government is a party.
- (c) "Officer in charge of the case" means the Law Officer, Legal Practitioner, or Government Officer appointed to conduct the proceedings on behalf the Government or of a public officer in any suit; and
- (d) "Suit" means a suit by or against, or affecting the Government or a public officer in his official capacity or which is brought or defended by a public officer at the public expense, and includes an appeal, and application for revision or review or execution of decree, and any civil judicial proceeding including writs etc. in which the Government or a public officer in his official capacity is a party or has any interest.

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

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

*Note-3.*—The provisions of these rules apply to all suits, by or against municipalities in respect of nazul land and other Government property of which the management and control has been entrusted to municipalities.

*Note-4.*—Rules relating to suits with respect to lands within the limits of Cantonments in India or in a Military station or in an abandoned Cantonments before its disposal as such are to be found in instructions regarding suits in connection with Military Lands.

**8.2 Controlling Authorities in suits affecting Himachal Pradesh Government.**—In respect of suits in the civil courts and the revenue courts by or against the Himachal Pradesh Government and by or against a public officer serving under the Himachal Pradesh Government not being suits by or against a public officer, in which tortuous conduct is imputed to a public officer in the execution of his official duties, the following officers have been appointed to be controlling authorities:—

- (a) Chief Engineers of the public works Department, Himachal Pradesh, Building and Roads, Irrigation and Public Health Branches, in respect of all cases affecting their Departments; and Superintending Engineers, Building and Roads, Irrigation and Public Health Branches, in respect of cases not exceeding Rs.20,000 in value or amount and subject to such limitation as to class of suits as their respective Chief Engineers may fix;

- (b) The Superintendent of a Jail, with the consent, to be previously obtained, of the Inspector General of Prisons for the recovery of debts due to the Jail manufactories, not exceeding Rs.50,000/- in amount in any one case;
- (c) The Principal Chief Conservator of Forests, Himachal Pradesh, in respect of cases affecting his Department, not exceeding Rs.50,000 in value or amount;
- (d) The Excise and Taxation Commissioner in respect of suits not exceeding 50,000/- rupees in value affecting the administration of his Department;
- (e) The Financial Commissioner, in respect of cases arising in the Departments under his control;
- (f) The Director of Industries, Himachal Pradesh, in respect of cases relating to the eviction and recovery of rent under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971; and
- (g) All disputes to which Government is a party and which are referred to arbitration, including suits which are stayed under the Arbitration and Conciliation Act, 1996, shall be submitted by the Controlling authority or the Head of the Department concerned through their respective Administrative Departments to the Legal Remembrancer.

## CHAPTER-9

### SUIT—GENERAL

**9.1 Restrictions as to supply of copies and production of confidential papers and necessary sanction before access is allowed to documents in possession of the Government.**—No person with whom any suit is pending or there is any likelihood of any suit arising, and person acting for, or concerned with, any such person shall, without, the express sanction of the controlling authority, be allowed access to, or be supplied with, copies of any document in the possession of the Government in any way connected with, or relating to, matters out of which such suit may arise or has arisen.

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

All correspondence with, and resolutions and orders of the Government are strictly confidential. No officers shall grant copies of any such documents, during the pendency of any dispute or suit to which they in any way relate, to any person other than to a proper officer of the Government or to the officer in-charge of the case; and

no such copies shall be granted at any time after the final decision of the suit without the previous sanction of the Head of Department concerned.

**9.2 Original document when sent or to be so sent by registered post and a certified copy to be retained.**—When in complying with the requirements of any of these rules, it is thought necessary to transmit any document, in original, to any officer of the Government or to the officer in charge of the case, a certified or an authenticated copy thereof is to be retained in the office of issue, and the original document is to be sent by registered acknowledgement due post or courier service, the proof of service to be retained on the concerned file.

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

**9.4 By whom report to be submitted to controlling authority and opinion of reporting officer.**—(1) When the subject of the suit to be brought or defended is connected with district administration and belongs to no particular department, the report shall be prepared by the Deputy Commissioner and shall be submitted by him to the Financial Commissioner through the Divisional Commissioner of the Division concerned. When the suit is connected with any particular department, the report shall be prepared by the proper officer of such Department, and shall be submitted, through the Head of that Department, to the proper controlling authority.

(2) In each case the officer submitting the report to the controlling authority shall,—

- (a) satisfy himself, before forwarding it that these rules have been fully complied with, and
- (b) state his own opinion on the matter, with his reasons for that opinion.

**9.5 Documents to be supplied with reports, and precautions in regard thereto.**—(1) All copies or translations submitted should be absolutely accurate and complete, reproducing every particular contained in the original, whether of a formal nature or not.

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

(3) All the copies of maps or calculations should be duly authenticated by a competent officer.

*Note.*—In cases where the controlling authority or Head of Department, referred to in para 8.2 above may be called upon to act as Arbitrator, strict attention should be paid to Chapter 15 of this Manual.

**9.6 Orders to Controlling Authorities and instructions to Legal Remembrancer.**—(1). Upon the reports so received, Controlling Authority will, after consulting the Legal Remembrancer when that course appears to be desirable, decide whether the particular suit is to be instituted or defended, and will instruct the Legal



Remembrancer accordingly in all cases in which it is proposed to place the conduct of the proceedings in Court in the hands of the Law Department of the Government.

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

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

(4) The procedure provided above for obtaining the advice of the Legal Remembrancer regarding the institution of suits by Government will apply *mutatis-mutandis* to proposals to refer disputes (between Government and its grantees, contractors, etc.) to arbitration vide Chapter-15 of this Manual.

**9.7 Land Acquisition Cases.**—Cases which are referred by Land Acquisition Officers to the District Court under Part III of the Land Acquisition Act, 1894, fall within the definition of "suit" and are subject to the provisions laid down in the Suit Rules. The Collector should proceed in such cases in the manner provided for the defence of civil suits and shall submit his report in accordance with the provisions of rule 9.4 to the proper controlling authority, Rule 13.1 and 13.2 shall apply to such cases.

The Land Acquisition Officers shall, forward all the references against the award to the District Court concerned within one month from its receipt with all documents as referred to under section 19(2) of the Land Acquisition Act, 1894 to avoid unnecessary burden of interest on the Government. Further, where only the Collector is a respondent, every endeavour shall be made to implead the acquiring department as the Co-respondent.

**9.8 Deputy Commissioners to provide necessary funds for suits instituted on behalf of the Government.**—(1) When sanction has been given to institute or defend a suit at the public expense the Deputy Commissioner concerned will provide the necessary funds for stamps and other expenses in the same way as the ordinary contingencies.

(2) Further items that may arise will be dealt within the same way and all expenditure in excess of Rs.5000/- in one suit will be referred to the Controlling Authority for sanction.

(3) In civil suits relating to the Government of India, the Government Pleader shall spend amount on account of court fee etc. and recover the expenses required for such litigation by the concerned department of the Government of India.

(4) All such items, whether sanctioned separately or included in contingent bills, will be deemed as on account of 'legal charges' of the Department concerned.

**9.9 Recoveries to be credited to the concerned.**—All recoveries made, whether on account of the principal sum sued for or Departmental costs, will be credited to Department concerned.

**9.10 Earliest opportunity is to be taken to adjust advances.**—In urgent cases, where money may have been advanced from other source, the earliest opportunity should be taken for adjusting such advances in accordance with these rules.

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

## CHAPTER-10

### SUIT RULES—INSTITUTION OF SUITS

**10.1 Suits by the Government only to be brought in the last.**—No suit is to be brought on behalf of the Government except in the last resort, when all other means of obtaining satisfaction have failed. For filing the suit on behalf of the State Government, the provisions of Order XXVII of the Code of Civil Procedure be adhered to.

The institution of a suit on behalf of the Government is not to be recommended or authorized until the proposed defendant has been given an ample opportunity of stating his view of the case and conciliatory efforts to avoid litigation shall be made at the initial level it is also the duty of officers of the Government to enforce the just rights of the Government and to protect its interest.

**10.2 Sanction to bring a suit on behalf of the Government or a public officer.**—No suit on behalf of the Government or a public officer as such shall be instituted without the previous sanction of the proper controlling authority.

**10.3 Report to be submitted by officer who considers that suit should be instituted on behalf of Government.**—Any officer, who considers that a suit should be instituted on behalf of the Government shall submit a clear and detailed report, as provided in Rule 9.4 showing—

- (a) The circumstances which, in his opinion, render the institution of the suit necessary and precisely when and where they each occurred,
- (b) The subject of the claim and the relief sought,
- (c) whether any conciliatory effort has been made, if so its result,
- (d) The steps which have been taken to obtain satisfaction of the claim without bringing a suit,
- (e) The pleas or objections, if any, which have been urged by the proposed defendant against the claim,

- (f) The evidence, both oral and documentary, which is believed to be obtainable and which it is proposed to adduce in support of the claim,
- (g) Whether the documents, if any, referred to in sub-clause (e), are registered or not,
- (h) Whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him,
- (i) The evidence, both oral and documentary, which, so far as is known, the proposed defendant will be able and is likely to adduce in his defence,
- (j) Whether the documents, if any, referred to in sub-clause(h) are registered or not,
- (k) Any other facts which the officer considers material, *e.g.* whether there are any special reasons for the institution of the suit apart from the amount actually claimed; whether other similar claims will hinge upon its decision or the like,
- (l) The amount required for court fee stamps or other expenses, and
- (m) Opinion of the District Attorney or Advocate General, as the case may be.

Further, no suit shall be filed or brought by one department against the other department of the Government. Any dispute interse the departments shall be brought to the notice of the Chief Secretary by the Head of Department or the concerned department under the Rules of Business of the Government to resolve the same.

**10.4 Copies.**—Copies of all documents referred to in clauses (e) and (h) of the preceding rule, and of all correspondence and written proceedings, whether in English or in the vernacular(together in the latter case, with translations), connected with the proposed suit, should accompany the report, with an exact list of the same wherever this is reasonably possible. If these copies cannot be supplied for any reasons the originals should be submitted. The controlling authority will, thereupon, consult the Legal Remembrancer and decide upon the course to be adopted. If legal action is decided on, the controlling authority will, ordinarily, instruct the Legal Remembrancer to proceed accordingly, and shall communicate his decision to the Deputy Commissioner or head of the Department concerned and further action will be in accordance with the procedure laid down in Rules 9.4 and 9.6.

**10.5 Procedure when intervention is deemed necessary.**—If it appears advisable to the Deputy Commissioner or to the Head of any department, on the representation of any subordinate officer or otherwise, to intervene in any suit to which the Government has not been made a party, an application for a postponement of the case shall, if necessary, be made to the court, by or through the Deputy Commissioner of the district in which the court has jurisdiction. The Deputy Commissioner or other officer concerned shall then submit a full report to the controlling authority, showing clearly his reasons for considering such intervention

necessary, and, in particular, stating how the decision of the suit is likely in his opinion to affect the interests of Government.

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

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

## CHAPTER-11

### SUIT RULES-DEFENCE OF SUITS

**11.1 No person having a just claim against Government to be compelled to sue.**—No person having a just claim against the Government should be compelled to resort to litigation to enforce it.

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

The object of the notice provided by section 80 of the Code of Civil Procedure or under any other law which provide for such notice is to allow ample time to the Government to enquire into the justice or otherwise of all claims and to effect settlement of all just claims before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitable and amicably adjusting claims. Therefore, on the receipt of notice, the genuineness of the matter be examined by respective Department. According to the [instructions issued by the State Government vide letter No. LLR-E(9)-2/2004-Leg., dated 28<sup>th</sup> November, 2005]<sup>1</sup>

**11.2 Sanction for defence.**—The sanction of the authority empowered to sanction the institution of a suit of any kind shall be obtained for the defence of a suit of such kind.

**11.3 Procedure on receipt of Notice.**—(1) When notice of an intended suit is given, under the provisions of section 80 of the Code of Civil Procedure or under the provisions of any other law, the officer to whom it is delivered or the head of the office at which it is left shall forthwith endorse, or cause to be endorsed, on the notice—

- (a) the date of receipt,
- (b) the manner of delivery,
- (c) the date of endorsement, and

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1 . Annexure “H”.

- (d) the signature of the officer making the endorsement, and shall thereupon proceed as hereinafter provided.

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

(3) If the notice is served on a Secretary to the Himachal Pradesh Government, that officer shall forward it to the Deputy Commissioner or head of the Department concerned, for his comments.

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

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

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

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

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

If any officer is in doubt, at this stage, as to any legal point, he should submit the case, in due course, to the Legal Remembrancer, for opinion, through the Administrative Department concerned.

The procedure provided above for obtaining the Legal Remembrancer's advice regarding the defence of suits shall apply *mutatis-mutandis* to any application for stay of suit under the Arbitration and Conciliation Act, 1996, and to proposals to defend references to arbitration of disputes between Government and its grantees, contractors etc., vide Chapter 15 of this Manual.

**11.5 Communication to be made only under legal advice.**—When notice of the intention of any person to sue the Government or public officer has been given, under section 80 of the Code of Civil Procedure, or under the provisions of any other

law having such provision, no communication should ordinarily be made to such person otherwise than under the advice of the Legal Remembrancer or other Law Officer of the Government.

**11.6 Action when claim should be adjusted.**—(1) When, after receiving any such notice and enquiring into the matter, the controlling authority proposes to,—

- (a) tender any amount admitted to be due to the claimant;
- (b) officer, terms of adjustment or suggest reference to arbitration, the Legal Remembrancer should ordinarily be consulted as to the form or terms of the proposed tender, adjustment or reference, as the case may be, before they are communicated to the opposite party, and when once a suit has been instituted, no sum should be tendered, terms of adjustment offered or reference to arbitration suggested, otherwise than through the officer- in-charge of the case.

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

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

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

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

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

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

**11.9 Action when summons served on the Deputy Commissioner.—**

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

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

The Deputy Commissioner shall in every case forthwith apply for certified copies.—

- (a) of the plaint (whether only a concise statement of it has been received with the summons),
- (b) of all documents filed with the plaint, as well as of the list of the same prescribed by the High Court, and
- (c) of any list of further documents relied on or referred to in rule 14 of Order VII (First Schedule) of the Code of Civil Procedure, filed with the plaint.

**11.10 Procedure of Deputy Commissioner when summons relate to a suit affecting a department not connected with district administration or within his control.—**If the suit is one connected with any department not within his control, the Deputy Commissioner, shall, as soon as may be, obtain necessary copies, forward—

- (a) the summons, duly endorsed with the date of receipt thereof; and
- (b) copies of the plaint, documents (if any) of further documents relied on, to the head of the Department concerned.

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

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

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

**11.12 Collection of information to the facts of the case to be begun on receipt of suit.**—If notice of suit (whether it appears to be an adequate notice or not) has been received, the Deputy Commissioner or the Head of the Department concerned shall proceed to collect, with the least practicable delay, all the information regarding the facts of the case which are immediately available and shall, as soon as possible, send a summary thereof to the Legal Remembrancer, for his opinion—

**11.13 Report recommending the defence of a suit.**—(1) He shall then, as soon as possible, submit to the controlling authority the following documents together with an exact gist of the same :—

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

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

- (c) copies of documents and lists of documents, if any, filed with the plaint;
- (d) copies of all other documents procurable, which are believed to bear on the case, either for the plaintiff or the defendant, together with as accurate a description as may be of other documents (if any) which are believed to be relevant, but of which the contents cannot be precisely ascertained except through the Court;
- (e) all the correspondence and written proceedings, whether in English or in the vernacular, connected with the subject of the suit; and
- (f) These documents shall be accompanied by a clear and detailed report, stating—
  - (i) the circumstances which led to the suit, mentioning precisely when and where they each occurred; the course which it is proposed to adopt, namely, whether to admit, compromise or



defend the suit, all the reasons for the same, and the steps (if any) which have already been taken to adjust the matter out of Court;

- (ii) if it is proposed to defend the suit, the proposed defence, written on half margin, showing clearly and fully how each of the allegations in the plaint is to be met, and the evidence which it is proposed to adduce for that purpose;
- (iii) Whether the documents referred to in (c) and (d) are registered or not; and
- (iv) the date fixed by the Court for the first hearing.

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

(3) Mostly the concerned Departments contact the Government pleader for preparing the reply and for appearance hardly two or three days before the date of filing reply or appearance with the result that the Government pleaders are facing difficulties in preparing the reply or protecting the interest of the State Government for want of sufficient time to study the facts of the case thoroughly. Whenever a court case is received in the Department, the Department should contract the Government pleader alongwith relevant record/documents/proposed reply immediately in order to brief him in the matter and to file the reply before the stipulated period.

Certified copies of the judgement/order are not supplied to the department concerned by Government Advocate immediately. As a result of this, in certain cases the period of limitation expired and the judgement/ orders of the court attain finality, which directly put the State Government in an awkward position and sometimes result in heavy financial losses. The incharge of the case shall apply for the copy of the judgment/order on the same day on which the judgment/order is delivered/passed by the court and as and when the copy of the judgment/order is supplied by the copying agency, the same must be sent to the concerned department for appropriate action at once.

Record of cases in which Special Leave Petitions are to be filed, are not being sent in time to the District Attorney, Legal Cell, New Delhi by the Department concerned with the result that for filing Special Leave Petition in the Hon'ble Supreme Court of India an application for condonation of delay has to be filed. The Hon'ble Supreme Court of India has taken serious note of this lapse and some time the delay is not condoned. While sending the record of case to the Legal Cell, New Delhi, the Administrative Departments should also send the comments/brief history of the case. In service matters, tax matters and other important cases in which Special Leave Petitions are to be filed, the Administrative Departments are required to send their senior officers well conversant with the facts of such cases and discuss with the District Attorney, Legal Cell/Advocate-on-Record or Advocate concerned.

Many times, due to default on the part of the Administrative Departments, the Government advocates have to cut a sorry figure in the Court, resulting in not only loss

but unnecessary adverse orders against the State which can easily be avoided. The filing of pleadings on behalf of the State is invariably delayed for lack of proper co-operation and sometimes on account of this slackness on the part of the Administrative Departments the evidence on behalf of the State is not examined and in such circumstances the State is burdened with unnecessary costs. There are number of instances where defence has been struck off for not filling the written statement and reply or non production of the record and witnesses in time. Some times State cases are dismissed in default or *ex-parte* orders are passed for want of proper Co-operation by the concerned administrative department. All these shortcomings can easily be avoided in case the Administrative Department takes interest in rendering the necessary Co-operation to the Government Counsel. When even a notice is received by the Administrative Department from a Court of Law, Administrative Department have to move a Court of Law in any case, a responsible officer who is well conversant with the record and facts of the case should be made responsible and entrusted with the entire case who alone should contact the Government counsel and brief him not only at the very outset but on every hearing till final disposal of the case.

Some Departments not file replies despite several opportunities granted by the various courts and exemplary costs are awarded against the State. Such cases should be immediately brought to the notice of Law Department and action should at once be initiated against the concerned officer/official and he shall personally be liable for the negligence and the cost imposed by the court should be recovered from him.

Government Advocates, while accept the service of notice and receive the copy of application etc. waive of the service of notice. On the first date of hearing or at the time of receipt of notice, the Government. Advocates should not waive of the service of notice in the case and should invariably insist upon the courts by making a request to allow them some time for consulting the Government Departments and for obtaining their version before hearing them. In case such time and opportunity is allowed by the Court before passing an interim order, the Government Advocates should invariably contact Administrative Secretary/Head of Department or any other responsible officer of the Department/ Boards/Corporations/ Universities concerned so as to obtain the reply/version of the Departments/Boards/ Corporation/Universities within limited time of adjournment before arguing the case in the concerned court. In the event of Court passing an interim injunction order on first date of hearing without waiting for Government reply as it can legitimately do in urgent cases, the Government Advocate should insist upon the concerned court to record its reasons for passing the interim injunction orders the requirement of the Law. In such cases the Government Advocate may also insist upon the Court to record in its order the request for grant of time and opportunity for obtaining the Government version.

In the event of court passing an injunction order with or without recording reasons on the first date of hearing, the Government Advocate should immediately convey such order to the concerned Departments/Boards/ Corporations etc. and should invariably advise the Department/Board/ Corporation if it is fit to file appeal/writ petition/Special Leave Petition before the concerned court for challenging the order of the lower court or should file the reply and request the concerned courts to finally

dispose of injunction application within the stipulated period, for which the interim injunction order passed by the court may remain validly in force.

For the proper monitoring of progress of each court case, in various courts, the Administrative Departments/Head of Departments/ Boards/Corporations are required to maintain a register of court cases in the form as given in para 13.1.18 of the Office Manual. This register should always be kept updated by making an entry after each day of hearing. In this entry a brief description of the proceedings/order of the court is to be made, it should also be mentioned as to what is required to be done on the next date of hearing. Besides this, every Department should nominate one officer, not below the rank of Section Officer or Supdt. Grade-I, as officer- in-charge who shall be responsible for monitoring the court cases at all levels and at all stages, and he should apprise his Secretary/Head of Department/Managing Director etc. about the progress of the court cases after every date of hearings.]<sup>1</sup>

**11.14 Special instructions in cases of tort.**—Further action will be taken in accordance with the procedure laid down in Rules 9.4. and 11.5.

**11.15** A number of notices are received under section 80 of the Code of Civil Procedure on the ground that some officer of Government has wrongfully seized private property, or has wrongfully confined some person. The reports accompanying such notices, complete as they may be in other respects, seldom mention one of the points which Government have to take into consideration in deciding how the suit should be met, which is whether the officer in question was supposed to be acting under any statutory authority or not. When a report is supplied in future under rule 11.12 in respect of any action which is alleged to constitute a wrongful interference with private property or private liberty' it should invariably be stated whether the officer concerned believed himself to have any statutory or other authority for his action. The controlling authority should also state whether in his opinion the action was covered by such authority or not. For the purpose of such a report it is not sufficient merely to explain the motive of the action, or to say that the action was taken under the orders of a superior officer, unless the superior officer himself had the necessary authority.

## CHAPTER-12

### SUIT BY OR AGAINST THE PUBLIC OFFICERS

#### SUITS BY PUBLIC OFFICER

**12.1 No suit to be instituted by public officer without the sanction of the Government.**—The sanction of the Himachal Pradesh Government shall be obtained before any public officer has recourse to the Courts for the vindication of his public acts or of his character as a public functionary.

**12.2 Procedure in obtaining sanction report.**—When a public officer considers that a suit should be instituted for the vindication of his public acts or of his

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1. Annexure "T".

character as a public functionary, he shall submit a report of conforming to the directions contained in rule 10.3.

**12.3 Transmission of Report.**—The Head of the Department, after recording his opinion, will forward a report, together with his opinion thereon, to the Himachal Pradesh Government for orders as to whether the suit,(i) is or is not to be brought, and (ii) if brought is to be conducted at the public expense or at that of the officer concerned.

**12.4 Instructions.**—If sanction be given by the Himachal Pradesh Government to the conduct of the suit at the public expense, the controlling authority seek concurrence of the Finance Department after obtaining the opinion from the Law Department and also for engaging the counsel. If such sanction be not given, the officer concerned shall be informed accordingly, when, if the institution of the suit has been sanctioned by the Himachal Pradesh Government, he shall be at liberty to make his own arrangements in connection therewith subject to the above conditions..

## **SUIT AGAINST PUBLIC OFFICERS**

**12.5 Procedure to be observed in regard to the defence of suits brought against public Officers.**—When any suit is threatened to be brought or is brought against a public officer, as such, or in regard to his acts as such, and such officer considers that the suit should be defended at the public expense, he shall submit a report conformable to the directions contained in Rules 9.4 and 11.13.

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

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

**12.6 Transmission of report.**—The Head of the Department will forward the report, together with his opinion thereon, to the Himachal Pradesh Government for orders as to whether the suit is to be defended at the public expense or whether the officer concerned is to be left to take such measures in the case at his own expense as he thinks fit.

**12.7 Instructions.**—If the defence of the suit at the public expense is sanctioned by the Government, the controlling authority will get the concurrence of the Finance Department in consultation with the Law Department. If such sanction is not given, the officer concerned shall be informed accordingly, and will be at liberty to make his own arrangements in connection therewith.

**12.8 Defence of suits brought against retired public officers.**—The provisions of Rules 12.5, 12.6 and 12.7 will apply, *mutatis -mutandis*, to a suit against a retired public officer, in regard to an official act performed by him during the period of his service. The benefit of section 80 and Order XXVII of the Code of Civil Procedure, 1908 is not available to officers who have retired from the service of the State.

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

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

## CHAPTER-13

### SUIT RULES-ACTION ON THE TERMINATION OF A SUIT

**13.1 Copies to be obtained.**—Immediately on the termination of any suit, a copy of the Judgment and decree or other final order of the court shall be procured, without delay by the Officer in charge of the case.

**13.2 Results of suits etc. by and to whom the report to be submitted.**—Immediately on receipt of the copies of the Judgment and decree or other final order of the court specified in the last preceding rule, the officer in charge of the case shall submit a report (in duplicate) of the result of the suit for the information of the controlling authority with a copy to the Legal Remembrancer.

**13.3 Arrangements for payment of decretal amounts.**—When the result is adverse to the Government and involve disbursement of public money, the report should always state when the money will be required for payment. Immediately on

receipt of the report from the Legal Remembrancer, the controlling officer of the Department to which the case relates should make arrangements, in consultation with the Deputy Commissioner of the district to deposit the decretal amount in Court within three months' at the most, of the order of the Court. While making the deposit the controlling officer should request the Deputy Commissioner to apply to the Court that the amount be not paid to the decree-holder pending the result of the appeal where an appeal is filed or proposed to be filed or only on such security as the Court may deem reasonable.

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

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

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

The Legal Remembrancer shall on receipt of these documents from the Administrative Department consider the desirability of filing an appeal or application for revision or review of judgement or otherwise and convey his views to the controlling authority. If it is decided to file an appeal or application for revision or review of judgement, the Legal Remembrancer may on his own authority issue instructions to the officer in charge(Law Officer) for doing the needful or to inform the controlling authority or the Administrative Department about the action taken. The controlling authority, if agrees with the views, of the Legal Remembrancer, shall accord sanction of the action taken. If the controlling authority, in cases, where the Legal Remembrancer does no favour for filing of an appeal or application for revision or review of the judgment and the controlling authority still insists for obtaining the verdict of appellate/revisional court, as the case may be, the former will invariably act

accordingly. Ordinarily, the officer in charge of the case shall not prefer an appeal or application for revision or review of judgment except under express instructions from the controlling authority based upon the opinion of the Legal Remembrancer to the Government.

**13.5 Report as to whether appeal should be made.**—If the original suit was not instituted or defended through the Legal Remembrancer the report required by the preceding rule should be submitted to the controlling authority.

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

**13.7 Rules applicable to appeals etc.**—The provisions of rules 13.1 to 13.5 shall be applicable to appeals, second appeals, applications for revision or review judgement and the officer in charge of the case will be required to submit his report to the Legal Remembrancer or the controlling authority, as the case may be, at the conclusion of each stage of suit, appeal, application for revision or review of judgement.

**13.8 Miscellaneous proceedings.**—The procedure laid down in rules 13.1 to 13.6 shall apply *mutatis mutandis* to all miscellaneous proceedings including arbitration proceedings to which Government is a party.

## CHAPTER-14

### EXECUTION OF DECREES

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

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

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

**14.4 Measures to be taken to trace out property of judgment debtor action as to security.**—Deputy Commissioner and other officer concerned are required to take all possible measures to ascertain what property of the judgment debtor exists and is available for attachment and sale in execution of decree and that, where security is taken from the judgment debtor on stay of execution, under Rule 5. Order XLI, First Schedule of the Code of Civil Procedure, the security taken by the Court is substantial and sufficient, and that proper action for immediate execution is taken if the required security is not satisfactory.

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

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

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

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

**14.6 Cost in suits by indigent persons.**—Order XXXIII, Rule 14, directs that where an order is made under rules 10, 11, or 11-A of the Code of Civil Procedure, the Court shall forthwith forward a copy of the decree to the Collector. On receipt of this copy, it is for the Collector to take necessary action for the recovery of an amount which may be due. Full instructions regarding the method of recovery will be found in the Himachal Stamp Manual.

The Government Pleader or the Collector of the District shall recover the amount of stamp duty and other costs due to the Government in suits by indigent in proceedings in execution of decree as such suits are instituted without payment of court fees and rules 10 and 11, Order XXXIII, of the Code of the Civil Procedure,



provide for the recovery of the amount of the fees which should have been paid if the plaintiff had not been allowed to sue as an indigent person.

**14.7 Responsibility of Collector to recover moneys due to Government.—**

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

**14.8 Recoveries made outside court to be certified.—**

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

**14.9 Government servants for bidden to bid at auctions.—**

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

## CHAPTER-15

### ARBITRATION

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

**15.2 Only a valid award is a bar to a suit.—**Such a clause is no bar to a suit. Only a valid award, *i.e.* one granted as the result of proceedings legally conducted and completed prior to the institution of suit, before an Arbitrator with jurisdiction over the subject matter is duly stamped (under Section 12 of the Indian Stamp Act 1899) and where section 17(1)(b) of the Indian Registration Act, 1908,

applies, provided such award has been registered; and the provisions of the Arbitration and Conciliation Act, 1996 have been complied with.

The existence, however, of such a clause as is mentioned in para 15.1 does ordinarily enable the defendant in the suit lodged in connection with such contract, to apply to the court (under the Arbitration and Conciliation Act, 1996) to exercise its discretion to stay the suit and to refer the parties to arbitration, in accordance with the agreement:

Provided that—

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

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

**15.3 Preparation of letters of reference.**—Whenever a dispute arises or suit is threatened, in respect of any grant or contract by Government, the Deputy Commissioner, Executive Engineer, or other officer immediately concerned, should promptly examine the grant or contract in order to ascertain whether it contains any clause whereby the parties have agreed to submit to arbitration. If so, prompt steps should be taken to obtain orders for the preparation of a letter of reference which should ordinarily be laid before the Government Pleader concerned before being addressed to the officer referred to in such clause as Arbitrator. The latter has to avoid expressing any opinion on the dispute save as Arbitrator after the receipt by him of formal letter of reference to arbitration, and after hearing the opposite party and then only in the form of an award. The ordinarily controlling authority will be the authority provided in Chapter 8, unless such authority is mentioned either personally or *ex-officio* as an Arbitrator in the contract or grant concerning which the dispute has arisen in which case the controlling authority will be Government in the department concerned. The report and statement or reasons referred to in rule 9.4(2) and the data necessary in order to draft the letter of reference to arbitration should be submitted promptly to the controlling authority so ascertained.

In those cases where a Financial Commissioner or Chief Engineer is referred to as Arbitrator, the Commissioner or Superintending Engineer, as the case may be, will, if he considers it necessary to refer to Government, take steps to see that the file with the Deputy Commissioner's or Executive Engineer's noting or recommendation, if approved, is sent either to Government, with special reference to the fact that the

Head of the Department is mentioned as Arbitrator, and is thus incapacitated from dealing with the file save in that capacity and after complying with Rule 15.8.

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

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

**15.4 Additional letters of reference.**—If the opposite party has already issued such letter of reference consideration should be given to the question whether that letter of reference sufficiently incorporated all points in dispute. If not, steps may be taken for an additional letter of reference completing or amplifying, the opponent's letter of reference to be drafted, and issued to the Arbitrator.

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

- (a) date and general effect of the grant or contract out of which the dispute has arisen;
- (b) a verbatim copy or extract of the clause which Government alleges the opposite party has breached or failed to fulfil or on which the dispute has more particularly arisen;
- (c) statement of facts and dates arranged chronologically on the strength of which Government alleges breach of non fulfilment;
- (d) copy or verbatim extract of any clause, or an indication of the law or legal principle, under which Government may have exercised, or may claim any, specific remedy;
- (e) copy or summary of the clause of the grant or contract constituting the "submission" *i.e.* the agreement between the parties to refer disputes to the officer(to whom this letter of reference is addressed) as sole Arbitrator; and

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

**15.6 Application for stay of suit.** - If, notwithstanding the agreement to submit to arbitration, suit is actually lodged against Government, then the officer submitting the report and opinion etc., in compliance with rule 9.4(2) should bring to the immediate notice of the Legal Remembrancer the agreement to refer to arbitration with a view to an application for stay of suit being made. Unless and until the court stays the suit, the reference to arbitration cannot be issued. If it has already been issued, the Arbitrator must postpone all further proceedings relating to the subject matter of that suit until the application for stay of suit has been accepted by the Court.

**15.7 Arbitrators to do justice to both the parties.**—It should be remembered that reference to arbitration is intended to be an expeditious, inexpensive and decisive method of settling a dispute relating to a contract or grant without resort to the dilatoriness, intricacies and complications of civil litigation. The officer concerned when moved as Arbitrator should, keeping these principles in view do justice to the claims of both sides within the limitations imposed by the clause which empowers him to act.

**15.8 Points to be borne in mind.**—The points which the officer referred to as Arbitrator should bear in mind in that capacity, are as follows:—

- (a) on receipt of notice to arbitration, he should see that the letter of reference clearly state the points on which he is to arbitrate, and where Government is the party moving for arbitration that such letter of reference is signed by an officer competent to bind Government. He cannot, of course, refer the point for arbitration to himself. If satisfied that the points are clear and within his jurisdiction as Arbitrator, he should then issue to both parties concerned notice of date, place and time, fixed for the appearance of the parties, or their representatives, and for the production of witnesses and documentary evidence and restating precisely the points referred for arbitration, and that those matters will be finally determined by him as Arbitrator, and that if either party fails to attend, the matter may be decided *ex-parte*. In such notice it should be explained that if either party requires the other to produce any documents in the possession or power of the other he must inform the Arbitrator in good time (not less than seven days ) before the date fixed as above;
- (b) he should, before arriving at or, in any case, before recording any decision, give each side reasonable opportunity to adduce evidence, oral or documentary, which they may wish to bring (in the presence of the other) and he should listen (within reason) to any arguments which they may wish to present at the conclusion of the evidence. These proceedings should be conducted in the presence of both parties to the dispute, or their legal representatives. If, however, either of the parties is absent and not represented, at any hearing, of which he has had due notice, the Arbitrator may proceed *ex-parte* after recording a normal

order to that effect. The Arbitrator should keep a note of the proceedings, recording the presence of the parties before him and the fact of his having conformed to the procedure herein suggested. He should also make a brief memorandum of the main points in the statement of each witness. Subject to these observations the proceedings may be conducted without any special formalities, and the taxing or settlement of costs and fees and charges payable in respect of the arbitration and award ;

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

**15.9 Submission of copies of awards.**— In all cases of arbitration in which the amount of the award exceed two thousand rupees a copy of the award be forwarded to the Government for information. Intimation regarding awards should in all cases be sent to the Accountant General, Himachal Pradesh for audit purposes.

## CHAPTER-16

### FEES IN CIVIL CASES

**16.1 Fees in Supreme Court Cases.**—Fees admissible to advocates for different categories of work shall be as under :—

- (1) Sr. Advocate-on-Record (both for Civil and Criminal cases) :

- (i) Rs. 5,500/- per appearance in miscellaneous hearing.
- (ii) Rs. 11,000/- per appearance in regular hearing.
- (2) Advocates-on-Record (both for Civil & Criminal cases) :
  - (i) Rs. 1, 100/- per appearance in miscellaneous hearing.
  - (ii) Rs. 2, 000/- per appearance in regular hearing.
  - (iii) Rs. 1,100/- for drafting of Special Leave Petition/ Counter.
  - (iv) As and when advocate-on-record puts in appearance with the panel advocates in a case then he will be entitled to half fee.
- (3) Panel Advocates ( both for Civil and Criminal cases) :
  - (i) Rs. 1, 100/- per appearance in miscellaneous hearing.
  - (ii) Rs. 2, 000/- per appearance in regular hearing.
  - (iii) Rs. 1,100/- for drafting of Special Leave Petition/ Counter.

**16.2** Besides above the following conditions will be applicable for Advocate-on-Record and panel advocates :—

- (i) They will not be entitled to any fee for arranging the services of any senior counsel for obtaining advice in State cases and for acting as junior or senior counsel in tendering advice.
- (ii) Where applications, affidavits, replies etc. are to be drafted in a set of similar cases, the set would be considered as one case and they will be entitled to the fee for one case only.
- (iii) They will not appear/advise or would brief in any case against the State of Himachal Pradesh.
- (iv) They will not be entitled for any clerkage.
- (v) The Government has the right to appoint any other lawyer of repute in important cases as and when the occasion would arise.
- (vi) While forwarding the bills for payments, it may invariably be certified that the fees claimed, are in accordance with the scales of fees laid above and the bills must be verified by the District Attorney (Legal Cell), New Delhi.
- (vii) All the bills of the months should be submitted to the office of District Attorney (Legal Cell), New Delhi at the end or the first week of the succeeding month to avoid delay of payments.]<sup>1</sup>

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1. Annexure "J".

**16.3 Fees Payable to Private advocates in the High Court/Subordinate Courts.**—Ordinarily cases by or against the State Government are conducted/defended by the Advocate General in the High Court, and District Attorney/Assistant District Attorney in the Subordinate Courts. But in case of special importance where heavy amount is at stake, the Legal Remembrancer may appoint Private Advocates to conduct such cases and may determine the fee to be paid to the Advocate by the Government by negotiations.

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