

Himachal Pradesh Land Code

2023

[Volume-III]



Department of Revenue Government of Himachal Pradesh

Containing:
Important central acts and rules related to land
(Amended up to 2023)

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Disclaimer: The present edition of H.P Land Code has been compiled after taking the information from the Departmental sources and www.indiacode.com. All due care has been taken to ensure that the content is correct even then reference to a standard source is advised. Further the Code may also contain a few repealed instructions/documents which have been added for reference purpose. The user is advised to carefully check the applicability of such documents.

संदेश

राजस्व विभाग से आम जन का सीधा जुड़ाव है। हर नागरिक का अपने जीवन में भूमि सम्बन्धी मामलों से सरोकार रहता है। सामाजिक एवं पारिवारिक सौहार्द में भी भूमि विवादों के सर्वसम्मत समाधान का एक बड़ा योगदान रहता है। जनता की समस्याओं के त्वरित समाधान के लिए हमारी राजस्व न्याय प्रणाली का चुस्त दुरुस्त होना अनिवार्य है एवं इसके लिए आवश्यक है कि नियम एवं कानून व् विभागीय दिशानिर्देश क्षेत्रीय अधिकारियों एवं लोगों को सरलता से उपलब्ध हों। इसके दृष्टिगत वर्तमान सरकार द्वारा सत्ता सँभालने के बाद पहले ही बजट भाषण में हमारा ये आश्वासन था की हम राजस्व विभाग में नए लैंड कोड को प्रकाशित करेंगे जिसमें भूमि सम्बन्धी नियमों, कानूनों एवं विभागीय निर्देशों का अद्यतन संकलन हो। मुझे खुशी है कि हमारे निर्देश पर विभाग द्वारा त्वरित कारवाई करते हुए नए लैंड कोड को प्रकाशित किया जा रहा है। इस कोड के उपयोग से राजस्व अधिकारियों का मार्गदर्शन होगा एवं वे लोगों के भूमि मामलों का शीघ्र व् सही निपटान कर पाएंगे। आम जन को भी राजस्व विभाग के कानून एवं नियम व् समय-समय पर जारी निर्देशों की जानकारी आसानी से उपलब्ध हो पायेगी। प्रथम लैंड कोड का प्रकाशन 1992 में किया गया था। मैं राजस्व विभाग द्वारा लगभग 31 वर्षों के बाद प्रकाशित किये जा रहे लैंड कोड के नवीन संस्करण के लिए सभी अधिकारियों को हार्दिक बधाई व शुभकामनायें देता हूँ।

श्री सुखविंदर सिंह सुक्खू
माननीय मुख्यमंत्री, हिमाचल प्रदेश

संदेश

यह हर्ष का विषय है कि राजस्व विभाग द्वारा 'लैंड कोड' का प्रकाशन किया जा रहा है। पूरे देश भर की भान्ति हिमाचल प्रदेश में भी भूमि-सुधार के प्रयास हुये हैं तथा पूर्ण राज्यत्व प्राप्ति के बाद राज्य द्वारा भू-सुधार अधिनियमों को बनाया गया। इन कानूनों का उद्देश्य गरीब एवं वंचित वर्गों को भूमि के मालिकाना हक देना व बड़े भू-स्वामियों के पास सम्पत्ति का केन्द्रीकरण रोकना रहा है। समय-समय पर कानूनों में बदलाव हुए हैं। इनका संकलन हिमाचल प्रदेश लैंड कोड के रूप में किया गया था।

वर्तमान सरकार का यह प्रयास है कि कानूनों में आवश्यक संशोधन किया जाए जिससे प्रक्रियाएं सरल हों तथा आम जनता के कार्यों का निपटान तीव्रता से हो। राजस्व विभाग में व्यवस्था परिवर्तन आम जन के हितों के लिए अति आवश्यक है इसी के दृष्टिगत राज्य सरकार ने "राजस्व लोक अदालत" जैसी पहल की है तथा कानूनों एवं नियमों के बदलाव का दौर शुरू किया है। लैंड कोड के नए संस्करण का प्रकाशन इसी पहल की एक कड़ी है ताकि अधिकारियों एवं जनता को सभी कानूनों, नियमों एवं दिशानिर्देशों का एक अद्यतन संकलन मिल सके।

मैं राजस्व विभाग के अधिकारियों को लैंड कोड के नए संस्करण के प्रकाशन पर हार्दिक बधाई एवं शुभकामनायें देता हूँ।

श्री जगत सिंह नेगी
माननीय राजस्व मंत्री, हिमाचल प्रदेश

Foreword

The Land laws and executive instructions of Department of Revenue were first codified in 1992 in the shape of H.P Land Code. This code is still used as a mother book of Revenue Department by the officers, advocates and general public. While there have been substantial changes in the land laws but the code remained unrevised for almost three decades. The Department has also released numerous guidelines, clarifications and executive instructions from time to time addressing legal matters and prescribing procedures to be observed by Revenue Officers. Notably, the instructions issued since 1992 have not been consolidated into a comprehensive code underscoring the imperative for an inclusive update of the code. Furthermore, the evolving socio-economic landscape has also necessitated transformative overhaul of departmental affairs to align with the progressive aspirations of the modern society. To achieve this goal measures such as digitization of records, e-governance, simplification of procedures and updating our laws and rules have been taken. Additionally, codification of laws, rules and all guidelines, is pivotal for this endeavor. Recognizing the necessity, we took the decision to embark on the task of revising the land code.

A Committee was constituted for the purpose and a team led by Sh. Priyatu Mandal (I.A.S) after a diligent work of almost six months successfully finalized the Code. As the famous quote says, “The hands that make mistakes belong to those who work” the team has definitely approached the task with precision and great deal of hard work and the code has been scrutinized minutely but the existence of errors in the book may not be ruled out. Surely, the benefits derived from the code will far surpass the mistakes observed.

I must appreciate all the hard work, commitment and dedication put in by the members of the committee and officers of the department for shaping this document into reliable reference for all. I hope that the current version of H.P Land Code which is being released in three volumes will prove beneficial to all the stakeholders and will contribute to the improvement of the public service delivery by empowering our officers.

(Onkar Chand Sharma)

Principal Secretary (Revenue) cum
Financial Commissioner (Revenue)
Government of Himachal Pradesh

Preface

The boosters of the Space Shuttle could have been made bigger and more powerful, but the NASA engineers were constrained by logistical difficulties. Since the boosters had to be transported by US railways, where the standard gauge was 4 feet and 8.5 inches, the NASA engineers were in a fix. This gauge in the USA was of this measure because it was imported from their old colonial masters, the British. The British rail gauge was this broad because the older tram gauge, which carried wagons, were of this measure. Why were the wagon wheels of this width? Because this was the measure of horse wagons, which ran on some of the old, long-distance roads in England. Who built those roads? Imperial Rome. So, NASA boosters were effectively designed by imperial Rome.

This example shows how legacy decisions taken in the past affect the world far into the future. Legend has it that Todar Mal overhauled the revenue system of imperial Mughals under Akbar. Todar Mal, one of the Navaratnas of the court of Emperor Akbar, was his Finance Minister, and senior administrator. If the legends are true, then much of what we face as challenges of the present revenue system in Himachal stem from decisions taken by Todar Mal. The humble jareb (the measuring unit made from steel chains) and the triangular system of area measurement probably stem from that time - with procedural additions by the British. It is far easier to make new satellite land maps that would be accurate - but we are stuck with the legacy records made often-times a century back. This reminds me of a case I had disposed in Nahan - the appellant's land was decreased in Settlement, although his possession was intact. The whole fight was over the decrease in land that existed on paper only - on ground, he was in possession over as much land today as he had 50 years back. People fight, ruining their lives and finances over generations, over their rights as established in the record. It does not much matter if those records are accurate or not. Legacy decides the present. And future.

...

The last edition of the Land Code was compiled by Mr. I.S. Chandel. Mr. Chandel was a stalwart of the revenue department, having written many of the books we still read today. The Land Records Manual which he drafted is also in daily use in the department. These books came out in 1992, a good three decades back. And much has changed in the years since their publication.

However, nothing is permanent but change. Any compilation of laws or processes becomes outdated even before they reach the bookshelves, fresh and warm out of the printer. Any attempt to compile something in a book shape that is desired to be printed on paper is a foolhardy attempt in today's day and age. It is far easier to update a compilation in a digital format, than it is to go through all the steps for printing. I earnestly hope that this is the last Land Code to ever come out in print - all future Codes, of this or any other department, should come out in digital-only format.

...

They say that fools rush in where angels fear to tread. In early excitement, I rushed in with the desire to update the Land Code and the Manual, books heavily criticised in the field because of outdated provisions. The government quickly formalised a committee to update these books and various revenue processes, and was gracious in allowing me to chair it. However, we did not know the challenges of the undertaking. It took months and months of effort in finding the documents. Record-keeping was far from perfect - and attempts to find the latest and all intervening documents were painful, filled with frustration and anguish. However, patience and dedication are virtues in themselves, and yield rewards. Despite that, we are sure there will be documents missing. At best, this compilation is only an attempt at perfection, and far from it.

Priyatu Mandal
(Head of Committee to draft the Land Code)

Acknowledgements

Newton famously said that he has seen further as he stood on the shoulders of giants. All works are products of joint efforts - far more than we realise. This certainly is the case with government work, and certainly the case with these volumes.

The government notified a committee to compile the revenue documents, and gave a fine group of members to work with. These volumes are the results of countless hours of searching, compiling, drafting, redrafting and copy correction by not just the committee members, but also the supporting staff. I wish to thank Sh. Sandeep Sood, Technical Director (NIC), Sh. Sunil Verma (HAS), Sh. Balwan Chand (HAS), Sh. Manish Chaudhary, (HAS), Sh. Narayan Chauhan (HAS), Sh. Sees Ram (Tehsildar) and Sh. Vikram Jeet Singh (Tehsildar), who are all Committee members. My special thanks go to Sh. Yogesh Chauhan (HAS), and Sh. Chandan Kapoor (HAS), who were part of the sub-committee that did the yeoman's work for the drafts. The longest hours of hard work came from Sh. Anil Chauhan (HAS), who was instrumental in locating decades old documents from the dusty files of the Secretariat - a job easier said than done. I also wish to thank Sh. Sunil Kumar (Steno-Typist), who must have discarded a few keyboards in typing and compiling these thick volumes.

Last but not the least, I wish to thank Sh. Onkar Chand Sharma, IAS, Financial Commissioner (Revenue), Government of Himachal Pradesh, for his continued support and directions. Without his support, these volumes would not have seen the light of the day.

Priyatu Mandal
(Head of Committee to draft the Land Code)

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**THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND
ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013**

ACT No. 30 OF 2013

[26th September, 2013.]

An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.— (1) This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(2) It extends to the whole of India ^{1***}.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint:

Provided that the Central Government shall appoint such date within three months from the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 receives the assent of the President.

2. Application of Act.— (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:—

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number

¹The word “except the State of Jammu and Kashmir omitted by Act 34 of 2019, s. 95, and the Fifth Schedule (w.e.f. 31-10-2019).

²1st January 2014, vide notification No. 3729(E), dated 19th December, 2013, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

- (ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;
 - (iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;
 - (iv) project for water harvesting and water conservation structures, sanitation;
 - (v) project for Government administered, Government aided educational and research schemes or institutions;
 - (vi) project for sports, health care, tourism, transportation or space programme;
 - (vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
- (c) project for project affected families;
 - (d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;
 - (e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;
 - (f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:—

- (a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);
- (b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for—

- (i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and
- (ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,—

- (a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;
- (b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole.

3. Definition.— In this Act, unless the context otherwise requires,—

- (a) “Administrator” means an officer appointed for the purpose of rehabilitation and resettlement of affected families under sub-section (1) of section 43;
- (b) “affected area” means such area as may be notified by the appropriate Government for the purposes of land acquisition;
- (c) “affected family” includes—
 - (i) a family whose land or other immovable property has been acquired;
 - (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
 - (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;
 - (iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
 - (v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;
 - (vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;
- (d) “agricultural land” means land used for the purpose of—
 - (i) agriculture or horticulture;
 - (ii) dairy farming, poultry farming, pisciculture, sericulture, seed farming breeding of livestock or nursery growing medicinal herbs;
 - (iii) raising of crops, trees, grass or garden produce; and
 - (iv) land used for the grazing of cattle;
- (e) “appropriate Government” means,—

- (i) in relation to acquisition of land situated within the territory of, a State, the State Government;
- (ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;
- (iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;
- (iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and
- (v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

- (f) “Authority” means the Land Acquisition and Rehabilitation and Resettlement Authority established under section 51;
- (g) “Collector” means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate Government to perform the functions of a Collector under this Act;
- (h) “Commissioner” means the Commissioner for Rehabilitation and Resettlement appointed under sub-section (1) of section 44;
- (i) “cost of acquisition” includes—
 - (i) amount of compensation which includes solatium, any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or Court;
 - (ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;
 - (iii) cost of acquisition of land and building for settlement of displaced or adversely affected families;
 - (iv) cost of development of infrastructure and amenities at the resettlement areas;
 - (v) cost of rehabilitation and resettlement as determined in accordance with the provisions of this Act;
 - (vi) administrative cost,—
 - (A) for acquisition of land, including both in the project site and out of project area lands, not exceeding such percentage of the cost of compensation as may be specified by the appropriate Government;
 - (B) for rehabilitation and resettlement of the owners of the land and other affected families whose land has been acquired or proposed to be acquired or other families affected by such acquisition;
 - (vii) cost of undertaking ‘Social impact Assessment study’;
- (j) “company” means—
 - (i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) other than a Government company;

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any corresponding law for the time being in force in a State;

(k) “displaced family” means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area;

(l) “entitled to act”, in relation to a person, shall be deemed to include the following persons, namely:—

(i) trustees for other persons beneficially interested with reference to any such case, and that to the same extent as the person beneficially interested could have acted if free from disability;

(ii) the guardians of minors and the committees or managers of lunatics to the same extent as the minors, lunatics or other persons of unsound mind themselves, if free from disability, could have acted:

Provided that the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, mutatis mutandis, apply in the case of persons interested appearing before a Collector or Authority by a next friend, or by a guardian for the case, in proceedings under this Act;

(m) “family” includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him:

Provided that widows, divorcees and women deserted by families shall be considered separate families.

Explanation.— An adult of either gender with or without spouse or children or dependents shall be considered as a separate family for the purposes of this Act;

(n) “holding of land” means the total land held by a person as an owner, occupant or tenant or otherwise;

(o) “infrastructure project” shall include any one or more of the items specified in clause (b) of sub-section (1) of section 2;

(p) “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(q) “landless” means such persons or class of persons who may be,—

(i) considered or specified as such under any State law for the time being in force; or

(ii) in a case of landless not being specified under sub-clause (i), as may be specified by the appropriate Government;

(r) “land owner” includes any person,—

(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or

(iv) any person who has been declared as such by an order of the court or Authority;

- (s) “local authority” includes a town planning authority (by whatever name called) set up under any law for the time being in force, a Panchayat as defined in article 243 and a Municipality as defined in article 243P, of the Constitution;
- (t) “marginal farmer” means a cultivator with an un-irrigated land holding up to one hectare or irrigated land holding up to one-half hectare;
- (u) “market value” means the value of land determined in accordance with section 26;
- (v) “notification” means a notification published in the Gazette of India or, as the case may be, the Gazette of a State and the expression “notify” shall be construed accordingly;
- (w) “patta” shall have the same meaning as assigned to it in the relevant Central or State Acts or rules or regulations made thereunder;
- (x) “person interested” means—
 - (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;
 - (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
 - (iii) a person interested in an easement affecting the land;
 - (iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and
 - (v) any person whose primary source of livelihood is likely to be adversely affected;
- (y) “prescribed” means prescribed by rules made under this Act;
- (z) “project” means a project for which land is being acquired, irrespective of the number of persons affected;
- (za) “public purpose” means the activities specified under sub-section (1) of section 2;
- (zb) “Requiring Body” means a company, a body corporate, an institution, or any other organisation or person for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land is for public purpose to a company, body corporate, an institution, or any other organisation, as the case may be, under lease, license or through any other mode of transfer of land;
- (zc) “Resettlement Area” means an area where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government;
- (zd) “Scheduled Areas” means the Scheduled Areas as defined in section 2 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996);
- (ze) “small farmer” means a cultivator with an un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal farmer.

CHAPTER II

DETERMINATION OF SOCIAL IMPACT AND PUBLIC PURPOSE

A.—PRELIMINARY INVESTIGATION FOR DETERMINATION OF SOCIAL IMPACT AND PUBLIC PURPOSE

4. Preparation of Social Impact Assessment study.— (1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the

affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

(2) The notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be, at the stage of carrying out the Social Impact Assessment study:

Provided further that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.

(3) The Social Impact Assessment study report referred to in sub-section (1) shall be made available to the public in the manner prescribed under section 6.

(4) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:—

- (a) assessment as to whether the proposed acquisition serves public purpose;
- (b) estimation of affected families and the number of families among them likely to be displaced;
- (c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- (d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;
- (e) whether land acquisition at an alternate place has been considered and found not feasible;
- (f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

(5) While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

(6) The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures

required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area.

5. Public hearing for Social Impact Assessment.— Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

6. Publication of Social Impact Assessment study.— (1) The appropriate Government shall ensure that the Social Impact Assessment study report and the Social Impact Management Plan referred to in sub-section (6) of section 4 are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government.

(2) Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment:

Provided that, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law for the time being in force, the provisions of this Act relating to Social Impact Assessment shall not apply.

B.—APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT BY AN EXPERT GROUP

7. Appraisal of Social Impact Assessment report by an Expert Group.— (1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

(2) The Expert Group constituted under sub-section (1) shall include the following, namely:—

- (a) two non-official social scientists;
- (b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;
- (c) two experts on rehabilitation; and
- (d) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,—

- (a) the project does not serve any public purpose; or
- (b) the social costs and adverse social impacts of the project outweigh the potential benefits, it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision:

Provided further that where the appropriate Government, inspite of such recommendations, proceeds with the acquisition, then, it shall ensure that its reasons for doing so are recorded in writing.

(5) If the Expert Group constituted under sub-section (1), is of the opinion that,—

- (a) the project will serve any public purpose; and
- (b) the potential benefits outweigh the social costs and adverse social impacts, it shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision.

(6) The recommendations of the Expert Group referred to in sub-sections (4) and (5) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed and uploaded on the website of the appropriate Government.

8. Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government.— (1) The appropriate Government shall ensure that—

- (a) there is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified;
- (b) the potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;
- (c) only the minimum area of land required for the project is proposed to be acquired;
- (d) there is no unutilised land which has been previously acquired in the area;
- (e) the land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof.

(2) The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

(3) The decision of the appropriate Government shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that where land is sought to be acquired for the purposes as specified in sub-section (2) of section 2, the appropriate Government shall also ascertain as to whether the prior

consent of the affected families as required under the proviso to sub-section (2) of section 2, has been obtained in the manner as may be prescribed.

9. Exemption from Social Impact Assessment.— Where land is proposed to be acquired invoking the urgency provisions under section 40, the appropriate Government may exempt undertaking of the Social Impact Assessment study.

CHAPTER III

SPECIAL PROVISION TO SAFEGUARD FOOD SECURITY

10. Special provision to safeguard food security.— (1) Save as otherwise provided in sub-section (2), no irrigated multi-cropped land shall be acquired under this Act.

(2) Such land may be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort, where the acquisition of the land referred to in sub-section (1) shall, in aggregate for all projects in a district or State, in no case exceed such limits as may be notified by the appropriate Government considering the relevant State specific factors and circumstances.

(3) Whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security.

(4) In a case not falling under sub-section (1), the acquisition of the agricultural land in aggregate for all projects in a district or State, shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the appropriate Government:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

CHAPTER IV

NOTIFICATION AND ACQUISITION

11. Publication of preliminary notification and power of officers.— (1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:—

- (a) in the Official Gazette;
- (b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;
- (d) uploaded on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.

(2) Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level, municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed

of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

(3) The notification issued under sub-section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under section 43.

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his willful violation of this provision shall not be made up by the Collector.

(5) After issuance of notice under sub-section (1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months.

12. Preliminary survey of land and power of officers to carry out survey.— For the purposes of enabling the appropriate Government to determine the extent of land to be acquired, it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

- (a) to enter upon and survey and take levels of any land in such locality;
- (b) to dig or bore into the sub-soil;
- (c) to do all other acts necessary to ascertain whether the land is adapted for such purpose;
- (d) to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; and
- (e) to mark such levels, boundaries and line by placing marks and cutting trenches and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no act under clauses (a) to (e) in respect of land shall be conducted in the absence of the owner of the land or in the absence of any person authorised in writing by the owner:

Provided further that the acts specified under the first proviso may be undertaken in the absence of the owner, if the owner has been afforded a reasonable opportunity to be present during the survey, by giving a notice of at least sixty days prior to such survey:

Provided also that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

13. Payment for damage.— The officer so authorised under section 12 shall at the time of entry under section 12 pay or tender payment for any damage caused, and, in case of dispute as to

the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

14. Lapse of Social Impact Assessment report.— Where a preliminary notification under section 11 is not issued within twelve months from the date of appraisal of the Social Impact Assessment report submitted by the Expert Group under section 7, then, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings under section 11:

Provided that the appropriate Government, shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

15. Hearing of objections.— (1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to—

- (a) the area and suitability of land proposed to be acquired;
- (b) justification offered for public purpose;
- (c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

16. Preparation of Rehabilitation and Resettlement Scheme by the Administrator.— (1) Upon the publication of the preliminary notification under sub-section (1) of section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner and within such time as may be prescribed, which shall include—

- (a) particulars of lands and immovable properties being acquired of each affected family;
- (b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;
- (c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;
- (d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and
- (e) details of any common property resources being acquired.

(2) The Administrator shall, based on the survey and census under sub-section (1), prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved—

- (i) a list of Government buildings to be provided in the Resettlement Area;
- (ii) details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.

(3) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall include time limit for implementing Rehabilitation and Resettlement Scheme.

(4) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

(5) A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area:

Provided that in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than twenty-five per cent. of land belonging to that Gram Sabha or Municipality is being acquired:

Provided further that the consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).

(6) The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.

17. Review of the Rehabilitation and Resettlement Scheme.— (1) The Collector shall review the draft Scheme submitted under sub-section (6) of section 16 by the Administrator with the Rehabilitation and Resettlement Committee at the project level constituted under section 45.

(2) The Collector shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme.

18. Approved Rehabilitation and Resettlement Scheme to be made public.— The Commissioner shall cause the approved Rehabilitation and Resettlement Scheme to be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government.

19. Publication of declaration and summary of Rehabilitation and Resettlement.— (1) When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a

Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).

(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):

Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:

Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land:

Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.

(3) In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.

(4) Every declaration referred to in sub-section (1) shall be published in the following manner, namely:—

- (a) in the Official Gazette;
- (b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;
- (d) uploaded on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.

(5) Every declaration referred to in sub-section (1) shall indicate,—

- (a) the district or other territorial division in which the land is situated;
- (b) the purpose for which it is needed, its approximate area; and
- (c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

20. Land to be marked out, measured and planned including marking of specific areas.— The Collector shall thereupon cause the land, unless it has been already marked out under section 12, to be marked out and measured, and if no plan has been made thereof, a plan to be made of the same.

21. Notice to persons interested.— (1) The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

(2) The public notice referred to in sub-section (1) shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

(3) The Collector may in any case require such statement referred to in sub-section (2) to be made in writing and signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated.

(5) In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website.

22. Power to require and enforce the making of statements as to names and interests.— (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being less than thirty days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code (45 of 1860).

23. Enquiry and land acquisition award by Collector.— On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section

21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—

- (a) the true area of the land;
- (b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land; and
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.— (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

25. Period within which an award shall be made.— The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

26. Determination of market value of land by Collector.— (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

- (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
- (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

- (a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or
- (b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or
- (c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

27. Determination of amount of compensation.— The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

28. Parameters to be considered by Collector in determination of award.— In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29. Determination of value of things attached to land or building.— (1) The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

30. Award of solatium.— (1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a “Solatium” amount equivalent to one hundred percent of the compensation amount.

Explanation.—For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

CHAPTER V

REHABILITATION AND RESETTLEMENT AWARD

31. Rehabilitation and Resettlement Award for affected families by Collector.— (1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

- (2) The Rehabilitation and Resettlement Award shall include all of the following, namely:—
- (a) rehabilitation and resettlement amount payable to the family;
 - (b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;
 - (c) particulars of house site and house to be allotted, in case of displaced families;
 - (d) particulars of land allotted to the displaced families;
 - (e) particulars of one time subsistence allowance and transportation allowance in case of displaced families;
 - (f) particulars of payment for cattle shed and petty shops;
 - (g) particulars of one-time amount to artisans and small traders;
 - (h) details of mandatory employment to be provided to the members of the affected families;
 - (i) particulars of any fishing rights that may be involved;
 - (j) particulars of annuity and other entitlements to be provided;
 - (k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided:

Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as “not applicable”:

Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.

32. Provision of infrastructural amenities in resettlement area.— In every resettlement area as defined under this Act, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule.

33. Corrections to awards by Collector.— (1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

34. Adjournment of enquiry.— The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

35. Power to summon and enforce attendance of witnesses and production of documents.— For the purpose of enquiries under this Act, the Collector shall have powers to summon and enforce the attendance of witnesses, including the parties interested of any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).

36. Power to call for records, etc.— The appropriate Government may at any time before the award is made by the Collector under section 30 call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

37. Awards of Collector when to be final.— (1) The Awards shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his awards to such of the persons interested who are not present personally or through their representatives when the awards are made.

(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose.

38. Power to take possession of land to be acquired.— (1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30:

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

39. Additional compensation in case of multiple displacements.— The Collector shall, as far as possible, not displace any family which has already been displaced by the appropriate Government for the purpose of acquisition under the provisions of this Act, and if so displaced, shall pay an additional compensation equivalent to that of the compensation determined under this Act for the second or successive displacements.

40. Special powers in case of urgency to acquire land in certain cases.— (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply,

and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11.

(5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section:

Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States.

41. Special provisions for Scheduled Castes and Scheduled Tribes.— (1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.

(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.

(3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:

Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

(4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

(5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

(6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first installment and the rest shall be paid after taking over of the possession of the land.

(7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.

(9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void,

and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.

(10) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five percent rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a onetime entitlement of fifty thousand rupees.

42. Reservation and other benefits.— (1) All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area.

(2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, then, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlement area is a Scheduled Area referred to in the said Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not.

(3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

CHAPTER VI

PROCEDURE AND MANNER OF REHABILITATION AND RESETTLEMENT

43. Appointment of Administrator.— (1) Where the appropriate Government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land, then, the State Government shall, by notification, appoint in respect of that project, an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector or equivalent official of Revenue Department to be the Administrator for Rehabilitation and Resettlement.

(2) The Administrator shall, with a view to enable him to function efficiently and to meet the special time-frame, be provided with such powers, duties and responsibilities as may be prescribed by the appropriate Government and provided with office infrastructure and be assisted by such officers and employees who shall be subordinate to him as the appropriate Government may decide.

(3) Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator.

44. Commissioner for rehabilitation and resettlement.— (1) The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families under this Act, to be called the Commissioner for Rehabilitation and Resettlement.

(2) The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans.

(3) The Commissioner shall be responsible for the post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas.

45. Rehabilitation and resettlement committee at project level.— (1) Where land proposed to be acquired is equal to or more than one hundred acres, the appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the Gram Sabha in rural areas and municipality in urban areas.

(2) The Rehabilitation and Resettlement Committee shall include, apart from officers of the appropriate Government, the following members, namely:—

- (a) a representative of women residing in the affected area;
- (b) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;
- (c) a representative of a voluntary organisation working in the area;
- (d) a representative of a nationalised bank;
- (e) the Land Acquisition Officer of the project;
- (f) the Chairpersons of the panchayats or municipalities located in the affected area or their nominees;
- (g) the Chairperson of the District Planning Committee or his nominee;
- (h) the Member of Parliament and Member of the Legislative Assembly of the concerned area or their nominees;
- (i) a representative of the Requiring Body; and
- (j) Administrator for Rehabilitation and Resettlement as the Member-Convenor.

(3) The procedure regulating the discharge of the process given in this section and other matters connected thereto of the Rehabilitation and Resettlement Committee shall be such as may be prescribed by the appropriate Government.

46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons.— (1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more than such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and circumstances, for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of—

- (a) intent to purchase;
- (b) purpose for which such purchase is being made;
- (c) particulars of lands to be purchased.

(2) It shall be the duty of the Collector to refer the matter to the Commissioner for the satisfaction of all relevant provisions under this Act related to rehabilitation and resettlement.

(3) Based upon the Rehabilitation and Resettlement Scheme approved by the Commissioner as per the provisions of this Act, the Collector shall pass individual awards covering Rehabilitation and Resettlement entitlements as per the provisions of this Act.

(4) No land use change shall be permitted if rehabilitation and resettlement is not complied with in full.

(5) Any purchase of land by a person other than specified persons without complying with the provisions of Rehabilitation and Resettlement Scheme shall be void ab initio:

Provided that the appropriate Government may provide for rehabilitation and resettlement provisions on sale or purchase of land in its State and shall also fix the limits or ceiling for the said purpose.

(6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners.

Explanation.—For the purpose of this section, the expression—

- (a) “original land owner” refers to the owner of the land as on the 5th day of September, 2011;
- (b) “specified persons” includes any person other than—
 - (i) appropriate Government;
 - (ii) Government company;
 - (iii) association of persons or trust or society as registered under the Societies Registration Act, 1860 (21 of 1860), wholly or partially aided by the appropriate Government or controlled by the appropriate Government.

47. Quantification and deposit of rehabilitation and resettlement amount.— Where the Collector is of the view that the obligations of the Requiring Body with regard to rehabilitation and resettlement can be quantified into monetary amount, he shall allow the payment of such amount into an account in complete satisfaction of such obligations, which shall be administered by the Administrator appointed under section 43, under the supervision of the Collector.

CHAPTER VII

NATIONAL MONITORING COMMITTEE FOR REHABILITATION AND RESETTLEMENT

48. Establishment of National Monitoring Committee for rehabilitation and resettlement.— (1) The Central Government may, whenever necessary, for national or inter-State projects, constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.

(2) The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields.

(3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed.

(4) The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning.

49. Reporting requirements.— The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required.

50. Establishment of State Monitoring Committee for rehabilitation and resettlement.—

(1) The State Government shall constitute a State Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.

(2) The Committee may, besides having representatives of the concerned Ministries and Departments of the State Government, associate with it eminent experts from the relevant fields.

(3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed by the State.

(4) The State Government shall provide such officers and other employees to the Committee as may be necessary for its efficient functioning.

CHAPTER VIII

ESTABLISHMENT OF LAND ACQUISITION, REHABILITATION AND RESETTLEMENT AUTHORITY

51. Establishment of Land Acquisition, Rehabilitation and Resettlement Authority.—

(1) The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as “the Land Acquisition, Rehabilitation and Resettlement Authority” to exercise jurisdiction, powers and authority conferred on it by or under this Act.

(2) The appropriate Government shall also specify in the notification referred to in sub-section (1) the areas within which the Authority may exercise jurisdiction for entertaining and deciding the references made to it under section 64 or applications made by the applicant under second proviso to sub-section (1) of section 64.

52. Composition of Authority.— (1) The Authority shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the appropriate Government.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may authorise the Presiding Officer of one Authority to discharge also the functions of the Presiding Officer of another Authority.

53. Qualifications for appointment as Presiding Officer.— (1) A person shall not be qualified for appointment as the Presiding Officer of an Authority unless,—

- (a) he is or has been a District Judge; or
- (b) he is a qualified legal practitioner for not less than seven years.

(2) A Presiding Officer shall be appointed by the appropriate Government in consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established.

54. Terms of office of Presiding Officer.— The Presiding Officer of an Authority shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

55. Staff of Authority.— (1) The appropriate Government shall provide the Authority with a Registrar and such other officers and employees as that Government may think fit.

(2) The Registrar and other officers and employees of an Authority shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the Registrar and other officers and employees of an Authority shall be such as may be prescribed.

56. Salary and allowances and other terms and conditions of service of Presiding Officers.— The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Presiding Officer of an Authority, shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the said Presiding Officers shall be varied to their disadvantage after appointment.

57. Filling up of vacancies.— If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of an Authority then the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Authority from the stage at which the vacancy is filled.

58. Resignation and removal.— (1) The Presiding Officer of an Authority may, by notice in writing under his hand addressed to the appropriate Government, resign his office: Provided that the Presiding Officer shall, unless he is permitted by the appropriate Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(2) The Presiding Officer of an Authority shall not be removed from his office except by an order made by the appropriate Government on the ground of proven misbehaviour or incapacity after inquiry in the case of the Presiding Officer of an Authority made by a Judge of a High Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The appropriate Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

59. Orders constituting Authority to be final and not to invalidate its proceedings.— No order of the appropriate Government appointing any person as the Presiding Officer of an Authority shall be called in question in any manner, and no act or proceeding before an Authority shall be called in question in any manner on the ground merely of any defect in the constitution of an Authority.

60. Powers of Authority and procedure before it.— (1) The Authority shall, for the purposes of its functions under this Act, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) reviewing its decisions, directions and orders;
- (g) any other matter which may be prescribed.

(2) The Authority shall have original jurisdiction to adjudicate upon every reference made to it under section 64.

(3) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Authority shall have the power to regulate its own procedure.

(4) The Authority shall, after receiving reference under section 64 and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties, dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly.

(5) The Authority shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of such award.

61. Proceedings before Authority to be judicial proceedings.— All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

62. Members and officers of Authority to be public servants.— The Member and officers of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

63. Jurisdiction of civil courts barred.— No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

64. Reference to Authority.— (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made—

- (a) person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

65. Collector's statement to Authority.— (1) In making the reference, the Collector shall state for the information of the Authority, in writing under his hand—

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think interested in such land;
- (c) the amount awarded for damages and paid or tendered under section 13, and the amount of compensation awarded under the provisions of this Act;
- (d) the amount paid or deposited under any other provisions of this Act; and
- (e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) The statement under sub-section (1) shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the persons interested respectively.

66. Service of notice by Authority.— The Authority shall thereupon cause a notice specifying the day on which the Authority will proceed to determine the objection, and directing their appearance before the Authority on that day, to be served on the following persons, namely:—

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

67. Restriction on scope of proceedings.— The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interest of the persons affected by the objection.

68. Proceeding to be in public.— Every such proceeding shall take place in public, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

69. Determination of award by authority.— (1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement

entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.

(2) In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount.

70. Form of award.— (1) Every award under this Chapter shall be in writing signed by the Presiding Officer of the Authority, and shall specify the amount awarded under clause first of section 28, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of clause (2), and clause (9) of respectively, of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

71. Costs.— (1) Every such award shall also state the amount of costs incurred in the proceeding under this Chapter, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Authority concerned is of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

72. Collector may be directed to pay interest on excess compensation.— If the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct that the Collector shall pay interest on such excess at the rate of nine per cent. per annum from the date on which he took possession of the land to the date of payment of such excess into Authority:

Provided that the award of the Authority concerned may also direct that where such excess or any part thereof is paid to the Authority after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Authority before the date of such expiry.

73. Re-determination of amount of compensation on the basis of the award of the Authority.—(1) Where in an award under this Chapter, the Authority concerned allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 23, the persons interested in all the other land covered by the same preliminary notification under section 11, and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector, by written application to the Collector within

three months from the date of the award of the Authority concerned require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Authority:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority concerned.

74. Appeal to High Court.— (1) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Explanation.—For the purposes of this section, “High Court” means the High Court within the jurisdiction of which the land acquired or proposed to be acquired is situated.

CHAPTER IX

APPORTIONMENT OF COMPENSATION

75. Particulars of apportionment to be specified.— When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

76. Dispute as to apportionment.— When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.

CHAPTER X

PAYMENT

77. Payment of compensation or deposit of same in Authority.— (1) On making an award under section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).

(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

78. Investment of money deposited in respect of lands belonging to person incompetent to alienate.— (1) If any money is deposited in the Authority concerned under sub-section (2) of section 77 and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Authority concerned shall—

- (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held; or
- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Authority concerned shall think fit, and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—
 - (i) in the purchase of such other lands as aforesaid; or
 - (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of money deposited to which this section applies the Authority concerned shall order the costs of the following matters, including therein all reasonable charge and expenses incident thereon, to be paid by the Collector, namely:—

- (a) the costs of such investments as aforesaid;
- (b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of the Authority concerned of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

79. Investment of money deposited in other cases.— When any money shall have been deposited in the Authority concerned under this Act for any cause other than the causes mentioned in section 78, the Authority may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and paid in such manner as it may consider will give the parties interested therein the same benefit from it as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

80. Payment of interest.— When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent. per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

CHAPTER XI

TEMPORARY OCCUPATION OF LAND

81. Temporary occupation of waste or arable land, procedure when difference as to compensation exists.— (1) Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Authority.

82. Power to enter and take possession and compensation on restoration.— (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 64, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose.

83. Difference as to condition of land.— In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Authority concerned.

CHAPTER XII

OFFENCES AND PENALTIES

84. Punishment for false information, mala fide action, etc.— (1) If a person, in connection with a requirement or direction under this Act, provides any information that is false or

misleading, or produces any false document, he shall be liable to be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one lakh rupees, or with both.

(2) Any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be liable to be recovered by the appropriate Government in the manner as may be prescribed.

(3) Disciplinary proceedings may be drawn up by the disciplinary authority against a Government servant, who if proved to be guilty of a mala fide action in respect of any provision of this Act, shall be liable to such punishment including a fine as the disciplinary authority may decide.

85. Penalty for contravention of provisions of Act.— If any person contravenes any of the provisions relating to payment of compensation or rehabilitation and resettlement, every such person shall be liable to a punishment of six months which may extend to three years or with fine or with both.

86. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) "company" means anybody corporate and includes a firm or other association of individuals and a Requiring Body; and
- (b) "director", in relation to a firm, means a partner in the firm.

87. Offences by Government departments.— (1) Where an offence under this Act has been committed by any department of the Government, the head of the department, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any person liable to any punishment if such person proves that the offence was committed without his knowledge or that such person exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any

officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

88. Cognizance of offences by court.— No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence punishable under this Act.

89. Offences to be non-cognizable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence under this Act shall be deemed to be non-cognizable.

90. Offences to be cognizable only on complaint filed by certain persons.— No court shall take cognizance of any offence under this Act which is alleged to have been committed by a Requiring Body except on a complaint in writing made by the Collector or any other officer authorised by the appropriate Government or any member of the affected family.

CHAPTER XIII MISCELLANEOUS

91. Magistrate to enforce surrender.— If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of the land to the Collector.

92. Service of notice.— (1) Save as otherwise provided in section 66, the service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice, by the officer therein mentioned, and, in the case of any other notice, by order of the Collector.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult member of his family residing with him; and, if no such adult member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and also publish the same in at least two national daily newspapers and also on his website.

93. Completion of acquisition not compulsory, but compensation to be awarded when not completed.— (1) The appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the

person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

94. Acquisition of part of house or building.— (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Authority concerned and shall not be taken possession of such land until after the question has been determined.

(2) In deciding on such a reference made under the proviso to sub-section (1), the Authority concerned shall have regard to the question whether the land proposed to be taken, is reasonably required for the full and unimpaired use of the house, manufactory or building.

(3) If, in the case of any claim under this Act, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(4) In the case of any acquisition of land so required no fresh declaration or other proceedings under sections 11 to 19, (both inclusive) shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under section 23.

95. Acquisition of land at cost of a local authority or Requiring Body.— (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Requiring Body, the charges of land incidental to such acquisition shall be defrayed from or by such fund or Requiring Body.

(2) In any proceeding held before a Collector or Authority concerned in such cases the local authority or Requiring Body concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Requiring Body shall be entitled to demand a reference to the Authority concerned under section 64.

96. Exemption from income-tax, stamp duty and fees.— No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

97. Acceptance of certified copy as evidence.— In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908) including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

98. Notice in case of suits for anything done in pursuance of Act.— No suit or other proceeding shall be commenced against any person for anything done in pursuance of this Act,

without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amendments.

99. No change of purpose to be allowed.— No change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed:

Provided that if the land acquired is rendered unusable for the purpose for which it was acquired due to a fundamental change because of any unforeseen circumstances, then the appropriate Government may use such land for any other public purpose.

100. No change of ownership without permission to be allowed.— No change of ownership without specific permission from the appropriate Government shall be allowed.

101. Return of unutilised land.— When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation.—For the purpose of this section, “Land Bank” means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use.

102. Difference in price of land when transferred for higher consideration to be shared.— Whenever the ownership of any land acquired under this Act is transferred to any person for a consideration, without any development having taken place on such land, forty per cent. of the appreciated land value shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired within a period of five years from the date of acquisition:

Provided that benefit shall accrue only on the first sale or transfer that occurs after the conclusion of the acquisition proceedings.

103. Provisions to be in addition to existing laws.— The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.

104. Option of appropriate Government to lease.— Notwithstanding anything contained in this Act, the appropriate Government shall, wherever possible, be free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose referred to in sub-section (1) of section 2.

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.— (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases

of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

106. Power to amend Schedule.— (1) The Central Government may, by notification, amend or alter any of the Schedules to this Act, without in any way reducing the compensation or diluting the provisions of this Act relating to compensation or rehabilitation and resettlement.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

107. Power of State Legislatures to enact any law more beneficial to affected families.— Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.

108. Option to affected families to avail better compensation and rehabilitation and resettlement.— (1) Where a State law or a policy framed by the Government of a State provides for a higher compensation than calculated under this Act for the acquisition of land, the affected persons or his family or member of his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such State law or such policy of the State.

(2) Where a State law or a policy framed by the Government of a State offers more beneficial rehabilitation and resettlement provisions under that Act or policy than under this Act, the affected persons or his family or member of his family may at his option opt to avail such rehabilitation and resettlement provisions under such State law or such policy of the State instead of under this Act.

109. Power of appropriate Government to make rules.— (1) Subject to the other provisions of this Act, the appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters, namely:—

- (a) the process of obtaining the prior consent under the first proviso to sub-section (2) of section 2;

- (b) the limits of land in rural areas or urban areas under clause (a) of sub-section (3) of section 2;
- (c) the manner and the time limit for carrying out social impact assessment study under sub-section (1) of section 4;
- (d) the manner of preparing and publishing social impact assessment study reports under sub-section (1) of section 6;
- (e) the manner and time for conducting survey and undertaking census under sub-section (2) of section 16;
- (f) the manner of preparing draft Rehabilitation and Resettlement Scheme under sub-section (5) of section 16;
- (g) the manner of conducting public hearing under sub-section (5) of section 16;
- (h) the manner of depositing amount by the Requiring Body under second proviso to sub-section (2) of section 19;
- (i) the manner in which and the period within which any excess amount paid may be recovered under sub-section (3) of section 33;
- (j) the form in which the Development Plan shall be prepared under sub-section (2) of section 41;
- (k) the powers, duties and responsibilities of Administrator under sub-section (2) of section 43;
- (l) the procedure of Rehabilitation and Resettlement Committee under sub-section (3) of section 45;
- (m) the procedure to be followed by the Rehabilitation and Resettlement Committee and allowances to be paid to the experts under sub-section (3) of section 48;
- (n) the procedures to be followed by the State Monitoring Committee and the allowances payable to the experts under sub-section (3) of section 50;
- (o) the salaries and allowances and other conditions of service of the Registrar and other officers and employees of an Authority under sub-section (3) of section 55;
- (p) the salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer of an Authority under section 56;
- (q) any other matter under clause (g) of sub-section (1) of section 60;
- (r) the manner of recovery of the rehabilitation and resettlement benefits, availed of by making false claim or through fraudulent means, under sub-section (2) of section 84;
- (s) the manner of returning the unutilised land by reversion under section 101;
- (t) manner of publication wherever the provisions of this Act provide for;
- (u) any other matter which is required to be or may be specified under this Act.

110. Rules made by Central Government to be laid before Parliament.— Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

111. Rules made by State Government to be laid before State Legislature.— Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

112. Previous publication of rules made by Central and State Government.— The power to make rules by the Central or State Government under this Act shall be subject to the condition of the rules, being made after previous publication.

113. Power to remove difficulties.— (1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

114. Repeal and saving.— (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed. (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

THE FIRST SCHEDULE

[See section 30(2)]

COMPENSATION FOR LAND OWNERS

The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government.

Serial No.	Component of compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
1.	Market value of land	To be determined as provided under section 26.	
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.	
3.	Factor by which the market value is to be multiplied in the case of urban areas	1(One).	
4.	Value of assets attached to land or building	To be determined as provided under section 29.	
5.	Solatum	Equivalent to one hundred per cent. of the market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 for rural areas or serial number 3 for urban areas plus value of assets attached to land or building against serial number 4 under column (2).	
6.	Final award in rural areas	Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).	
7.	Final award in urban areas	Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 3 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).	
8.	Other component, if any, to be included		

NOTE.— The date on which values mentioned under column (2) are determined should be indicated under column (4) against each serial number.

THE SECOND SCHEDULE

[See sections 31(1), 38(1) and 105(3)]

ELEMENTS OF REHABILITATION AND RESETTLEMENT ENTITLEMENTS FOR ALL THE AFFECTED FAMILIES (BOTH LAND OWNERS AND THE FAMILIES WHOSE LIVELIHOOD IS PRIMARILY DEPENDENT ON LAND ACQUIRED) IN ADDITION TO THOSE PROVIDED IN THE FIRST SCHEDULE.

Serial No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/provision	Whether provided or not (if provided, details to be given)
(1)	(2)	(3)	(4)
1.	Provision of housing units in case of displacement	<p>(1) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sqmts in plinth area.</p> <p>(2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area:</p> <p>Provided that any such family in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than one lakh fifty thousand rupees:</p> <p>Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house:</p> <p>Provided also that no family affected by acquisition shall be given more than one house under the provisions of this Act.</p> <p>Explanation.—The houses in urban area may, if necessary, be provided in multi-storied building complexes.</p>	
2.	Land for Land	In the case of irrigation project, as far as possible and in lieu of compensation to be	

paid for land acquired, each affected family owning agricultural land in the affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired:

Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is lower.

3. Offer for Developed Land

In case the land is acquired for urbanisation purposes, twenty per cent. of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development:

Provided that in case the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.

4. Choice of Annuity or Employment

The appropriate Government shall ensure that the affected families are provided with the following options:

(a) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or

(b) onetime payment of five lakhs rupees per affected family; or

- (c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.
5. Subsistence grant for displaced families for a period of one year
Each affected family which is displaced from the land acquired shall be given a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award. In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees.

In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities.
 6. Transportation cost for displaced families
Each affected family which is displaced shall get a onetime financial assistance of fifty thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.
 7. Cattle shed/Petty shops cost
Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees for construction of cattle shed or petty shop as the case may be.
 8. One-time grant to artisan, small traders and certain others
Each affected family of an artisan, small trader or self-employed person or an affected family which owned nonagricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition, shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees.
 9. Fishing rights
In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate

- Government.
10. One-time Resettlement Allowance Each affected family shall be given a one-time "Resettlement Allowance" of fifty thousand rupees only.
11. Stamp duty and registration fee (1) The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body.
(2) The land for house allotted to the affected families shall be free from all encumbrances.
(3) The land or house allotted may be in the joint names of wife and husband of the affected family.
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THE THIRD SCHEDULE

[See sections 32, 38(1) and 105(3)]

PROVISION OF INFRASTRUCTURAL AMENITIES

For resettlement of populations, the following infrastructural facilities and basic minimum amenities are to be provided at the cost of the Requisitioning Authority to ensure that the resettled population in the new village or colony can secure for themselves a reasonable standard of community life and can attempt to minimise the trauma involved in displacement.

A reasonably habitable and planned settlement would have, as a minimum, the following facilities and resources, as appropriate:

Serial No.	Component of infrastructure amenities provided/ proposed to be provided by the acquirer of land	Details of infrastructure amenities provided by the acquirer of land
(1)	(2)	(3)
1.	Roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged.	
2.	Proper drainage as well as sanitation plans executed before physical resettlement.	
3.	One or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India.	
4.	Provision of drinking water for cattle.	
5.	Grazing land as per proportion acceptable in the State.	
6.	A reasonable number of Fair Price Shops.	
7.	Panchayat Ghars, as appropriate.	
8.	Village level Post Offices, as appropriate, with facilities for opening saving accounts.	
9.	Appropriate seed-cum-fertilizer storage facility if needed.	
10.	Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some Government scheme or special assistance.	
11.	All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/urban localities.	
12.	Burial or cremation ground, depending on the caste-communities at the site and their practices.	
13.	Facilities for sanitation, including individual toilet points.	
14.	Individual single electric connections (or connection through no conventional sources of energy like solar energy), for each household and for public lighting.	
15.	Anganwadi's providing child and mother supplemental	

- nutritional services.
16. School as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009);
 17. Sub-health centre within two kilometres range.
 18. Primary Health Centre as prescribed by the Government of India.
 19. Playground for children.
 20. One community centre for every hundred families.
 21. Places of worship and chowpal/tree platform for every fifty families for community assembly, of numbers and dimensions consonant with the affected area.
 22. Separate land must be earmarked for traditional tribal institutions.
 23. The forest dweller families must be provided, where possible, with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and, in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood.
 24. Appropriate security arrangements must be provided for the settlement, if needed.
 25. Veterinary service centre as per norms.

NOTE.— Details of each component of infrastructural amenities mentioned under column (2) against serial numbers 1 to 25 should be indicated by the acquirer of land under column (3).

THE FOURTH SCHEDULE**(See section 105)****LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION
AND RESETTLEMENT**

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
 2. The Atomic Energy Act, 1962 (33 of 1962).
 3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
 4. The Indian Tramways Act, 1886 (11 of 1886).
 5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).
 6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).
 7. The National Highways Act, 1956 (48 of 1956).
 8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).
 9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
 10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
 11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
 12. The Electricity Act, 2003 (36 of 2003).
 13. The Railways Act, 1989 (24 of 1989).
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[Authoritative English Text of this Department's notification No. Rev.B.A.(3)-3/2014, Dated 27-01-2015 as require under Article 348(3) of the Constitution of India.]

**THE HIMACHAL PRADESH RIGHT TO FAIR COMPENSATION AND
TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND
RESETTLEMENT (SOCIAL IMPACT ASSESSMENT AND CONSENT) RULES, 2015**

REVENUE DEPARTMENT

NOTIFICATION

Shimla-171002, the 27th January, 2015

No.Rev.B.A.(3)3 /2014.—In exercise of the powers conferred by section 109 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Governor, Himachal Pradesh proposes to make the Himachal Pradesh Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2015 and the same are hereby published for the information of general public as required under section 112 of the Act *ibid*;

Any interested person who has any objection(s)/ suggestion(s) with regard to the proposed rules, may send the same to the Principal Secretary (Revenue) to the Government of Himachal Pradesh, Shimla-171002, within a period of thirty days from the date of publication of these rules in the Official Gazette (e-Gazette) Himachal Pradesh;

The objection(s) /suggestion(s), if any, received within the period specified above shall be duly considered by the Government before finalising these rules, namely:—

Chapter I

GENERAL

1. Short title, extent and commencement.—(1) These rules may be called the Himachal Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2015.

(2) They extend to the whole of the State of Himachal Pradesh.

(3) They shall come into force on the date of their final publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,—

- (a) "Act" means the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013);
- (b) "form" means form appended to these rules;
- (c) "Gram Sabha" or "Sabha" means a Gram Sabha established under section 4 of the Himachal Pradesh Panchayati Raj Act, 1994;
- (d) "Social Impact Assessment" means an assessment made under sub-section (1) of section 4 of the Act;
- (e) "Social Impact Management Plan" means the plan prepared as part of Social Impact Assessment Process under sub-section (6) of section 4 of the Act;
- (f) "State Government" or "Government" means the Government of Himachal Pradesh; and
- (g) "section" means section of the Act.

(2) Words and expressions used and not defined in these rules but defined in the Act, shall have the meanings respectively assigned to them in the Act.

CHAPTER II

SOCIAL IMPACT ASSESSMENT

3. Social Impact Assessment Study. - (1) The State Government shall, for the purpose of the Act, issue a notification for carrying out Social Impact Assessment in accordance with Part-B of FORM-I of these rules regarding the commencement of Social Impact Assessment and the same shall be made available in both Hindi and English to the concerned Panchayat or Municipality or Municipal Corporation, as the case may be, and in the concerned offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil. A wide publicity will also be made in the affected area through publication in at least two daily news papers circulated in the area, and also by affixing the notification at conspicuous places within the affected areas. Besides this, the notification shall also be uploaded on the website of the State Government:

Provided that such notification shall be issued within thirty days after the deposit of the processing fee for carrying Social Impact Assessment by the Requiring Body, which shall be determined under sub-rule (1) of rule 5.

(2) The Social Impact Assessment shall be conducted in consultation with concerned Panchayat or Municipality or Municipal Corporation, as the case may be, at village level or ward level in the affected areas, for the purposes of section 4 of the Act, followed by a public hearing in the affected areas by giving adequate publicity about the date, time and venue for the public hearing to ascertain the views of the affected families which shall be recorded in writing.

(3) The Social Impact Assessment Report shall be submitted in FORM-II to the State Government within a period of six months from the date of its commencement and shall include the views of the affected families recorded in writing.

(4) The Social Impact Management Plan listing the ameliorative measures required to be undertaken for addressing the impact of the project under sub-section (6) of section 4 of the Act shall be submitted in FORM-III alongwith the Social Impact Assessment Report.

(5) The Social Impact Assessment report and the Social Impact Management Plan shall be made available in both Hindi and English to the concerned Panchayat or Municipality or Municipal Corporation, as the case may be, at village level or ward level in the affected areas and in the offices of the District Collector, the Sub-Divisional Magistrate, Tehsildars and shall also be uploaded on the website of the State Government.

4. Institutional support and facilitation for Social Impact Assessment.—The State Government shall identify or establish an independent organization which shall be responsible for ensuring that Social Impact Assessments are commissioned and conducted by such persons or bodies other than the Requiring Body as per the provisions of the Act.

- (2) The Social Impact Assessment Unit shall undertake the following tasks namely:—
- (a) build and continuously expand a Database of qualified Social Impact Assessment Resource Partners and Practitioners, which will serve as a network of individuals and institutions with the required skills and capacities to conduct Social Assessments for land acquisition, rehabilitation and resettlement.

- (b) respond immediately to State Government's request for a Social Impact Assessment to be conducted by preparing project-specific Terms of Reference;
- (c) conduct training and capacity building programmes for the Social Impact Assessment team and community surveyors and make available manuals, tools, comparative case study reports and other materials required for the analysis;
- (d) provide ongoing support and corrective action, as required during the Social Impact Assessment process;
- (e) ensure that the transaction based web-based workflow for Social Impact Assessments and Management Information System for Land Acquisition and Rehabilitation and Resettlement as specified in rule 13 is maintained and that all relevant documents are disclosed as per the provisions of the Act;
- (f) maintain, catalogue of all Social Impact Assessments and associated primary material; and
- (g) continuously review, evaluate and strengthen the quality of Social Impact Assessments and the capacities available to conduct them across the State.

5. Project-specific Terms of Reference and Processing Fee for the Social Impact Assessment.— (1) Where the State Government intends to acquire land, the proposal for such land acquisition shall be sent alongwith all the relevant documents to the Social Impact Assessment Unit, which shall—

- (a) prepare a detailed project-specific Terms of Reference for each proposal of land acquisition, listing all the activities that must be carried out by indicating the appropriate team size (and number of field teams) and profile of the team members, and stipulate the schedule and deadlines for key deliverables for the Social Impact Assessment as detailed in Part-A of FORM-I appended to these rules;
- (b) determine an estimated Social Impact Assessment fee based on the Terms of Reference with clear break-up of costs for each item or activity. The fee amount shall be based on the parameters defined by the State Government including area, type of project and number of affected families.

(2) Ten per cent of the Social Impact Assessment fee shall be allocated to Social Impact Assessment Unit as administrative expenses for preparing the Terms of Reference and estimated Social Impact Assessment fee report to submit the same to the State Government.

(3) The Requiring Body shall deposit the Social Impact Assessment fee in the Scheduled Bank account of the State Government for the purpose.

6. Selection of the Social Impact Assessment Team.— (1) The Social Impact Assessment Unit shall be responsible for selecting the Social Impact Assessment team for each project from the individuals and institutions registered or empanelled in the Database of qualified Social Impact Assessment Resource Partners and Practitioners.

(2) The Requiring Body shall not be involved in any way in the appointment of the Social Impact Assessment team being appointed to carry out the Social Impact Assessment.

(3) The size and selection criteria for the Social Impact Assessment team shall be as per the project-specific Terms of Reference developed by the Social Impact Assessment Unit.

(4) The Social Impact Assessment team may be constituted by appointing individuals or an organization with experience in conducting Social Impact Assessments or related field-based assessments and the team may include a combination of independent practitioners, qualified social

activists, academics, technical experts, who are not directly connected with the requiring body and at least one of them is a woman member.

(5) A team leader shall be appointed from amongst the Social Impact Assessment team to liaison with the Social Impact Assessment Unit throughout the assessment period.

(6) While selecting the Social Impact Assessment team, it is to be ensured that there is no conflict of interest involving the team members appointed to assess the concerned project.

(7) (i) If at any stage, it is found that any team member or any family member of the team member directly or indirectly receives any benefit from the Requiring Body or any other stakeholder in the project, the said member shall be disqualified.

(ii) All the members of Social Impact Assessment team shall give an undertaking that any team member or any family member of the team member directly or indirectly shall not receive any benefit from the Requiring Body or any other stakeholder in the project.

7. Process of conducting the Social Impact Assessment.— (1) The Social Impact Assessment team shall collect and analyze a range of quantitative and qualitative data, undertake detailed site visits, use participatory methods such as focused group discussions, participatory rural appraisal techniques and informant interviews in preparing the Social Impact Assessment report.

(2) All relevant project reports and feasibility studies shall be made available to the Social Impact Assessment team throughout the Social Impact Assessment process, as required. Any request for information from Social Impact Assessment team shall be met at the earliest but not exceeding ten days. The District Collector shall be responsible for providing the information requisitioned by the Social Impact Assessment team.

(3) A detailed assessment based on a thorough analysis of all relevant land records and data, field verification, review and comparison with similar projects shall be conducted by the Social Impact Assessment team. The assessment shall determine the following, namely:—

- (a) area of impact under the proposed project, including both the land to be acquired and areas that will be affected by environmental, social or other impacts of the project;
- (b) quantity and location of land proposed to be acquired for the project;
- (c) the land proposed for acquisition is the bare minimum required;
- (d) possible alternative sites for the project and their feasibility;
- (e) whether, the land proposed for acquisition in Scheduled Area is a demonstrable last resort;
- (f) land, if any, already purchased, alienated, leased or acquired, and the intended use for each plot of land required for the project;
- (g) the possibility of use of any public, unutilized land for the project and whether any of such land is under occupation;
- (h) nature of the land, present use and classification of land and if it is an agricultural land, the irrigation coverage for the said land and the cropping pattern;
- (i) the special provisions with respect to food security have been adhered to in the proposed land acquisition;
- (j) size of holdings, ownership patterns, land distribution, number of residential houses, and public and private infrastructure and assets; and
- (k) land prices and recent changes in ownership, transfer and use of lands over the last three years,

(4) Based on the land assessment, land records and field verification, the Social Impact Assessment shall provide an accurate estimate of the number of affected families and the number of displaced families among them and ensure that, as far as possible, the Social Impact Assessment team shall enumerate all affected families;

Provided that where enumeration is not possible, a representative sample shall be done by the Social Impact Assessment Unit.

(5) A socio-economic and cultural profile of the affected area must be prepared, based on available data and statistics, field visits and consultations as per FORM-II:

Provided that in projects where resettlement is required, the identified resettlement sites shall be visited and a brief socio-economic profile of the land and its current resident population shall be indicated.

(6) Basing on the data collected in processes listed above and in consultation with the affected communities and key stakeholders, the Social Impact Assessment shall identify and assess the nature, extent and intensity of the positive and negative social impacts associated with the proposed project and land acquisition as per FORM-II.

(7) (i) The Social Impact assessment process includes the preparation of a social Impact Management Plan, which will present the ameliorative measures to be undertaken to address the social impacts identified in the course of the assessment.

(ii) The Social Impact Assessment team must assess the viability of impact mitigation and management strategies with clear indication of costs, timelines and capacities.

(iii) The Social Impact Management Plan shall include the following measures:-

- (a) that have been specified in the terms of Rehabilitation and Resettlement and compensation for all the categories of affected families as outlined in the Act;
- (b) that the Requiring Body has stated that it will undertake in the project proposal and other relevant project documents; and
- (c) that additional measures being undertaken by the Requiring Body, which has been undertaken by it in response to the findings of the Social Impact Assessment process and public hearings.

(8) The Social Impact Assessment must provide a conclusive assessment of the balance and distribution of the adverse social impacts and social costs and benefits of the proposed project and land acquisition, including the mitigation measures, and provide an assessment as to whether the benefits from the proposed project exceed the social costs and adverse social impacts that are likely to be experienced by the affected families or even after the proposed mitigation measures, the affected families remained at risk of being economically or socially worse, as a result of the said land acquisition and resettlement.

8. Process for conducting public hearings.— (1) Public hearings shall be held in the affected areas to bring out the main findings of the Social Impact Assessment, seeking feedback on the findings and to seek additional information and views for incorporating the same in the final documents.

(2) Public hearings shall be conducted in all Gram Sabhas, wards of the Municipal Corporation or Municipalities where members of the local populace are directly or indirectly affected by the acquisition of the land.

(3) The date and venue of the public hearing must be announced and publicized three weeks in advance through public notifications and posters in all the villages within a radius of five kilometers of the land proposed to be acquired, advertisement in local newspapers, radio, and through direct communication with Gram Panchayat or Municipal Ward representatives and by uploading the information on the website of the State Government.

(4) (i) The draft Social Impact Assessment report and Social Impact Management Plan shall be published in both Hindi and English three weeks prior to the public hearing and distributed to all affected Gram Panchayats and Municipal offices. One copy of the draft report shall be made available in the District Collector's office.

(ii) The Requiring Body may also be served with a copy of the draft report. Adequate copies of the report and summaries shall be made available on the day of the public hearing. Accessible displays and other visual shall be used to share the findings of the Social Impact Assessment report.

(5) (i) A member of the Social Impact Assessment team shall facilitate the public hearing which shall be organised through the local administration with the designated government officers of appropriate level.

(ii) The Gram Panchayat or Municipal Ward representatives shall also be included in all the decisions regarding the arrangements for the public hearings in their respective areas.

(6) All the proceedings shall be held in the Hindi language with effective and credible translators to ensure that all the participants could understand and express their views.

(7) Representatives from the Requiring Body and designated land acquisition and Rehabilitation and Resettlement functionaries shall also attend the public hearing and address the questions and concerns raised by the affected parties.

(8) Public representatives, local voluntary Organisations and media shall also be invited to attend the public hearings.

(9) The proceedings of the public hearing shall be video recorded and transcribed accordingly. This recording and transcription shall be submitted along with the final Social Impact Assessment Report and Social Impact Management Plan.

(10) After the conclusion of the public hearings, the Social Impact Assessment team shall analyze the entire feedback received and information gathered in the public meetings and incorporate the same alongwith their analysis, in the revised Social Impact Assessment Report accordingly.

(11) Every objection raised in the public meeting shall be recorded and the Social Impact Assessment team shall ensure that the every objection shall be considered in the Social Impact Assessment Report.

9. Submission of Social Impact Assessment Report and Social Impact Management Plan.— The final Social Impact Assessment Report and Social Impact management Plan shall be prepared in the Hindi and English languages and shall be made available to the Gram Panchayat or

Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil and shall be propagated in the form of posters circulated in the affected areas by affixing the posters in conspicuous places and shall also be uploaded on the website of the State Government.

10. Social Impact Assessment Report and Social Impact Management Plan.- The Social Impact Assessment Report and Social Impact Management Plan shall be formulated keeping in view all the relevant information and analysis in a single document and reduced to writing that is clear, concise and accessible, in particular to the members of the affected communities.

11. Appraisal of Social Impact Assessment Report by an Expert Group.- (1) The Expert Group constituted under Sub-section (1) of Section 7 of the Act shall evaluate the Social Impact Assessment Report and shall make its recommendation to that effect within a period of two months from the date of its constitution.

(2) The recommendations of the Expert Group shall be made available in both Hindi and English languages to the concerned Gram Panchayat, Municipality or Municipal Corporation, at village level or ward level in the affected areas and in the Offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil and shall be published in the form of posters circulated in the affected areas and by affixing them in conspicuous places in the affected areas and shall be uploaded on the website of the State Government.

12. Consideration of the Social Impact Assessment Report, recommendations of the Expert Group etc.— (1) The State Government shall examine the Social Impact Assessment Report, the recommendations of the Expert Group, report of the Collector, if any, and recommend such area for acquisition which would ensure minimum adverse impact on the individuals affected.

(2) The recommendation of the State Government under sub-rule (1) shall be made available in the Hindi and English languages to the concerned Gram Panchayat, Municipality or Municipal Corporation at village level or ward level in the affected areas and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil and shall be propagated in the form of posters circulated in the affected areas and by affixing the posters in conspicuous places and shall also be uploaded on the website of the State Government.

13. Web-based Work Flow and Management Information System for Land Acquisition and Rehabilitation & Resettlement.—The State Government shall create a dedicated, user-friendly website that may serve as a public platform on which the entire work flow of each acquisition case will be hosted, beginning with the notification of the Social Impact Assessment and tracking each step of decision making, implementation and audit.

14. Additional Norms with regard to the Social Impact Assessment Process.—Parameters and a table of contents for the Social Impact Assessment Study and the Social Impact Management Plan are given in FORM-II.

15. Inventory of Waste, Barren Unutilized Land.—To ensure acquisition of minimum amount of land and to facilitate the utilization of unutilized public lands, the State Government shall prepare a district level inventory report of waste, barren and unutilized public land, and land available in the Government land bank and shall be made available to the Social Impact Assessment team and Expert group. The inventory report shall be updated from time to time.

Chapter III

CONSENT

16. Consent Requirement.— (1) The State Government, though the concerned District Collector shall obtain prior consent of the affected land owners in PART-A of FORM-IV along with the Social Impact Assessment study.

(2) The exercise of obtaining the consent shall be undertaken by the State Government, through the concerned District Collector, who may appoint officers under his control to assist him in the process of obtaining the prior consent.

(3) The State Government shall take necessary steps for updating the records relating to land rights, title in the land and other revenue records in the affected areas, so that the names of land owners, occupants of the land and individuals be identified for initiating the prior consent process and land acquisition.

17. Consent of the Gram Sabha, Municipal Corporation and Municipalities.— (1) The District Collector shall in consultation with the representatives of the Gram Panchayat or Municipal Corporations or Municipalities, as the case may be, notify the date, timing and venue for holding the meeting of Gram Sabha Municipal Corporation or Municipality, as the case may be, in the affected areas three weeks in advance and conduct public awareness campaigns to motivate members of the Gram Sabhas, Municipal Corporation or Municipalities as the case may be to participate in the said meeting.

(2) The names and signatures of all the members who attended the meeting shall be taken and kept in the records.

(3) The quorum shall be the same as prescribed in the Himachal Pradesh Panchayati Raj Act, 1994 (Act No. 4 of 1994), the Himachal Pradesh Municipal Corporation Act, 1994 (Act No. 12 of 1994) or the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) as the case may be, of the total members of the Gram Sabha for considering the consent as valid.

(4) Printed copies with the proposed terms and conditions for compensation, rehabilitation and resettlement shall be made available in both Hindi and English languages at least three weeks prior to the meeting.

(5) (i) For public private partnership projects and projects by private companies, representatives of the Requiring Body, who are competent to take decision and negotiate terms of Rehabilitation and Resettlement and compensation shall be present at all such meetings and respond to the queries raised by the members.

(ii) The terms and conditions, Rehabilitation and Resettlement, compensation committed by the Requiring Body shall be explained to the members attending the meeting in both Hindi and English languages and their signatures as well as that of representative of Requiring Body shall be obtained on such terms and conditions.

(6) (i) After deliberations, the resolution shall be passed with majority in PART-B of FOPRM-IV giving or withholding consent for the proposed acquisition and the resolution shall contain the negotiated terms and conditions for Rehabilitation and Resettlement, compensation, impact management and mitigation that the Requiring Body has committed and which have been signed by the District Collector or designated district officer and the representative of the Requiring Body.

(ii) The resolution once received shall be counter signed by the Distt. Collector or a designated district officer and a signed copy shall be handed over to all the representatives.

(7) Any resolution that does not explicitly contain a statement of consent to the project, a statement of the negotiated terms of compensation and Rehabilitation and Resettlement shall be invalid.

(8) All the proceedings of the Gram Sabha, Municipal Corporation or Municipality as the case may be, shall be video recorded, documented in writing and shall be made available in the respective Panchayat offices and uploaded on the website of the State Government.

(9) Members of the Social Impact Assessment team shall be present to assist in the said meetings.

18. Consent of the Affected Land owners.— (1) (i) In Public Private Partnership projects and projects by private companies, a list of all affected land owners from whom consent is required to be obtained shall be drawn up by district offices in consultation with the Social Impact Assessment team.

(ii) The list shall be made available in the affected area, in the form of posters and handouts and by displaying the list in conspicuous places of the affected areas for at least ten days before obtaining consent.

(2) In case of any objection, the views of the objector shall also be taken, and the reasons for doing so shall be recorded in writing and conveyed to the concerned person within ten days.

(3) The District Collector shall in consultation with the representatives of Gram Panchayat, Municipality or Municipal Corporation, as the case may be, notify the date, time and venue at least three weeks in advance, for holding the affected land owners meetings at the village or ward level.

(4) The proposed terms and conditions agreed to by the Requiring Body shall also be made available in both Hindi and English languages at least three weeks in advance of the meeting of the affected land owners to each and every affected land owner.

(5) (i) For public private partnership projects and projects by private companies, representatives of the Requiring Body, who are competent to take decision and negotiate terms of Rehabilitation and Resettlement and compensation shall be present at all such affected land owners meetings and respond to the queries raised by the affected land owners.

(ii) The terms and conditions, Rehabilitation and Resettlement, compensation committed by the Requiring Body shall be explained to the members in Hindi and the signatures of the members as well as the representative of Requiring Body shall be obtained on such terms and conditions.

(6) (i) At the conclusion of the meeting, each individual land owner shall be asked to indicate in the signed declaration whether he or she gives or withholds consent for the acquisition of land involved.

(ii) A copy of this declaration with the attached terms and conditions shall be given to the land holder concerned. The declaration shall be countersigned by the District Collector or district officers on its receipt.

(7) (i) Arrangements shall be made for those who could not attend the land owners meeting for enabling them to submit their signed declarations to the designated district officer within twenty one days from the date of land owners meeting.

(ii) The declaration Form shall be counter-signed by the District Collector or designated officer on its receipt and a copy of the declaration, with the attached terms and conditions shall be handed over to the affected land owner.

(8) Consent procedure shall be determined on the basis of the signed or thumb impression, written declarations of land owners.

(9) (i) All proceedings of taking affected land owner's consent during land owners meetings shall be recorded in video and all the proceedings must be documented in writing.

(ii) The outcome of the consent process shall be made available in the office of Gram Panchayat or Municipality or Municipal Corporation as the case may be and on the web site of the State Government.

(10) Members of the Social Impact Assessment team shall be present to assist the affected land owners meeting.

19. Roles and Responsibilities of the State Government for consent processes.— (1) The State Government shall notify and publish the date, time and venue of the meeting of Gram Sabha or Municipality or Municipal Corporation, as the case may be, and affected land owners meetings for obtaining the consent and organise public awareness campaigns to encourage participation of the affected land owners in the consent processes.

(2) The State Government shall ensure that the following are provided at least three weeks in advance to every member from whom consent is sought, in both Hindi and English languages, namely:—

- (a) a copy of the draft Social Impact Assessment report (if readily available).
- (b) initial package being offered for compensation and Rehabilitation and Resettlement:
- (c) a list of the rights currently enjoyed by the village and its residents under revenue laws, Forest Rights Act and other legislations;
- (d) a written statement signed by the District Collector, certifying that there will be no consequences, if consent is denied for a project and stating that any attempt to coerce or intimidate in order to obtain consent shall be illegal; and
- (e) contact details of the officer or authority alongwith telephone number to be contacted in case of any attempt to coerce for signing the declaration of consent process.

(3) The District Collector or any official appointed by the District Collector shall attend the meeting of the Gram Sabha or the Municipality or Municipal Corporation, as the case may be, and land owners meetings.

(4) The State Government shall ensure that all the documents relating to Social Impact Assessment are made available to the affected land owners and all requests for information are provided within seven days.

20. Roles and Responsibilities of the Requiring Body for consent processes.— (1) The Requiring Body shall appoint representatives competent to take decisions and negotiate terms and condition of compensation and Rehabilitation and Resettlement, who shall be present in the

meetings of affected land owners for obtaining the consent and reply to the queries raised by the land owners.

(2) The Requiring Body shall provide all the information on the project, prior to the taking of consent as well as any additional information, if required.

FORM-I

Part-A. Terms of Reference and Processing Fee for the Social Impact Assessment

[See sub-rule (1) of rule 5]

(i) The Social Impact Assessment Unit will review the proposal for land acquisition sent by the State Government and produce a project-specific Terms of Reference and budget. Based on the Terms of reference and budget, a processing fee will be determined, which must be deposited by the Requiring Body before the notification of the Social Impact Assessment can be issued.

(ii) The Terms of Reference shall include the following information:—

- (a) A brief description of the project, project area and the extent of lands proposed for acquisition.
- (b) The objectives of the Social Impact Assessment and all the activities that must be carried out by the Social Impact Assessment team.
- (c) Sequencing, schedule and deadlines for deliverables with dates for the Social Impact Assessment process, based on the size and complexity of the project and land acquisition, and whether consent of Gram Sabha or the Municipality or Municipal Corporation, as the case may be, and/or land owners is required to be sought.
- (d) The appropriate size and profile of the Social Impact Assessment team required (including field surveyors if needed) to conduct the Social Impact Assessment for the specific project.
- (e) A project-specific budget based on the Terms of Reference, with a clear break-up of costs for each item or activity.
- (f) The schedule for the disbursement of funds to the Social Impact Assessment team tied to clearly defined deliverables in the Social Impact Assessment process.

(iii) The processing fee will be determined based on the terms of Reference and budget developed for each specific project and will be based on the type, size, location and sensitivity of the project and the land proposed for acquisition. Information regarding the processing fee bands and the cost for separate components or line items must be made consistent and easily accessible, so that the Requiring Body can factor this into its costs in advance. These rates must be reviewed and revised from time to time. A fixed proportion of the fee will go towards meeting the costs of the Social Impact Assessment Unit.

Part-B. Notification of the Social Impact Assessment

[See sub-rule (1) of rule 3]

The notification of the Social Impact Assessment must include:—

- (a) Name of project developer, a brief description of the proposed project and the extent of the lands proposed for acquisition, the project area and the affected areas to be covered by the Social Impact Assessment.
- (b) The main objectives of the Social Impact Assessment and key activities including (i) consultations (ii) survey (iii) public hearings.
- (c) If consent of Gram Sabha or the Municipality or the Municipal Corporation, as the case may be, and/or land owners are required, the notification must state this.
- (d) The timeline for the Social Impact Assessment and the final deliverables (Social Impact Assessment Report and Social Impact Management Plan) alongwith the manner of their disclosure must be specified.
- (e) Statement that any attempt at coercion or threat during this period will render the exercise null and void.
- (f) Contact information of the Social Impact Assessment Unit.

FORM-II**Social Impact Assessment Report**

[See sub-rule (3) of rule 3, sub-rule (5) & (6) of rule 7 and rule 14]

A. List of socio-economic and cultural parameters to be covered by the Social Impact Assessment

1. Demographic details of the population in the project area

- (a) Age, sex, caste, religion
- (b) Literacy, health and nutritional status

2. Poverty levels

3. Vulnerable groups

- (a) Women,
- (b) children,
- (c) the elderly,
- (d) women-headed households,
- (e) the differently abled.

4. Kinship patterns and women's role in the family.

5. Social and cultural organization.

6. Administrative organization.

7. Political organization.

8. Civil society organisations and social movements.

9. Land use and livelihood

- (a) Agricultural and non-agricultural use
- (b) Quality of land – soil, water, trees etc.
- (c) Livestock
- (d) Formal and informal work and employment.
- (e) Household division of labour and women's work
- (f) Migration
- (g) Household income levels
- (h) livelihood preferences
- (i) Food security

10. Local economic activities

- (a) Formal and informal, local industries

- (b) Access to credit
- (c) Wage rates
- (d) Specific livelihood activities women are involved in

11. Factors that contribute to local livelihoods

- (a) Access to natural resources
- (b) Common property resources
- (c) Private assets
- (d) Roads, transportation
- (e) Irrigation facilities
- (f) Access to markets
- (g) Tourist sites
- (h) Livelihood promotion programmes
- (i) Co-operatives and other livelihood-related associations

12. Quality of the living environment

- (a) Perceptions, aesthetic qualities, attachments and aspirations
- (b) Settlement patterns
- (c) Houses
- (d) community and civic spaces
- (e) Sites of religious and cultural meaning
- (f) Physical infrastructure (including water supply sewage systems etc.)
- (g) Public service infrastructure (schools, health facilities, anganwadi centres, public distribution system)
- (h) Safety, crime, violence
- (i) Social gathering points for women.

B. Key impact areas

1. Impacts on land, livelihoods and income

- (a) Level and type of employment
- (b) Intra-household employment patterns
- (c) Income levels
- (d) Food Security
- (e) Standard of living
- (f) Access and control over productive resources

- (g) Economic dependency, or vulnerability
 - (h) Disruption of local economy
 - (i) Impoverishment risks
 - (j) Women's access to livelihood alternatives
2. Impact on physical resources
 - (a) Impacts on natural resources, soil, air, water, forests
 - (b) Pressure on land and common property natural resources for livelihoods
 3. Impacts on private assets, public services and utilities
 - (a) Capacity of existing health and education facilities
 - (b) Capacity of housing facilities
 - (c) Pressure on supply of local services.
 - (d) Adequacy of electrical and water supply, roads, sanitation and waste management system
 - (e) Impact on private assets such as bore wells, temporary sheds etc.
 4. Health impacts
 - (a) Health impacts due to in-migration
 - (b) Health impacts due to project activities with a special emphasis on:-
 - (i) Impact on women's health
 - (ii) Impact on the elderly
 5. Impacts on culture and social cohesion
 - (a) Transformation of local political structures
 - (b) Demographic changes
 - (c) Shifts in the economy-ecology balance
 - (d) Impacts on the norms, beliefs, values and cultural life
 - (e) Crime and illicit activities
 - (f) Stress of dislocation
 - (g) Impact of separation of family cohesion
 - (h) Violence against women
 6. Impact at different stages of the project cycle

The type, timing, duration and intensity of social impacts will depend on and relate closely to the stages of the project cycle. Below is an indicative list of impacts

- (a) Pre-construction phase

- (i) Interruption in the delivery of services
 - (ii) Drop in productive investment
 - (iii) Land speculation
 - (iv) Stress of uncertainty
- (b) Construction phase
- (i) Displacement and relocation
 - (ii) Influx of migrant construction workforce
 - (iii) Health impacts on those who continue to live close to the construction site
- (c) Operation phase
- (i) Reduction in employment opportunities compared to the construction phase
 - (ii) Economic benefits of the project
 - (iii) Benefits on new infrastructure
 - (iv) New patterns of social organisation
- (d) De-commissioning phase
- (i) Loss of economic opportunities
 - (ii) Environmental degradation and its impact on livelihoods
- (e) Direct and indirect impacts
- (i) “Direct impacts” will include all impacts that are likely to be experienced by the affected families (i.e. Direct land and livelihood losers)
 - (ii) “Indirect impacts” will include all impacts that may be experienced by those not directly affected by the acquisition of land but those living in the project area
- (f) Differential impacts
- (i) Impact on women, children, the elderly and the different abled
 - (ii) Impacts identified through tools such as Gender Impact Assessment Checklists, and Vulnerability and Resilience Mapping
- (g) Cumulative impacts
- (i) Measureable and potential impacts of other projects in the area along with the identified impacts for the project in question
 - (ii) Impact on those not directly in the project area but based locally or even regionally.

C. Table of Contents for Social Impact Assessment Report and Social Impact Management Plan.

Chapter	Content
Executive Summary	<ul style="list-style-type: none"> (a) Project and public purpose (b) Location (c) Size and attribute of land acquisition (d) Alternatives considered (e) Social Impacts (f) Mitigation measures (g) assessment of social costs and benefits.
Detailed Project Description	<ul style="list-style-type: none"> (a) Background of the project, including developers background and governance or management structure. (b) Rationale for project including how the project fits the public purpose criteria listed in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (c) Details of project size, location, capacity, outputs, production targets, cost, risks. (d) Examination of alternatives (e) Phases of project construction (f) Core design features and size and type of facilities (g) Need for ancillary infrastructural facilities. (h) Work force requirements (temporary and permanent) (i) Details of Social Impact Assessment or Environmental Impact Assessment if already conducted and any technical feasibility reports (j) Applicable legislations and policies
Team composition, approach, methodology and Schedule of the Social Impact Assessment.	<ul style="list-style-type: none"> (a) List of all team members with qualifications, Gender experts to be included in team. (b) Description and rationale for the methodology and tools used to collect information for the Social Impact Assessment. (c) Sampling methodology used. (d) Overview of information or data sources used. Detailed reference must be included separately in the forms. (e) Schedule of consultations with key stakeholders and brief description of public hearings conducted. Details of the public hearings and the specific feedback incorporated into the Report must be included in the forms.
Land Assessment.	<ul style="list-style-type: none"> (a) Information from land inventories and primary sources- Describe with the help of the maps. (b) Entire area of impact under the influence of the project (not limited to land area for acquisition) (c) Total land requirement for the project (d) Present use of any public, unutilized land in the vicinity of the project area (e) Land (if any) already purchased, alienated, leased or acquired, and the intended use for each plot of land required for the project

	<ul style="list-style-type: none"> (f) Quantity and location of land proposed to be acquired for the project (g) Nature, present use and classification of land and if agricultural land, irrigation coverage and cropping patterns (h) Size of holdings, ownership patterns, land distribution, and number of residential houses (i) Land prices and recent changes in ownership, transfer and use of lands over the last 3 years
Estimation and enumeration (where required) of affected families and assets	<p>Estimation of the following types of families that are—</p> <ul style="list-style-type: none"> (a) Directly affected (own land that is proposed to be acquired): <ul style="list-style-type: none"> (i) Are tenants or occupy the land proposed to be acquired (ii) The Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights (iii) Depend on common property resources which will be affected due to acquisition of land for their livelihood (iv) Have been assigned land by the State Government under any of its schemes and such land is under acquisition; (v) Have been residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land (vi) Have depended on the land being acquired as a primary source of livelihood for three years prior to the acquisition (b) Indirectly impacted by the project (not affected directly by the acquisition of own lands) (c) Inventory of productive assets and significant lands
Socio-economic and cultural profile (affected area and resettlement site)	<ul style="list-style-type: none"> (a) Demographic details of the population in the project area (b) Income and poverty levels (c) Vulnerable groups (d) Land use and livelihood (e) Local economic activities (f) Factors that contribute to local livelihoods (g) Kinship patterns and social and cultural organisation (h) Administrative organisation (i) Political organisation (j) Community-based and civil society organizations (k) Regional dynamics and historical change processes (l) Quality of the living environment
Social impacts	<ul style="list-style-type: none"> (a) Framework and approach to identifying impacts (b) Description of impacts at various stages of the project cycle such as impacts on health and livelihoods and culture. For each type of impact, separate indication of whether it is a directly or indirect impact, differential impacts on different categories of affected families and where applicable cumulative impacts. (c) Indicative list of impacts areas include: impacts on land, livelihoods and income, physical resources, private assets, public services and utilities, health, culture and social cohesion and gender based impacts.

Analysis of costs and benefits and recommendations on acquisition	(a) Final conclusions on: assessment of public purpose, less-displacing alternatives, minimum requirements of land, the nature and intensity of social impacts, the viability of the mitigation measures and the extent to which mitigation measures described in the Social Impact Management Plan will address the full range of social impacts and adverse social costs. (b) The above analysis will use the equity principle described in Rule 9(10) as a criteria of analysis for presenting a final recommendation on whether the acquisition should go through or not
References and Forms	For reference and further information

FORM-III

(See sub-rule (4) of rule 3)

Social Impact Management Plan

1. Approach to mitigation
2. Measures to avoid, mitigate and compensate impact
3. Measures that are included in the terms of Rehabilitation & Resettlement and compensation as outlined in the Act.
4. Measures that the Requiring Body has stated it will introduce in the Project Proposal.
5. Additional measures that the Requiring Body has stated it will undertake in response to the findings of the Social Impact Assessment process and public hearings.
6. The Social Impact management Plan must include a description of institutional structures and key person responsible for each mitigation measure and timelines and costs for each activity.

FORM-IV

PART-A. PRIOR WRITTEN CONSENT/DECLARATION FORM

[See sub-rule(1) of rule 16]

Sr. No.	Detail of Person Concerned	
1.	Name of the person(s) as per section 3(c) (i) & (v) of the Act:	
2.	Name of spouse:	
3.	Name of father/mother	
4.	Address:	
5.	Village/Basti:	
6.	Gram Panchayat/Municipality/ Township	

7.	Tehsil:		
8.	District:		
9.	Name of other members in the family with age: (including children and adult dependents)		
10.	Extent of land owned:		
11.	Area for the acquisition:		
12.	Plot No.		
13.	Record of Rights		
14.	Disputed lands if any]		
15.	Pattas/lease/grants, if any		
16.	Any other right, including tenancy, if any:		
17.	Regarding the acquisition of my land by the government, I wish to state the following (please circle)		
	(i) I have read/readout the contents of this consent form and explained to me in Hindi language and	Yes	No
	(ii) I do not agree to this acquisition	Yes	No
	(iii) I agree to this acquisition	Yes	No
	Signature or Thumb impression of The affected family (s) and date		
18.	The terms and conditions, Rehabilitation and Resettlement, compensation and other measures committed by the Requiring Body have been explained in both Hindi and English languages. These terms and conditions must be attached to the Form.		
	Date and Signature of designated District official receiving the signed form		
19.	It is a crime under law to threaten any person or to cause them any harm if they refuse to consent or if they choose to state that they do not consent on this form. This includes any threat or act that causes them to lose money, that hurts them physically or that results in harm to their family. If any such threat has been made this form is null and void.		

PART-B. FORMAT FOR GRAM SABHA RESOLUTION

[See sub-rule (6) of rule 17]

we, the undersigned members of the Gram Sabha of _____ within _____ Panchayat of _____ tehsil in _____ district wishes to state that the following certification is based on the information supplied by the administration and officials. If this information is incomplete or incorrect or if any consent has been obtained through any use of threats, fraud or misrepresentation,

it is null and void. On this basis, this Gram Sabha hereby certifies that it CONSENTS/REFUSES TO CONSENT to the proposed ----- project, which will involve:

- acquisition of ----- (unit) of private land.
- transfer of ----- (unit) of government land to the project.
- transfer of ----- (unit) of forest land to the project.

The terms and conditions of compensation, rehabilitation and resettlements benefits and social impact mitigation measures agreed to by the Requiring Body (state the name) are attached.

The Gram Sabha also states that any consent it subject to all of its residents receiving title to all of their individual and community rights over forests and forest lands, including their titles for forest land that they have been cultivating, ownership titles for all forms of minor forest produce that they use, and titles to protect and manage their community forests. [Note: This will have to be certified by this Gram Sabha separately.]

Date and signatures/thumb impressions of Gram
Sabha members.

Date and signature of designated district officer on
receipt of the Resolution.

By order,
TARUN SHRIDHAR,
Addl. Chief Secretary(Rev.).

[Authoritative English text of this Department Notification No. Rev. B.A. (3)4 2016 dated 19.04.2017 as required under article 348(3) of the Constitution of India].

REVENUE DEPARTMENT

NOTIFICATION

Shimla-171002, the 19th April, 2017

No. Rev. B.A.(3) 4/2016.—Whereas, the draft rules, namely the Himachal Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2016 were notified vide Notification of even number dated 23 January, 2017 and published in the Rajpatra (e-Gazette), Himachal Pradesh on dated 28th February, 2017 as required under section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) for inviting objection(s) from the persons likely to be effected thereby within a period of 30 days from the date of said publication:

And whereas, the objections/suggestions received from the effected persons on the said draft rules have been considered by the State Government;

Now, therefore, in exercise of the powers conferred by the section 109 read with section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013), the Governor, Himachal Pradesh is pleased to make the following rules, namely;

THE HIMACHAL PRADESH RIGHT TO FAIR COMPENSATION AND TRANSPARENCY LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (COMPENSATION REHABILITATION AND RESETTLEMENT AND DEVELOPMENT PLAN) RULES, 2016.

CHAPTER-I

General

1. Short title, applicability and commencement. – (1) These rules may be called the Himachal Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2016.

(2) They shall be applicable in cases of land acquisition where the State Government is the appropriate Government as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013); and shall extend to the whole of the State of Himachal Pradesh.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires.—

- (a) “Aadhaar number” means a 12-digit unique identification number generated and issued to an individual by the Unique Identification Authority of India (UIDAI) after de-duplication of demographic and biometric information pertaining to the individual;

- (b) “Act” means the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013);
- (c) “consent-based Aadhaar authentication service” means electronic authentication carried out by Unique Identification Authority of India (UIDAI), or agencies appointed by it, after matching the biometric information of an individual at his request or with his consent, with information maintained by UIDAI in its own central servers, and include a ‘Yes/No’ response or response containing the demographic information and photograph of that individual; and
- (d) “section” means section of the Act.

(2) Words and expression used but not defined in these rules and defined in the Act, shall have the meanings respectively assigned to them in the Act.

CHAPTER II

Request for Land Acquisition

3. Request for acquisition of land.—(1) After completion of Social Impact Assessment, wherever applicable and receipt of the recommendations of the Expert Group, if it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, the Requiring Body or its authorized representative, for whom land is to be acquired shall file the request to the concerned Collector in Form-I alongwith the following documents, namely:--

- (i) Detailed project report;
- (ii) Sanction letter of project;
- (iii) Three copies of Record of Rights and revenue maps of the affected areas;
- (iv) Information about the classification of land that is, irrigated multi-cropped, single cropped, wasteland, etc; and
- (v) Any other information required by the collector.

(2) A copy of the request filed with the Collector under sub-rule (1) shall be submitted to the Commissioner.

(3) Where the Requiring Body is the Government, the request shall be filed by the Secretary of the concerned Department and in case of Public Sector Undertaking by Secretary of the Department dealing with such undertaking.

4. Action by Collector on receiving request.—(1) (a) The Collector on receiving the request under sub-rule (1) of rule 3, shall constitute a committee of officers consisting of officers from Revenue Department, Agriculture Department, Forest Department, Irrigation and Public Health Department, Public Works Department or any other Department as the Collector deems necessary to make a field visit alongwith the representatives of the Requiring Body to make a preliminary enquiry regarding-

- (i) Availability of waste or arid land;
- (ii) Correctness of the particulars furnished in the request under sub-rule (1) of rule 3;
- (iii) bare minimum land required for the project;
- (iv) whether the request is consistent with the provisions of the Act, and submit a report to the Collector.

- (b) The report of the committee referred to in clause (a) shall include the following namely:--
- (i) that the proposed acquisition of land serves public purpose;
 - (ii) that the extent of land proposed for acquisition is the absolute bare-minimum needed for the project;
 - (iii) that the acquisition of land at an alternate place has been considered and found not feasible;
 - (iv) that there is no unutilized land which has been previously acquired in the area;
 - (v) that the land, if any, acquired earlier and remained unutilised, may be used for such public purpose; and
 - (vi) the recommendations of the committee.

(2) (a) If the Collector, on the basis of the report of the committee referred to in sub rule (1), other information available with him and instructions issued by the Central Government in this regard, is satisfied that the request is consistent with the provisions of the Act, he shall make a preliminary estimate of the cost of the acquisition as defined in clause (i) of section 3.

(b) The administrative cost under item (A) of sub-clause (vi) of section 3 shall be at the rate of five percent of the cost of compensation as provided in sub-clause (i) of clause (i) of section 3 subject to a maximum of five crore rupee.

(c) The Collector shall inform the Requiring Body to deposit the estimated cost of acquisition or part thereof as specified by the Collector in the designated account of the office of the Collector before the publication of declaration under sub-section (2) of section 19 within such period as may be specified by him and the Requiring Body shall deposit the same within the said period.

(3) The Requiring Body shall deposit the balance cost of acquisition after final estimation is prepared by the Collector and in cases where excess amount is awarded by the Authority or Court, the same shall be deposited as and when so required.

CHAPTER III

Preliminary Notification for land Acquisition and Rehabilitation and Resettlement Scheme

5. Publication of preliminary notification.—(1) The preliminary notification referred to in section 11 shall be published in Form-II.

(2) A copy of the preliminary notification referred to in section 11 shall be affixed at conspicuous places in the affected areas and shall be informed to the public by beat of drum.

(3) After publication of the preliminary notification under section 11, the Collector shall ensure completion of the exercise of updating land records as specified hereunder;—

- (a) delete the names of deceased persons;
- (b) enter the names of the legal heirs of the deceased persons;
- (c) enter the registered transactions of the rights in land such as sale, gift, partition, etc;
- (d) make all entries of the mortgages in the land records;
- (e) delete the entries of mortgages in case the lending agency issues letter towards full payment of loans taken through registered reconveyance of mortgaged property deeds;

- (f) make necessary entries in respect of all prevalent forest laws;
- (g) make necessary entries in case of the Government land;
- (h) make necessary entries in respect of assets on the land like buildings, trees, well, etc.;
- (i) make necessary entries of share-croppers in the land;
- (j) make necessary entries of crops grown or sown and the area of such crops; and
- (k) any other relevant entries.

6. Hearing of objections.—(1) The Collector shall issue a notice for inviting objections in FORM-III and after hearing all objections and making enquiry as provided under sub-section (2) of section 15 shall submit a report alongwith his recommendations on the objections to the appropriate Government for decision.

(2) The report of the Collector shall include the following:-

- (a) assessment as to whether the proposed acquisition serves public purpose;
- (b) whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project;
- (c) whether land acquisition at an alternate place has been considered and found not feasible;
- (d) there is no unutilized land which has been previously acquired in area;
- (e) the land, if any, acquired earlier and remained unutilized, is used for such public purpose and recommendations in respect thereof;
- (f) recommendations on the objections;
- (g) record of proceedings; and
- (h) approximate cost of land acquisition in cases where social assessment has been exempted.

7. Preparation of rehabilitation and Resettlement Scheme and public hearing.—(1) Upon publication of the preliminary notification under sub-section (1) of section 11, the Administrator shall conduct a survey and undertake a census of the affected families within a period of two months from the date of publication of such preliminary notification.

(2) For the purpose of the survey to be conducted and the census of the affected families to be undertaken by Administrator, he shall take into account—

- (a) the social Impact Assessment report;
- (b) the records of the Panchayat, Municipality or Municipal Corporation, as the case may be, and other Government records.

(3) The Administrator shall get the data verified by door-to-door visit of the affected families and by site visits in case of infrastructure projects in the affected area.

(4) The draft Rehabilitation and Resettlement Scheme prepared by the Administrator shall, in addition to the particulars mentioned in sub-section (2) of section 16, contain the following, namely:-

- (a) list of affected families with Aadhaar number of its members, if available;
- (b) list of displaced families with Aadhaar number of its members, if available;
- (c) list of infrastructure in the affected area;

- (d) list of land holdings in the affected area;
- (e) list of trees, buildings, other immovable property or assets attached to the land or building which are to be acquired;
- (f) list of trades or business in the affected area;
- (g) list of persons belonging to the Scheduled Castes or the Scheduled Tribes, the handicapped or physically challenged persons in the affected area;

Provided that in case a person does not have an Aadhaar number, efforts may be made to get him so enrolled, provided he gives his consent for such enrolment and the claims of the affected families may be facilitated by carrying out consent-based Aadhaar authentication service.

(5) The Administrator shall give wide publicity to the draft Rehabilitation and Resettlement Scheme in the affected area through publication in the following manner, namely:--

- (a) in the Official Gazette;
- (b) in two daily newspapers being circulated in the locality of such area of which one shall be in the regional language;
Provided that in a place where such media is not available, then this clause shall not apply;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, Taluk, Sub-Division or Block, as the case may be;
- (d) uploaded on the website of the appropriate Government.

(6) The Administrator or an officer authorized by him shall conduct a public hearing in the affected areas by issuing advance notice of three weeks on the date, time and venue mentioned in the said notice in accordance with the provisions of rule 8 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2015.

8. Publication of the approved Rehabilitation and Resettlement Scheme.—The Commissioner shall publish the approved Rehabilitation and Resettlement Scheme by affixing it in conspicuous places in the affected area.

9. Development Plan for Scheduled Castes or Scheduled Tribes families.—The Development Plan, in cases of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or Scheduled Tribes families, referred to in section 41 shall be prepared in Form IV.

CHAPTER-IV Declaration and Award

10. Publication of declaration for acquisition.—The Declaration referred to in sub-section (1) of section 19 shall be published by affixing a copy thereof local language at conspicuous places in the affected areas in FORM V.

11. Land acquisition award.—The land acquisition award referred to in section 23 shall be made in FORM VI and FORM VII.

12. Fishing rights of affected families.—The fishing rights referred to in column (3) against serial number 9 of the Second Schedule to the Act, shall be allowed by the Fisheries

Department in consultation with the Irrigation and Public Health Department, Revenue Department or any other concerned Department of the Government.

13. Recovery of excess amount.—In the case of any default or refusal to pay the excess amount as referred to in sub-section (3) of section 33, the same shall be recovered as an arrears of land revenue under the provisions of the Revenue Recovery Act, 1890 (1 of 1890) and such recovery proceedings shall be initiated within a period of three years from the date on which the excess amount is found to have been paid.

14. Recovery of rehabilitation and resettlement benefit.—Any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be recovered as arrears of land revenue under the provisions of the Revenue Recovery Act, 1890 (1 of 1890).

15. Limits of extent of land under sub-section (3) of section 2.—The limit of extent of land referred to in clause (a) of sub-section (3) of section 2 shall be twenty hectares in urban areas and forty hectares in rural areas.

CHAPTER-V

Administrator, Rehabilitation and Resettlement Committee and National Monitoring Committee

16. Powers, duties and responsibilities of Administrator.—The Administrator shall have the following powers, duties and responsibilities, namely.—

- (a) to conduct a survey and undertake a census of the affected families and details of livestock possessed by each affected family in accordance with rule 7;
- (b) to prepare a draft Rehabilitation and Resettlement Scheme (hereinafter referred to as the draft Scheme);
- (c) to give wide publicity to draft Scheme in accordance with sub-rule (5) of rule 7 in the affected areas;
- (d) to make the draft Scheme available to the concerned persons and authorities;
- (e) to organize and conduct public hearings on the draft Scheme;
- (f) to submit the draft Scheme to the Collector;
- (g) to execute and monitor the Rehabilitation and Resettlement Scheme;
- (h) to assist the Commissioner in post-implementation social audit of Rehabilitation and Resettlement Scheme; and
- (i) any other work required to be done for Rehabilitation and Resettlement.

17. Rehabilitation and Resettlement Committee at Project Level.—(1) The Rehabilitation and Resettlement Committee constituted under section 45 shall follow the following procedures:--

- (a) the Committee shall have its first meeting when a draft has been prepared by the Administrator;
- (b) the Committee shall discuss the draft Scheme and make suggestions and recommendations and thereafter, the Committee shall meet to review and monitor the progress of rehabilitation and resettlement once in a month till the process of rehabilitation and resettlement is completed;

- (c) for the purpose of carrying out the post-implementation social audits, the Committee shall meet once in three months;
- (d) the committee may visit the affected area and discuss with the affected families if it so requires and also visit the resettlement area to monitor the resettlement process.

(2) The Member-Convener of the Committee shall be assisted by subordinate officers and staff provided by the appropriate Government.

(3) The non-official members of the Committee shall be entitled to travelling and daily allowance at the rate admissible to the Group 'A' Officers of the State Government.

18. Salaries, allowances, etc. of Presiding Officer, Registrar and other officers and employees of Authority.—(1) The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) and procedure for the investigation of misbehaviour or incapacity of the Presiding Officer of Authority shall be the same as applicable to a District Judge.

(2) The salary and allowances payable to and the other terms and conditions of service (including pension gratuity and other retirement benefits) of the Registrar of the Authority shall be same as applicable to an officer of the rank of Deputy Secretary in the State Government.

(3) The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the officers and employees of the Authority shall be the same as applicable to the officers of the State Government of equivalent rank.

19. Procedure of National Monitoring Committee.—(1) The National Monitoring Committee constituted under section 48 shall review and monitor the implementation of the Rehabilitation and Resettlement Schemes for the projects within two months of the publication of the approved Schemes by the Commissioner under section 18 and thereafter, the meetings of the Committee shall be held once in three months to review and monitor the implementation of the Rehabilitation and Resettlement Schemes.

(2) For the purpose of sub-rule (1), the Committee may—

- (a) call for records and information of Rehabilitation and Resettlement Schemes;
- (b) call the Requiring Body for discussion as and when required; and
- (c) ask for report about implementation of its decision.

(3) The non-official experts associated with the National Monitoring Committee shall be paid travelling and daily allowance at the rate admissible to an officer of the rank of Joint Secretary in the State Government.

CHAPTER-VI

Miscellaneous

20. Manner of return of unutilized land.—(1) When any land acquired under the Act remains unutilized for a period of five years as referred to in section 101, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank by issuing a notice to the Requiring Body for whom the land was acquired and by giving an opportunity of being heard and by passing necessary order in writing by the Collector in this behalf for this purpose.

(2) After passing the order by Collector under sub-rule (1), the Collector shall take the possession of the acquired land for the purpose of returning the same to the original owner or owners of their legal heirs, as the case may be, or to the Land Bank.

(3) If the land is being returned to the original owner or owners or their legal heirs, as the case may be, the compensation paid to them excluding solatium shall be returned and deposited by them in the designated account of the officer of the Collector as specified by him before taking possession of the land and the amount so refunded shall be used towards development of culturable wastelands.

(4) If the Requiring Body does not handover possession of the said land to Collector, the Collector shall be competent to take the help of the concerned Executive Magistrate and police force to take the possession after giving prior notice to the Requiring Body.

FORM-I

[See rule 3(1)]

Request for Acquisition of Land

Form:

Name

And/or Designation of the Requiring Body

To:

1. The Collector
District _____
2. Commissioner, Rehabilitation and Resettlement.

_____ it is requested to acquire _____ hectare(s) of land for which _____ project/purpose and the details are furnished in Annexures I, II and III along with three copies of Combined Sketch (to scale) showing the lands to be acquired.

The gestation period of the project will be _____ years and _____ months (applicable only if gestation period is More than five years.)

Requisite cost of acquisition including cost of social impact assessment study (SIA) is available and will be deposited in your office, as provided under provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as and when required by you. All further necessary information and assistance will be provided on the date/time appointed/stipulated by you.

Yours faithfully

Requiring Body

Annexure-I

Name of the Project:-

- (1) Name of the Village-
- (2) Name of the Taluk/Sub-Division/Tehsil/Block (as applicable)-
- (3) Name of the Municipality/Municipal Corporation -
- (4) Name of the District -
- (5) Survey Nos. to be acquired-
- (6) Total area under request (in hectares/sq.metres)
- (7) Boundaries of the area to be acquired –

East-

West-

North-

South-

- (8) Area of the agricultural and irrigated multi-cropped land
- (9) Reasons for inclusion of agricultural and irrigated multi-cropped land

(10) Details of buildings and other structures, tanks, wells, trees, etc.

(11) Reasons for the inclusion of religious building, graveyard or tomb etc. for acquisition if any.

Requiring Body.

Annexure-II

Name of the project :-

1. Department or Government or Company, Local Authority, Institution:
2. Official designation of the Requiring Body:-
3. Purpose of acquisition (in detail):-
4. Whether the request is filed u/s 2(1) of the Act by the Government or Department for its own use hold and control:-
5. Whether the request is filed u/s 2(1)(a) to 2(1) (f) of the Act:-
6. Whether the request is filed u/s 2(1) (a) or (b) of the Act:-
7. How many families are affected as described u/s 3(c) (i) to (vi) of the Act:-
8. Whether the request is filed u/s 40 of the Act:-
9. If so, on what ground?
10. Has the land for the project been partially purchased from the owners by private negotiation?
11. If so, on what date and on what terms (please state the terms of negotiation in short and attach the copy of it)
12. Date of issue of administrative approval for the project (copy to be attached) in case of Government or Department or local authority.
13. Reasons for delay in filing request, if request is filed after six weeks from the date of administrative approval of the project in case of Government or Department or local authority.
14. By what time possession of the land is required.

Requiring Body

Annexure-III

Certificate to be furnished alongwith request for acquisition of land by the Requiring Body.

Name of the project:-

(1) Certified that the project for which the land is sought has been administratively approved vide Department letter No. _____ dated _____ for acquisition under the Act (Copy of letter attached). (if applicable)

(2) The estimated cost of the project of Rs. _____ and necessary budget was sanctioned and funds are available towards cost of acquisition.

(3) The Requiring Body undertakers to pay the full amount in case of decree by the Land Acquisition Rehabilitation and Resettlement Authority/High Court/ Supreme Court as and when asked to do so by the Collector.

Requiring Body

FORM II [See rule 5(1)] Preliminary notification

No. _____

Dated _____

Whereas it appears to the appropriate Government that a total of _____ hectares land is required in the _____ Village _____ Taluk/Sub-Division/Tehsil/Block (as applicable) _____ District for public purpose, namely _____ Social Impact Assessment study was carried out by Social Impact Assessment (SIA) Unit and a report submitted/ preliminary investigation by a team constituted by a Collector as laid down under rule 4. The summary of the Social Impact Assessment report/preliminary investigation is as follows (Attach copy of SIA report):

A total of _____ (no.) families are likely to be displaced due to the land acquisition. The reason necessitating such displacement is given below

_____ is appointed as Administrator for the purpose of rehabilitation and resettlement of the affected families. Therefore it is notified that for the above said project in the _____ Village of _____ Taluk/Sub-Division/ Tehsil/Block (as applicable) _____ District a piece of land measuring _____, hectares viz; hectare of standard measurement, whose detail is as following, is under acquisition:

Sr. No.	Survey No.	Type of Title	Type of land	Area under acquisition (in hectare)	Name and address of person interested	Boundaries			
						N	S	E	W

Trees	
Variety	
Number	

Structures	
Type area	Plinth

This notification is made under the provisions of section 11 (1) of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), to all whom it may concern.

A plan of land may be inspected in the office of the collector and _____ on any working day during working hours.

The Government is pleased to authorize Officer _____ and his staff _____ to enter upon and survey land, take levels of any land, dig or bore into the sub-soil and do all other acts required for the proper execution of their work as provided and specified in section 12 of the said Act.

Under section 11 (4) of the Act, no person shall make any transaction or cause transaction of land i.e. sale/ purchase, etc. or create any encumbrances on such land from the date of publication of such notification without prior approval of the Collector.

Objections to the acquisitions, if any, may be filed by the person interested within 60 (sixty days) from the date of publication of this notification as provided under section 15 of the Act before Collector.

Since the land is urgently required for the project falling within the purview of section 40 (2) and same has approval of the Parliament, it has been decided not to carry out the Social Impact Assessment Study, vide G.O. No. _____ dated _____ (Strike if not applicable)

Encl: as above

Place :

Date :

Collector

Form No. III
[See rules 6]
NOTICE BY COLLECTOR

No.

Dt

Notice is hereby given that the land specified in the Schedule below and situated in the village of in the Taluk/Sub-Division/Tehsil/Block (as applicable) in the District of is needed or is likely to be needed in accordance with the notification under section-III) of the Right to Fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) published by the Collector at page Of para 1 of the (name of State/UT) Gazette, dated All persons interested in the land are accordingly required to file their objections before within sixty (60) days from the date of publication of the above preliminary notification, a statement in writing of their objection, if any, to the acquisition of the said land.

Any objections statement which is received after the due date or which does not clearly explain the nature of the senders interest in the lands is liable to be summarily rejected.

Objections received with the due date, if any will be enquired into on at when the objection will be at liberty to appear in person or by advocate and to adduce any oral or documentary evidence in support of their objections.

Schedule

Sr. No.	Survey No.	Total area in hectare	Area in hectares under acquisition	Name and address of the person interested	Boundaries N.S.E.W	Details of trees, structures etc., if any
1	2	3	4	5	6	7

Place:

Date:

Collector

FORM IV
[See rule 9]

Format for Development Plan under Rehabilitation and Resettlement Scheme for Scheduled Caste/Scheduled Tribes Families displaced due to land acquisition

Sr. No.	Name of Claimant/ family head	Permanent address	Entitlements (See Section 31, 41 and Second Schedule of the Act)	Remarks
			<ol style="list-style-type: none"> 1. Land upto 0.4 Hectare for agricultural, horticultural, cattle grazing field per family shall be provided. 2. Provision of dwelling housing unit per family, drinking water facility, toilet etc. 3. One time financial assistance of one lakh fifty thousand rupees per family shall be given. 4. For landless laborers employment shall be provided under Mahatma Gandhi National Rural Employment Guarantee Scheme of the Govt. 5. Skill development through different training programs for the youth of affected family. 6. Subsistence grant for displaced family equivalent to three thousand rupees per month for a year from the date of award. 7. For cattle shed and petty shop, minimum twenty five thousand rupees. 8. Alternative fuel, fodder and non-timber forest produce resources on non-forest land, for affected members of Scheduled Castes. 9. Fishing Rights. 	

- (a) Details of Land rights due, but not settled:
- (b) Details of actions for restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive.
- (c) Programme for development of alternate fuel, fodder and not-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes under section 41 (5) of the Act.

FORM V
[See Rule 10]
Declaration by Secretary, Revenue Department

No. _____

Dated _____

Whereas it appears to the Government that a total of _____ hectares land is required in the village _____ Taluk/Sub-Division/Tehsil/Block (as applicable) _____ District _____ for public purpose, namely, _____

Therefore, declaration in made that a piece of land measuring Hectares is under acquisition for the above said project in the village Taluk/ Sub-Division/Tehsil/ Block (as applicable) _____ District _____ whose detailed description is as following:

Sr. No.	Survey No.	Type of Title	Type of land	Area under acquisition (in hectare)	Name and address of person interested	Boundaries			
						N	S	E	W

Trees	
Variety	Number

Structures	
Type	Plinth area

This declaration is made after hearing of objections of persons interested and due enquiry as provided u/s 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013). The number of families likely to be resulted due to land acquisition is _____ for whom resettlement area has been identified, whose brief description is as following:-

Village _____ Taluk/ Sub-Division/Tehsil/Block (as applicable) _____ District _____ Area _____ (in hectares).

Mines of coal, iron-stone, slate or other minerals laying under the said land or any particular portion of the said land, except such parts of the mines and minerals which may be required to be dug or removed or used during the construction phase of the project for the purpose of which the land is being acquired, are not needed.

A plan of the land may be inspection in the office of the Land Acquisition Officers and _____ on any working day.

A summary of the Rehabilitation and Resettlement Scheme is appended.

Encl: As above

Secretary, Revenue Department

FORM VI
[See Rule 11]
Land Acquisition Award

Land Acquisition Case No.

	Name of the project-
	Number and date of declaration under which the land is to be acquired
	Situation and extent of the land in hectares, the number of field plots on the survey map, the village in which situated with the number of mile plan if any.
	Description of the land, i.e. whether fallow, cultivated, homestead, etc. if cultivated, how cultivated?
	Name of persons interested in the land and the nature of their respected interests. Aadhar No. of such persons.
	Amount allowed for the land itself, without trees, buildings etc. if any
	Amount allowed out of such sum as compensation for the tenants interested in the land.
	Basis of calculation:
	Amount allowed for trees, houses or any other immovable property
	Amount allowed for crops.
	Additional compensation on the market value under section 30(3)
	Damages under section 28 of Act 30 of 2013
	Solatum u/s 30(1)
	Total of amounts
	Particulars of abatement of Government Revenue, or of the Capitalized value paid, the date from which the abatement takes effect.

	Apportionment of the amount of compensation.	Sr. No.	Name of claimants	Aadhar No.	Amount payable to each	Bank A/C No.	Remarks
	Area (in hectare)						
	Date on which possession was taken u/s 38(1) and 40(1) of Act 30 of 2013						

If under section 40(1) the number and date of the order of Government giving authority to do so.

Date:

Signature

- Bank account details to be collected in all cases where Aadhar number is not available or Aadhar is not seeded in the bank account of the claimant.

FORM VII
[SEE RULE 11]
Award for Rehabilitation and Resettlement

Land Acquisition Case No:

1.	Name of the project
2.	Number and date of declaration under which the land is to be acquired.
3.	Situation and extent of the land in hectares, the number of field plots on the survey map, the village in which situated with the number of mile plan if any.
4.	Description of the housing units, transportation cost, housing allowances, annuity, employment subsistence grant, cattle shed, petty shop, one time resettlement allowances etc.
5.	Name/ Names of persons interested in the land and the nature of their respective claim for rehabilitation and resettlement.

6.	Appointment of the amount of compensation area (in hec.)	Sr. No.	Name of Claimants/ affected family	Aadhar No.	Rehabilitation and Resettlement Entitlements	Bank A/C No.	Amount payable to each	Non Monetary entitlement	remarks.
					(i) House to be allotted. (ii) Land to be allotted. (iii) Offer for Development land (iv) Annuity/ Employment (v) Subsistence grant (vi) Transportation Cost, Housing Allowances. (vii) Cattle shed, Petty Shop (viii) One time grant to artisan, small traders and certain others. (ix) Fishing rights (x) One time resettlement allowances (xi) Stamp duty and				

					registration fee.				
7.	Date on which Rehabilitation and Resettlement entitlements given to the affected family:-								
8.	Basis of calculation:								
9.	Amount allowed for trees, houses or any other immovable things.								
10.	Amount allowed for crops.								
11.	Additional compensation on the market value under section 30(3)								
12.	Damages under section 28 of Act 30 of 2013								
13.	Solatium u/s 30(1)								
14.	Total of Amounts								
15.	Particulars of abatement of Government Revenue, or of the capitalized value paid, the date from which the abatement takes effect.								

	Apportionment of the amount of compensation	Sr. No.	Name of Claimants	Aadhar No.	Bank A/C No.	Remarks
	Area (in hectares)					
16.	Date on which possession was taken under section 38(1) and 40(1) of the Act of 30/2013.					

If under section 40 (1), the number and dated of the order of Government giving authority to do so.

Date:

Signature

- Bank account details to be collected in all cases where Aadhar number is not available or Aadhar is not seeded in the bank of the claimant.

By order,
TARUN SHRIDHAR
Addl. Chief Secretary (Revenue).

(Authoritative English Text of this Department's Notification No. Rev.B.A(3)-3/2014-I dated 1st April, 2015 as required under Article 348(3) of the Constitution of India.)

Government of Himachal Pradesh
Revenue Department

No. Rev.B.A(3)-3/2014-I

Dated: Shimla-2,

the 1st April, 2015

NOTIFICATION

In exercise of the powers conferred by sub-section (2) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with the FIRST SCHEDULE appended to the said Act, the Governor, Himachal Pradesh, for the purpose by which the market value of the land is to be multiplied in the case of rural areas, is pleased to notify the factor as 1.00 (One) under serial No. 2 of the said SCHEDULE.

By Order

Tarun Shridhar
Addl. Chief Secy. (Revenue) to the
Government of Himachal Pradesh.

(Authoritative English Text of this Department's Notification No. Rev.B.A(3)-3/2014-loose dated 07-09-2015 as required under Clause (3) of Article 348 of the Constitution of India.)

Government of Himachal Pradesh
Revenue Department

No. Rev.B.A(3)-3/2014-loose Dated: Shimla-2, the 07-09-2015

NOTIFICATION

In exercise of the powers conferred upon him under clauses (a), (g) and (h) of the section 3 read with sub-section (1) of sections 43 and 44 of the right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013), the Governor of Himachal Pradesh is pleased to notify the following authorities within their respective jurisdictions for carrying out the purposes of this Act, namely.-

- | | |
|------------------|--|
| 1. Commissioner | The Divisional Commissioners,
Shimla/Kangra/Mandi Divisions. |
| 2. Administrator | Additional District Magistrates/
Additional Deputy Commissioners of the Districts
Concerned. |
| 3. Collector | All the Sub-Divisional Officers (Civil)/
Land Acquisition Officers in the State. |

By Order

Sd/-

Tarun Shridhar

Addl. Chief Secy. (Revenue) to the
Government of Himachal Pradesh.

Endst. No. Rev.B.A(3)-3/2014-loose Dated Shimla-171002 the 07-09-2015

Copy forwarded for information and necessary action to:-

1. All the Secretaries to the Government of Himachal Pradesh, Shimla-2.
2. The D.L.R-cum-Deputy Secretary (Law) to the government of Himachal Pradesh, Shimla-2.
3. All the Divisional Commissioners, Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.
5. The Settlement Officer in Shimla and Kangra Districts.
6. The Controller, Printing and Stationery, Himachal Pradesh, Shimla-5 for favour of publication in extra ordinary Rajpatra.
7. COC to the financial Commissioner (Appeals) Himachal Pradesh, Shimla-2.
8. Guard file.

Sd/-

Rakesh Mehta

Deputy Secretary (Revenue) to the
Government of Himachal Pradesh.

Government of Himachal Pradesh
Revenue Department

No. Rev.B.A(3)12/2023

Dated: Shimla-2, the

02-08-2023

NOTIFICATION

In exercise of the powers conferred upon him under clauses (a), (g) and (h) of the section 3 read with sub-section (1) of sections 43 and 44 of the right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013), and in continuation to this Department's Notification No. Rev.B.A(3)-3/2014-loose Dated 07-09-2015, the Governor of Himachal Pradesh is pleased to notify the following authorities within their respective jurisdictions in District Kinnaur for carrying out the purposes of this Act, as follows:-

- | | | |
|----|---------------|--|
| 1. | Collector | ADM Pooh. |
| 2. | Administrator | Assistant Commissioner to Deputy
Commissioner, Kinnaur. |

By Order

Onkar Chand Sharma
Principal Secretary (Revenue) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated Shimla-2, the

02-08-2023

Copy forwarded for information and necessary action to:-

1. All the Secretaries to the Government of Himachal Pradesh, Shimla-2.
2. All the Divisional Commissioners, Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.
4. The Settlement Officer District Shimla and Kangra at Dharamshala, H.P.
5. The D.L.R-cum-Deputy Secretary (Law) to the Government of Himachal Pradesh, Shimla.
6. The Controller, Printing and Stationery, Himachal Pradesh, Shimla-5 for favour of publication in extra ordinary Rajpatra.
7. COC to the financial Commissioner (Appeals) Himachal Pradesh, Shimla-2.
8. Guard file.

Sd/-

(Anil Chauhan)
Joint Secretary (Revenue) to the
Government of Himachal Pradesh.

THE NATIONAL HIGHWAYS ACT, 1956¹

ACT NO. 48 OF 1956

[11th September, 1956.]

An Act to provide for the declaration of certain highways to be national highways and for matters connected therewith.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

1. Short title, extent and commencement.—(1) This Act may be called the National Highways Act, 1956.

(2) It extends to the whole of India.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Declaration of certain highways to be national highways.—(1) Each of the highways specified in the Schedule^{3***} is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

⁴**3. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “competent authority” means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;
- (b) “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

¹ Subject to verification and confirmation by the administrative ministry.

² 15th April, 1957, vide S.R.O. 1180(E), dated 4th April, 1957, see Gazette of India, 1957, Part II, s. 3(ii).

³ The words “except such parts thereof as are situated within any municipal area” omitted by Act 16 of 1997, s. 2 (w.e.f. 24-1-1997).

⁴ Subs. by Act 16 of 1997, section 3, for section 3 (w.e.f. 24-1-1997).

3B. Power to enter for survey, etc.—On the issue of a notification under sub-section (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to—

- (a) make any inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into sub-soil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. Hearing of objections.—(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3D. Declaration of acquisition.—(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under subsection (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3E. Power to take possession.—(1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with

the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

- (a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;
- (b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Right to enter into the land where land has vested in the Central Government.—

Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government—

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

- (a) the market value of the land on the date of publication of the notification under section 3A;

- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

3I. Competent authority to have certain powers of civil court.—The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

3J. Land Acquisition Act 1 of 1894 not to apply.—Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.]

4. National highways to vest in the Union.—All national highways shall vest in the Union, and for the purposes of this Act “highways” include—

- (i) all lands appurtenant thereto, whether demarcated or not;
- (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
- (iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

6. Power to issue directions.—The Central Government may give directions to the Government of any State as to the carrying out in the State of any of the provisions of this Act or of any rule, notification or order made thereunder.

7. Fees for services or benefits rendered on national highways.—(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, ¹[permanent bridges the cost of construction of each of which is more than rupees twenty-five lakhs and which are opened to traffic on or after the 1st day of April, 1976,] temporary bridges and tunnels on national highways ²[and the use of sections of national highways].

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

(3) Any fee leviable immediately before the commencement of this Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule shall continue to be leviable under this Act unless and until it is altered in exercise of the powers conferred by sub-section (1):

³[Provided that if the Central Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this sub-section.]

⁴8. * * * * *

⁵[8A. Power of Central Government to enter into agreements for development and maintenance of national highways.—(1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

¹ Ins. by Act 30 of 1977, s. 2 (w.e.f. 12-8-1977).

² Ins. by Act 1 of 1993, s. 2 (w.r.e.f. 23-10-1992).

³ The proviso Ins. by Act 30 of 1977, s. 2 (w.e.f. 12-8-1977).

⁴ Section 8 omitted by Act 16 of 1997, s. 4 (w.e.f. 24-1-1997).

⁵ Ins. by Act 26 of 1995, s. 2 (w.e.f. 16-6-1995).

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof.

8B. Punishment for mischief by injury to national highway.—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.]

9. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any officer or authority subordinate to the Central Government or the State Government;
- ¹[(aa) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 3H;]
- ²[(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway ³[and the use of sections of any national highway] may be levied, and the manner in which such fees shall be collected, under section 7;]
- (c) the periodical inspection of national highways and the submission of inspection reports to the Central Government;
- (d) the reports on works carried out on national highways;
- (e) any other matter for which provision should be made under this Act.

⁴[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

¹ Ins. by Act 16 of 1997, s. 5 (w.e.f. 21-1-1997).

² Subs. by Act 30 of 1977, s. 3, for clause (b) (w.e.f. 12-8-1977).

³ Ins. by Act 1 of 1993, s. 3 (w.e.f. 23-10-1992).

⁴ Ins. by Act 30 of 1977, s. 3 (w.e.f. 12-8-1977).

10. Laying of notifications, rules, etc., before Parliament.—All notifications or agreements issued or entered into under this Act shall be laid before both Houses of Parliament as soon as may be after they are issued or entered into ^{1***}.

THE SCHEDULE

[See section 2]

NATIONAL HIGHWAYS

Serial No.	National Highway No.	Description of National Highways
1.	1	The highway connecting Delhi, Ambala, Jullundur and Amritsar and proceeding to the border between India and Pakistan.
2.	1A	The highway connecting Jullundur, Madhopur, Jammu, Banihal, Srinagar, Baramula and Uri.
² [2-A.	1B	The highway starting from its junction at Botole on National Highway No. 1A and connecting Doda with Kishtwar to be a national highway.]
³ [2-AA	Extension of NH No. 1B	The highway starting from its junction with National Highway No. 1B near Kishtwar and connecting Chhatree, Symthan Maidan and terminating at Symthan pass in Jammu and Kashmir.
2-AAA	1C	The highway starting from its junction with National Highway No. 1A near Domel and terminating at Katra in Jammu and Kashmir.]
⁴ [3	2	[The highway connecting Delhi, Mathura, Agra, Kanpur, Allahabad, Banaras, Mohania, Barhi Palsit, Baidyabati, Bara, Calcutta.]
	* 2A	Sikandra – Bhognipur
4	3	The highway connecting Agra, Gwalior, Shivpuri, Indore, Dhulia, Nasik, Thana and Bombay.
⁵ [5	302	The highway starting from its junction with NH-2 near Theriat connecting Lunglei, Lungseni, Tuiehong and terminating at Demagiri in the State of Mizoram.]
⁶ [5A	4A	The highway connecting Belgaum, Anmod, Panda and Panaji.]
⁷ [5B	4B	The highway starting from its junction with Panvel- Uran State Highway near Nhava-Sheva Port Complex and proceeding further with one arm terminating of Kalamboli on National Highway No. 4 and another arm crossing National Highway No. 17 near Palaspe and proceeding further to terminate on National Highway No. 4.]
6	5	The highway starting from its junction near Baharagora with the highway specified in serial No. 7 and connecting Cuttack, Bhubaneswar, Visakhapatnam, Vijayawada and Madras.

¹ Certain words omitted by Act 30 of 1977, s. 4 (w.e.f. 12-8-1977).

² Ins. by notification No. S.O. 1980(E) Dated 25th May, 1977.

³ Ins by S.O. 7 (E) Dated 6th January, 1999.

⁴ Ins. by notification S.O. 380(E) Dated 25th July, 1975.

⁵ Subs. by notification No. S.O. 839(E) Dated 4th March, 2014.

⁶ Ins. by notification No. S.O. 3344(E) Dated 21st July, 1971.

⁷ Ins. by notification No. S.O. 865(E) Dated 12th November, 1984.

Serial No.	National Highway No.	Description of National Highways
¹ [6A	5A	The highway starting from its junction near Haridaspur with National Highway No. 5 and terminating at the Paradip Port.]
7	6	The highway starting from its junction near Dhulia with the highway specified in serial No. 4 and connecting Nagpur, Raipur, Sambalpur, Baharagora and Calcutta.
² [7A	Extension of N.H. No. 6	The highway starting from its junction with N.H. No. 6 near Dhule in Maharashtra and terminating at Surat in Gujarati.]
³ [7AA	Extension of NH No. 6	The highway starting from its junction near Surat on National Highway No. 6 and terminating at Hajira in Gujarat.]
8	7	The highway starting from its junction near Banaras with the highway specified in serial No. 3 and connecting Mangawan, Rewa, Jabalpur, Lakhnadon, Nagpur, Hyderabad, Kurnool, Bangalore, Krishnagiri, Salem, Dindigul, Madurai and Cape Comorin.
⁴ [8A	7A	The highway connecting Palayankottai on National Highway No. 7 with the Tuticorin Port.]
9	8	The highway connecting Delhi, Jaipur, Ajmer, Udaipur, Ahmedabad, Baroda and Bombay.
10	8A	The highway connecting Ahmedabad, Limbdi, Morvi and Kandla.
¹ [10A	Extension of NH No. 8A	The highway starting from its junction near Kandla on National Highway No. 8A connecting Mundra and terminating at Mandvi in Gujarat.]
11	8B	The highway starting from its junction near Bamanbhore with the highway specified in serial No. 10 and connecting Rajkot and Porbandar.
⁵ [11A	8C	The highway connecting Chiloda on National Highway No. 8, in Gujarat, Gandhinagar and terminating at Sarkej on National Highway No. 8A shall be a national highway.]
¹ [11AA	8D	The highway starting from its junction near Jetpur on National Highway No. 8B and connecting Junagarh, Keshod and terminating at Somnath in Gujarat.]
	*8E	Somnath-Bhavnagar

¹ Ins. by notification No. S.O. 865(E), Dated 21st July, 1971.

² Ins. by notification No. S.O. 116(E), Dated 9th February, 1998.

³ Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

⁴ Ins. by notification No. S.O. 179(E), Dated 7th March, 1972.

⁵ Ins. by notification No. S.O. 3114(E), Dated 18th October, 1978.

Serial No.	National Highway No.	Description of National Highways
12	9	The highway connecting Poona, Sholapur, Hyderabad and Vijayawada.
¹ [12A	Extension of NH No. 9	The highway starting from its junction near Vijayawada on National Highway No. 5 connecting Vuyyuru, Pammari and terminating at Machilipatnam in Andhra Pradesh.]
13	10	The highway connecting Delhi and Fazilka and proceeding to the border between India and Pakistan.
² [13A	11	The highway connecting Agra, Jaipur and Bikaner.]
³ [13B	12	The highway starting from Jabalpur, connecting Bhopal, Bhaora, Rajgarh, Khilehipur, Aklera, Jhalawar, Kota, Bundi, Devil, Tonk and terminating at Jaipur on National Highway No. 8.]
⁴ [13C	13	The highway connecting Sholapur and Chitradurga.]
¹ [13CC	Extension of NH No. 13	The highway starting from its junction near Mangalore on National Highway No. 48 and connecting Tirthahalli, Shimoga and terminating at its junction with National Highway No. 4 near Chitradurga in Karnataka.]
	*14	Beawar-Sirohi-Radhapur
⁵ [13D	21	The highway starting from its junction near Chandigarh with National Highway No. 22 and connecting Ropar, Bilaspur, Mandi, Kulu and Manali.]
¹ [13DD	21A	The highway starting from its junction near Pinjore on National Highway No. 22 in Haryana connecting Baddi, Nalagarh and terminating at its junction with National Highway No. 21 near Swarghat in Himachal Pradesh.]
⁶ [13E	15	The highway connecting Pathankot-Amritsar, Bhatinda, Ganganagar, Bikaner, Jaisalmer, Barmer to its junction with National Highway No. 8A near Samakhiali (near Kandla).]
⁷ [13F	17	The highway connecting Panvel on National Highway No. 4, Mahad, Panaji, Karwar, Mangalore, Cannanore, Calicut (Kozhikode), Feroke, Kuttipuram, Pudu Ponnani, Chowghat Cranganpur to junction with National Highway No. 47 near Edapally.

¹ Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

² Ins. by notification No. S.O. 1199(E), Dated 4th March, 1960.

³ Ins. by notification No. S.O. 114(E), Dated 17th February, 1981.

⁴ Ins. by notification No. S.O. 3114(E), Dated 18th October, 1978.

⁵ Ins. by notification No. S.O. 3344(E), Dated 21st July, 1971

⁶ Ins. by notification No. S.O. 179(E), Dated 7th March, 1972.

⁷ Ins. by notification No. S.O. 442(E), Dated 17th July, 1974.

Serial No.	National Highway No.	Description of National Highways
¹ [13G	17A	The highway starting from its junction near Cortalim with National Highway No. 17 and terminating at the Marmugao Port.]
² [13GG	17B	The highway starting from its junction with NH No. 4A near Ponda connecting Barim-verna and terminating near Vasco in Goa.]
³ [13H	*18	Junction with National Highway No. 7 near Kurnool - Nandyal - Cuddapah Junction with National Highway No. 4 Near Chittoor
⁴ [13-J	*19	Gazipur - Ballia – Patna
	*20	Pathankot – Mandi
14	22	The highway connecting Ambala, Kalka, Simla, Narkanda, Rampur and Chini and proceeding to the border between India and Tibet near Shipki-La.
¹ [14A	23	The highway connecting Chas, Ranchi, Rourkela, Talcher and terminating at National Highway No. 42.]
15	24	The highway connecting Delhi, Bareilly and Lucknow.
⁵ [16	6	The highway starting from its junction with NH-27 near Jorabat in the State of Assam connecting Shillong, Dhaleswar, Kanpui, Aizawal, Selling, Lumtui, Khawthlir, Tuisen, Neihdawn and terminating at Champai in the State of Mizoram.]
⁶ [16-A	25A	The highway starting from its junction with National Highway No. 25 at Km 19 and terminating at Bakshi ka Talab in National Highway No. 24 in Uttar Pradesh.]
17	26	The highway connecting Jhansi and Lakhnadon.
18	27	The highway connecting Allahabad with the highway specified in serial No. 8 near Mangawan.
19	28	The highway starting from its junction near Barauni with the highway specified in serial No. 23 and connecting Muzaffarpur, Pipra, Gorakhpur and Lucknow.
20	28A	The highway starting from its junction near Pipra with the highway specified in serial No. 19 and connecting Sagauli and Raxaul and proceeding to the border between India and Nepal.

¹ Ins. by notification No. S.O. 179(E), Dated 7th March, 1972.

² Ins. by notification No. S.O. 116(E), Dated 9th February, 1998.

³ Ins. by notification No. S.O. 57(E), 19th January, 1993.

⁴ Ins. by notification No. S.O. 87(E), 31st January, 1996.

⁵ Subs. by notification No. S.O. 839(E), Dated 4th March, 2014.

⁶ Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

Serial No.	National Highway No.	Description of National Highways
¹ [20A	11A	The highway starting from Mnoharpura on National Highway No. 8 connecting Andhi to terminate at Dausa on National Highway No. 11 in the State of Rajasthan.]
21	29	The highway connecting Gorakhpur, Ghazipur and Banaras.
22	30	The highway starting from its junction near Mohania with the highway specified in serial No. 3 and connecting Patna and Bakhtiyarpur.
² [22A	30A	The highway starting from its junction near Phatuha on National Highway No. 30 and connecting Chandi Harnaut National Highway No. 31, Saksohara and terminating in its junction on National Highway No. 31 near Barh in Bihar.]
³ [23	31	The highway starting from its junction near Barhi with the highway specified in serial No. 3 and connecting Bakhtiyarpur, Mokameh, Purnea, Dalkhola, Siliguri, Sivok, and Cooch-Behar, North Salmara and proceeding generally via Nalbari, Charali and Amingaon to its junction with the highway specified in serial No. 28 near Pandu.]
¹ [23A	16	The highway starting from its junction at Nizamabad on National Highway No. 7 in the State of Andhra Pradesh connecting Mancheral-Sironcha-Bhopalpatnam-Bijapur to terminate at Jagdalpur on National Highway No. 43 in the State of Madhya Pradesh.]
24	31A	The highway connecting Sivok and Gangtok.
³ [24A	32	The highway starting from its junction near Govindpur with National Highway No. 2 and connecting Dhanbad with Jamshedpur.]
⁴ [24AA	31B	The highway starting from near North Salmara to its junction with National Highway No. 37 near Goalpara.]
⁵ [24AAA	31C	The highway starting from near Galgalia, connecting Baghdogra, Chalsa, Nagrakata, Goyerkata.]
25	33	The highway starting from its junction near Barhi with the highway specified in serial No. 3 and connecting Ranchi and Tatanagar and proceeding to its junction with the highway specified in serial No. 7 near Baharagora.
⁶ [25A	20	The highway starting from its junction at Pathankot in the State of Punjab connecting Chakki-Palampur-Joginder Nagar to terminate at Mandi in the State of Himachal Pradesh.]

¹ Ins. by notification No. S.O. 147(E) Dated 20th February, 1989.

² Ins. by notification No. S.O. 7(E) Dated 6th January, 1999.

³ Ins. by notification No. S.O. 568(E), Dated 6th January, 1999.

⁴ Ins. by notification No. S.O. 513(E) Dated 12th February, 1963.

⁵ Ins. by notification No. S.O. 698(E) Dated 1st September, 1980.

⁶ Ins. by notification No. S.O. 147(E), Dated 20th February, 1989.

Serial No.	National Highway No.	Description of National Highways
26	34	The highway starting from its junction near Dalkhola with the highway specified in serial No. 23 and connecting Berhampore, Barasat and Calcutta.
27	35	The highway connecting Barasat and Bangaon and proceeding to the border between India and Pakistan.
¹ [27A	36	The highway connecting Nowgong, Dabaka, and Dimapur (Manipur Road).]
28	37	The highway starting from its junction near Goalpara with the highway specified in serial No. 23 and connecting Gauhati, Jorabat, Kamargaon, Makum and Saikhoa Ghat.
	*37A	Kuarital-Junction with National Highway No. 52 Near Tezpur
29	38	The highway connecting Makum, Ledo and Lekhapani.
30	39	The highway connecting Kamargaon, Imphal and Palel and proceeding to the border between India and Burma.
31	40	The highway connecting Jorabat and Shillong and proceeding to the border between India and Pakistan near Dawki.
² [31A	Extension of NH No. 40	The highway starting from its junction with National Highway No. 44 near Jowai connecting Amlarem and terminating at its junction with National Highway No. 40 near Dawki in Meghalaya.]
32	42	The highway starting from its junction near Sambalpur with the highway specified in serial No. 7 and proceeding via Angul to its junction with the highway specified in serial No. 6 near Cuttack.
33	43	The highway connecting Rajpur and Vizianagaram and proceeding to its junction with the highway specified in serial No. 6 near Vizianagaram.
² [33A	44	The highway connecting Shillong, Passi, Baderpur and Agartala.]
³ [33AA	44A	The highway starting from its junction with National Highway No. 54 near Aizawl in Mizoram and connecting Sairang, Lengpui, Mamit and terminating at Manu in Tripura.]
³ [33B	Extension of NH 44	The highway starting from its junction near Agartala on NH 44 and terminating at Sabroom in Tripura.]
34	45	The highway connecting Madras, Tiruchirappalli and Dindigul.
⁴ [34A	45A	The highway starting from Villuspuram on National Highway No. 45 and terminating at Pondicherry.]

¹ Ins. by notification No. S.O. 3344(E), Dated 21st July, 1971.

² Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

³ Ins. by notification No. S.O. 116(E), Dated 9th November, 1983.

⁴ Ins. by notification No. S.O. 803(E), Dated 7th November, 1983.

Serial No.	National Highway No.	Description of National Highways
¹ [34-AA	Extension of NH No. 45A	The highway starting from its junction with National Highway No. 45A near Pondy in Pondicherry and connecting CuddaloreChidambaram and terminating at its junction with National Highway No. 67 near Nagapattinam in Tamil Nadu.]
¹ [34-AAA	45B	The highway starting from its junction with National Highway No. 45 near Trichy and connecting Viralimalai, Tovarankuruchchi, Melur, Madurai (National Highway No. 7), Aruppakottai and terminating at its junction with National Highway No. 7A near Tuticorin in Tamil Nadu.]
35	46	The highway connecting Krishnagiri and Ranipet.
36	47	The highway connecting Salem, Coimbatore, Trichur, Ernakulam, Trivandrum and Cape Comorin.
¹ [36A	41	The highway between its junction (near Kolaghat) with the National Highway No. 6 and the point where it touches Haldia Port to be a National Highway.]
² [36B	47A	The highway starting from Willingdon Islads and Terminating at Cochin on National Highway No. 47.]
37	47A	³ * * * * *
⁴ [37A	48	The highway connecting Bangalore, Hassan and Mangalore.]
38	49	The highway connecting Madurai and Dhanushkodi.
39	50	The highway connecting Nasik with the highway specified in serial No. 5 near Poona.
⁵ [40	51	The highway starting from its junction at Baihata Charali on National Highway No. 37, in Assam, connecting Tura and terminating at Dalu in Meghalaya.
41	52	The highway starting from its junction at Baihata Charali on National Highway No. 31, in Assam, connecting Tejpur, Bander Dewa, Northlakhimpur, Pasighat, Tezu, Sitapani and terminating near Saikhoaghat on National Highway No. 37.
42	52A	The highway starting from its junction at Bander Dewa on National Highway No. 52 in Assam and terminating at Hanagar in Arunachal Pradesh.]
⁶ [42A	Extension of NH 52 A	The highway starting from its junctions near Itanagar on National Highway No. 52A in Arunachal Pradesh and terminating at its junction with National Highway No. 52 near Gohpur in Assam.]

¹ Ins. by notification No. S.O. 39(E), Dated 18th December, 1967.

² Ins. by notification No. S.O. 849(E), Dated 18th November, 1986.

³ Omitted by notification No. S.O. 178(E), Dated 6th March, 1972.

⁴ Ins. by notification No. S.O. 179(E), Dated 7th March, 1972.

⁵ Ins. by notification No. S.O. 698(E), Dated 1st September, 1980.

⁶ Ins. by notification No. S.O. 116(E), Dated 9th February, 1998.

Serial No.	National Highway No.	Description of National Highways
¹ [43]	53	The highway starting from its junction near Badarpur on National Highway No. 44, in Assam connecting Silchar, Jirighat and terminating near Imphal on National Highway No. 39.]
		² * * * * *
³ [44A]	54	The highway starting from its junction at Silchar in Assam on N.H. No. 53 connecting Aizawal and terminating at Tuipang in Mizoram.]
⁴ [44-AA]	Extension of NH No. 54	The highway starting from its junction near Daboka on National Highway No. 36 and connecting Lumding, Langdin, Haflong and terminating at its junction with National Highway No. 54 near Silchar in Assam.]
⁴ [44B]	54A	The highway starting from its junction at Theriat in Mizoram on National Highway No. 54 and terminating at Lungli in Mizoram.
44C	54B	The highway starting from its junction at "Venas Saddle" in Mizoram on National Highway No. 54 and terminating at Saiha in Mizoram.]
⁵ [44D]	55	The highway starting from Siliguri on National Highway No. 31 passing through Kurseong and terminating at Darjeeling.]
⁶ [45]	56	The highway starting from Lucknow and connecting Jagdishpur, Sultanpur and Jaunpur and terminating near Varanasi.]
⁵ [45-A]	*56A	The highway starting from its junction with National Highway No. 28 near Chenhat and terminating at Km. 16 of NH No. 56 in Uttar Pradesh.
45-AA	56B	The highway starting from its junction with National Highway No. 56 near Km 16 and terminating at Km 19 of NH No. 25 in Uttar Pradesh.]
⁷ [46]	*NE-1	The highway starting from Ahmedabad passing close to the town of Nadiad, Anand and terminating at Vadodara.]
⁸ [47]	61	The highway starting from its junction near Kohima on National Highway No. 39 in Nagaland and connecting Workha-Moko-KchungAmguri and terminating at its junctions with National Highway No. 37 near Jhanji in Assam.]

¹ Ins. by notification No. S.O. 698(E), Dated 1st September, 1980.

² Omitted by notification No. S.O. 457(E), Dated 4th August, 1986.

³ Ins. by notification No. S.O. 458(E), Dated 4th August, 1986.

⁴ Ins. by notification No. S.O. 7(E) Dated 6th January, 1999.

⁵ Ins. by notification No. S.O. 845(E), Dated 6th November, 1990.

⁶ Ins. by notification No. S.O. 868(E), Dated 17th November, 1984.

⁷ Ins. by notification No. S.O. 92(E), Dated 13th March, 1986.

⁸ Ins. by notification No. S.O. 116(E), Dated 9th February, 1998.

Serial No.	National Highway No.	Description of National Highways
¹ [48]	52B	The highway starting from its junctions on National Highway 52 near Kuljan and terminating at its junction with National Highway 37 in Assam.]
¹ [49]	62	The highway starting from its junction on National Highway 37 near Damra in Assam and terminating at Bhaghmara in Meghalaya.]
¹ [49-A]	Extension of NH No. 62	The highway starting from its junction with National Highway No. 62 near Baghmara and terminating at its junction with National Highway No. 51 near Dalu in Meghalaya.]
¹ [50]	63	The highway starting from its junction with National Highway No. 17 near Ankola-Hospet and terminating at its junction with National Highway No. 7 near Gooty in Andhra Pradesh.]
51	64	The highway starting from its junction on National Highway No. 22 near Chandigarh and connecting Rajpura-Patiala-Sangrur and terminating at its junction with NH No. 15 near Bhatinda in Punjab.
² [51A]	Extension of NH No. 64	The highway starting from its junction with National Highway No. 15 near Bhatinda in Punjab and terminating at its junction with National Highway No. 10 near Dabwali in Haryana.]
52	65	The highway starting from its junction with NH No. 1 near Ambala in Haryana and connecting Kaithal-Hisar and terminating at its junction with NH No. 11 near Fatehpur in Rajasthan.
¹ [52-A]	Extension of NH No. 65	The highway starting from its junction with National Highway No. 11 near Fatehpur and connecting Nagaur, Jodhpur and terminating at its junction with National Highway No. 14 near Pali in Rajasthan.]
53	66	The highway starting from its junction with National Highway No. 45A in Pondicherry and connecting Tindivanam-GingeeThiruvannamalai and terminating at its junction with National Highway No. 7 near Krishnagiri in Tamil Nadu.
54	67	The highway starting from Nagapattinam and connecting Trichy and terminating at its junction on National Highway No. 7 near Karur in Tamil Nadu.
¹ [54-A]	Extension of NH No. 67	The highway starting from its junction with National Highway No. 7 near Karur and connecting Palladam and terminating at its junction with National Highway No. 47 near Coimbatore in Tamil Nadu.]
55	68	The highway starting from its junction on National Highway No. 45 near Ulundrupet and terminating at its junction with National Highway No. 7 near Salem in Tamil Nadu

¹ Ins. by notification No. S.O. 7(E) Dated 6th January, 1999.

² Ins. by notification No. S.O. 7(E) Dated 6th January, 1999.

Serial No.	National Highway No.	Description of National Highways
¹ [57]	70	The highway starting from its junction near Jalandhar on National Highway No. 1 in Punjab and connecting Hoshiarpur, Hamirpur, Toni Devi, Ahwa Devi, Dharampur and terminating at its junction with National Highway No. 21 near Mandi in Himachal Pradesh.]
¹ [58]	71	The highway starting from its junction near Jalandhar on National Highway No. 1 in Punjab and connecting, Moga, Barnala, Sangrur, Narwana, Rohtak, Jhajjar and terminating at its junction with National Highway No. 8 near Bawal in Haryana.]
¹ [59]	71A	The highway starting from its junction near Rohtak on National Highway No. 10 and connecting Gohana and terminating at its junction with National Highway No. 1 near Panipat in Haryana.]
¹ [59A]	24A	The highway starting from its junction with National Highway No. 24 near Bakshi Ka Talab and terminating near Chenhat on National Highway No. 28 in Uttar Pradesh.]
¹ [60]	72	The highway starting from its junction near Ambala on National Highway No. 1 and connecting Nahan, Paonta Sahib, Dehradun and terminating at its junction with National Highway No. 58 near Rishikesh (Haridwar) in Uttar Pradesh.]
² [60A]	09	Extension of National Highway No. 49 starting from Madurai in the State of Tamil nadu connection Muvattupuza-Munnar Theni to terminate at Cochin in the State of Kerala.]
¹ [61]	73	The highway starting from its junction near Roorkee on National Highway No. 58 in Uttar Pradesh and connecting Saharanpur, Yamunanagar, Saha and terminating at its junction with National Highway No. 22 near Panchkula in Haryana.]
¹ [62]	74	The highway starting from its junction with National Highway No. 58 near Haridwar and connecting Najibabad, Nagina, Afzalgarh, Kashipur, Kichha, Jehanabad, Pilibhit and terminating at its junction with National Highway No. 24 near Bareilly in Uttar Pradesh.]
¹ [63]	75	The highway starting from its junction with National Highway No. 3 near Gwalior in Madhya Pradesh and connecting Jhansi (Uttar Pradesh), Khajuraho, Chhatarpur, Panna, Satna and terminating at its junction with National Highway No. 7 near Rewa in Madhya Pradesh.]
¹ [64]	76	The highway starting from its junction with National Highway No. 14 near Pindwara in Rajasthan and connecting Udaipur, Mangarwar, Chittaurgarh, Kota (National Highway No. 12), Shivpuri (National Highway No. 3), Jhansi (National Highway No. 25), Mahoba, Banda, Karwi, Mau and terminating at its junction with National Highway No. 27 near Allahabad in Uttar Pradesh.]

¹ Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

² Ins. by notification No. S.O. 147(E), Dated 20th February, 1989.

Serial No.	National Highway No.	Description of National Highways
¹ [65]	77	The highway starting from its junction near Hajipur on National Highway No. 19 and connecting Muzaffarpur (National Highway No. 28), Sitamarhi and Sonbarsa in Bihar.]
¹ [66]	78	The highway starting from its junction near Katni on National Highway No. 7 in Madhya Pradesh connecting, Shahdol, Nagar, Ambikapur, Jashpurnagar and terminating at its junction with National Highway No. 23 near Gumla in Bihar.]
¹ [67]	79	The highway starting from its junction with National Highway No. 8 near Ajmer in Rajasthan and connecting Nasirabad, Bhilwara, Chittaurgarh, Nayagaon, Nimach, Ratlam and terminating at its junction with National Highway No. 59 near Ghatbilod (Indore) in Madhya Pradesh.]
¹ [68]	80	The highway starting from its junction near Mokama on National Highway No. 31 in Bihar and connecting Munger, Bhagalpur, Sahebganj, Rajmahal and terminating at its junction with National Highway No. 34 near Farakka in West Bengal.]
² [68A]	81	The highway starting from its junction with National Highway No. 31 near Kora in Bihar and connecting Katihar and terminating at its junction with National Highway No. 34 near Maldah in West Bengal]
¹ [68B]	82	The highway starting from its junction near Gaya on National Highway No. 83 and connecting Rajgir, Bihar Sharif and terminating at its junction with National Highway No. 31 near Mokama in Bihar.]
¹ [68C]	83	The highway starting from its junction with National Highway No. 30 near Patna and connecting Punpun, Gaya, Bodh Gaya and terminating at its junction with National Highway No. 2 near Dobhi in Bihar.]
¹ [68D]	84	The highway starting from its junction with National Highway No. 30 near Arrah and connecting Bhojpur and terminating on National Highway No. 19 near Buxar in Bihar.]
¹ [68E]	85	The highway starting from its junction with National Highway No. 19 near Chhapra and connecting Siwan and terminating at its junction with National Highway No. 28 near Gopalganj in Bihar.]
¹ [68F]	86	The highway starting from its junction with National Highway No. 2 near Kanpur in Uttar Pradesh and connecting Chhatrapur and terminating at its junction with National Highway No. 26 near Sagar in Madhya Pradesh.]
³ [68G]	87	The highway starting from its junction with National Highway No. 24 near Rampur and connecting Bilaspur, Pantnagar, Haldwani and terminating at Nainital in Uttar Pradesh.]

¹ Ins. by notification No. S.O. 7(E) Dated 6th January, 1999.

² Ins. by notification No. S.O. 561(E) Dated 7th July, 1999.

³ Ins. by notification No. S.O. 561(E), Dated 7th July, 1999.

Serial No.	National Highway No.	Description of National Highways
¹ [68H	88	The highway starting from its junction with National Highway No. 22 near Simla and connecting Bilaspur, Hamirpur, Nadaun, Ranital, Kangra and terminating near Bhawan on National Highway No. 20 in Himachal Pradesh.]
¹ [68-1	89	The highway starting from its junction with National Highway No. 8 near Ajmer and connecting Nagaur, and terminating at its junction with National Highway No. 11 near Bikaner in Rajasthan.]
	*90	Baran – Aklera
	*91	Ghaziabad - Aligarh - Eta - Kannauj – Kanpur
	*92	Bhongaon - Etawah – Gwalior
	*93	Agra - Aligarh - Babrala - Chandausi – Moradabad
	*94	Rishikesh - Ampata - Tehri - Dharasu - Kuthnaur – Yamnotr
	*95	Kharar (Chandigarh) - Ludhiana - Jagaron – Ferozepu
	*96	Faizabad - Sultanpur - Pratapgarh – Allahabad
	*97	Ghazipur - Zamania – Saiyedraja
	*98	Patna - Aurangabad – Rajhara
	*99	Dobhi - Chatra – Chandwa
	*100	Chatra - Hazaribagh – Bogoda
	*101	Chhapra - Baniapur - Maharajganj – Barauli
	*102	Chhapra - Rewaghat – Muzaffarpur
	*103	Hazipur – Musahrigharar
	¹ [104	The highway strating form its junction near Chakia on National Highways No. 28 connecting Narhar-Pakri Bridge-Madhuban-ShivharSitamarhi-Umagaon-Jayanagar-Lakoush-Laukahiaand terminating at its junction near Narahia on National Highway No. 57 in the State of Bihar.]
	*105	Darbhangha - Aunsi – Jaynagar
	*106	Birpur - Madhepura – Bihpur
	*107	Maheshkhunt - Sonbar Saraj - Simri Bakhtiarpur - Bariahi - Saharsa - Madhepura – Purnea

¹ Subs. by notification No. S.O. 251(E), Dated 27th February, 2002.

Serial No.	National Highway No.	Description of National Highways
³ [69	150	The highway starting from its junction with National Highway No. 54 near Aizawl in Mizoram and connecting Ipaimukh, Churachandpur, Imphal, Ukhrul, Jessami and terminating at its junction with National Highway No. 39 near Kohima in Nagaland.]
	*151	Karimganj - Bangladesh Border
³ [69-A	Extension of NH No. 60	The highway starting from its junction with National Highway No. 6 near Kharagpur and connecting Bishnupur, Bankura and terminating at its junction with National Highway No. 2 near Asansol in West Bengal]
¹ [69B	152	The highway starting from its junction near Patacharkuchi on National Highway No. 31C, connecting Hajua and terminating at Indo-Bhutan border.]
	*15	Ledo - Lekhapani - Indo/Mynamar Border
	*154	Dhaleshwar - Bhairabi – Kanpu
² [70	200	The highway starting from its junction with National Highway No. 6 near Raipur in Madhya Pradesh and connecting Bilaspur, Sarangarh, Raigarh, Kanaktura, Jharsuguda, Kochinda, Pravasuni, Deogarh. Talcher, and terminating at its junction with National Highway No. 5 near Chandikhol in Orissa.]
³ [71	201	The highway starting from its junction with National Highway No. 43 near Boriguma and connecting Bhawanipatna, Bolangir, Barapali and terminating at its junction with National Highway No. 6 near Bargarh in Orissa.]
¹ [72	202	The highway starting from its junction near Hyderabad on National Highway No. 7 in Andhra Pradesh and connecting Warangal, Venkatpuram and terminating at its junction near Bhopalpatnam on National Highway No. 16 in Madhya Pradesh.]
¹ [73	203	The highway starting from its junction with National Highway No. 5 near Bhubaneshwar and terminating at Puri in Orissa.]
¹ [74	204	The highway starting from Ratnagiri and connecting Hathkamba (National Highway No. 17), Pali (National Highway No. 17), Sakharpa, Malkapur, and terminating at its junction with National Highway No. 4 near Kolhapur in Maharashtra.]
¹ [75	205	The highway starting from its junction near Ananthapur on National Highway No. 7 in Andhra Pradesh and connecting Kadiri, Tirupati, Renigunta, Tiruttani and terminating at its junction with National Highway No. 5 near Chennai in Tamil Nadu.]

¹ Ins. by notification No. S.O. 561(E), Dated 7th July, 1999.

² Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

Serial No.	National Highway No.	Description of National Highways
¹ [76]	206	The highway starting from its junction near Tumkur on National Highway No. 4 and connecting Shimoga and terminating at its junction with National Highway No. 17 near Honnavar in Karnataka.]
¹ [77]	207	The highway starting from its junction near Hosur on National Highway No. 7 in Tamil Nadu connecting Sarjapur, Devenhalli (on National Highway No. 7), Doda Ballapur and terminating at its junction with National Highway No. 4 near Nelamangala in Karnataka.]
¹ [78]	208	The highway starting from its junction near Kollam on National Highway No. 47 in Kerala and connecting Punalur, Tenkasi, Rajapalayam, Srivilliputtur and terminating at its junction with National Highway No. 7 near Tirumangalam in Tamil Nadu.]
¹ [79]	209	The highway starting from its junction near Dindigul on National Highway No. 7 in Tamil Nadu and connecting Pollachi, Coimbatore, Annur, Satyamanglam, Chamrajnagar, Kollegal and terminating at its junction with National Highway No. 7 near Bangalore in Karnataka.]
¹ [80]	210	The highway starting from its junction with National Highway No. 45 near Trichy and connecting Pudukottai, Devakottai and terminating at its junction with National Highway No. 49 near Ramanathapuram in Tamil Nadu.]
¹ [81]	211	The highway starting from its junction with National Highway No. 9 near Solapur and connecting Osmanabad, Aurangabad and terminating at its junction with National Highway No. 3 near Dhule in Maharashtra.]
² [82]	212	The highway starting from its junction with National Highway No. 17 near Kozhikode in Kerala connecting Mysore, and terminating at its junction with National Highway No. 209 near Kollegal in Karnataka.]
¹ [83]	213	The highway starting from its junction with National Highway No. 47 near Palghat and terminating at its junction with National Highway No. 17 near Kozhikode in Kerala.]
¹ [84]	214	The highway starting from its junction with National Highway No. 5 near Kathipudi and connecting Kakinada, and terminating at its junction with National Highway No. 9 near Pamarru in Andhra Pradesh.]
¹ [85]	215	The highway starting from its junction with National Highway No. 5 near Panikoli and connecting Keonjhar, and terminating at its junction with National Highway No. 23 near Rajamunda in Orissa.]

¹ Ins. by notification No. S.O. 7(E), Dated 6th January, 1999.

² Ins. by notification No. S.O. 561(E), Dated 7th July, 1999.

Serial No.	National Highway No.	Description of National Highways
	*216	Raigarh - Sarangarh - Saraipalli
	*217	Raipur – Gopalpur
	*218	Bijapur – Hubli
	*219	Madnapalli - Kuppam - Krishnagiri
	*220	Kollam (Quilon) – Teni
¹ [225]	563	The highway starting from its junction with NH-63 near Mancheral connecting Karimnagar and terminating at NH-163 near Warangal in the State of Andhra Pradesh.
226	365A	The highway starting from its junction with NH-65 near Kodad connecting Khammam and terminating at NH-365 near Mahboobabad in the State of Andhra Pradesh.]
² [227]	334B	The highway starting from its junction with new NH-34 near Meerut in the State of Uttar Pradesh connecting Sonipat, Kharkhauda, Sampla, Jhajjar, Charkhi Dadri and terminating at its junction with NH-709 near Loharu in the State of Haryana.]
³ [228]	150 Extn.	The highway starting from its junction with new NH-50 near Gulbarga connecting Chowdapur, Afzalpur in the State of Karnataka, Dudhani, Akkalkote and terminating at its junction with new NH-52 near Sholapur in the State of Maharashtra.]
⁴ [229]	848B	The highway starting from its junction with NH-48 near Karembali Phatak connecting Bamanpunja, Dholar Road in the State of Gujarat, Ambawadi, Patalia Costal Highway in the Union Territory of Daman and Diu and terminating at NH-48 near Udvada in the State of Gujarat.
230	251	The highway starting from its junction with NH-51 near Una in the State of Gujarat connecting Ghoghla in the Union Territory of Daman and Diu and terminating at NH-51 near Kesaria in the State of Gujarat.]
⁵ [231]	248A	The highway starting from its junction with NH-48 near Sahpura connecting Alwar, Ramgarh, Haryana/Rajasthan border in the State of Rajasthan, Nuh and terminating at its junction with new NH No. 48 near Gurgaon in the State of Haryana.]

¹ Ins. by notification No. S.O. 775(E), Dated 4th March, 2014.

² Ins. by notification No. S.O. 766(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O. 772(E) Dated 24th February, 2014.

⁴ Ins. by notification No. S.O. 838(E), Dated 4th March, 2014.

⁵ Ins. by notification No. S.O. 842(E), Dated 4th March, 2014.

Serial No.	National Highway No.	Description of National Highways
¹ [232]	107A	The highway starting from its junction with new NH No. 7 near Chamoli connecting Gopeshwar, Okhimath and terminating at its junction on new NH No. 107 near Baramwari in the State of Uttarakhand.
233	309A	The highway starting from its junction with new NH No. 9 near Rameshwar connecting Gangolihat, Berinag, Chaukori, Kanda, Bagheshwar, Takula and terminating at its junction with new NH No. 109 near Almora in the State of Uttarakhand.]
³ [234]	325	The highway starting from its junction with NH-25 near Balotra connecting Siwana, Jalore, Ahor and terminating at its junction with new NH No. 62 near Sandera in the State of Rajasthan.
235	25 Extension.	The highway starting from Barmer connecting Ramsar and terminating at Munabao Road in the State of Rajasthan.]
² [236]	102C	The highway starting from its junction with NH-2 near Maram in the State of Manipur connecting Peren, Jaluki, Pimla, Junction, Razaphe Junction and terminating at NH-29 Near Dimapur in the State of Nagaland.]
³ [237]	381	The highway starting from its junction with NH-544 near Avinashi connecting Tirupur and terminating at its junction with new NH No. 81 near Avinashipalaiym in the State of Tamilnadu.]
⁴ [238]	367	The highway starting from its junction with NH-67 near Bhanapur connecting Kukunur, Yelburga, Gajendragad, Badami, Guledaguda, Bagalkote, Bagalkot and terminating at its junction with new NH No. 52 near Gaddankeri in the State of Karnataka.
239	173	The highway starting from its junction with NH-73 near Mudigere connecting Chikkamagaluru and terminating at its junction with new NH No. 69 near Kadur in the State of Karnataka.
240	275	The highway starting from its junction with NH-75 near Bantwala connecting Puttur, Sulya, Madikeri, Priyapatna Mysuru, Srirangapattana, Mandya, Channapatnam, Ramanagaram and terminating at its junction with new NH No. 75 on Bengaluru in the State of Karnataka.
241	150A	The highway starting from its junction with NH-50 at Jevargi connecting Siriguppa, Bellary, Hiriyyur, Huliyyur, Chikkanayakanahalli, Nagamangala Srirangapatna-MysoreNanjangud and terminating at its junction with NH-948 at Chamarajanagar in the State of Karnataka.]

¹ Ins. by notification No. S.O. 867(E), Dated 4th March, 2014.

² Ins. by notification No. S.O. 767(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O. 770(E), Dated 4th March, 2014.

⁴ Ins. by notification No. S.O. 774(E), Dated 4th March, 2014.

Serial No.	National Highway No.	Description of National Highways
¹ [242]	154A	The highway starting from its junction with NH-154 near Chakki, Dhar in the State of Punjab connecting Banikhet, Chamba and terminating at Bharmour in the State of Himachal Pradesh
243	505	The highway starting from its junction with NH-5 near Khab Sangam connecting Chango, Sumdo, Tabo, Attargo, Kaza, Morang, Hanse, Losar, Lachu, Chhota Dhara and terminating at Gramphoo in the State of Himachal Pradesh.
244	503 Extention	The highway starting from its junction with NH-3 near Mubarakpur connecting Amb, Una, Dehlan in the State of Himachal Pradesh, Anandpur Sahib, Kiratpur and terminating at its junction with new NH No. 205 in the State of Punjab.]
² [245]	444	The highway starting from its junction with NH-44 near Srinagar connecting Badgam, Pulwama, Shupiyan, Kulgam and terminating at its junction with new NH No. 44 near Quazigund in the State of Jammu and Kashmir.
246	144A	The highway starting from its junction with NH-44 near Jammu connecting Akhnur, Naoshera, Rajauri and terminating at Punch in the State of Jammu and Kashmir.]
³ [247]	627	The highway starting from its junction with new NH-27 near Nelle (Amsoi Gate) connecting Rajagaon, Doyangmukh, Umrangso, Khobak and terminating at NH-27 near Harangajao in the State of Assam]
⁴ [248]	310A	The highway starting from its junction with NH-10 near Tashiview point connecting Phodang and terminating at Mangan in the State of Sikkim
249	710	The highway starting from its junction with NH-10 near Melli connecting Manpur, Namchi and terminating at Damthang in the State of Sikkim
250	510	The highway starting from its junction with NH-10 near Singtham connecting Damthang, Legship and terminating at Geyzing in the State of Sikkim.]
⁵ [251]	427	The highway starting from its junction with NH-27 near Howli connecting Barpeta, Hajo and terminating at its junction with new NH No. 27 near Jalukbari in the State of Assam.
252	329	The highway starting from its junction with NH-29 near Manja connecting Diphu and terminating at its junction with new NH No. 27 near Lumding in the State of Assam

¹ Ins. by notification No. S.O. 836(E), Dated 4th March, 2014.

² Ins. by notification No. S.O. 764(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O. 840(E), Dated 4th March, 2014.

⁴ Ins. by notification No. S.O. 768(E), Dated 4th March, 2014.

⁵ Ins. by notification No. S.O. 863(E), Dated 4th March, 2014.

Serial No.	National Highway No.	Description of National Highways
253	117A	The highway starting from its junction with NH-17 near Bilasipara connecting Kokrajhar and terminating at its junction with New NH27 near Garubhasa in the State of Assam
254	715A	The highway starting from its junction with NH-27 near Nakhola connecting Jagiroad, Marigaon, Kaupati, Rowta, Udalguri, Khoirabari and terminating at Indo/Bhutan border in the State of Assam
255	127E	The highway starting from its junction with NH-27 near Barama connecting Baska, Subankhata and terminating at Indo/Bhutan border in the State of Assam]
¹ [256	326A	The highway starting from its junction with new NH No. 326 near Mohana connecting Chandiput, Chheligada, Ramagiri Udayagiri, Raygarh, Parlakimidi, Kotabommali and terminating at its junction with NH-16 near Narasannapeta in the State of Odisha.]
² [257	702	The highway starting from its junction with NH-2 near Chantongia connecting Longling, Lonhching, Mon, Lapa, Tizit in the State of Nagaland, Sonari and terminating at its junction with new NH No. 215 near Sapekhati in the State of Assam.
258	702A	The highway starting from its junction with new NH No 2 near Mokokchung connecting Zunheboto, Phek in the State of Nagaland and terminating at Jessam near new NH No. 29 in the State of Manipur.
259	208	The highway starting from its junction with NH-8 near Kumarghat connecting Kailashahar, Khowai and terminating at its junction with new NH-8 near Teliamura in the State of Tripura.
260	108A	The highway starting from its junction with new NH No. 8 near Jolaibari connecting Belonia and terminating at Indo/Bangladesh border.
261	102C	The highway starting from its junction with new NH No. 102 near Palel and terminating at Chandel in the State of Manipur.]
³ [262	103A	The highway starting from its junction with new NH-3 near Hoshiarpur connecting Mahalpur, Gurhshankar, Nawanshahr, Balachur and terminating at its junction with new NH No. 205 near Rupnagar in the State of Punjab.
263	703A	The highway starting from its junction with new NH-3 near Jalandhar connecting Kapurthala, Sultanpur Lodhi, Pindi and terminating at its junction with new NH No. 54 near Makhu in the State of Punjab.]

¹ Ins. by notification No. S.O.869(E), Dated 4th March, 2014.

² Ins. by notification No. S.O. 868(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O. 864(E), Dated 4th March, 2014.

Serial No.	National Highway No.	Description of National Highways
¹ [264	512	The highway starting from its junction with NH-12 near Gajol connecting Daulatpur, Bansihari, Gangarampur, Harsura, Balurghat and terminating at Hilli in the State of West Bengal near Indo/Bangladesh Border.]
¹ [265	754	The highway starting from its junction with new NH-54 near Kot Kapurthala connecting Khara, Muktsar, Saidoke and terminating at Jalalabad in the State of Punjab.]
² [266	185	The highway starting from its junction with new NH No. 85 near Adimali connecting Cheruthoni, Painavu and terminating at its junction with new NH No. 183 near Kumily in the State of Kerala.
267	183A	The highway starting from its junction with new NH No. 183 near Adur connecting Pathanamthitta, Vadserikkara, Lahai, and terminating at its junction with new NH No. 183 near Vandiperiyar in the State of Kerala.]
³ [268	333A	The highway starting from its junction with NH-33 near Bar Bigha connecting Shekhpura, Sikandra, Jamui, Jha-Jha, Banka in the State of Bihar and terminating at its junction with NH-133 near Godda in the State of Jharkhand.
269	527A	The highway starting from its junction with new NH No. 527 B near Pokhrauni Chowk connecting Madhubani, Rampatti and terminating at its junction with new NH No. 27 near Jhanjharpur in the State of Bihar.
270	219	The highway starting from its junction with new NH No. 19 near Mohania connecting Bhabhua, Chainpur, Chand in the State of Bihar and terminating at its junction with NH-19 near Chandauli in the state of Uttar Pradesh.]
⁴ [271	753	The highway starting from its junction with NH-53 near Duggipar connecting Goregaon, and terminating at Gondia in the State of Maharashtra.
272	753A	The highway starting from its junction with NH-53 near Malkapur connecting Buldhana, Chikhli, Deulgaon Raja, Jalna and terminating near Aurangabad on NH-52 in the State of Maharashtra.
273	753B	The highway starting from its junction with NH-53 near Shevali connecting Nizampur, Chhadvel, Nundurbar, Taloda, Akkalkura in the State of Maharashtra, Dediapada and terminating at Netrang on NH-56 in the State of Gujarat.

¹ Ins. by notification No. S.O. 871(E), Dated 4th March, 2014.

² Ins. by notification No. S.O. 866(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O.870(E), Dated 4th March, 2014

⁴ Ins. by notification No. S.O. 875(E), Dated 5th March, 2014.

Serial No.	National Highway No.	Description of National Highways
274	166A	The highway starting from Vadkhal on NH-66 and terminating at Alibag in the State of Maharashtra.]
¹ [275]	130D	The highway starting from its junction with NH-30 on Kondagaon and terminating at Narainpur in the State of Chhattisgarh.
276	163A	The highway starting from Geedam(Gidam) on NH-63 and terminating at Dantewara in the State of Chhattisgarh.
277	149B	The highway starting from its junction with NH-49 near Champa connecting Korba, Chhuri and terminating at its junction with new NH No. 130 near Katghora in the State of Chhattisgarh
278	130C	The highway starting from its junction with NH-30 near Abhanpur connecting Rajim, Gariaband, Bardula, Deobhog in the State of Chhattisgarh and terminating at its junction with new NH No. 201 near Baldhimal in the State of Odisha.
279	930	The highway starting from its junction with NH-30 near Purur connecting Balod, Kusumkasa, Kumhari, Manpur in the State of Chhattisgarh, Muramgaon, Dhanora, Gadchiroli, Mul, Chandrapur, Warora, Wani and terminating near Karanji on NH-44 in the State of Maharashtra.
280	130A	The highway starting from its junction with NH-30 near Pondi connecting Pandaria, Mungeli, and terminating at NH-130 on Bilaspur in the State of Chhattisgarh.
281	130B	The highway starting from Raipur on NH-30 connecting Palari, Baloda Bazar, Kasdol and terminating at its junction with NH No. 153 near Sarangarh in the State of Chhattisgarh.]
² [282]	133A	The highway starting from its junction with NH-33 near Baharwa connecting Pakur in the State of Jharkhand and terminating with NH12 near Nimtala in the State of West Bengal.
283	419	The highway starting from its junction with NH-19 near Kulti in the State of West Bengal connecting Chittaranjan, Jamtara and terminating at Gobindpur in the State of Jharkhand.
284	143A	The highway starting from its junction with NH-43 near Gumla connecting Ghaghra, Lohardaga and terminating at its junction with NH-39 near Kuru in the State of Jharkhand.]
³ [288]	713	The Highway starting from its junction with NH-13 near Joram connecting Palin, Sangram and terminating at Koloriang in the State of Arunachal Pradesh.

¹ Ins. by notification No. S.O. 874(E), Dated 5th March, 2014.

² Ins. by notification No. S.O. 873(E), Dated 4th March, 2014.

³ Ins. by notification No. S.O. 1515(E), Dated 13th June, 2014.

Serial No.	National Highway No.	Description of National Highways
289	513	The Highway starting from its junction with NH-13 near Passighat connecting Mariyang and terminating at Yingkiong in the State of Arunachal Pradesh.
290	313	The Highway starting from its junction with NH-13 near Meka and terminating near Anini in the State of Arunachal Pradesh.
291	113	The Highway starting from its junction with NH-13 near Hawacamp connecting Hayuliang and terminating near Hawaii in the State of Arunachal Pradesh.
292	713A	The Highway starting from its junction with NH-13 near Hoj connecting Yupia and terminating at its junction with NH-415 near Pappu (near Nahurlagun) in the State of Arunachal Pradesh.]
¹ [293	341	The highway starting from its junction with NH-41 near Bhimasar connecting Anjar, Bhuj, Khavda and terminating at Dharmshala in the State of Gujarat.
294	147A	The highway starting from its junction with NH-47 near Limbdi connecting Surendranagar, Dhrangadhra and terminating at Kuda in the State of Gujarat.
295	351	The highway starting from its junction with NH-51 near Mahuva connecting Saverkundla, Amreli, Bagasara and terminating at Jetpur on NH-27 in the State of Gujarat.
296	953	The highway starting from its junction with NH-53 near Songudh connecting Ahwa in the State of Gujarat, Sarad, Vani and terminating at its junction with NH-60 near Pimpalgaon Baswant in the State of Maharashtra.
297	927D	The highway starting from its junction with NH-27 near Dhoraji connecting Jamkandorna, Kalavad and terminating at Jamnagar in the State of Gujarat.]
² [298	348A	The highway starting from its junction with NH-348 near Jawahar Lal Nehru Port Trust connecting Gavanphata section of SH-54 (Km. 5.300 to km. 14.550), Amara Marg (km. 0.000 to km. 6.500) and terminating at its junction with Palm Beach Road in the State of Maharashtra.]
³ [313	709A	The highway starting from its junction with new NH No. 709 at Bhiwani connecting Mundal, Jind, Karnal in the State of Haryana, Shamli, Budhana and terminating at its junction with new NH No. 34 at Meerut in the State of Uttar Pradesh.]

¹ Ins. by notification No. S.O. 1522(E), Dated 13th June, 2014.

² Ins. by notification No. S.O. 1513(E) Dated 13th June, 2014.

³ Ins. by notification No. S.O. 699(E) dated 10th March, 2015.

THE NATIONAL HIGHWAYS RULES, 1957¹

In exercise of the powers conferred by section 9 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following rules, namely:

1. Short title.-These rules may be called the National Highways Rules, 1957.

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

- a) "Act" means the National Highways Act, 1956 (48 of 1956);
- b) "approved work" means any original work on a national highway in respect of which the Central Government has accorded technical approval and financial sanction;
- c) "completion report" means a report required to be furnished under rule 8;
- d) "executive agency" means-
 - (i) in the case of a Union Territory the 'Administrator thereof to whom the functions of the Central Government in relation to the execution of works pertaining to national highways are delegated under article 239 of the Constitution; and
 - ² [(ia) in the case of a national highway or part thereof in respect of which such functions are delegated to the Border Roads Organisation, the Border Roads Development Board;
 - (ib) in the case of a national highway or part thereof in respect of which such functions are delegated to the National Highways Authority of India;]
 - (ii) in any other case the State Government to which such functions are delegated under section 5 of the Act; and
- e) "progress report" means a report required to be furnished under rule 7.

³ **[3. Detailed estimate of the original work.**-(1) Where the estimate of the cost for the execution of any original work on a national highway exceeds Rs. 10.00 lakhs, a detailed estimate of the cost for the execution of the work shall be forwarded by the executive agency to the Central Government in such form as the Central Government may specify in that behalf and that Government may accord technical approval and financial sanction to such estimate subject to such conditions as it may think fit to impose. _

(2) Where the estimate of the cost for the execution of any original work on a national highway does not exceed Rs. 10.00 lakhs, technical approval and financial sanction to the plan and estimate for the execution of such work may be accorded by the executive agency concerned subject to the conditions specified in the Schedule annexed to these rules.

(3) No original work on any national highway shall be undertaken by the executive agency until technical approval and financial sanction to the estimate for the execution of the work have been accorded by the Central Government or the executive agency, as the case may be, except in cases of emergency, such as flood, earthquake or any other *force majeure* which shall be immediately reported to the authority competent to, sanction the estimate and the Audit Officer concerned indicating the approximate amount of liability involved.]

¹ Vide S.R.O. 1182, dated 4th April, 1957.

² Ins. by G.S.R. 417 (E), dated 31st July, 1998 (w.e.f. 31-7-1998).

³ Subs. by 5.0. 680 (E), dated 15th October, 1976.

4. Abstract of particulars of detailed estimate for maintenance of national highways.-An abstract of the particulars of the detailed estimate for the maintenance of a national highway during each financial year shall be forwarded by the executive agency to the Central Government in such form as the Central Government may require not later than the 1st day of the month of May in that financial year:

Provided that the Central Government may, in any case or class of cases, require the executive agency to forward a detailed estimate or estimates for the maintenance of any national highway in such form as that Government may require.

(2) The Central Government may accord approval to the abstract or the detailed estimate or estimates submitted to it under this rule subject to any conditions it may think fit to impose.

¹**[5. Revised detailed estimate.**-Where the expenditure upon any original work on a national highway for the detailed estimate of the cost for which the Central Government has accorded technical approval and financial sanction, under sub-rule (1) of rule 3, is likely at any time to exceed, or exceeds, the amount of such estimate by more than fifteen per cent thereof or by a sum of one crore rupees, whichever is less, the executive agency shall forward a revised detailed estimate of the cost for such work to the Central Government in such form as that Government may specify in this behalf, and the Central Government may accord technical approval and financial sanction to the revised detailed estimate subject to such conditions as it may think fit to impose.

(2) Where the expenditure upon any original work on a national highway to the detailed estimate of the cost for which the executive agency concerned has accorded technical approval and financial sanction, under sub-rule (2) of rule 3, is likely at any time to exceed, or exceeds, the amount of such estimate and the revised cost of the original work, including the excess, is likely at any time to exceed, or exceeds by more than fifteen per cent of the original estimate or Rs. 10.00 lakhs, the executive agency shall forward a revised detailed estimate of the cost for such work to the Central Government in such form as that Government may specify and the Central Government may accord technical approval and financial sanction to such revised estimate subject to such conditions as it may think fit to impose.

(3) Notwithstanding anything contained in sub-rule (2), where the expenditure upon any original work on a national highway to the detailed estimate of the cost for which the executive agency concerned has accorded technical approval and financial sanction, under sub-rule (2) of rule 3, is likely at any time to exceed, or exceeds, the amount of such estimate and the revised estimate of the cost for the original work, including the excess is likely at any time to exceed, or exceeds, by more than fifteen per cent of the original estimate but by not more than fifteen per cent of the rough estimate of the costs for the original work which the executive agency had submitted to the Central Government and obtained the approval of that Government, technical approval and financial sanction to such revised estimate may be accorded by the executive agency concerned subject to the conditions specified in the Schedule annexed to these rules:

Provided that the amount of the revised estimate is not likely to exceed, or does not exceed Rs.10.00 lakhs:

Provided further that the excess of expenditure is caused only by routine factors such as increase in the cost of labour or material and not due to revision in the scope or enlargement of the work or specifications already approved.

¹ Subs. by S.O. 680 (E), dated 15th October, 1976.

(4) Where the expenditure upon any original work on a national highway is likely at any time to exceed, or exceeds, the amount of the estimate of the cost for such work no funds shall be allotted to the work by the Central Government in the cases provided for in sub-rule (1), (2) or (3), unless the provisions of those sub-rules are complied with except in cases where the Central Government directs otherwise.

Explanation.-For the removal of doubts, it is hereby declared that in cases where the excess of expenditure is less than the percentage or amount specified in sub-rule (1) or sub-rule (2), it is not necessary to obtain technical approval and financial sanction of the Central Government for the revised estimate in accordance with those sub-rules only if the excess of expenditure is caused by routine factors such as increase in the cost of labour or material and not due to revision in the scope or enlargement of the work or specifications already approved.]

6. Application for allotment of funds.-An application for the allotment of funds for meeting expenditure on any original work on a national highway or on the maintenance of a national highway during any financial year shall be made by the executive agency to the Central Government in such form as that Government may require and the Central Government shall communicate its decision to the executive agency on such application as soon as possible after such application is received.

7. Monthly progress report.-The executive agency shall furnish to the Central Government a monthly progress report on every approved work in such form as that Government may require.

8. Completion report.-As early as possible after the completion of any approved work the executive agency shall furnish to the Central Government a full and correct report on such completion in such form as that Government may require.

9. Inspection of works.-The Consulting Engineer to the Government of India (Road Development) or any officer authorised by him in this behalf may inspect at any time any approved work in progress or completed. A report of every such inspection shall be submitted to the Central Government.

¹**[10. Utilisation of space beneath the road, over bridges or flyovers.**- The Central Government, where it deems fit, may accord permission to the State Government or the Government of a Union Territory, as the case may be, for utilisation of space beneath the road, over bridges or flyovers on national highways for which an yearly license fee which shall be either

- (i) a percentage of capital cost; consisting of the cost of land and the cost, if any, incurred by the Central Government for covering or enclosing the space beneath the approach spans of road, over bridges or flyovers and for providing sanitary, water supply and electric installations, equal to such rate of interest as may from time to time be fixed by the President under FR 45A plus an addition for house or property tax, if any, payable by Government in respect of the covered space and for maintenance and repairs of the covered structure, or
- (ii) six per cent per annum of such capital cost, whichever is less, shall be fixed and levied on the terms and conditions as may be laid down by the Central Government in this respect. The rate of license fee to be levied as above, shall

¹ Added by S.O. 699 (E), dated 17th September, 1993 (w.e.f. 17-9-1993).

be subject to revision after every five years to take into account any change in the market value of the land.]

[THE SCHEDULE

[See rule 3(2)]

Conditions for the issue of technical approval and financial sanction to plan and estimate for execution of any original work on a national highway costing an amount not exceeding Rs. 10.00 lakhs by the executive agency concerned.

(1) The executive agency shall forward to the Central Government for approval rough cost estimates along with detailed information in respect of the particulars given below according to the tentative details given in the annual plan works programme for a particular year, within a period of 3 months after the receipt of annual plan works programme for the year:

- (a) Proposal in brief with a rough plan of the area in which the work is to be executed.
- (b) Extent of preliminary survey and investigation done.
- (c) Broad features showing the existing position and the improvements desired.
- (d) Traffic data.
- (e) Duration of execution.
- (f) Phasing of expenditure and also physical performance.
- (g) Rough quantities and estimated cost under broad headings such as:

(1) <i>Road works</i>	(2) <i>Bridge works</i>
Land acquisition; earth work; road material.	Foundation, super structure, guide bunds, etc.
- (h) Detailed specification.
- (i) List of equipments required for speedy execution of the work.
- (j) Alignment plan and longitudinal section in case of roads; hydraulic data and outline designs of structures in case of bridges.
- (k) Particulars for comparison of the similar works carried out in the same region.
- (l) Special features, if any.

(2) (a) Permissible job sizes shall be regulated according to description given in the annual Plan works programme mentioned under condition (1) and the work shall not be split up.

(b) In the case of items saving lump sum provision (such as improvement of geometrics, stabilizing, slipping reaches, raising roads in submersible sections, each specific location supported by requisite details shall be treated individually.

(3) Technical approval and financial sanction shall be accorded only in respect of such items of work for which specific provision has been made in the highways during the year for the individual work on the basis of the approval given under condition (1).

(4) While sanctioning detailed estimates, the executive agency shall ensure that the rough cost estimate for the work appearing in the budget estimates accepted by the Central Government for presentation to Parliament is not exceeded by more than 15 per cent or the total cost of detailed estimate to be sanctioned by that agency, in no case exceeds Rs. 10 lakhs, whichever is less.

(5) Abstract of cost of sanctioned detailed estimates in all cases shall be submitted by the executive agency in respect of the works sanctioned by that agency and in the case of bridge' estimates, in addition a general outline drawing shall also be submitted. Abstract of cost of sanctioned detailed estimates shall give justification for excess, if any, referred to under condition (4).

(6) Progress reports in respect of all works sanctioned by the executive agency shall be submitted to the Central Government, in such form and at such periodicity as may be required by the Central Government from time to time.

(7) Technical approval and financial sanction to plans and estimates for execution of any original work on a national highway shall be accorded by the executive agency only after the approval of an officer of the rank of Chief Engineer or Additional Chief Engineer or Principal Engineer in charge of national highway works has been obtained.

(8) In case the executive agency considers it necessary to accord technical approval and financial sanction after the approval of officers of the rank of Superintending Engineers possessing requisite technical, administrative and financial powers, the prior approval of the Central Government shall be obtained but in all such cases they shall have to consult the Regional Officer concerned of the Ministry of the Central Government dealing with the national highways.

(9) In the case of projects, concerning bypasses, realignment and improvement of geometrics as also designs for bridges of length up- to 100 metres and of individual spans not exceeding 30 metres even where cost may be within Rs. 10.00 lakhs, no work shall be sanctioned by the executive agency without prior approval of the Regional Officer concerned of the Ministry in the Central Government dealing with national highways.

(10) In the matters relating to technical approval and financial sanction, the following procedure shall be followed namely:

- (i) In case of the works where standards and designs adopted in the estimates are in accordance with the Indian Roads Congress Code and specifications and any other relevant instructions, guidelines, standard bridge designs, etc., issued by the Central Government from time to time, copies of the sanctions accorded by the executive agency shall invariably be endorsed to the Regional Officers concerned of the Ministry in the Central Government dealing with national highways along with complete copy of the estimate so that even after sanction, they could examine the matter and bring to the notice of executive agency deviations from such Code, specifications, instructions, guidelines, standard bridge designs, if any.
- (ii) Where for any work, deviations, from approved standards, specifications, instructions, guidelines issued by the Central Government have to be made due to local conditions no work shall be sanctioned by any executive agency unless a complete copy of the estimate is furnished to the Regional Officer concerned of the Ministry in the Central Government dealing with national highways and his approval has been obtained in accordance with the general instructions issued by them from time to time governing the disposal of such cases. A brief mention of these deviations shall also be made by the executive agency in the abstract estimates to be sent to the Central Government quoting the reference of approval of the Regional Officer concerned.

- (iii) In all other cases where proposed deviations do not fit in with the general instructions issued by the Central Government or are not necessitated due to local conditions, technical and financial sanction thereto may be accorded by the executive agency with the prior approval of the Central Government on a reference being made in this behalf along with a copy of the detailed estimate through the Regional Officer of the Ministry of the Central Government dealing with the national highways who shall forward the same to the Central Government with his comments thereon.
- (iv) After the budget estimates have been accepted by the Central Government, the funds likely to be available for the work shall be intimated to the executive agency concerned. Work-wise allotment of funds shall be made by the Central Government and the same shall also be communicated to the executive agency concerned for further necessary action as soon as the budget is passed by the Parliament. Sanction for entering into financial commitments may be accorded by the executive agency only after the budget is passed by the Parliament and the same is intimated to the executive agency. All other actions including technical sanction to the project, calling and receipt of tenders, negotiation for their settlement, etc., may, however, be taken by the executive agency as soon as the acceptance of the budget estimate by the Central Government has been intimated to it.

THE NATIONAL HIGHWAYS (TEMPORARY BRIDGES) RULES, 1964¹

In exercise of the powers conferred by section, 9 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following rules, namely:

1. Short title.- These rules may be called the National Highways (Temporary Bridges) Rules, 1964.

2. Rate of fees.- The rates at which fees for services rendered in relation to the use of temporary bridges on any national highway may be levied, shall be as specified in the Schedule to these rules.

3. Procedure for collection of fees.- The Central Government may-

- (i) collect the fees payable for services rendered in relation to the use of temporary bridges departmentally; or
- (ii) lease out, by public auction or by negotiation, for a period not exceeding one year at a time and subject to such conditions as may be specified in the lease deed, the right to collect such fees:

Provided that where such right is leased out by negotiation, the reasons for the same shall be recorded in writing.

SCHEDULE

Fees for services rendered in relation to the use of temporary bridges on National Highways

Sr. No.	Nature of Service	Rate of fees (in Rs.)
1	2	3
1.	Palkee with 8 bearers and travellers	0.37
2.	Palkee empty and	0.19
3.	Palkee with 6 bearers and travellers	0.25
4.	Palkee empty	0.12
5.	Dolly with 4 bearers and travellers	0.19
6.	Dolly empty	0.06
7.	Dolly with 2 bearers and travellers	0.09
8.	Dolly empty	0.06
9.	Ekka, Rath, Manjhauli with single bullock or party	0.19
10.	Ekka, Rathless bullock pair	0.25
11.	Drawn by horse or one or two bullocks with travellers and sayees	0.50
12.	Drawn with sayees only	6.37
13.	Four wheeled carriage on spring drawn by one horse or pair of	1.00

¹ Vide G.S.R. 1733, dated 26th November, 1964, published in the Gazette of India, 1964, Pt. II, Sec. 3(i), p. 1901.

	bullock with travellers and servants	
14.	Four wheeled carriage with servants only	1.75
15.	Four wheeled carriage drawn by two horses with travelers and servants	1.50

1	2	3
16.	Four wheeled carriage with servants only	1.00
17.	Four wheeled carriage without spring drawn by two bullocks laden and with travelers	0.50
18.	Four wheeled carriage empty	0.25
19.	Four wheeled carriage drawn by more than two bullocks laden or with travelers	1.00
20.	Four wheeled carriage empty	0.50
21.	Hackney with pair of bullocks laden	0.22
22.	Hackney with three or more bullocks laden	0.37
23.	Hackney empty	0.09
24.	Hackney empty with three or more bullocks	0.19
25.	Bullocks or buffaloes in drive per score if less than one score	0.25
26.	Bullocks and buffaloes if less than one score	0.08
27.	Bullocks or buffaloes if laden	0.03
28.	Sheep goats in drive per score	0.12
29.	Sheep if less than one score	0.02
30.	Dog	0.06
31.	Horse with rider or sayees or both	0.19
32.	Ponny with rider or sayees or both	0.06
33.	Ass or mule laden with driver	0.09
34.	Ass or mule unladen with driver	0.06
35.	Camels laden in strings per 1/4 score	2.25
36.	Camels laden in less than ten each	0.31
37.	Camels laden/unladen in string per half score	1.50
38.	Camels if less than ten	0.19
39.	Elephant with gear or howdah	0.75
40.	Motor car (in addition to Rs. 10.00 additional 25 P. for every occupant)	10.00
41.	Loaded truck or passenger bus	50.00
42.	Unloaded truck or passenger bus (in addition to Rs. 12.50 . additional 25 P. for every occupant)	12.50
43.	Rickshaw loaded	0.25
44.	Rickshaw unloaded	0.12

45.	Motor cycle with side car	0.50
46.	Motor without side car	0.25

Services exempted from fees

1. Mails, mail-carts, dak-runners, and Government telegraphs messengers on duty.
 2. Police and other public officers and process serving peons when travelling on duty with their *bona fide* baggage, horse, palkies or other conveyances.
 3. Executive officers of the District Road Department when travelling on duty.
 4. Members of the District and Local Board travelling on duty connected with their office as such members.
 5. Coolies engaged in repairing roads, with their tools and instruments.
 6. Persons carrying dead bodies or property sent in by the police.
 7. Military officers, when travelling on duty, troops in uniform and their families, attendant, animals and vehicles accompanying them.
 8. Vehicles moving under the orders of military authority.
 9. Government servants travelling on duty, their attendants, animals and vehicles accompanying them.
 10. Persons and animals employed in and vehicles transmitted on the public service.
 11. Vehicles employed in connection with the transport of materials or goods owned or purchased by Government while proceeding with, or travelling empty for taking, such a load.
 12. Village kotwals travelling on duty and accused persons in custody.
 13. Persons, animals and vehicles conveying materials for use on works in charge of the P.W.D.
 14. Pedestrians
-

THE NATIONAL HIGHWAYS (COLLECTION OF FEES BY ANY PERSON FOR THE USE OF SECTION OF NATIONAL HIGHWAYS/PERMANENT BRIDGE/TEMPORARY BRIDGE ON NATIONAL HIGHWAYS) RULES, 1997¹

In exercise of the powers conferred by section 9 read with section 8A of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following rules for Collection of Fees by any Person for the Use of Section of any National Highways/ Permanent Bridges/temporary Bridges on National Highways, namely:-

1. Short title.-(i) These rules may be called the National Highways (Collection of Fees by any Person for the Use of Section of National Highways/Permanent Bridge/ Temporary Bridge on National Highways) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official Gazette.

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

- (a) "mechanical vehicle" means any laden *or* unladen vehicle designed to be driven under its own power, including a motor vehicle, as defined in clause (28) of section 2 of the Motor Vehicles Act of 1988 (59 of 1988);
- (b) "section of national highway/permanent bridge/temporary bridge" means that length of national highway/permanent bridge/temporary bridge on national highway notified by the Central Government in Official Gazette for the development/maintenance of which an agreement has been entered into between the Central Government and any person;
- ²[(c) "person" shall include any company *or* association or body of individuals whether incorporated *or* not]

3. Agreement and rate of fee.-(1) The Central Government may enter into an agreement with any person in relation to development and maintenance of the whole *or* any part of a national highway/permanent bridge/temporary bridge on national highway as it may decide, whereby the person may be permitted to invest his own funds for the development/maintenance of a section of national highway/permanent bridge/temporary bridge and to collect and retain the fees at agreed rates from different categories of mechanical vehicles for an agreed period for the use of the facilities thus created, subject to the terms and conditions of the agreement and these rules.

(2) The rates of fees and the period of collection shall be decided and shall be specified by notification in the Official Gazette by the Central Government having regard to the expenditure involved in building, maintenance, management and operation of the whole *or* part of such section, interest on the capital invested, reasonable return; the volume of traffic and the period of such agreement.

(3) On completion of the period of collection of fees by the person, as per the agreement, all rights pertaining' to the section/permanent bridge/temporary bridge on national highway shall

¹ Vide G.S.R. 62(E). dated 6th February. 1997, published in the Gazette of India. Extra.. Pt. II. Sec. 3(i), dated 6th February. 1997. pp. 2-3.

² Ins. by G.S.R. 336 (E), dated 13th April. 2000 (w.e.f. 17-4-2000).

be deemed to have been taken over by the Central Government and that Government shall continue with the collection of fees as notified from time to time.

(4) ¹The rates of fee, the categories' of vehicles exempted from payment of fee and the name, address and telephone number of the authority to whom complaints, if any, should be addressed, shall be conspicuously and prominently displayed 500m ahead of the toll booths, 100m ahead of the toll booths and at the toll booths also, the height of the display boards and size of letters being such that it is easy for drivers to read the display boards.]

4. Modalities of fee collection.-(1) The mode of fee collection shall be decided by the person referred to in sub-rule (1) of rule 3.

(2) A table of fees authorised to be collected on any section of national highway! permanent bridge/temporary bridge on national highway shall be put up by such person in a conspicuous place near a fee collection booth legibly written or printed in English, Hindi and the regional language of the area in which the national highway is situated.

5. Incharge of fee collection.²[(1) The person authorised to collect and retain the fees under these rules shall nominate an official as in-charge of fee collection, and the person as also the official so nominated shall be responsible to ensure that fees are collected at not more than the agreed rates and the fee collection is smooth without causing undue hardship to the road users, and for all other matters connected with the fee collection of section of national highway/permanent bridge/temporary bridge:

Provided that no fee shall be payable or collected in respect of the following vehicles, namely:-

- (i) vehicles having "VIP" symbols or belonging to the President and Vice-President of India, Central and State Ministers, Leaders of Opposition in Lok Sabha Rajya Sabha/ State Legislature having the status of Cabinet Minister, Governors/ Lt. Governors / Executive Councilors/ Speakers/ Chairman of Central and State Legislatures, Members of Parliament and Members of State Legislative Assemblies/ Councils within their respective constituencies, Foreign Dignitaries on State visit to India, Foreign diplomats stationed in India using cars with "CD" symbols;
- (ii) Defence vehicles, Police vehicles, Fire-fighting vehicles, Ambulances, Funeral vans, Posts and Telegraphs Department vehicles and Central Government and State Government vehicles on duty.]

(2) The name, address and telephone number, if any, of the incharge of a fee collection shall be displayed at suitable and conspicuous locations.

6. Verification of fee collection.-(1) It shall be the responsibility of the person referred to in sub-rule (1) of rule 3 to strictly ensure that all fees leviable are levied, fully collected and correctly maintained. The person shall submit certified and audited copies of the statements of

¹ Ins. by G.S.R. 336(E), dated 13th April, 2000 (w.e.f. 17-4-2000). 2. Subs. by G.S.R. 336(E). dated 13th April, 2000 (w.e.f. 17-4-2000).

² Subs. B G.S.R. 336(E), dated 13th April, 2000 (w.e.f. 17-4-2000)

fee collection at specified intervals as required under the notification for fee collection under sub-rule (2) of rule 3. The auditor shall be appointed by the Government.

(2) The Central Government shall have the right to check the fee collection at any or all times through their designated officers.

7. Person to have rights to regulate traffic.-The person referred to in sub-rule (1) of rule 3 shall have powers to regulate and control the traffic, on such section of national highway/permanent bridge/temporary bridge on national highway relating to which he is authorised to collect fees under these rules, in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 for proper management thereof.

THE NATIONAL HIGHWAYS (RATE OF FEE) RULES, 1997¹

In exercise of the powers conferred by section 9 read with sub-section (1) of section 7 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following rules to lay down the rate of fee for the use of sections of any national highway or bridges or both, namely:-

1. Short title and commencement.-(1) These rules may be called the National Highways (Rate of Fee) Rules, 1997.

(2) They shall come into force on the date of their publication in the Official Gazette.

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

- (a) "Act" means the National Highways Act, 1956(48 of 1956);
- (b) "mechanical vehicle" means any laden or unladen vehicle designed to be driven under its own power, including a motor vehicle as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- ²[(c) "bridge" means a permanent bridge or a temporary bridge, as the case may be, the cost of which includes the cost of bridge proper, approach roads, guide bunds and protective works, excluding the cost of toll booths, which is more than rupees 25 lakhs and upto rupees 100 lakh for each, completed and opened to traffic on or after first day of April 1976 but before the first day of May, 1992 and thereafter all the bridges costing more than Rs. 100 lakhs before the date of the publication of this notification in the Official Gazette and thereafter all the bridges costing more than Rs. 500 lakhs on National Highways, which shall be notified separately for levy of fee collection;]
- (d) "section of national highway or permanent bridge or temporary bridge" means that continuous length of national highway or permanent bridge or temporary bridge on national highway as notified by the Central Government in Official Gazette on which fee shall be charged.

² [3. **Rate.**-(1) The rate of fee for services or benefits rendered in relation to the use of ferries, permanent bridges, temporary bridges or tunnels on any section of national highway or bridges or both shall be as per Table given below:

¹ Vide G.S.R. 570(E), dated 30th September, 1997, published in the Gazette of India, Extra. PI. II, Sec. 3(i), dated 30th September, 1997.

² Subs. by G.S.R. 877 (E), dated 4th December, 2001 (w.e.f: 4-12-2001).

Table

Initial cost of the bridge and its approaches (Rs. in crores)	Toll Rates (Rs. Per Vehicle)		
	Cars/Jeep, etc.	Light Commercial Vehicles/Minibuses	Trucks/Buses and Multi Axle Vehicles
Below 50	5	10	15
50-75	10	10	25
75-100	10	15	30
100-125	15	20	40
125-150	15	20	40
150-200	15	25	50
Above 200	20	30	60]

(2) The fee under sub-rule (1) for projects involving conversion into four-lanes of existing two-lane of national highways shall not exceed the capping rates given below at June 1997 prices, namely:-

S.No	Type of vehicle	Rate
1.	Car or Jeep or Van	Rs.0.40 per km
2.	Light commercial vehicles	Rs.0.70 per km
3.	Truck or Bus	Rs.1.40 per km
4.	Heavy construction machinery and earthmoving equipment	Rs.3.00 per km

¹ [(3) The rate of fee fixed under sub-rule (1) and sub-rule (2) may be reviewed after every five years based on wholesale price index and ,fixed in multiple of rupees five by the Central Government over the rates notified.]

¹ Subs. by G.S.R. 871 (E), dated 4th December, 2001 (w.e.f. 4-12-2001).

**THE NATIONAL HIGHWAYS (FEES FOR THE USE OF NATIONAL
HIGHWAYS SECTION AND PERMANENT BRIDGE-PUBLIC FUNDED PROJECT)
RULES, 1997¹**

In exercise of the powers conferred by section 9 of the National Highways Act, 1956 (48 of 1956) and in supersession of the National Highways (Fees for Use of Permanent Bridges) Rules, 1992 except as respects things done or omitted to be done before such supersession the Central Government hereby makes the following rules to levy the fees for the use of sections of any National Highway or Bridges or both.

1. Short title, extent and commencement.-(i) These rules may be called the National Highways (Fees for the Use of National Highways, Section and Permanent Bridge-Public Funded Project) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official Gazette.

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

- (a) 'Act' means the National Highways Act, 1956 (48 of 1956),
- (b) "executing agency" means,
 - (i) in the case of those national highways administratively placed under the charge of Border Roads Organization the Border Roads Development Board (hereinafter referred to as 'BRDB');
 - (ii) in the case of those national highways or part thereof entrusted to National Highways Authority of India (hereinafter referred to as NHAI), the National Highways Authority of India;
 - (iii) in other cases the State Government or Union Territory, the Administration to which such functions are delegated under section 5 of the Act;
- (c) "mechanical vehicle" means any laden or unladen vehicle designed to be driven under its own power including a motor vehicle as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (d) "franchisee" means a firm or a company or a person to whom the franchise to collect and retain the fee has been awarded through auction;
- (e) "Fee Inspector" means a person authorised by the executing agency concerned to collect fee in respect of, any mechanical vehicle crossing a permanent bridge or using the National Highway Section and includes every Government employee posted on such bridge or National Highway Section in connection with the collection of fees;
- (f) "Form A" means Form A appended to these rules;
- (g) "Form B" means *Form B* appended to these rules;
- (h) "Form C" means Form C appended to these rules;

¹ *Vide* G.S.R. 490 (E), dated 27th August, 1997, published in the Gazette of India, Extra., Pt. II, Sec. 3 (i), dated 27th August, 1997.

- (i) "Pay and Accounts Officer" means Pay and Accounts Officer (National Highway), Ministry of Surface Transport, New Delhi;
- ¹(j) "permanent bridge" means a bridge with permanent structure the cost of which includes the cost of bridge proper, approach roads, guide bunds and protective works, excluding the cost of toll booths which is more than rupees 25 lakh and upto rupees 100 lakh *for* each, completed and opened to traffic on or after first day of April, 1976 but before the first day of May, 1992 and thereafter all the bridges costing *more* than Rs. 100 lakh before the date of the publication of this notification in the Official Gazette and thereafter all the bridges costing *more* than Rs. 500 lakh on National Highway, which shall be notified separately *for* levy of fee collection;] and
- (k) "National Highway Section" means continuous length of any national highway or by-pass which shall be, notified *for* separately levy of fee collection;
- (l) "Sectional Officer/Junior Engineer" means the officer of the State Public Works Department (Roads and Building) of any other department dealing with National Highway having that designation of equivalent and being incharge of a particular road of permanent bridge located on a national highway.

3. Rate of fee and its payment.- These shall be levied and paid to the executing agency, on behalf of the Government of India, fee on mechanical vehicles *for* the use of National Highway Section or permanent bridge or both at the rates notified by the Central Government, in the Official Gazette in respect of such National Highway Section or permanent bridge or both.

4. Displaying of rates of fees.-A table displaying rates of fees, rates authorised to be levied at any National Highway Section or permanent bridge or both shall be put up in a conspicuous place near the fee collection booths legibly written or printed in English, Hindi and the regional language of the area in which National Highway Section or permanent bridge or both are situated.

5. Procedure for collection.-All fees levied under these rules shall be collected by the executing agency concerned departmentally or through private contractors on the basis of competitive bidding on behalf of the Central Government.

6. Collection of fees departmentally - (1) The executing agency concerned shall make necessary arrangement *for* putting up adequate number of collection booths, operated manually or by automatic arrangement or by combination of both as may be considered suitable by the executing agency.

(2) There shall be posted a Fee Inspector, with necessary police guard to assist at either end of the National Highways Section or permanent bridge who shall be authorised to collect fee in respect of, any mechanical vehicle using the National Highway Section or permanent, bridge or both, at the rates notified by the Central Government separately.

(3) There shall be provided at either end of the National Highway Section or permanent bridge or both together, a cross bar for securing the stoppage of mechanical vehicles.

(4) The Fee Inspector shall ensure at the cross bar that passage is not allowed to mechanical vehicles unless the fee leviable in respect thereof has been paid.

¹ Subs. by G.S.R. 876 (E), dated 4th December, 2001 (w.e.f.4-12-2001).

7. Mode of collection of fee in case of departmental fee collection.-(1) Every driver, owner or person incharge of a mechanical vehicle shall, before crossing the National Highway Section or permanent bridge or having crossed it, stop his vehicle at the cross bar and pay the fee leviable in respect of the vehicles at the fee collection booths. The Fee Inspector shall in return, prepare a receipt in duplicate in Form A and hand over one copy of the receipt to the driver or owner or person incharge of the mechanical vehicle.

(2) Toll collection shall be done only at one place within a distance of 80 kms. from a point at the beginning of first National Highway Section or approach of entry of the first permanent bridge to be crossed under the jurisdiction of the same executing agency, regardless of number of projects falling within the length in order to facilitate free and unhindered movement of traffic. Where it is not feasible to do so, the number of collection point shall be kept minimum and shall be decided with the approval of Central Government. The fee may be collected from the driver, owner or person incharge of a vehicle on the first National Highway Section or permanent bridge which is intended to be crossed by such vehicle. The driver, owner or person incharge of the vehicle holding the receipt of such payment, shall be allowed to pass through other Sections and bridges of such Highway unhindered after showing the receipt to the Fee Inspector posted on other sections or bridges. Details of such Sections and bridges shall be displayed at a conspicuous place near the fees collection booths of the Sections or bridges covered under this sub-rule legibly written or printed in English, Hindi and the regional language of the area in which such sections or bridges are situated.

(3) The Fee Inspector shall on receipt of the fee notified by the Central Government fill up a receipt in duplicate in Form A and deliver one copy thereof to the driver, owner or the person incharge of the vehicle in respect of which the fee has been paid and retain the second copy for record.

(4) When the same vehicle has to cross the National Highway Section or bridge more than once in a day, the user shall have the option to pay one and a half times of rate notified by the Government while crossing such section or bridge in the first trip itself, or if the vehicle has to use the section or bridge frequently the vehicle owner can have a monthly pass on the payment of charges equal to 30 single rates.

8. Remittance of fee collection in case of departmental fee collection.-(1) The Fee Inspector ,on duty shall be responsible for the collection and safe custody of the amounts collected during his duty period. The Fee Inspector shall not leave the collection booth till his reliever takes over from him.

(2) The Fee Inspector shall maintain a cash register as prescribed in Form B and keep it posted upto date.

(3) The Fee Inspector shall at the end of the period of his duty hand over the amount collected by him to his reliever after obtaining the signature of the latter in the relevant column of the cash register.

(4) Every day between 16.00 hours and 17.00 hours the Fee Inspector on duty shall hand over the entire amount of the fee collected during the preceding 24 hours to the Sectional Officer/Junior Engineer-in-charge of National Highway Section or permanent bridge after obtaining his signature in the relevant column of the cash register.

(5) The Sectional Officer/Junior Engineer-in-charge shall keep the amounts of collection received from the Fee Inspector in the chest provided for the purpose at his office.

(6) The Sectional Officer/Junior Engineer-in-charge shall on every Saturday or if it happens to be a holiday, on the next working day, remit the amount received by him in respect of the week preceding the Saturday by a demand draft to the Pay and Accounts Officer. The Pay and Accounts Officer shall account the amounts so received in the relevant receipt head in his books.

(7) The Sectional Officer/Junior Engineer-in-charge shall maintain a register as prescribed in Form C showing the remittance made to the Pay and Accounts Officer and shall keep the register posted up to date.

(8) The Sectional Officer/Junior Engineer-in-charge shall exercise supervision and control over the staff posted at the National Highway Section or permanent bridge in connection with the collection of the fees and maintain the proper accounts and, records.

(9) The Sub-Divisional Officer, in-charge of the National Highway Section or the permanent bridge shall pay surprise visits at least twice a month at the Office of the Fee Inspector or the Sectional Officer/Junior Engineer-in-charge to check that the collection and remittance of fees by the staff is being done in accordance with the provisions of these rules. He shall countersign the cash register and the other record maintained by the staff in token of such visit. Such visit, atleast once in three months shall also be made by the Executive Engineer of the State Public Works Department (Roads and Building) or by the officer of equivalent rank in any other department.

9. Fee collection through franchisee.-(1) In case the fee collection is to be done through the franchisee, the collection of fee and retaining such fee shall be auctioned under the instructions for specific periods as the Central Government may issue and the money shall be collected by the executing agency or his authorised representative as per the terms and conditions of the agreement executed for such purposes.

(2) The mode of fee collection shall be decided by the franchisee referred to in sub. rule (1) with the approval of the Central Government.

(3) A table of fees authorised to be collected on any National Highway Section or permanent bridge shall be put up by such franchisee in a conspicuous place near a fee collection booth legibly written or printed in English, Hindi and the regional language of the area in which the national highway is situated.

(4) The franchisee authorised to collect and retain the fee under these rules shall nominate an official as in charge of fee collection who shall be responsible to ensure that fees are collected at not more than the notified rates and the fee collection is smooth without causing hardship to the road users and for all other matters connected with the fee collection on National Highway Section or permanent bridge.

(5) The name, address and telephone number if any, of such official incharge of fee collection shall be displayed at suitable and conspicuous locations.

(6) The executing agency shall remit the auction money so collected from the franchisee by a demand draft to the Pay and Accounts Officer, National Highways, Ministry of Surface Transport, New Delhi. The Pay and Accounts Officer shall account the amount so received in the relevant receipt head in his books.

10. Special conditions when sections or bridges built by Government are used for developing adjacent Build, Operate and Transfer Projects of private parties.- To improve the financial viability of a Build, Operate and Transfer Project as decided by the Competent Authority,

the concessionaire may be allowed to collect and retain the fees *so* collected for the full concession period as agreed to in the specific agreement in respect of the facility offered to him under National Highways (Collection of Fee by any Person for the Use of Section of National Highways/Permanent Bridges/Temporary Bridges on National Highways) Rules, 1997 and the facility shall revert back to the Government at the end of concession period and the collection of fee thereafter shall be governed by these rules.

National Highways Section/permanent bridges built under public funding programme and offered for developing further contiguous sections of such National Highway as decided by the Competent Authority shall revert back to the Government at the end of the concession period and the collection of fee thereafter shall be governed by these rules.

11. Tenure of fee collection.- The fee shall be collected in perpetuity by the executing agency.

12. Submission of returns.-(1) The executing agency concerned in case of departmental fee collection shall furnish returns in the first week of July, October, January and April of every year to the Pay and Accounts Officer containing

- (a) Month wise consolidated statement showing the amount collected and remitted on account of fee proceeds in respect of each National Highway Section or permanent bridge alongwith the details of number and date of demand draft by which the amount has been remitted, and
- (b) Month wise break up of the expenditure incurred on each National Highway Section or permanent bridge by the executing agency required' *to* be reimbursed on account of collection of the fees on the basis of actual expenditure incurred.

(2) The Executing Agency concerned in case of fee collection through franchisee shall furnish *to* the Pay and Accounts Officer, National Highways, Government of India, Ministry of Surface Transport, New Delhi or any other officer *so* authorised, the details regarding the franchise, the amount and the period for which the franchise has been awarded, immediately, after the auction for fee collection through such Franchise.

13. Furnishing of security in case of departmental fees collection.-Every Fee Inspector or the Sectional Officer/Junior Engineer-in-charge shall deposit a cash security of not less than Rs. 1000 by executing a security bond in the prescribed form as laid down in the Treasury Rules with the concerned Executive Engineer or the concerned officer *of* equivalent rank in any other department.

FORM A
[See rule 7(1)]

RNo.,

Receipt *for* payment of fee.

Name *of* Section Permanent Bridge.

1. Description of mechanical vehicle with Registration number.
2. Whether laden or unladen or with or without passengers.
3. Time and date *of* outward journey.
4. Name *of* driver and/or owner.
5. Amount of fee paid.

- **THE INDIAN SUCCESSION ACT, 1925**
- **THE HINDU SUCCESSION ACT, 1956**
- **THE SPECIAL MARRIAGE ACT, 1954**
- **THE HINDU MARRIAGE ACT, 1955**
- **THE HINDU MARRIAGE AND DIVORCE (HIMACHAL PRADESH) RULES, 1982**
- **THE HIMACHAL PRADESH REGISTRATION OF MARRIAGES ACT, 1996**
- **THE HIMACHAL PRADESH REGISTRATION OF MARRIAGES RULES, 2004**
- **THE HINDU ADOPTION AND MAINTENANCE ACT, 1956**
- **THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956**
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THE INDIAN SUCCESSION ACT, 1925

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THE INDIAN SUCCESSION ACT, 1925

ACT NO. 39 OF 1925¹

[30th September, 1925.]

An Act to consolidate the law applicable to intestate and testamentary succession ^{2***}.

WHEREAS it is expedient to consolidate the law applicable to intestate and testamentary succession ^{2***}. It is hereby enacted as follows:—

PART I PRELIMINARY

1. Short title.—This Act may be called the Indian Succession Act, 1925.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;

(b) “codicil” means an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will;

³[(bb) “District Judge” means the Judge of a Principal Civil Court of original jurisdiction;]

(c) “executor” means a person to whom the execution of the last Will of a deceased person is, by the testator’s appointment, confided;

⁴[(cc) “India” means the territory of India excluding the State of Jammu and Kashmir;]

(d) “Indian Christian” means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;

(e) “minor” means any person subject to the Indian Majority Act, 1875 (9 of 1875) who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and “minority” means the status of any such person;

(f) “probate” means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;

⁵[(g) “State” includes any division of India having a court of the last resort;] and

(h) “will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act.— (1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49 , 58 to 191 , 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.

¹ The Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941), to Manipur by the Union Territories (Laws) Amendment Act, 1956 (68 of 1956) and to Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and the First Schedule.

² The words “in the Provinces of India” omitted by the A.O. 1950.

³ Ins. by Act 18 of 1929, s. 2 (w.e.f. 1-10-1929).

⁴ Ins. by Act 3 of 1951, s. 3 and the Schedule (w.e.f. 1-4-1951).

⁵ Subs. by s. 3 and the Schedule, *ibid.*, for clause (g)(w.e.f. 1-4-1951).

(2) The State Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect.

(3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865¹ (10 of 1865), under section 332 of that Act are in this Act referred to as “exempted persons”.

PART II OF DOMICILE

4. Application of Part.—This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina.

5. Law regulating succession to deceased person’s immovable and moveable property, respectively.—(1) Succession to the immovable property in ²[India], of a person deceased shall be regulated by the law of ²[India], wherever such person may have had his domicile at the time of his death.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations

(i) A, having his domicile in ²[India], dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immovable, in ²[India]. The succession to the whole is regulated by the law of ²[India].

(ii) A, an Englishman, having his domicile in France, dies in ²[India], and leaves property, both moveable and immovable, in ²[India]. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of ²[India].

6. One domicile only affects succession to moveables.—A person can have only one domicile for the purpose of the succession to his moveable property.

7. Domicile of origin of person of legitimate birth.—The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father’s death.

Illustration

At the time of the birth of A, his father was domiciled in England. A’s domicile of origin is in England, whatever may be the country in which he was born.

8. Domicile of origin of illegitimate child.—The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

9. Continuance of domicile of origin.—The domicile of origin prevails until a new domicile has been acquired.

¹ Rep. by this Act.

² Subs. by Act 3 of 1951, s. 3 and the Schedule for “the States”.

10. Acquisition of new domicile.—A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in ¹[India] merely by reason of his residing therein ²[the civil, military, naval or air force service of Government], or in the exercise of any profession or calling.

Illustrations

(i) A, whose domicile of origin is in England, proceeds to ¹[India], where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in ¹[India].

(ii) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(iii) A, whose domicile of origin is in France, comes to reside in ¹[India] under an engagement with the Central Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in ¹[India].

(iv) A, whose domicile is in England, goes to reside in ¹[India] for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in ¹[India], however, long the residence may last.

(v) A, having gone to reside in ¹[India] in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in ¹[India]. A has acquired a domicile in ¹[India].

(vi) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in ¹[India].

(vii) A, having come to Calcutta in the circumstances stated in the last preceding illustration, continues to reside thereafter such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A, has acquired a domicile in ¹[India].

11. Special mode of acquiring domicile in India.—Any person may acquire a domicile in ¹[India] by making and depositing in some office in ¹[India] appointed in this behalf by the State Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in ¹[India] for one year immediately preceding the time of his making such declaration.

12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.—A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

13. Continuance of new domicile.—A new domicile continues until the former domicile has been resumed or another has been acquired.

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule for “the States”.

² Subs. by the A.O. 1950, for “His Majesty’s civil, military, naval or air force service”.

14. Minor's domicile.—The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin. Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Government, or has set up, with the consent of the parent, in any distinct business.

15. Domicile acquired by woman on marriage.—By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

16. Wife's domicile during marriage.—A wife's domicile during her marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Minor's acquisition of new domicile.—Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile.

18. Lunatic's acquisition of new domicile.—An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

19. Succession to moveable property in India in absence of proof of domicile elsewhere.—If a person dies leaving moveable property in ¹[India], in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of ¹[India].

PART III MARRIAGE

20. Interests and powers not acquired nor lost by marriage.— (1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

(2) This section— shall not apply to any marriage contracted before, the first day of January, 1866; shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion.

21. Effect of marriage between person domiciled and one not domiciled in India.—If a person whose domicile is not in ¹[India] marries in ¹[India] a person whose domicile is in ¹[India], neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in ¹[India] at the time of the marriage.

22. Settlement of minor's property in contemplation of marriage.—(1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from ¹[India], with the approbation of the High Court.

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule for "the States".

(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

PART IV OF CONSANGUINITY

23. Application of Part.—Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi.

24. Kindred or consanguinity.—Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

25. Lineal consanguinity.—(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

26. Collateral consanguinity.—(1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.

27. Persons held for purpose of succession to be similarly related to deceased.—For the purpose of succession, there is no distinction—

- (a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or
- (b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or
- (c) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

28. Mode of computing of degrees of kindred.—Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I.

Illustrations

- (i) The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and

from him one of descent to the uncle, and another to the cousin-german, making in all four degrees.

- (ii) A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.
- (iii) A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

PART V

INTESTATE SUCCESSION

CHAPTER I.—Preliminary

29. Application of Part.— (1) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of ¹[India] in all cases of intestacy.

30. As to what property deceased considered to have died intestate.—A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect,

Illustrations

- (i) A has left no will. He has died intestate in respect of the whole of his property.
- (ii) A has left a will, whereby he has appointed B his executor; but the will contains no other provision. A has died intestate in respect of the distribution of his property.
- (iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
- (iv) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

CHAPTER II.—Rules in cases of Intestates other than Parsis

31. Chapter not to apply to Parsis.— Nothing in this Chapter shall apply to Parsis.

32. Devolution of such property.— The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

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33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.— Where the intestate has left a widow—

- (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule for “the States”.

² The Explanation omitted by Act 26 of 2002, s. 2 (w.e.f. 27-5-2002).

- (b) ¹[save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;
- (c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

²[**33A. Special provision where intestate has left widow and no lineal descendants.**— (1) Where the intestate has left a widow but no lineal descendants and the Nett value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.

(2) Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

(4) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

(5) This section shall not apply—

(a) to the property of—

(i) any Indian Christian,

(ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872 (3 of 1872), regulated by the provisions of this Act;

(b) unless the deceased dies intestate in respect of all his property.]

34. Where intestate has left no widow, and where he has left no kindred.—Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Government.

35. Rights of widower.—A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.

Distribution where there are lineal descendants

36. Rules of distribution.—The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40.

¹ Ins. by Act 40 of 1926, s. 2.

² Ins. by s. 3, *ibid.* 21

37. Where intestate has left child or children only.—Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

38. Where intestate has left no child, but grandchild or grandchildren.—Where the intestate has not left surviving him any child but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is one, or shall be equally divided among all his surviving grandchildren.

Illustrations

- (i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandfather will have one-ninth.
- (ii) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

39. Where intestate has left only great-grandchildren or remoter lineal descendants.—In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

40. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.—(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations

- (i) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.
- (ii) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild, and the remaining one-ninth is equally divided between the two great-grandchildren.
- (iii) A has three children, John, Mary and Henry; John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child, and one-third is divided into four parts, one of which is allotted to each

of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

- (iv) A has two children, and no more, John and Mary. John dies before his father, leaving his wife pregnant. Then A dies leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and the posthumous child.

Distribution where there are no lineal descendants

41. Rules of distribution where intestate has left no lineal descendants.—Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.

42. Where intestate's father living.—If the intestate's father is living, he shall succeed to the property.

43. Where intestate's father dead, but his mother, brothers and sisters living.—If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.—If the intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each takes one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

45. Where intestate's father dead and his mother and children of any deceased brother or sister living.—If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves no brother or sister but leaves his mother and one child of a deceased sister, Mary, and two children of a deceased brother, George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.—If the intestate's father is dead, but the intestate's mother is living, and there is neither

brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

47. Where intestate has left neither lineal descendant, nor father, nor mother.—Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.— Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations

(i) A, the intestate, has left a grandfather, and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(ii) A, the intestate, has left a great-grandfather, or a great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iii) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iv) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They will each take one-eleventh of the property.

49. Children's advancements not brought into hotchpot.—Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

CHAPTER III.—Special Rules for Parsi Intestates

¹**50. General principles relating to intestate succession.**—For the purpose of intestate succession among Parsis— (a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;

(b) a lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower or any lineal descendant or ²[a widow or widower of any lineal descendant] shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and

(c) where a ³[widow or widower of any relative] of an intestate has married again in the lifetime of the intestate, ⁴[such widow or widower] shall not be entitled to receive any share of the property of which the intestate has died intestate, and ³[such widow or widower] shall be deemed not to be existing at the intestate's death.

¹ Subs. by Act 17 of 1939, s. 2, for sections 50 to 56 (w.e.f. 12-6-1939).

² Subs. by Act 51 of 1991, s. 2, for "a widow of any lineal descendant" (w.e.f. 9-12-1991).

³ Subs. s. 2, *ibid.*, for "widow of any relative" (w.e.f. 9-12-1991).

⁴ Subs. by s. 2, *ibid.*, for "she" (w.e.f. 9-12-1991).

¹**51. Division of intestate's property among widow, widower, children and parents.—**

(1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—

- (a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child received equal shares;
- (b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.

(2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.]

53. Division of share of predeceased child of intestate leaving lineal descendants.—In all cases where a Paris dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:—

- (a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this Chapter as if he had died immediately after the intestate's death: Provided that where such deceased son has left a widow or a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this Chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.
- (b) If such deceased child was a daughter, her share shall be divided equally among her children.
- (c) If any child of such deceased child has, also died during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b), as the case may be.
- (d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the predecease of all the intestate's lineal descendants directly between him or her and the intestate.

²**54. Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow or widower of any lineal descendant.—**Where a Parsi dies without leaving any lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:—

- (a) if the intestate leaves a widow or widower but no widow or widower of a lineal descendant, the widow or widower shall take half the said property;
- (b) if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said

¹ Subs. by s. 3, *ibid.*, for sections 51 and 52 (w.e.f. 9-12-1991).

² Subs. by s. 4, *ibid.*, for section 54 (w.e.f. 9-12-1991).

- property and the widow or widower of any lineal descendant shall receive another one-third or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;
- (c) if the intestate leaves no widow or widower, but one widow or widower of the lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no widow or widower but -more than one widow or widower of lineal descendants, two-thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares;
 - (d) the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;
 - (e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.]

55. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant.—When a Parsi dies leaving neither lineal descendants nor a widow or widower nor ¹[a widow or widower of any lineal descendant] his or her next of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that ²[each male and female standing in the same degree of propinquity shall receive equal shares.]

56. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.]

PART VI

TESTAMENTARY SUCCESSION

CHAPTER I.—Introductory

³**57. Application of certain provisions of Part to a class of wills made by Hindus, etc.**—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

- (a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and
- (b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits, ¹[and

¹ Subs. by Act 51 of 1991, s. 5, for “a widow of any lineal descendant (w.e.f. 9-12-1991).

² Subs. by s. 5, *ibid.*, for “each male shall take double the share of each female standing in the same degree of propinquity” (w.e.f. 9-12-1991).

³ Sub-section (1) renumbered as section 57 thereof by Act 18 of 1929, s. 3 (w.e.f. 1-10-1929) which was earlier renumbered as sub-section (1) thereof by Act 37 of 1926, s. 2 (w.e.f. 9-9-1926).

- (c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):] Provided that marriage shall not revoke any such will or codicil.]

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58. General application of Part.— (1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by any other law for the time being in force the provisions of this Part shall constitute the law of ³[India] applicable to all cases of testamentary succession.

CHAPTER II—Of Wills and Codicils

59. Person capable of making wills.—Every person of sound mind not being a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Illustrations

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(ii) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

60. Testamentary guardian.—A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

61. Will obtained by fraud, coercion or importunity.—A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

¹ Added by s. 3, *ibid.* (w.e.f. 1-10-1929).

² Sub-section (2) omitted by Act 18 of 1929, s. 3 (w.e.f. 1-10-1929) which was earlier inserted by Act 37 of 1926, s. 2 (w.e.f. 9-9-1926).

³ Subs. by Act 3 of 1951, s. 3 and the Schedule for “the States”.

Illustrations

(i) A, falsely and knowingly represents to the testator, that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, A's favour; such will has been obtained by fraud, and is

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will yet being so much under the control of B that he is not a free agent, makes a will, dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(viii) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

62. Will may be revoked or altered.—A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

CHAPTER III.—Of the Execution of unprivileged Wills

63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, ¹[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—

- (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.
- (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

64. Incorporation of papers by reference.—If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the will or codicil in which it is referred to.

¹ Ins. by Act 10 of 1927, s. 2 and the First Schedule (w.e.f. 4-4-1927).

CHAPTER IV.—Of privileged Wills

65. Privileged wills.—Any soldier being employed in an expedition or engaged in actual warfare, ¹[or an airman so employed or engaged,] or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 66. Such wills are called privileged wills.

Illustrations

(i) A, a medical officer attached to a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(ii) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(iii) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged will.

(v) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

66. Mode of making, and rules for executing, privileged wills.—(1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged wills shall be governed by the following rules:—

- (a) The will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.
- (b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.
- (c) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his will, if it is shown that it was written by the testator's directions or that he recognised it as his will.
- (d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.
- (e) If the soldier, ¹[airman] or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.
- (f) If the soldier, ¹[airman] or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.
- (g) The soldier, ¹[airman] or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.
- (h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

¹ Ins. by Act 10 of 1927, s. 2 and the First Schedule (w.e.f. 4-4-1927).

CHAPTER V.—Of the Attestation, Revocation, Alteration and Revival of Wills

67. Effect of gift to attesting witness.—A will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

68. Witness not disqualified by interest or by being executor.— No person, by reason of interest in, or of his being an executor of, a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

69. Revocation of will by testator's marriage.— Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property. 70. Revocation of unprivileged will or codicil.—No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is herein before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Illustrations

(i) A has made an unprivileged will. Afterwards, A makes another unprivileged will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

71. Effect of obliteration, interlineation or alteration in unprivileged will.—No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or indiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will:

Provided that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

72. Revocation of privileged will or codicil.—A privileged will or codicil, may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will

73. Revival of unprivileged will.—(1) No unprivileged will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.

(2) When any will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.

CHAPTER VI.—Of the construction of Wills

74. Wording of wills.—It is not necessary, that any technical words or terms of art be used in a will, but only that the wording be such that the intentions of the testator can be known therefrom.

75. Inquiries to determine questions as to object or subject of will.—For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations

(i) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin, Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(ii) A, by his will, leaves to B “my estate called Black Acre”. It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator’s is called Black Acre.

(iii) A, by his will, leaves to B “the estate which I purchased of C”. It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

76. Misnomer or misdescription of object.—(1) Where the words used in a will to designate or describe a legatee or a class of legatees sufficiently show what is meant, and error in the name or description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name. Illustrations

- (i) A bequeaths a legacy to “Thomas, the second son of my brother John”. The testator has an only brother named John, who has no son named Thomas, but has a second son whose name is William. William will have the legacy.
- (ii) A bequeaths a legacy “to Thomas, the second son of my brother John”. The testator has an only brother, named John, whose first son is named Thomas and whose second son is named William. Thomas will have the legacy.
- (iii) The testator bequeaths his property “to A and B, the legitimate children of C”. C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

- (iv) The testator gives his residuary estate to be divided among “my seven children” and, proceeding to enumerate them, mentions six names only. This omission will not prevent the seventh child from taking a share with the others.
- (v) The testator, having six grandchildren, makes a bequest to “my six grandchildren” and, proceeding to mention them by their Christian names, mentions one twice over omitting another altogether. The one whose name is not mentioned will take a share with the others.
- (vi) The testator bequeaths “1,000 rupees to each of the three children of A”. At the date of the will A has four children. Each of these four children will, if he survives the testator, receive a legacy of 1,000 rupees.

77. When words may be supplied.—Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration

The testator gives a legacy of “five hundred” to his daughter A and a legacy of “five hundred rupees” to his daughter B. A will take a legacy of five hundred rupees.

78. Rejection of erroneous particulars in description of subject.—If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations

(i) A bequeaths to B “my marsh-lands lying in L and in the occupation of X”. The testator had marsh-lands lying in L but had no marsh-lands in the occupation of X. The words “in the occupation of X” shall be rejected as erroneous, and the marshlands of the testator lying in L will pass by the bequest.

(ii) The testator bequeaths to A “my zamindari of Rampur”. He had an estate at Rampur but it was a taluq and not a zamindari. The taluq passes by this bequest.

79. When part of description may not be rejected as erroneous.—If a will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 78 shall be deemed to have been struck out of the will.

Illustrations

(i) A bequeaths to B “my marsh-lands lying in L and in the occupation of X”. The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest will be considered as limited to such of the testator's marsh-lands in L as were in the occupation of X.

(ii) A bequeaths to B “my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands”. The testator had marshlands lying in L some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement will be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

80. Extrinsic evidence admissible in cases of patent ambiguity.—Where the words of a will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only

of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations

(i) A man, having two cousins of the name of Mary, bequeaths a sum of money to “my cousin Mary”. It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(ii) A, by his will, leaves to B “my estate called SultanpurKhurd”. It turns out that he had two estates called SultanpurKhurd. Evidence is admissible to show which estate was intended.

81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.—Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations

(i) A man has an aunt, Caroline, and a cousin, Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 rupees to “my aunt, Caroline” and 1,000 rupees to “my cousin, Mary” and afterwards bequeaths 2,000 rupees to “my before-mentioned aunt, Mary”. There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by “my before-mentioned aunt, Mary”. The bequest is, therefore, void for uncertainty under section 89.

(ii) A bequeaths 1,000 rupees to.....leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(iii) A bequeaths to Brupees, or “my estate of.....” Evidence is not admissible to show what sum or what estate the testator intended to insert.

82. Meaning or clause to be collected from entire Will.—The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

Illustrations

(i) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(ii) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first as if he had said “I give Black Acre to B, and all the rest of my estate to A”.

83. When words may be understood in restricted sense, and when in sense wider than usual.—General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

Illustrations

(i) A testator gives to A “my farm in the occupation of B”, and to C “all my marsh-lands in L”. Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, “all my marsh-lands in L”, are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marshlands in L.

(ii) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend, A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(iii) A, by his Will, bequeathed to B all his household furniture plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under

the first bequest is B entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

84. Which of two possible constructions preferred.—Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

85. No part rejected, if it can be reasonably construed.—No part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

86. Interpretation of words repeated in different parts of will.—If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

87. Testator's intention to be effectuated as far as possible.—The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration

The testator by a will made on his death-bed bequeathed all his property to C.D. for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent because the gift to the hospital is void under section 118, but it will take effect so far as regards the gift to C.D.

88. The last of two inconsistent clauses prevails.—Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations

(i) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A". B will have it.

(ii) If a man, at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.

89. Will or bequest void for uncertainty.—A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration

If a testator says "I bequeath goods to A," or "I bequeath to A," or "I leave to A all the goods mentioned in the Schedule" and no Schedule is found, or "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much, this is void.

90. Words describing subject refer to property answering description at testator's death.—The description contained in a will of property, the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

91. Power of appointment executed by general bequest.—Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he may have -power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

92. Implied gift to objects of power in default of appointment.—Where property is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the

benefit of certain objects in such proportions as a specified person may appoint, and the will does not provide for the event of no appointment being made; if the power given by the will is not exercised, the property belongs to all the objects of the power in equal shares.

Illustration

A, by his will bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund will be divided equally among the children.

93. Bequest to “heirs,” etc., of particular person without qualifying terms.—Where a bequest is made to the “heirs” or “right heirs” or “relations” or “nearest relations” or “family” or “kindred” or “nearest of kin” or “next-of-kin” of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations

(i) A leaves his property “to my own nearest relations”. The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(ii) A bequeaths 10,000 rupees “to B for his life, and, after the death of B, to my own right heirs”. The legacy after B’s death belongs to those who would be entitled to it if it had formed part of A’s unbequeathed property.

(iii) A leaves his property to B; but if B dies before him, to B’s next-of kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(iv) A leaves 10,000 rupees “to B for his life, and after his decease to the heirs of C”. The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debt independently of the legacy.

94. Bequest to “representatives”, etc., of particular person.—Where a bequest is made to the “representatives” or “legal representatives” or “personal representatives” or “executors or administrators” of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

Illustration

A bequest is made to the “legal representatives” of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and Will apply it in the first place to the discharge of such part of A’s debt as may remain unpaid: if there be any surplus B Will pay it to those persons who at A’s death would have been entitled to receive any property of A’s which might remain after payment of his debts, or to the representatives of such persons.

95. Bequest without words of limitation.—Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.

96. Bequest in alternative.—Where a property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations

- (i) A bequest is made to A or to B. A survives the testator. B takes nothing.
- (ii) A bequest is made to A or to B. A dies after the date of the Will, and before the testator. The legacy goes to B.
- (iii) A bequest is made to A or to B. A is dead at the date of the Will. The legacy goes to B.
- (iv) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.
- (v) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.
- (vi) Property is bequeathed to A for life, and after this death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.
- (vii) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

97. Effect of words describing a class added to bequest to person.—Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations

- (i) A bequest is made—
to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

- (ii) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.
- (iii) A bequest is made to A for life and after his death to his issue. At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A.

98. Bequest to class of persons under general description only.—Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

99. Construction of terms.—In a will— (a) the word “children” applies only to lineal descendants in the first degree of the person whose “children” are spoken of;

(b) the word “grandchildren” applies only to lineal descendants in the second degree of the person whose “grand children” are spoken of;

(c) the words “nephews” and “nieces” apply only to children of brothers or sisters;

(d) the words “cousins,” or “first cousins,” or “cousins-german,” apply only to children of brothers or of sisters of the father or mother of the person whose “cousins,” or “first cousins,” or “cousins-german,” are spoken of;

(e) the words “first cousins once removed” apply only to children of cousins-german, or to cousins-german of a parent of the person whose “first cousins once removed” are spoken of;

(f) the words “second cousins” apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose “second cousins” are spoken of;

- (g) the words “issue” and “descendants” apply to all lineal descendants whatever of the person whose “issue” or “descendants” are spoken of;
- (h) words expressive of collateral relationship apply alike to relatives of full and of half blood; and
- (i) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

100. Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.—In the absence of any intimation to the contrary in a will, the word “child,” the word “son,” the word “daughter” or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Illustrations

- (i) A having three children, B, C and D of whom B and C are legitimate and D is illegitimate leaves his property to be equally divided among “my children”. The property belongs to B and C in equal shares, to the exclusion of D.
- (ii) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.
- (iii) A, having in his Will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to “my said children”. B will take a share in the legacy along with the legitimate children.
- (iv) A leaves a legacy to “the children of B”. B is dead and has left none but illegitimate children. All those who had at the date of the Will acquired the reputation of being the children of B are objects of the gift.
- (v) A bequeaths a legacy to “the children of B”. B never had any legitimate child. C and D had, at the date of the Will, acquired the reputation of being children of B. After the date of the Will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.
- (vi) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the Will the reputation of being the child of A by the woman designated. B takes the legacy.
- (vii) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.
- (viii) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is void.

101. Rules of construction where will purports to make two bequests to same person.—Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall have effect in determining the construction to be put upon the will:—

- (a) If the same specific thing is bequeathed twice to the same legatee in the same will or in the will and again in the codicil, he is entitled to receive that specific thing only.
- (b) Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.
- (c) Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.
- (d) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation: In clauses (a) to (d) of this section, the word “will” does not include a codicil.

Illustrations

(i) A, having ten shares, and no more, in the Imperial Bank of India, made his Will, which contains near its commencement the words "I bequeath my ten shares in the Imperial Bank of India to B". After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Imperial Bank of India to B". B is entitled simply to receive A's ten shares in the Imperial Bank of India.

(ii) A, having one diamond ring, which was given to him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his Will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given to him by B, C can claim nothing except the diamond ring which was given to A by B.

(iii) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(iv) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(v) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(vi) A, by one codicil to his will, bequeaths to B 5,000 rupees and by another codicil bequeaths to him, 6,000 rupees. B is entitled to receive 11,000 rupees.

(vii) A, by his will, bequeaths "500 rupees to B because she was my nurse", and in another part of the will bequeaths 500 rupees to B "because she went to England with my children". B is entitled to receive 1,000 rupees.

(viii) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(ix) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

102. Constitution of residuary legatee.—A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations

(i) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(ii) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby, desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(iii) A bequeaths all his property to B, except certain stock and funds, which he bequeaths to C. B is the residuary legatee.

103. Property to which residuary legatee entitled.—Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration

A by his will bequeaths certain legacies, of which one is void under section 118, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

104. Time of vesting legacy in general terms.—If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day

of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

105. In what case legacy lapses.—(1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the Will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations

(i) The testator bequeaths to B "500 rupees which B owes me". B dies before the testator; the legacy lapses.

(ii) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(iii) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(iv) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(v) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(vi) The testator and the legatee perished in the same ship-wreck. There is no evidence to show which died first. The legacy lapses.

106. Legacy does not lapse if one of two joint legatees die before testator.—If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

107. Effect of words showing testator's intention to give distinct shares.—If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator, B and C will only take so much as they would have had if A had survived the testator.

108. When lapsed share goes as undisposed of.—Where a share which lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

109. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.—Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the Will.

Illustration

A makes his Will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A, leaving a son, C, who survives A, and having made his Will whereby he bequeaths all his property to his widow, D. The money goes to D.

110. Bequest to A for benefit of B does not lapse by A's death.—Where a bequest is made to one person, for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

111. Survivorship in case of bequest to described class.—Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations

(i) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy will belong to C and D, to the exclusion of the representatives of E.

(ii) A lease for years of a house, was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E, his executor. D has survived A, D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(iii) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(iv) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B, D and E have survived B. One-third of A's land belong to D, E and the representatives of C, in, equal shares.

(v) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(vi) A bequeaths 1,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(vii) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

CHAPTER VII.—Of void Bequests

112. Bequest to person by particular description, who is not in existence at testator's death.— Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than

the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives.

Illustrations

(i) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(ii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(iii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(iv) A bequeaths his estate of Green Acre to be for life, and at his decease, to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(v) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

113. Bequest to person not in existence at testator's death subject to prior bequest.—

Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations

(i) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(ii) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(iii) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong, to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(iv) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

114. Rule against perpetuity.—No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's

death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations

(i) A fund is bequeathed to A for his life and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(ii) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(iii) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(iv) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

115. Bequest to a class some of whom may come under rules in sections 113 and 114.—

If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be ¹[void in regard to those persons only, and not in regard to the whole class].

Illustrations

(i) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; ²[and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A] (ii) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in Illustration (i). ² [Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attain the age of 25 within 18 years after A's death].

³[**116. Bequest to take effect on failure of prior bequest.—**Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.]

¹ Subs. by Act 21 of 1929, s. 14, for "wholly void".

² Subs. by s. 14, *ibid.*, for certain words.

³ Subs. by s. 14, *ibid.*, for section 116.

Illustrations

(i) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

(ii) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

¹ **[117. Effect of direction for accumulation.]**—(1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not effect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed; and such direction may be made accordingly.]

118. Bequest to religious or charitable uses.—No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons:

²[Provided that nothing in this section shall apply to a Parsi.]

Illustrations

A having a nephew makes a bequest by a will not executed and deposited as required—

- for the relief of poor people;
- for the maintenance of sick soldiers;
- for the erection or support of a hospital;
- for the education and preferment of orphans;
- for the support of scholars;
- for the erection or support of a school;
- for the building and repairs of a bridge;
- for the making of roads;
- for the erection or support of a church;
- for the repairs of a church;
- for the benefit of ministers of religion;

¹ Subs. by Act 21 of 1929, s. 14, for section 117. 2. Ins. by Act 51 of 1991, s. 6. 43

² Ins. by Act 51 of 1991, s. 6.

for the formation or support of a public garden;
All these bequests are void.

CHAPTER VIII.—Of the vesting of Legacies

119. Date of vesting of legacy when payment or possession postponed.—Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations

(i) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(ii) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest B.

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(iv) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(v) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

120. Date of vesting when legacy contingent upon specified uncertain event.—(1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations

(i) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(ii) A sum of money is bequeathed to A “in case he shall attain the age of 18,” or “when he shall attain the age of 18”. A’s interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

(iii) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one, or in the other has happened. 44

(iv) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A’s death.

(v) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she neither attains 18 nor marries under that age with B’s consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(vi) An estate is bequeathed to A until he shall marry and after that event to B. B’s interest in the bequest is contingent until the condition is fulfilled by A’s marrying.

(vii) An estate is bequeathed to A until he shall take advantage of any law for the relief of insolvent debtors, and after that event to B. B’s interest in the bequest is contingent until A takes advantage of such a law.

(viii) An estate is bequeathed to A if he shall pay 500 rupees to B. A’s interest in the bequest is contingent until he has paid 500 rupees to B.

(ix) A leaves his farm of SultanpurKhurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B’s interest in the bequest is contingent until he has conveyed the latter farm to C.

(x) A fund is bequeathed to A if B shall not marry C within five years after the testator’s death. A’s interest in the legacy is contingent until the condition is fulfilled by the expiration of the five years without B’s having married C, or by the occurrence within that period of an event which makes the fulfillment of the condition impossible.

(xi) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B’s death.

(xii) A bequeaths of B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(xiii) A bequeaths to B 500 rupees when he shall attain the age of 18 and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

121. Vesting of interest in bequest to such members of a class as shall have attained particular age.—Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

CHAPTER IX.—Of Onerous Bequests

122. Onerous bequests.—Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully. Illustration A, having shares in (X), a prosperous joint stock company and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in (Y). He forfeits the shares in (X).

123. One of two separate and independent bequests to same person may be accepted, and other refused.—Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He will not by this refusal forfeit the money.

CHAPTER X.—Of Contingent Bequests

124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.—Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations

(i) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(ii) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(iii) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The Legacy to B does not take effect.

(iv) A legacy is bequeathed to A for life, and, after his death to B, and, “in case of B’s death without children,” to C. The words “in case of B’s death without children” are to be understood as meaning in case B dies without children during the lifetime of A.

(v) A legacy is bequeathed to A for life, and, after his death to B, and, “in case of B’s death,” to C. The words “in case of B’s death” are to be considered as meaning “in case B dies in the lifetime of A”.

125. Bequest to such of certain persons as shall be surviving at some period not specified.— Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will.

Illustrations

(i) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(ii) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A’s death the legacy goes to C.

(iii) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(iv) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterward C dies in the lifetime of A. The legacy goes to the representative of C.

CHAPTER XI.—Of Conditional Bequests

126. Bequest upon impossible condition.—A bequest upon an impossible condition is void.

Illustrations

(i) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(ii) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

127. Bequest upon illegal or immoral condition.—A bequest upon a condition, the fulfillment of which would be contrary to law or to morality is void.

Illustrations

(i) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(ii) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

128. Fulfillment of condition precedent to vesting of legacy.—Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations

(i) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(ii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(iii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(iv) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(v) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(vi) A make his will whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(vii) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

129. Bequest to A and on failure of prior bequest to B.—Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

Illustrations

(i) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(ii) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

130. When second bequest not to take effect on failure of first.—Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a

particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Illustration

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect.

131. Bequest over, conditional upon happening or not happening of specified uncertain event.— (1) A bequest may be made to any person with the condition super-added, that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

(2) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 125, 126, 127, 129 and 130.

Illustrations

(i) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A dies under 18.

(ii) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(iii) A sum of money is bequeathed to A for life, and, after his death, to B, but if B shall then be dead leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(iv) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(v) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

132. Condition must be strictly fulfilled.—An ulterior bequest of the kind contemplated by section 131 cannot take effect, unless the condition is strictly fulfilled.

Illustrations

(i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. E dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(ii) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(iii) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

133. Original bequest not affected by invalidity of second.—If the ulterior bequest be not valid the original bequest is not affected by it.

Illustrations

(i) An estate is bequeathed to A for his life with condition super-added that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(ii) An estate is bequeathed to A for her life and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(iii) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 105, and A is entitled to the estate during his life.

134. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.—A bequest may be made with the condition super-added that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(i) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(ii) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(iii) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(iv) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(v) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

135. Such condition must not be invalid under section 120.—In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120.

136. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.—Where a bequest is made with a condition super-added that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations

(i) A bequest is made to A, with a proviso that, unless he enters the Army, the legacy shall go over to B. A takes Holy Orders, and thereby renders it impossible that he should fulfill the condition. B is entitled to receive the legacy.

(ii) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfillment of the conditions. The bequest ceases to have effect.

137. Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.—Where the will requires an act to be performed by the legatee within a

specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfillment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

CHAPTER XII.—Of Bequests with Directions as to Application or Enjoyment

138. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.—Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Illustration

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

139. Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.—Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations

(i) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(ii) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

140. Bequest of fund for certain purposes, some of which cannot be fulfilled.—Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations

(i) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(ii) A bequeaths the residue of his estate, to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

CHAPTER XIII.—Of Bequests to an Executor

141. Legatee named as executor cannot take unless he shows intention to act as executor.—If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy, unless he proves the will or otherwise manifests an intention to act as executor.

Illustration

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

CHAPTER XIV.—Of Specific Legacies

142. Specific legacy defined.—Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations

(i) A bequeaths to B—

“the diamond ring presented to me by C”:

“my gold chain”:

“a certain bale of wool”:

“a certain piece of cloth”:

“all my household goods which shall be in or about my dwelling-house in M. Street, in Calcutta, at time of my death”:

“the sum of 1,000 rupees in a certain chest”:

“the debt which B owes me”:

“all my bills, bonds and securities belonging to me lying in my lodgings in Calcutta”:

“all my furniture in my house in Calcutta”:

“all my goods on board a certain ship now lying in the river Hughli”:

“2,000 rupees which I have in the hands of C”:

“the money due to me on the bond of D”:

“my mortgage on the Rampur factory”:

“one-half of the money owing to me on my mortgage of Rampur factory”:

“1,000 rupees, being part of a debt due to me from C”:

“my capital stock of 1,0001 in East India Stock”:

“my promissory notes of the Central Government for 10,000 rupees in their 4 per cent. Loan”:

“all such sums of money as my executors may, after my-death, receive in respect of the debt due to me from the insolvent firm of D and Company”:

“all the wine which I may have in my cellar at the time of my death”:

“such of my horses as B may select”

“all my shares in the Imperial Bank of India”:

“all my shares in the Imperial Bank Of India which I may possess at the time of my death”:

“all the money which I have in the 51/2 per cent. loan of the Central Government”:

“all the Government securities I shall be entitled to at the time of my decease”.

Each of these legacies is specific.

(ii) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors “Government promissory notes for 10,000 rupees in trust to sell” for the benefit of B. The legacy is specific.

(iii) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(iv) A bequeaths to B—

his house in Calcutta:

his zamindari of Rampur:

hitaluq of Ramnagar:

his lease of the indigo-factory of Salkya:

an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(v) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(vi) A bequeaths a sum of money—

to buy a house in Calcutta for B:

to buy an estate in zilaFaridpur for B:

to buy a diamond ring for B:
 to buy a horse for B:
 to be invested in shares in the Imperial Bank of India for B:
 to be invested in Government securities for B.

A bequeaths to B—

“a diamond ring”:
 “a horse”:
 “10,000 rupees worth of Government securities”:
 “an annuity of 500 rupees”:
 “2,000 rupees to be paid in cash”:
 “so much money as will produce 5,000 rupees four per cent. Government securities.”

These bequests are not specific.

(vii) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.

143. Bequest of certain sum where stocks, etc., in which invested are described.—

Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.

Illustration

A bequeaths to B—

“10,000 rupees of my funded property”:
 “10,000 rupees of my property now invested in shares of the East Indian Railway Company”:
 “10,000 rupees, at present secured by mortgage of Rampur factory”,

No one of these legacies is specific.

144. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.—Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

145. Bequest of money where not payable until part of testator's property disposed of in certain way.—A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place.

Illustration

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realised in England. The legacy is not specific.

146. When enumerated articles not deemed specifically bequeathed.—Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

147. Retention, in form, of specific bequest to several persons in succession.—Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the

form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations

(i) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(ii) A, having an annuity during the life of B, bequeaths it to C, for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

148. Sale and investment of proceeds of property bequeathed to two or more persons in succession.—Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration

A, having a lease for a term of years, bequeaths all his property to B for life, and, after B's death to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

149. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.—If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

CHAPTER XV.—Of Demonstrative Legacies

150. Demonstrative legacy defined.—Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations

(i) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(ii) A bequeaths to B—

“ten bushels of the corn which shall grow in my field of Green Acre”:

“80 chests of the indigo which shall be made at my factory of Rampur”:

“10,000 rupees out of my five per cent. promissory notes of the Central Government”:

“An annuity of 500 rupees from my funded property”:

“1,000 rupees out of the sum of 2,000 rupees due to me by C”:

An annuity, and directs it to be paid “out of the rents arising from my taluk of Ramnagar”.

(iii) A bequeaths to B—

“10,000 rupees out of my estate at Ramnagar,” or charges it on his estate at Ramnagar:
 “10,000 rupees, being my share of the capital embarked in a certain business.”
 Each of these bequests is demonstrative.

151. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.—Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B. and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

CHAPTER XVI.—Of Ademption of Legacies

152. Ademption explained.—If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is a deemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations

(i) A bequeaths to B—

“the diamond ring presented to me by C”:

“my gold chain”:

“a certain bale of wool”:

“a certain piece of cloth”:

“all my household goods which shall be in or about my dwelling-house in M. Street in Calcutta, at the time of my death.”

A in his life time,—

sells or gives away the ring:

converts the chain into a cup:

converts the wool into cloth:

makes the cloth into a garment:

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(ii) A bequeaths to B—

“the sum of 1,000 rupees, in a certain chest”:

“all the horses in my stable”.

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(iii) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

153. Non-ademption of demonstrative legacy.—A demonstrative legacy is not a deemed by reason that the property on which it is charged by the will does not exist at the time of the death

of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator.

154. Ademption of specific bequest of right to receive something from third party.—Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is a deemed.

Illustrations

- (i) A bequeaths to B—
 “the debt which C owes me”:
 “2,000 rupees which I have in the hands of D”:
 “the money due to me on the bond of E”:
 “my mortgage on the Rampur factory”,

All these debts are extinguished in A’s lifetime, some with and some without his consent. All the legacies are a deemed.

(ii) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

155. Ademption *pro tanto* by testator’s receipt of part of entire thing specifically bequeathed.—The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration

A bequeaths to B “the debt due to me by C”. The debt amounts to 10,000 rupees. C pays to A 5,000 rupees the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

156. Ademption *pro tanto* by testator’s receipt of portion of entire fund of which portion has been specically bequeathed.—If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

157. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.—Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives ¹[500]

¹ Subs. by Act 10 of 1927, s. 2 and the First Schedule, for “5,000”.

rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

158. Ademption where stock, specifically bequeathed, does not exist at testator's death.—Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration

A bequeaths to B—

“my capital stock of 1,000£ in East India Stock”:

“my promissory notes of the Central Government for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes. The legacies are adeemed.

159. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.—Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration

A bequeaths to B his 10,000 rupees in the 5^{1/2} per cent. loan of the Central Government. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

160. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.—A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations

(i) A bequeaths to B “all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death”. The goods are removed from the house to save them from fire. A dies before they are brought back.

(ii) A bequeaths to B “all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death”. During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

161. When removal of thing bequeathed does not constitute ademption.—The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations

(i) A bequeaths to B “all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Calcutta”. At the time of his death these effects had been removed from his lodgings in Calcutta.

(ii) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

(iii) A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death. No one of these legacies is revoked by ademption.

162. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.—Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed,

Illustration

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

163. Change by operation of law of subject of specific bequest between date of will and testator's death.—Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not a deemed by reason of such change.

Illustrations

A bequeaths to B “all the money which I have in the 5^{1/2} per cent. loan of the. Central Government”. The securities for the 5^{1/2} per cent loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000 f invested in Consoles in the names of trustees for A. The sum of 2,000 transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Central government which he has power under his marriage settlement to dispose of by will. Afterwards, in A's lifetime, the hind is converted into Consoles by virtue of an authority contained in the settlement.

No one of these legacies has been a deemed.

164. Change of subject without testator's knowledge.—Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration

A bequeaths to B “all my 3 per cent. Consoles”. The Consoles are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not a deemed.

165. Stock specifically bequeathed lent to third party on condition that it be replaced.—Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

166. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.— Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

CHAPTER XVII—Of the payment of liabilities in respect of the subject of a bequest.

167. Non-liability of executor to exonerate specific legatees.—(1) Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such

pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance,

(2) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations

A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

168. Completion of testator's title to things bequeathed to be at cost of his estate.—Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations

A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

169. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.—Where there is a bequest of any interest in immovable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.

Illustration

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate will make good 25 rupees in respect of the rent.

170. Exoneration of specific legatee's stock in joint-stock company.—In the absence of any direction in the will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest.

Illustrations

(i) A bequeaths to B his shares in a certain railway. At A's death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(ii) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(iii) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(iv) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(v) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three installments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second installment, and without having paid the first installment. A's estate must pay the first installment, and B, if he accepts the legacy, must pay the remaining installments.

CHAPTER XVIII.—Of Bequests of Things described in General Terms

171. Bequest of thing described in general terms.—If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations

(i) A bequeaths to B a pair of carriage-horses or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(ii) A bequeaths to B "my pair of carriage-horses". A had no carriage horses at the time of his death. The legacy fails.

CHAPTER XIX.—Of Bequests of the Interest or Produce of a Fund

172. Bequest of interest or produce of fund.—Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal, as well as the interest, shall belong to the legatee.

Illustrations

(i) A bequeaths to B the interest of his 5 per cent. promissory notes of the Central Government. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Central Government.

(ii) A bequeaths the interest of his 5 1/2 per cent. promissory notes of the Central Government to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(iii) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

CHAPTER XX.—Of Bequests of Annuities

173. Annuity created by will payable for life only unless contrary intention appears by will.—Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations

(i) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(ii) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(iii) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

174. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.—Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.

Illustrations

(i) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him or to receive such a sum as will be sufficient for the purchase of such an annuity.

(ii) A bequeaths a fund to B for his life, and directs that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

175. Abatement of annuity.—Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

176. Where gift of annuity and residuary gift, whole annuity to be first satisfied.—Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

CHAPTER XXI.—Of Legacies to creditors and Portioners

177. Creditor prima facie entitled to legacy as well as debt.—Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy, as well as to the amount of the debt.

178. Child prima facie entitled to legacy as well as portion.—Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy, as well as the portion.

Illustration

A, by articles entered into in contemplation of his marriage with B covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken. A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

179. No ademption by subsequent provision for legatee.—No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations

(i) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby deemed.

(ii) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

CHAPTER—XXII.—Of Election

180. Circumstances in which election takes place.—Where a person, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

181. Devolution of interest relinquished by owner.—An interest relinquished in the circumstances stated in section 180 shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

182. Testator's belief as to his ownership immaterial.—The provisions of sections 180 and 181 apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations

(i) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(ii) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel or to lose the estate.

(iii) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy.

(iv) A, a person of the age of 18, domiciled in ¹[India] but owning real property in England, to which C is heir at law, bequeaths a legacy to C and, subject thereto, devises and bequeaths to B "all my property whatsoever and whosoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

183. Bequest for man's benefit how regarded for purpose of election.—A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C: and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

184. Person deriving benefit indirectly not put to election.—A person taking no benefit directly under a will, but deriving a benefit under it indirectly, is not put to his election.

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for "the States".

Illustration

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

185. Person taking in individual capacity under will may in other character elect to take in opposition.—A person who in his individual capacity takes a benefit under a will may, in another character, elect to take in opposition to the will.

Illustration

The estate of Sultanpur is settled upon A for life, and after his death, upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

186. Exception to provisions of last six sections.—Notwithstanding anything contained in sections 180 to 185, where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200 rupees during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of 1,000 rupees.

187. When acceptance of benefit given by will constitutes election to take under will.—Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations

(i) A is owner of an estate called SultanpurKhurd, and has a life interest in another estate called Sultanpur Buzurg to which upon his death his son B will be absolutely entitled. The will of A gives the estate of SultanpurKhurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(ii) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

188. Circumstances in which knowledge or waiver is presumed or inferred.—(1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

(2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

189. When testator's representatives may call upon legatee to elect.—If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election; and; if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

190. Postponement of election in case of disability.—In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

CHAPTER XXIII.—Of Gifts in Contemplation of Death

191. Property transferable by gift made in contemplation of death.—(1) A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers, to another the possession: of any moveable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations

(i) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

a watch:

a bond granted by C to A:

a bank-note:

a promissory note of the Central Government endorsed in blank:

a bill of exchange endorsed in blank:

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:

the debt secured by C's bond: the bank-note:

the promissory note of the Central Government :

the bill of exchange:

the money secured by the mortgage-deeds.

(ii) A, being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(iii) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A, dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART VII

PROTECTION OF PROPERTY OF DECEASED

192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.— (1) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friends, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

193. Inquiry made by Judge.—The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made bona fide.

194. Procedure.—If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly.

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not.

195. Appointment of curator pending determination of proceeding.—If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointment, and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in the consequence thereof:

Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator:

Provided, further, that every appointment of a curator in respect of any property shall be duly published.

196. Powers conferrable on curator.—The District Judge may authorise the curator to take possession of the property either generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession:

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

197. Prohibition of exercise of certain powers by curators.—(1) Where a certificate has been granted under Part X or under the Secession Certificate Act, 1889¹ (7 of 1889), or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) Payment of debts, etc., to curator.—All persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

198. Curator to give security and may receive remuneration.—(1) The District Judge shall take from the curator security for the faithful discharge of his trust, and for rendering, satisfactory accounts of the same as hereinafter provided, and may authorise him to receive out of the property such remuneration, in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

(2) All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceeding.

(3) Security shall be required from the curator with all reasonable dispatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

199. Report from Collector where estate includes revenue paying land.—(1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

¹ Rep. partly by Act 39 of 1925, and finally by Act 1 of 1938.

200. Institution and defence of suits.—The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate:

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquaintance for any sums of money received by virtue thereof.

201. Allowances to apparent owners pending custody by curator.—Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a prima facie right thereto as upon a summary investigation of the right and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto.

202. Accounts to be filed by curator.—The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the District Judge.

203. Inspection of accounts and right of interested party to keep duplicate.—(1) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.

204. Bar to appointment of second curator for same property.—If the Judge of any district has appointed a curator; in respect to the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district within the same State from appointing any other curator, but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment within the same State of another curator in respect of the residue or any portion thereof

Provided that no Judge shall appoint curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge:

Provided, further, that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property.

205. Limitation of time for application for curator.—An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession.

206. Bar to enforcement of Part against public settlement or legal directions by deceased.—Nothing in this Part shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such

case, as soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.

207. Court of Wards to be made curator in case of minors having property subject to its jurisdiction.—Nothing in this Part shall be deemed to authorise any disturbance of the possession of a Court of Wards of any property; and in case a minor, or other disqualified person whose property is subject to the Court of Wards, is the party on whose behalf application is made under this Part, the District Judge, if he determines to summon the party in possession and to appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the proceeding without taking security as aforesaid; and if the minor or other disqualified person, upon the adjudication of the summary proceeding, appears to be entitled to the property, possession shall be delivered to the Court of Wards.

208. Saving of right to bring suit.—Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part.

209. Effect of decision of summary proceeding.—The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.

210. Appointment of public curators.—The State Government may appoint public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with him under this Part.

PART VIII

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED ON SUCCESSION

211. Character and property of executor or administrator as such.— (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in- him as such.

(2) When the deceased was a Hindu, Muhammadan, Budhist, Sikh, ¹[Jaina or Parsi] or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

212. Right to intestate's property.—(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, ²[Indian Christian or Parsi].

213. Right as executor or legatee when established.—(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in ³[India] has

¹ Subs. by Act 16 of 1962, s. 2, for “or Jaina”.

² Subs. by s. 3, *ibid.*, for “or Indian Christian”.

³ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “the States”.

granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

¹[(2) This section shall not apply in the case of wills made by Muhammadans ²[or Indian Christians], and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the ³[ordinary-original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.]

214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.—(1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of—
 - (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
 - (ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or
 - (iii) a succession certificate granted under Part X and having the debt specified therein, or
 - (iv) a certificate granted under the Succession Certificate Act, 1889⁴ (7 of 1889), or
 - (v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word “debt” in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

215. Effect of certificate of subsequent probate or letters of administration.—(1) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Part X or under the Succession Certificate Act, 1889¹ (7 of 1889) or Bombay Regulation No. VIII of 1827, in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding:

¹ Subs. by Act 16 of 1962, s. 4, for sub-section (2).

² Ins. by Act 26 of 2002, s. 3 (w.e.f. 27-5-2002).

³ Subs. by Act 52 of 1964, s. 3 and the Second Schedule, for “ordinary civil jurisdiction”.

⁴ Rep. partly by Act 39 of 1925, and finally by Act 1 of 1938.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

216. Grantee of probate or administration alone to sue, etc., until same revoked.—After any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the State in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.

PART IX

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED

217. Application of Part.—Save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate and letters of administration with the will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.

CHAPTER I.—Of Grant of Probate and Letters of Administration

218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.—(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

219. Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.—If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 218, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely:—

(a) If the deceased has left a widow, administration shall be granted to the widow, unless the Court sees cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations

(i) The widow is a lunatic or has committed adultery or has been barred by her marriage settlement of all interest in her husband's estate. There is cause for excluding her from the administration.

(ii) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

(b) If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

(c) If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Provided that, when the mother of the deceased is one of the class of persons so entitled, she shall be solely entitled to administration.

(d) Those who stand in -equal degree of kindred to the deceased are equally entitled to administration.

(e) The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband.

(f) When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

(g) Where the deceased has left property in ¹[India], letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of ¹[India].

220. Effect of letters of administration.—Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

221. Acts not validated by administration.—Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

222. Probate only to appointed executor.—(1) Probate shall be granted only to an executor appointed by the will.

(2) The appointment may be expressed or by necessary implication.

Illustrations

(i) A wills that C be his executor if B will not. B is appointed executor by implication.

(ii) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds "but should the within-named C be not living I do constitute and appoint B my whole and sole executrix". C is appointed executrix by implication.

(iii) A appoints several persons executors of his will and codicils' and his nephew residuary legatee, and in another codicil are these words,—“I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils signed of different dates”. The nephew is appointed an executor by implication.

223. Persons to whom probate cannot be granted.—Probate cannot be granted to any person who is a minor or is of unsound mind ²[nor to any association of individuals unless it is a

¹ Subs. by Act 3 of 1951, s. 3 and Sch., for "the States." 2. Added by Act 17 of 1931, s.

² The words "nor, unless the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, to a married woman without the previous consent of her husband" which originally occurred at the end of this section had been omitted by Act 18 of 1927, s. 2.

company which satisfies the conditions prescribed by rules to be made ¹[,by notification in the Official Gazette] by the ²[State Government] in this behalf].

224. Grant of probate to several executors simultaneously or at different times.—When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first and then to C, or to C first and then to A.

225. Separate probate of codicil discovered after grant of probate.—(1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

(2) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

226. Accrual of representation to surviving executor.—When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

227. Effect of probate.—Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

228. Administration, with copy annexed, of authenticated copy of will proved abroad.—When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of ³[India], and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

229. Grant of administration where executor has not renounced.—When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship:

Provided that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

230. Form and effect of renunciation of executorship.—The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

231. Procedure where executor renounces or fails to accept within time limited.—If an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

¹ Ins. by Act 20 of 1983, s. 2 and Sch. (w.e.f. 15-3-1984).

² The words "G.G. in C." have been successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

³ Subs. by A.O. 1950, for "His Majesty's Domination".

232. Grant of administration to universal or residuary legatees.—When—

(a) the deceased has made a will, but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the will, or

(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

233. Right to administration of representative of deceased residuary legatee.—When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

234. Grant of administration where no executor, nor residuary legatee nor representative of such legatee.—When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

235. Citation before grant of administration to legatee other than universal or residuary.—Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

236. To whom administration may not be granted.—Letters of administration cannot be granted to any person who is a minor or is of unsound mind, ¹[nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made ²[by notification in the Official Gazette,] by the ³[State Government] in this behalf].

⁴[**236A. Laying of rules before State Legislature.—**Every rule made by the State Government under section 223 and section 236 shall be laid, as soon as it is made, before the State Legislature.]

CHAPTER II—Of Limited Grants

Grants limited in duration

237. Probate of copy or draft of lost will.—When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.

¹ Added by Act 17 of 1931, s. 2. The words "nor, unless the deceased was a Hindu, Muhammadan, Buddhist, Sikh, or Jaina or an exempted person, to a married woman without the previous consent of her husband" which originally occurred at the end of this section had been omitted by Act 18 of 1927, s. 2.

² Ins. by Act 20 of 1983, s.2 and Sch. (w.e.f. 15-3-1984).

³ The words "G.G. in C." have been successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

⁴ Ins. by Act 20 of 1983, s. 2 and the Schedule (w.e.f. 15-3-1984).

238. Probate of contents or lost of destroyed will.—When a will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

239. Probate of copy where original exists.—When the will is in the possession of a person residing out of the State in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it is produced.

240. Administration until will produced.—Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it is produced.

Grants for the use and benefit of others having right

241. Administration, with will annexed, to attorney of absent executor.—When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

242. Administration, with will annexed to attorney of a absent person who, if present, would be entitled to administer.—When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the State, letters of administration, with the will annexed may be granted to his attorney or agent, limited as mentioned in section .241.

243. Administration to attorney of absent person entitled to administer in case of intestacy.— When a person entitled to administration in case of intestacy is absent from the State, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 241.

244. Administration during minority of sole executor or residuary legatee.—When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court may think fit until the minor has attained his majority at which period, and not before, probate of the will shall be granted to him.

245. Administration during minority of several executors or residuary legatee.—When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have attained his majority.

246. Administration for use and benefit of lunatic or minor.—If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, is a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be.

247. Administration *pendente lite*.—Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Grants for special purposes

248. Probate limited to purpose specified in will.—If an executor appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney or agent to take administration on his behalf, the letters of administration, with the will annexed, shall be limited accordingly.

249. Administration, with will annexed, limited to particular purpose.—If an executor appointed generally gives an authority to an attorney or agent to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

250. Administration limited to property in which person has beneficial interest.—Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

251. Administration limited to suit.—When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor, or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

252. Administration limited to purpose of becoming party to suit to be brought against administrator.—If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the State within which the Court which has granted the probate or letters of administration exercises jurisdiction, the Court may grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

253. Administration limited to collection and preservation of deceased's property.—In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose jurisdiction any of the property is situate may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the Court.

254. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration.—(1) When a person has died intestate, or leaving a will of which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the State, and it appears to the Court to be

necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not as the Court thinks fit,

Grants with exception

255. Probate or administration, with will annexed, subject to exception.—Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

256. Administration with exception.—Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Grants of the rest

257. Probate or administration of rest.—Whenever a grant with exception of probate, or of letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Grant of effects unadministered

258. Grant of effects unadministered.—If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

259. Rules as to grants of effects unadministered.—In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

260. Administration when limited grant expired and still some part of estate unadministered.—When a limited grant has expired, by efflux of time, or the happening of the event or contingency on, which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER III.—Alteration and Revocation of Grants

261. What errors may be rectified by Court.—Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the Court and the grant of probate or letters of administration may be altered and amended accordingly.

262. Procedure where codicil discovered after grant of administration with will annexed.—If, after the grant of letters of administration with the will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly.

263. Revocation or annulment for just cause.—The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause shall be deemed to exist where—

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

- (i) The Court by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties who ought to have been cited.
- (iii) The will of which probate was obtained was forged or revoked.
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a later will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER IV.—Of the Practice in granting and revoking Probates and Letters of Administration

264. Jurisdiction of District Judge in granting and revoking probates, etc.—(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bomba¹ *** shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.

265. Power to appoint delegate of District Judge to deal with non-contentious cases.—(1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointments shall not be without the previous sanction of the State Government.

(2) Persons so appointed shall be called “District Delegates”.

¹ The words “and the province of Burma” omitted by the A.O. 1937.

266. District Judge's powers as to grant of probate and administration.—The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his Court.

267. District Judge may order person to produce testamentary papers.—(1) The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly such question as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code (45 of 1860), in case of default in not attending or in not answering such question or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit and had made such default.

(4) The costs of the proceeding shall be in the discretion of the Judge.

268. Proceedings of District Judge's Court in relation to probate and administration.—The proceeding of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (5 of 1908).

269. When and how District Judge to interfere for protection of property.—(1) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property,

(2) This section shall not apply when the deceased' is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

270. When probate or administration may be granted by District Judge.—Probate of the will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Ridge.

271. Disposal of application made to Judge of district in which deceased had no fixed abode.— When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the

application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

272. Probate and letters of administration may be granted by Delegate.—Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

273. Conclusiveness of probate or letters of administration.—Probate or letters of administration shall have effect over all the property and estate, moveable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted—

- (a) by a High Court, or
- (b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees, shall, unless otherwise directed by the grant, have like effect throughout ¹[the other States ^{2***}].

³[The proviso to this section shall apply in ⁴[India] ⁵after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.]

⁶[The proviso shall also apply in ²[India] ^{7***} ⁸after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.]

274. Transmission to High Courts of certificate of grants under proviso to section 273.—(1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 273, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

- (a) when the grant has been made by a High Court, to each of the other High Courts;
- (b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be made as nearly as circumstances admit in the form set forth in Schedule IV, and such certificate shall be filed by the High Court receiving the same.

¹ Subs. by the A.O. 1948, for “the whole of British India “.

² The words “of India” omitted by the A.O. 1950.

³ Ins. by the A.O. 1937.

⁴ Subs. by Act 3 of 1951, s. 3 and Sch., for “the States”.

⁵ 1st April, 1937.

⁶ Added by the A.O. 1948.

⁷ The words “of India” omitted by Act 42 of 1953, s. 4 and Sch. III.

⁸ 15th August, 1947.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 276 and 278, to be situate within the jurisdiction of a District Judge in another State, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

275. Conclusiveness of application for probate or administration if properly made and verified.—The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration; and no such grant shall be impeached by reason only that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

276. Petition for probate.—(1) Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—

- (a) the time of the testator's death,
- (b) that the writing annexed is his last will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner's hands, and
- (e) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state,—

- (a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
- (b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

277. In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.—In cases wherein the will, copy or draft, is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft, is in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely:—

“I (A.B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

278. Petition for letters of administration.—(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—

- (a) the time and place of the deceased's death;
- (b) the family or other relatives of the deceased, and their respective residences;

- (c) the right in which the petitioner claims;
- (d) the amount of assets which are likely to come to the petitioner's hands;
- (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
- (f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

279. Addition to statement in petition, etc., for probate or letters of administration in certain cases.—(1) Every person applying to any of the Courts mentioned in the proviso to section 273 for probate of a will or letters of administration of an estate intended to have effect throughout ¹[India], shall state in his petition, in addition to the matters respectively required by section 276 and section 278, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid, or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 273 may, if it thinks fit, reject the same.

280. Petition for probate, etc., to be signed and verified.—The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely:—

“I (A.B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

281. Verification of petition for probate, by one witness to will.—Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following, namely:—

“I (C.D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

282. Punishment for false averment in petition or declaration.—If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 193 of the Indian Penal Code (45 of 1860).

283. Powers of District Judge.—(1) In all cases the District Judge or District Delegate may, if he thinks proper,—

- (a) examine the petitioner in person, upon oath;

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “the States”.

- (b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;
- (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

284. Caveats against grant of probate or administration.—(1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.—(4) The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.

285. After entry of caveat, no proceeding taken on petition until after notice to caveator.—No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable.

286. District Delegate when not to grant probate or administration.—A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—“Contention” means the appearance of any one in person, or by his recognized agent, or by a pleader duly appointee to act on his behalf, to oppose the proceeding.

287. Power to transmit statement to District Judge in doubtful cases where no contention.—In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any

further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

288. Procedure where there is contention of District Delegate thinks probate or letters of administration should be refused in his Court.—In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do; and, in that case, the same shall be sent by him to the District Judge.

289. Grant of probate to be under seal of Court.—When it appears to the District Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VI.

290. Grant of letters of administration to be under seal of Court.—When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VII.

291. Administration-bond.—(1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person—

- (a) the exception made by sub-section (1) in respect of a grant under section 241 shall not operate.
- (b) the District Judge may demand a like bond from any person to whom probate is granted.

292. Assignment of administration-bond.—The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his or their own name or names as if the same had been originally given to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof,

293. Time for grant of probate and administration.—No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

294. Filing of original wills of which probate or administration with will annexed granted.—(1) Every District Judge, or District Delegate, shall file and preserve all original wills, of

which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established. 79

(2) The State Government shall make regulations for the preservation and inspection of the wills so filed.

295. Procedure in contentious cases.—In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

296. Surrender of revoked probate or letters of administration.—(1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person willfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

297. Payment to executor or administrator before probate or administration revoked.—When a grant of probate or letters of administration is revoked, all payments bona fide made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.

298. Power to refuse letters of administration.—Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jaina to whom section 57 does not apply, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made lousier this Act.

299. Appeals from orders of District Judge.—Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals.

300. Concurrent jurisdiction of High Court.—(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay^{1***} shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has by a notification in the Official Gazette, authorised it so to do.

¹ The words “and the province of Burma” omitted by the A.O. 1937.

301. Removal of executor or administrator and provision for successor.—The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any' such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

302. Directions to executor or administrator.—Where probate or letters of administration in respect of any estate has or have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

CHAPTER V.—Of Executors of their own Wrong

303. Executor of his own wrong.—A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions.—(1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations

(i) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(ii) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(iii) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

304. Liability of executor of his own wrong.—When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

CHAPTER VI.—Of the Powers of an Executor or Administrator

305. In respect of causes of action surviving deceased and debts due at death.—An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living.

306. Demands and rights of action of or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (45 of 1860), or other personal injuries not causing the

death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustrations

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. action does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

307. Power of executor or administrator to dispose of property.—(1) Subject to the provisions of sub-section (2), and executor or administrator has power to dispose of the property of the deceased, vested in him under section 211, either wholly or in part, in such manner as he may think fit.

Illustrations

(i) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(ii) The executor in the exercise of his discretion mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

(2) If the deceased was a Hindu, Muhammad an, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub-section (1) shall be subject to the following restrictions and conditions, namely:—

(i) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the Will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(ii) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under section 211, or

(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(3) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of sub-section (1) and clauses (i) and (iii) of sub-section (2) or of sub-section (1) and clauses (ii) and (iii) of sub-section (2), as the case may be.

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

308. General powers of administration.—An executor or administrator may, in addition to, and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him; and

- (b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

309. Commission or agency charges.—An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator-General by or under the Administrator-General's Act, 1913 (3 of 1913).

310. Purchase by executor or administrator of deceased's property.—If any executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

311. Powers of several executors or administrators exercisable by one.—When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Illustrations

- (i) One of several executors has power to release a debt due to the deceased.
- (ii) One has power to surrender a lease.
- (iii) One has power to sell the property of the deceased whether movable or immovable.
- (iv) One has power to assent to a legacy.
- (v) One has power to endorse a promissory note payable to the deceased.
- (vi) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

312. Survival of powers on death of one of several executors or administrators.—Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor.

313. Powers of administrator of effects unadministered.—The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

314. Powers of administrator during minority.—An administrator during minority has all the powers of an ordinary administrator:

315. Powers of married executrix or administratrix.—When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.—Of the Duties of an Executor or Administrator

316. As to deceased's funeral.—It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

317. Inventory and account.—(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint,

exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

The High Court may prescribe the form in which an inventory or account under this section is to be exhibited.

If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code (45 of 1860).

The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

318. Inventory to include property in any part of India in certain cases.— in all cases where a grant has been made of probate or letters of administration intended to have effect throughout ¹[India] ^{2***}, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable and immoveable property situate in ¹[India], and the value of such property situate in each state shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby whosoever situate within ¹[India].

319. As to property of, and debts owing to, deceased.—The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

320. Expenses to be paid before all debts.—Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, shall be paid before all debts.

321. Expenses to be paid next after such expenses.—The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

322. Wages for certain services to be next paid, and then other debts.—Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant shall next be paid, and then the other debts of the deceased according to their respective priorities (if any).

323. Save as aforesaid, all debts to be paid equally and rateably.—Save as aforesaid, no creditor shall have a right of priority over another; but the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

324. Application of moveable property to payment of debts where domicile not in India.—(1) If the domicile of the deceased was not in ³[India], the application of his moveable property to the payment of his debts is to be regulated by the law of ¹[India].

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for "the States".

² The words "of India" omitted by Act 48 of 1952, s. 3 and the Second Schedule.

³ Subs. by Act 3 of 1951, s. 3 and the Schedule for "the States".

(2) No creditor who has received payment of a part of his debt by virtue of sub-section (1) shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

(3) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Illustration

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal received half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts have been discharged. This will leave 5,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

325. Debts to be paid before legacies.—Debts of every description must be paid before any legacy.

326. Executor or administrator not bound to pay legacies without indemnity.—If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

327. Abatement of general legacies.—If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, or to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

328. Non-abatement of specific legacy when assets sufficient to pay debts.—Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

329. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.—Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of the legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

330. Rateable abatement of specific legacies.—If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration

A has bequeathed to B a diamond ring valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator; and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

331. Legacies treated as general for purpose of abatement.—For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.—Of assent to a legacy by Executor or Administrator

332. Assent necessary to complete legatee's title.—The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

Illustrations

(i) A by his will bequeaths to B his Government paper which is in deposit with the Imperial Bank of India. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(ii) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor or administrator.

333. Effect of executor's assent to specific legacy.—(1) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

(2) This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

Illustrations

(i) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(ii) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(iii) A bequest is made of a fund to A and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(iv) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(v) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

334. Conditional assent.—The assent of an executor or administrator to a legacy may be conditional, and if the condition is one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations

(i) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(ii) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

335. Assent of executor to his own legacy.—(1) When the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may, in like manner, be expressed or implied.

(2) Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor or administrator.

Illustration

An executor takes the rent of a house or the interest of Government securities bequeathed to him and applied it to his own use. This is assent.

336. Effect of executor's assent.—The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Illustrations

(i) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(ii) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

337. Executor when to deliver legacies.—An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.—Of the Payment and Apportionment of Annuities

338. Commencement of annuity when no time fixed by will.—Where an annuity is given by a will and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

339. When annuity, to be paid quarterly or monthly, first falls due.—Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

340. Dates of successive payments when first payment directed to be made within a given time or on day certain: death of annuitant before date of payment.—(1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made.

(2) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.—Of the Investment of Funds to Provide for Legacies

341. Investment of sum bequeathed, where legacy, not specific, given for life.—Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year he invested in such securities as the High Court may by any general rule authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

342. Investment of general legacy, to be paid at future time: disposal of intermediate, interest.— (1) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 341.

(2) The intermediate interest shall form part of the residue of the testator's estate.

343. Procedure when no fund charged with, or appropriated to, annuity.—Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 341.

344. Transfer to residuary legatee of contingent bequest.—Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy, if it shall become due.

345. Investment of residue bequeathed for life, without direction to invest in particular securities.—(1) Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 341 shall be converted into money and invested in such securities.

(2) This section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

346. Investment of residue bequeathed for life, with direction to invest in specified securities.— When the testator has bequeathed the residue of his estate of a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

347. Time and manner of conversion and investment.—Such conversion and investment as are contemplated by sections 345 and 346 shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of 4 per cent. per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested:

Provided that the rate of interest prior to completion of investment shall be six per cent. per annum when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person

348. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.—(1) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted to the account of the legatee, unless the legatee is a ward of the Court of Wards.

(2) If the legatee is a ward of the Court of Wards, the legacy shall be paid to the Court of Wards to his account.

(3) Such payment into the Court of the District Judge, or to the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid.

(4) Money when paid in under this section shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.—Of the Produce and Interest of Legacies

349. Legatee's title to produce of specific legacy.—The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations

(i) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the property of B.

(ii) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(iii) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them between the testator's death and A's completing 18, form part of the residue.

350. Residuary legatee's title to produce of residuary fund.—The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations

(i) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(ii) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

351. Interest when no time fixed for payment of general legacy.—Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Exception.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

352. Interest when time fixed.—Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

353. Rate of interest.—The rate of interest shall be four per cent. per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, in which case it shall be six percent per annum.

354. No interest on arrears of annuity within first year after testator's death.—No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by will for making the first payment of the annuity.

355. Interest on sum to be invested produce annuity.—Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.—Of the Refunding of Legacies

356. Refund of legacy paid under Court's orders.—When an executor or administrator has paid a legacy under the order of a Court, he is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

357. No refund if paid voluntarily.—When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

358. Refund when legacy has become due on performance of condition within further time allowed under section 137.—When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under section 137 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount.

359. When each legatee compellable to refund in proportion.—When the executor or administrator has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

360. Distribution of assets.—Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe or, if no such rule has been made, as the High Court would give in an administration-suit, for creditors and others to send in to him their claims against the state of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims

as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution:

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

361. Creditor may call upon legatee to refund.—A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor or administrator was voluntary or not.

362. When legatee, not satisfied or compelled to refund under section 361, cannot oblige one paid in full to refund.—If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under section 361, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

363. When unsatisfied legatee must first proceed against executor, if solvent.—If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor or administrator if he is solvent; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

364. Limit to refunding of one legatee to another.—The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration

A has bequeathed 240 rupees, to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees and, if properly administered, would give 200 rupees to B, 400 rupees to C and 600 rupees to D. C and D have been paid their legacies in full leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

365. Refunding to be without interest.—The refunding shall in all cases be without interest.

366. Residue after usual payments to be paid to residuary legatee.—The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

367. Transfer of assets from India to executor or administrator in country of domicile for distribution.—Where a person not having his domicile in ¹[India] has died leaving assets both in if ¹[India] and in the country in which he had his domicile at the time of his death, and there has been a grant of probate or letters of administration in ¹[India] with respect to the assets there a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in ¹[India], after having given such notices as are mentioned in

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “the States”.

section 360, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of ¹[India] who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.—Of the Liability of an Executor or Administrator for Devastation

368. Liability of executor or administrator for devastation.—When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations

- (i) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.
- (ii) The deceased had a valuable lease renewable by notice which the executor neglects to give at the proper time. The executor is liable to make good the loss.
- (iii) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

369. Liability of executor or administrator for neglect to get any part of property.—When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations

- (i) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.
- (ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART X

SUCCESSION CERTIFICATES

370. Restriction on grant of certificates under this part.—(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

- (2) For the purposes of this Part, “security” means—
 - (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
 - (b) any bond, debenture, or annuity charged by Act of Parliament ¹[of the United Kingdom] on the revenues of India;
 - (c) any stock or debenture of, or share in, a company or other incorporated institution;
 - (d) any debenture or other security for money issued by, or on behalf of, a local authority;

¹ Ins. by the A. O. 1950.

- (e) any other security which the ¹[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.

371. Court having jurisdiction to grant certificate.—The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

372. Application for certificate.—(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

²[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

373. Procedure on application.—(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

- (a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and
- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit, and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

¹ The words “G.G. in C” have been successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

² Added by Act 14 of 1928, s. 2.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

374. Contents of certificate.—When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

375. Requisition of security from grantee of certificate.—(1) The District Judge shall in any case in which he proposes to proceed under sub-section (3) or sub-section (4) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application made by petitioner and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

376. Extension of certificate.—(1) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.

377. Forms of certificate and extended certificate.—Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule VIII.

378. Amendment of certificate in respect of powers as to securities.—Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security the Judge may, on application made by petitioner and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 374 or by substituting any one for any other of those powers.

379. Mode of collecting court-fees on certificates.—(1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee

payable under the Court-Fees Act, 1870 (7 of 1870), in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

380. Local extent of certificate.—A certificate under this Part shall have effect throughout ¹[India] ^{2***}. ³[This section shall apply in ³[India] ⁴after the separation of Burma and Aden from India to certificates granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.] ⁵[It shall also apply in ³[India] ^{6***} ⁷after the separation of Pakistan from India to certificates granted before the date of the separation, or after that date in proceedings pending at that date in any of the territories which on that date constituted Pakistan.]

381. Effect of certificate.—Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

⁸**[382. Effect of certificate granted or extended by Indian representative in Foreign State and in certain other cases.**—Where a certificate in the form, as nearly as circumstances admit, of Schedule VIII—

- (a) has been granted to a resident within a foreign State by an Indian representative accredited to that State, or
- (b) has been granted before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within any Part B State by a district judge of that State or has been extended by him in such form, or
- (c) has been granted after the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within the State of Jammu and Kashmir by the district judge of that State or has been extended by him in such form, the certificate shall, when stamped in accordance with the provisions of the Court-Fees Act, 1870 (7 of 1870), with respect to certificates under this Part, have the same effect in India as a certificate granted or extended under this Part.]

383. Revocation of certificate.—A certificate granted under this Part may be revoked for any of the following causes, namely:—

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “the States”.

² The words “of India” omitted by the A.O. 1950.

³ Ins. by the A.O. 1937.

⁴ 1st April, 1937.

⁵ Added by the A.O. 1948.

⁶ The words “of India” omitted by Act 48 of 1952, s. 3 and Schedule II.

⁷ 15th August, 1947.

⁸ Subs. by Act 1957, s. 2 for s. 382.

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

384. Appeal.—(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District judge, on application being made therefore, to grant it accordingly, in super session of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

385. Effect on certificate of previous certificate, probate or letters of administration.— Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

386. Validation of certain payments made in good faith to holder of invalid certificate.— Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 383, or by reason of the grant of a certificate to a person named in an appellate order under section 384, or by reason of a certificate having been previously granted, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its super session or invalidity, shall be held good against claims under any other certificate.

387. Effect of decisions under this Act, and liability of holder of certificate thereunder.— No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto.

388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act.— (1) The State Government may by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this

Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior court as if it were a District Judge:

Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior court, and may either himself dispose of them or transfer them to another such court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior court specially or any class of such courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge.

389. Surrender of superseded and invalid certificates.—(1) When a certificate under this Part has been superseded or is invalid from any of the causes mentioned in section 386, the holder thereof shall, on the requisition of the Court which granted it, deliver it upto that court.

(2) If he willfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months or with both.

390. Provisions with respect to certificates under Bombay Regulation VIII of 1827.—Notwithstanding anything in Bombay Regulation No. VIII of 1827 the provisions of section 370, subsection (2), section 372, sub-section (1), clause (f), and sections 374, 375, 376, 377, 378, 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under this Part and applications therefore, and of section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation and applications made for certificates thereunder, after the 1st day of May, 1889 and to the exhibition of inventories and accounts by the holders of such certificates so granted.

PART XI

MISCELLANEOUS

391 Saving.—Nothing in Part VIII, Part IX or Part X shall—

- (i) validate any testamentary disposition which would otherwise have been invalid;
- (ii) invalidate any such disposition which would otherwise have been valid;

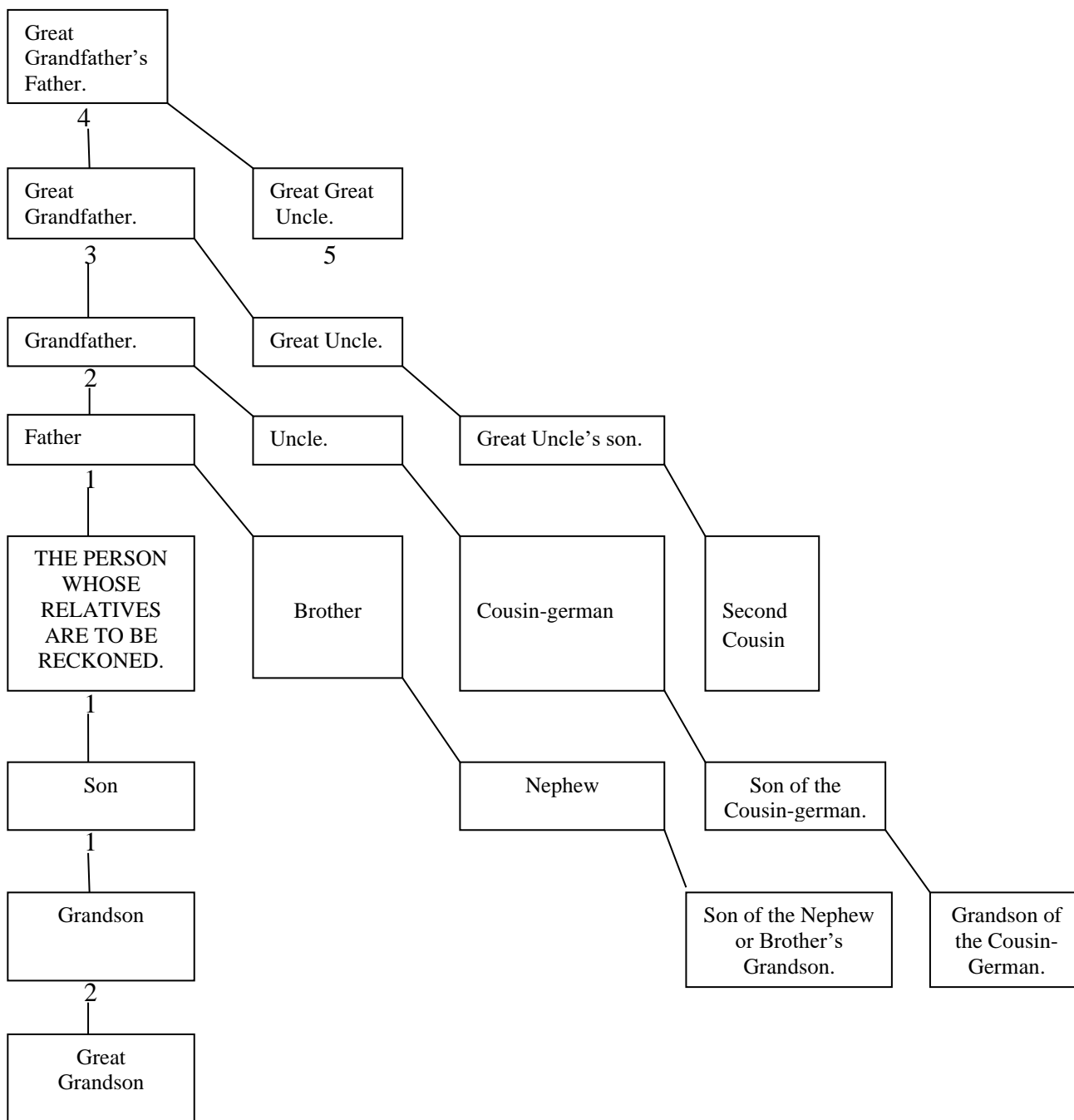
- (iii) deprive any person of any right of maintenance to which he would otherwise have been entitled; or
- (iv) affect the Administrator General's Act, 1913(3 of 1913).

392. [Repealed].—Rep. by the Repealing Act, 1927 (12 of 1927), s. 2 and Schedule.

SCHEDULE I

(See section 28)

TABLE OF CONSANGUINITY



¹[SCHEDULE II**PART I****(See section 54)**

- (1) Father and mother.
- (2) Brothers and sisters (other than half brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate.
- (3) Paternal and maternal grandparents.
- (4) Children of paternal and maternal grandparents and the lineal descendants of such of them as have predeceased the intestate.
- (5) Paternal and maternal grandparents' parents.
- (6) Paternal and maternal grandparents' parents' children and the lineal descendants of such of them as have predeceased the intestate.

PART II**(See section 55)**

- (1) Father and mother.
- (2) Brothers and sisters (other than half brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate.
- (3) Paternal and maternal grandparents.
- (4) Children of paternal and maternal grandparents and the lineal descendants of such of them as have predeceased the intestate.
- (5) Paternal and maternal grandparents' parents.
- (6) Paternal and maternal ²[grandparent's parents children] and the lineal descendants of such of them as have predeceased the intestate.
- (7) Half brothers and sisters and the lineal descendants of such of them as have predeceased the intestate.
- (8) Widows of brothers or half brothers and widowers of sisters or half sisters.
- (9) Paternal or maternal grandparents children's widows or widowers.
- (10) Widows or widowers of deceased lineal descendants of the intestate who have not married again before the death of the intestate.]

SCHEDULE III**[See section 57]****PROVISIONS OF PART VI****APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 57**

Sections 59, 61, 62, 63, 64, 68, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 95, 96, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, ³[117], 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 and 190.

¹ Subs. by Act 51 of 1991, s. 7 for the second Schedule.

² Subs. by Act 30 of 2001, s. 3 and the Second Schedule, for "grandparents' children" (w.e.f. 3-9-2001).

³ Ins by Act 21 of 1929, s. 14.

Restrictions and modifications in application of foregoing sections

1. Nothing therein contained shall authorise a testator to bequeath property which he could not have alienated inter vivos, or to deprive any persons of any right of maintenance of which, but for the application of these sections, he could not deprive them, by will.

2. Nothing therein contained shall authorise any Hindu, Buddhist, Sikh or Jaina, to create in property any interest which he could not have created before the first day of September, 1870.

3. Nothing therein contained shall affect any law of adoption or intestate succession,

4. In applying section 70, the words “than by marriage or” shall be omitted.

5. In applying any of the following sections, namely, sections seventy-five, seventy-six, one hundred and five, one hundred and nine, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, and one hundred and sixteen to such wills and codicils, the words “son”, “sons”, “child”, and “children” shall be deemed to include an adopted child; and the word “grand-children” shall be deemed to include the children, whether adopted or natural born, of a child whether adopted or natural-born; and the expression “daughter-in-law” shall be deemed to include the wife of an adopted son.

SCHEDULE IV **[See section 274(2)]** **FORM OF CERTIFICATE**

I, A. B., Registrar (or as the case may be) of the High Court of Judicature at (or as the case may be) hereby certify that on the day of, the High Court of Judicature at (or as the case may be) granted probate of the will (or letters of administration of the estate) of C.D., late of , deceased, to E.F. of and G.H. of, and that such probate (or letters) has (or have) effect over all the property of the deceased throughout ¹[India] ²***.

SCHEDULE V **[See section 284(4)]** **FORM OF CAVEAT**

Let nothing be done in the matter of, the estate of A. B., late of , deceased, who died on the day of at , without notice to C.D.of

SCHEDULE VI **(See section 289)** **FORM OF PROBATE**

I, Judge of the District of [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate’s jurisdiction)], hereby make known that on the day of in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may, from time to time, appoint, and also to render to this Court a

¹ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “the States”.

² The words “of India” omitted by the A.O. 1950.

true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.

SCHEDULE VII
(See section 290)
FORM OF LETTERS OF ADMINISTRATION

I, Judge of the District of [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate’s jurisdiction)], hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be), of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court, within six months from the date of this grant or within such further time as the Court may, from time to time, appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.

SCHEDULE VIII
(See section 377)
FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE

In the Court of

To A. B.

Whereas you applied on the day of for a certificate under Part X of the Indian Succession Act, 1925, in respect of the following debts and securities, namely:—

Debts			
Serial Number	¹ [Name] of debtor	Amount of interest, on date of application for certificate	Description and date of instrument, if any, by which the debt is secured

Securities				
DESCRIPTION				
Serial Number	Distinguishing number or letter of security	Name, title or class of security	Amount or of par value of security	Market-value of security on date of application for extension

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive][interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this _____ day of _____ District Judge

In the Court of

On the application of A. B. made to me on the day of , I hereby extend this certificate to the following debts and securities, namely:—

Debts			
Serial Number	Name of debtor	Amount of interest, on date of application for extension	Description and date of instrument, if any, by which the debt is secured

¹ Subs. by Act 48 of 1952, s. 3 and the Second Schedule, for “Number”.

Securities

DESCRIPTION					
Serial Number	Distinguishing number or letter of security	Name, title or class of security	Amount of par value of security	or of	Market-value on date of application for extension

This extension empowers A. B. to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this

day of

District Judge.

SCHEDULE IX.—[Enactments repealed.]. Rep. by the Repealing Act, 1927 (12 of 1927), s. 2 and the Schedule.

THE HINDU SUCCESSION ACT, 1956

ARRANGEMENT OF SECTIONS

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SECTIONS

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3. Definitions and interpretation.
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CHAPTER II INTESTATE SUCCESSION *General*

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6. Devolution of interest in coparcenary property.
7. Devolution of interest in the property of a *tarwad*, *tavazhi*, *kutumba*, *kavaruorillom*.
8. General rules of succession in the case of males.
9. Order of succession among heirs in the Schedule.
10. Distribution of property among heirs in class I of the Schedule.
11. Distribution of property among heirs in class II of the Schedule.
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13. Computation of degrees.
14. Property of a female Hindu to be her absolute property.
15. General rules of succession in the case of female Hindus.
16. Order of succession and manner of distribution among heirs of a female Hindu.
17. Special provisions respecting persons governed by *marumakkattayam* and *aliyasantana* laws.

General provisions relating to succession

18. Full blood preferred to half blood.
19. Mode of succession of two or more heirs.
20. Right of child in womb.
21. Presumption in cases of simultaneous deaths.
22. Preferential right to acquire property in certain cases.
23. [*Omitted.*].
24. [*Omitted.*].
25. Murderer disqualified.
26. Convert's descendants disqualified.
27. Succession when heir disqualified.
28. Disease, defect, etc., not to disqualify.

Escheat

29. Failure of heirs.

CHAPTER III
TESTAMENTARY SUCCESSION

30. Testamentary succession.

CHAPTER IV
REPEALS

31. [Repealed].
THE SCHEDULE.

THE HINDU SUCCESSION ACT, 1956
ACT NO. 30 OF 1956¹

[17th June, 1956.]

An Act to amend and codify the law relating to intestate succession among Hindus.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Succession Act, 1956. (2) It extends to the whole of India ^{2***}.

2. Application of Act.—(1) This Act applies—

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;
- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

¹ The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and First Schedule and to Pondicherry by Reg. 7 of 1963, s. 3 and First Schedule

² The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—

- (a) “agnate”—one person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males;
- (b) “*aliyasantana* law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras *Aliyasantana* Act, 1949, (Madras Act 9 of 1949) or by the customary *aliyasantana* law with respect to the matters for which provision is made in this Act;
- (c) “cognate”—one person is said to be a “cognate” of another if the two are related by blood or adoption but not wholly through males;
- (d) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

- (e) full blood “half blood” and “uterine blood”—
 - (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;
 - (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In this clause “ancestor” includes the father and “ancestress” the mother;

- (f) “heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;
- (g) “intestate”—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;
- (h) “marumakkattayam law” means the system of law applicable to persons—

(a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act 22 of 1933); the Travancore Nayar Act (2 of 1100K); the Travancore Ezhava Act (3 of 1100K); the Travancore Nanjinad Vellala Act (6 of 1101K); the Travancore Kshatriya Act (7 of 1108K); the Travancore Krishnanvaka Marumakathayee (Act 7 of 1115K); the Cochin Marumakathayam Act (33 of 1113K); or the Cochin Nayar Act (29 of 1113K); with respect to the matters for which provision is made in this Act; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore Cochin or Madras ¹[as it existed immediately before the 1st November, 1956], and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line;

but does not include the *aliyasantana* law;

(i) “nambudri law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 Madras Act (21 of 1933); the Cochin Nambudri Act (17 of 111K); or the Travancore Malayala Brahmin Act (3 of 1106K); with respect to the matters for which provision is made in this Act;

(j) “related” means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

4. Overriding effect of Act.—(1) Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

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CHAPTER II

INTESTATE SUCCESSION

General

5. Act not to apply to certain properties.—This Act shall not apply to—

- (i) any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954);
- (ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;
- (iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

¹ Ins. by the Adaptation of Laws (No. 3) Order, 1956.

² Omitted by Act 39 of 2005, s. 2 (w.e.f. 9-9-2005).

[6. ¹ Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—

¹ Subs. by s. 3, *ibid.*, for section 6 (w.e.f. 9-9-2005).

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

7. Devolution of interest in the property of a *tarwad*, *tavazhi*, *kutumba*, *kavaru* or *illom*.—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad*, *tavazhi* or *illom*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad*, *tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad*, *tavazhi* or *illom*, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the *tarwad*, *tavazhi* or *illom*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a *sthanamdar* dies after the commencement of this Act, the *sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar* belonged and the heirs of the *sthanamdar* as if the *sthanam* property had been divided per capita immediately before the death of the *sthanamdar* among

himself and all the members of his family then living,, and the shares falling to the members of his family and the heirs of the *sthanamdar* shall be held by them as their separate property.

Explanation.—For the purposes of this sub-section, the family of a *sthanamdar* shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of *sthanamdar* if this Act had not been passed.

8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule.—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;
- (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally.

12. Order of succession among agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

13. Computation of degrees.—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including

the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

17. Special provisions respecting persons governed by *marumakkattayam* and *atiyasantana* laws.—The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the *marumakkattayam* law or *aliyasantana* law if this Act had not been passed as if—

- (i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:—

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”;
- (ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:—

“(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;
 (b) secondly, upon the father and the husband;
 (c) thirdly, upon the heirs of the mother;
 (d) fourthly, upon the heirs of the father; and
 (e) lastly, upon the heirs of the husband.”;
- (iii) clause (a) of sub-section (2) of section 15 had been omitted;
- (iv) section 23 had been omitted.

General provisions relating to succession

18. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

- (a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and
- (b) as tenants-in-common and not as joint tenants.

20. Right of child in womb.—A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

21. Presumption in cases of simultaneous deaths.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

23. [Special provision respecting dwelling-houses.]—Omitted by the *Hindu Succession (Amendment) Act, 2005 (39 of 2005), s. 4 (w.e.f. 9-9-2005)*.

24. [Certain widows re-marrying may not inherit as widows.]—Omitted by *s. 5, ibid. (w.e.f. 9-9-2005)*.

25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

26. Convert’s descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children

born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

27. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

28. Disease, defect, etc., not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

Escheat

29. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

CHAPTER III TESTAMENTARY SUCCESSION

30. Testamentary succession.—¹*** Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so ²[disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this ³[section.]

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CHAPTER IV REPEALS

31. [Repeals.]—*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s.2 and the First Schedule (w.e.f. 26-12-1960).*

¹ The brackets and figure “(1)” omitted by Act 58 of 1960, s. 3 and the Second Schedule (w.e.f. 26-12-1960).

² Subs. by Act 39 of 2005, s. 6, for “disposed of by him” (w.e.f. 9-9-2005).

³ Subs. by Act 56 of 1974, s. 3 and the Second Schedule for “sub-section” (w.e.f. 20-12-1974).

⁴ Omitted by Act 78 of 1956, s. 29 (w.e.f. 21-12-1956).

THE SCHEDULE

(See section 8)

HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son ¹[son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

Class II

- I. Father.
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
- V. Father's father; father's mother.
- VI. Father's widow; brother's widow.
- VII. Father's brother; father's sister.
- VIII. Mother's father; mother's mother.
- IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

¹ Added by Act 39 of 2005, s. 7 (w.e.f. 9-9-2005).

No. Rev-2A.(4)-1/93-II
Government of Himachal Pradesh
Department of Revenue.

From

The Financial Commissioner (Revenue) to the
Government of Himachal Pradesh.

To

All the Deputy Commissioners
in Himachal Pradesh.

Dated: Shimla-171002, the 31.05.1996

Subject:- Succession to the property of a member of Schedule Tribe acquired outside the
Trible areas.

Sir,

I am directed to say that the matter regarding the application of "Hindu Code Bill, Succession Act" on the Scheduled Tribes particularly when they reside in the non-tribe area was under consideration of the Government. The Law Department has been consulted in this regard and following clarification has been given by the Law Department "According to the provisions of sub-section (2) of Section 2 of the Hindu Succession Act, 1956, the provision of Hindu Succession Act shall not be applicable to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution of India such, in view of the mandatory provisions of sub-section (2) of Section 2 of the Hindu Succession Act, 1956, the right inheritance in respect of members of the Scheduled Tribe of the State of Himachal Pradesh in relation to their properties situated within the territory of state of Himachal Pradesh and to be determined in accordance with the local customs in wajeab-ul-urz of that particular schedule area to which he belongs and not accordance with the provisions of Hindu Succession Act, 1956.

I am to request you to kindly issue necessary instruction to all under your kind control to take necessary action in such matters accordingly.

Yours faithfully,

-sd-

Joint Secretary(Revenue) to the
Government of Himachal Pradesh.

THE SPECIAL MARRIAGE ACT, 1954

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Marriage Officers.

CHAPTER II SOLEMNIZATION OF SPECIAL MARRIAGES

4. Conditions relating to solemnization of special marriages.
5. Notice of intended marriage.
6. Marriage Notice Book and publication.
7. Objection to marriage.
8. Procedure on receipt of objection. 9
9. Powers of Marriage Officers in respect of inquiries.
10. Procedure on receipt of objection by Marriage Officer abroad.
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THE FIRST SCHEDULE.
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THE SPECIAL MARRIAGE ACT, 1954
ACT NO. 43 OF 1954¹

[9th October, 1954.]

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Special Marriage Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to citizens of India domiciled in the territories to which this Act extends who are ²[in the State of Jammu and Kashmir].

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

4* * * * *

(b) “degrees of prohibited relationship”—a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.

Explanation I.—Relationship includes,—

- (a) relationship by half or uterine blood as well as by full blood;
- (b) illegitimate blood relationship as well as legitimate;
- (c) relationship by adoption as well as by blood; and all terms of relationship in this Act shall be construed accordingly.

Explanation II.—“Full blood” and “half blood”—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

Explanation III.—“Uterine blood”—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

Explanation IV.—In Explanations II and III, “ancestor” includes the father and “ancestress” the mother;

¹ The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Schedule I and to Pondicherry by Reg. 7 of 1963, Section 3 and Schedule I (w.e.f. 1-10-1963).

² Subs. by Act 33 of 1969, s. 29, for “outside the said territories” (w.e.f. 31-8-1969).

³ 1st January, 1955, vide notification No. S.R.O. 3606, dated 17th December, 1954, published in the Gazette of India, Extraordinary, Part II, Section 3.

⁴ Omitted by Act 33 of 1969, s. 29.

1* * * *

(d) “district” in relation to a Marriage Officer, means the area for which he is appointed as such under sub-section (1) or sub-section (2) of section 3;

²[(e) “district court” means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government by notification in the Official Gazette as having jurisdiction in respect of the matters dealt with in this Act;]

(f) “prescribed” means prescribed by rules made under this Act;

³[(g) “State Government”, in relation to a Union territory, means the administrator thereof.]

3. Marriage Officers.—(1) For the purposes of this Act, the State Government may, by, notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State.

⁴(2) For the purposes of this Act, in its application to citizens of India domiciled in the territories to which this Act extends who are in the State of Jammu and Kashmir, the Central Government may, by notification in the Official Gazette, specify such officers of the Central Government as it may think fit to be the Marriage Officers for the State or any part thereof.]

CHAPTER II SOLEMNIZATION OF SPECIAL MARRIAGES

4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

(a) neither party has a spouse living;

⁵[(b) neither party—

- i. is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
- ii. though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
- iii. has been subject to recurrent attacks of insanity ⁶* * *;]

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

⁷[(d) the parties are not within the degrees of prohibited relationship:

¹ Omitted by s. 29, *ibid.*

² Subs. by Act 68 of 1976, s. 20, for clause (e) (w.e.f. 27-5-1976).

³ Subs. by the A.O. (No. 3) Order, 1956 for clause (g).

⁴ Subs. by Act 33 of 1969, s. 29, for sub-section (2) (w.e.f. 31-8-1969).

⁵ Subs. by Act 68 of 1976, s. 21, for clause (b) (w.e.f. 27-5-1976).

⁶ The words “or epilepsy” omitted by Act 39 of 1999, s. 4 (w.e.f. 29-12-1999).

⁷ Subs. by Act 32 of 1963, s. 2, for clause (d) (w.e.f. 22-9-1963).

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]

¹[(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends].

²[*Explanation.*—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied—

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.]

5. Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

6. Marriage Notice Book and publication.—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

7. Objection to marriage.—(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

¹Subs. by Act 33 of 1969, s. 29, for clause (e) (w.e.f. 31-8-1969).

²Ins. by Act 32 of 1963, s. 2 (w.e.f. 22-9-1963).

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

8. Procedure on receipt of objection.—(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the court.

9. Powers of Marriage Officers in respect of inquiries.—(1) For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence of affidavits; and
- (e) issuing commissions for the examination of witnesses;

and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

Explanation.—For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Officer shall be the local limits of his district.

(2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

10. Procedure on receipt of objection by Marriage Officer abroad.—Where an objection is made under section 7 to a Marriage Officer ¹[in the State of Jammu and Kashmir in respect of an intended marriage in the State], and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall

¹ Subs. by Act 33 of 1969, s. 29, for “outside the territories to which this Act extends in respect of an intended marriage outside the said territories” (w.e.f. 31-8-1969).

transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government.

11. Declaration by parties and witnesses.—Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization.—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—“I, (A), take the (B), to be my lawful wife (or husband)”.

13. Certificate of marriage.—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

14. New notice when marriage not solemnized within three months.—Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district court on such appeal or, where the record of a case has been transmitted to the Central Government under section 10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed, and no Marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.

CHAPTER III

REGISTRATION OF MARRIAGES CELEBRATED IN OTHER FORMS

15. Registration of marriages celebrated in other forms.—Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration;

- (d) the parties have completed the age of twenty-one years at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship: Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and
- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.—Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

17. Appeals from orders under section 16.—Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Chapter may, within thirty days from the date of the order, appeal against that order to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer to whom the application was made shall act in conformity with such decision.

18. Effect of registration of marriage under this Chapter.—Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents:

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.

CHAPTER IV CONSEQUENCES OF MARRIAGE UNDER THIS ACT

19. Effect of marriage on member of undivided family.—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religions shall be deemed to effect his severance from such family.

20. Rights and disabilities not affected by Act.—Subject to the provisions of section 19, any person whose marriage is solemnized under this Act shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850), applies.

21. Succession to property of parties married under Act.—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its

application to members of certain communities, succession to the property or any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.

¹[**21A. Special provision in certain cases.**—Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, section 19 and section 21 shall not apply and so much of section 20 as creates a disability shall also not apply.]

CHAPTER V

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

22. Restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

²[*Explanation.*—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.]

23. Judicial separation.—(1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—

- (a) on any of the grounds specified ³[in sub-section (1) ⁴[and sub-section (1A)] of section 27] on which a petition for divorce might have been presented; or
- (b) on the ground of failure to comply with a decree for restitution of conjugal rights;

and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

(2) Where the court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

CHAPTER VI

NULLITY OF MARRIAGE AND DIVORCE

24. Void marriages.—(1) Any marriage solemnized under this Act shall be null and void ⁵[and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—

¹ Ins. by Act 68 of 1976, s. 22 (w.e.f. 27-5-1976).

² Added by s. 23, *ibid.*

³ Subs. by Act 29 of 1970, s. 2, for certain words (w.e.f. 12-8-1970).

⁴ Ins. by Act 68 of 1976, s. 24 (w.e.f. 27-5-1976).

⁵ Subs. by s. 25, *ibid.*, for “and may be so declared” (w.e.f. 27-5-1976).

- (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or
- (ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

25. Voidable marriages.—Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,—

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

- (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) that proceedings were instituted within a year from the date of the marriage; and
- (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—

- (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or
- (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

¹**[26. Legitimacy of children of void and voidable marriages.**—(1) Notwithstanding that a marriage is null and void under section 24, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 25, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

¹ Subs. by Act 68 of 1976, s. 26, for section 26 (w.e.f. 27-5-1976).

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 25, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of not his being the legitimate child of his parents.]

27. Divorce.—¹[(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

²[(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);

³* * * * *

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

⁴ [(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form; or]

⁵* * * * *

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

⁶* * * * *

⁷ [*Explanation.*—In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to

¹ Section 27 renumbered as sub-section (1) thereof by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

² Subs. by Act 68 of 1976, s. 27, for clauses (a) and (b).

³ The Proviso omitted by Act 68 of 1976, s. 27 (w.e.f. 27-5-1976).

⁴ Subs. by s. 27, *ibid.*, for clauses (e) and (f) (w.e.f. 27-5-1976).

⁵ Clause (g) omitted by Act 6 of 2019, s. 4 (w.e.f. 1-3-2019).

⁶ The word “or” omitted by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

⁷ Ins. by Act 68 of 1976, s. 27 (w.e.f. 27-5-1976).

the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;]

1* * * * *
2* * * * *

³[(1A) A wife may also present a petition for divorce to the district court on the ground,—

- (i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;
- (ii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

⁴[(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground—

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

⁵[**27A. Alternative relief in divorce proceedings.**—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the ground mentioned in clause (h) of sub-section (1) of section 27, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.]

28. Divorce by mutual consent.—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) ⁶[On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months] after

¹ The words “and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality” omitted by s. 27, *ibid.* (w.e.f. 27-5-1976).

² Omitted by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

³ Ins. by Act 68 of 1976, s. 27 (w.e.f. 27-5-1976).

⁴ Ins. by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

⁵ Ins. by Act 68 of 1976, s. 28 (w.e.f. 27-5-1976).

⁶ Subs. by s. 29, *ibid.*, for “On the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years” (w.e.f. 27-5-1976).

the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

29. Restriction on petitions for divorce during first one year after marriage.—(1) No petition for divorce shall be presented to the district court ¹[unless at the date of the presentation of the petition one year has passed] since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the district court may, upon application being made to it, allow a petition to be presented ²[before one year has passed] on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the ³[expiry of one year] from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the ⁴[expiration of the said one year] upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the ⁵[expiration of one year] from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the ⁶[said one year].

30. Remarriage of divorced persons.—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed ⁷* * * either party to the marriage may marry again.

CHAPTER VII JURISDICTION AND PROCEDURE

31. Court to which petition should be made.—⁸(1) Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose original civil jurisdiction—

- (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition resides; or
- (iii) the parties to the marriage last resided together; or
- ⁹[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]

¹Subs. by s. 30, *ibid.*, for “unless at the date of the presentation of the petition three years have passed” (w.e.f. 27-5-1976).

²Subs. by s. 30, *ibid.*, for “before three years have passed” (w.e.f. 27-5-1976).

³Subs. by s. 30, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

⁴Subs. by s. 30, *ibid.*, for “expiration of the said three years” (w.e.f. 27-5-1976).

⁵Subs. by s. 30, *ibid.*, for “expiration of the three years” (w.e.f. 27-5-1976).

⁶Subs. by s. 30, *ibid.*, for “said three years” (w.e.f. 27-5-1976).

⁷The words “and one year has elapsed thereafter but not sooner” omitted by Act 68 of 1976, s. 31, (w.e.f. 27-5-1976).

⁸Subs. by s. 32, *ibid.*, for sub-section (1) (w.e.f. 27-5-1976).

⁹Ins. by Act 50 of 2003, s. 2 (w.e.f. 23-12-2003).

- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive.]

(2) Without prejudice to any jurisdiction exercisable by the court under sub-section (1), the district court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

32. Contents and verification of petitions.—(1) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits the facts on which the claim to relief is founded, and shall also state that there is no collusion between, the petitioner and the other party to the marriage.

(2) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

¹**[33. Proceedings to be in camera and may not be printed or published.**—(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

34. Duty of court in passing decrees.—(1) In any proceeding under Chapter V or Chapter VI, whether defended or not, if the court is satisfied that,—

- (a) any of the grounds for granting relief exists; and
- (b) ²[where the petition is founded on the ground specified in clause (a) of sub-section (1) of section 27, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein], or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and
- (c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and
- (d) the petition is not presented or prosecuted in collusion with the respondent; and
- (e) there has not been any unnecessary or improper delay in instituting the proceedings; and
- (f) there is no other legal ground why the relief should not be granted; then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and

¹Subs. by Act 68 of 1976, s. 33, for section 33 (w.e.f. 27-5-1976).

²Subs. by s. 34, *ibid.* for “where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery” (w.e.f. 27-5-1976).

circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

¹[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (c), clause (e), clause (f), clause (g) and clause (h) of subsection (1) of section 27.]

²[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

³**[35. Relief for respondent in divorce and other proceedings.**—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground, and if the petitioner’s adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

36. Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband’s income, it may seem to the court to be reasonable.

⁴[Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.]

37. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband’s property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband’s property and ability ⁵[the conduct of the parties and other circumstances of the case], it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

¹ Added by Act 68 of 1976, s. 34 (w.e.f. 27-5-1976).

² Ins. by s. 34, *ibid.* (w.e.f. 27-5-1976).

³ Subs. by s. 35, *ibid.*, for section 35 (w.e.f. 27-5-1976).

⁴ Ins. by Act 49 of 2001, s. 6 (w.e.f. 24-9-2001).

⁵ Subs. by Act 68 of 1976, s. 36, for “and the conduct of the parties” (w.e.f. 27-5-1976).

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, ¹[it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]

38. Custody of children.—In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

²[Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

³**39. Appeals from decrees and orders.**—(1) All decrees made by the court in any proceeding under Chapter V or Chapter VI shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act, under section 37 or section 38 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a ⁴[period of ninety days] from the date of the decree or order.

39A. Enforcement of decrees and orders.—All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.]

40. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).

⁵**40A. Power to transfer petitions in certain cases.**—(1) Where—

(a) a petition under this Act has been presented to the district court having jurisdiction, by a party to the marriage praying for a decree for judicial separation under section 23 or for a decree of divorce under section 27, and

¹ Subs. by Act 68 of 1976, s. 36, for “it shall rescind the order” (w.e.f. 27-5-1976).

² The proviso ins. by Act 49 of 2001, s. 7 (w.e.f. 24-9-2001).

³ Subs. by Act 68 of 1976, s. 37, for section 39 (w.e.f. 27-5-1976).

⁴ Subs. by Act 50 of 2003, s. 3, for “period of thirty days” (w.e.f. 23-12-2003).

⁵ Ins. by Act 68 of 1976, s. 38 (w.e.f. 27-5-1976).

- (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under section 23, or for decree of divorce under section 27 on any ground whether in the same district court, or in a different district court, in the same State or in a different State, the petition shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

- (a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;
- (b) if the petitions are presented to different district courts, the petitions presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

40B. Special provisions relating to trial and disposal of petitions under the Act.—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day, until its conclusions, unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

40C. Documentary evidence.—Notwithstanding anything contained in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

41. Power of High Court to make rules regulating procedure.—(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,—

- (a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;
- (b) the awarding of damages against any such co-respondent;
- (c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;

- (d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and
- (e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

CHAPTER VIII MISCELLANEOUS

42. Saving.—Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

43. Penalty on married person marrying again under this Act.—Save as otherwise provided in Chapter III, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code (45 of 1860), as the case may be, and the marriage so solemnized shall be void.

44. Punishment of bigamy.—Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

45. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code (45 of 1860).

46. Penalty for wrongful action of Marriage Officer.—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act,—

- (1) without publishing a notice regarding such marriage as required by section 5, or
- (2) within thirty days of the publication of the notice of such marriage, or
- (3) in contravention of any other provision in this Act, shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

47. Marriage Certificate Book to be open to inspection.—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

48. Transmission of copies of entries in marriage records.—Every Marriage Officer in a State shall send to Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and, in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority as the Central Government may specify in this behalf.

49. Correction of errors.—(1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 48 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

50. Power to make rules.—(1) The Central Government, in the case of ¹* * * officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;
- (b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefore;
- (c) the form and manner in which any books required by or under this Act shall be maintained;
- (d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;
- (e) the manner in which public notice shall be given under section 16;
- (f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 48;
- (g) any other matter which may be or requires to be prescribed.

²[(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as it is made before the State Legislature.]

51. Repeals and savings.—(1) The Special Marriage Act, 1872 (3 of 1872), and any law corresponding to the Special Marriage Act, 1872 (3 of 1872), in force in any Part B State immediately before the commencement of this Act are hereby repealed.

¹ The words “diplomatic and consular officers and other” omitted by Act 33 of 1969, s. 29 (w.e.f. 31-8-1969).

² Ins. by Act 20 of 1983, s. 2 and the Schedule (w.e.f. 15.3.1984).

(2) Notwithstanding such repeal,—

- (a) all marriages duly solemnized under the Special Marriage Act, 1872 (3 of 1872), or any such corresponding law shall be deemed to have been solemnized under this Act;
- (b) all suits and proceedings in causes and matters matrimonial which, when this Act comes into operation, are pending in any court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment.

THE FIRST SCHEDULE
[See section 2(b) “Degrees of prohibited relationship”]

PART I

1. Mother.
2. Father’s widow (step-mother).
3. Mother’s mother.
4. Mother’s father’s widow (step grand-mother).
5. Mother’s mother’s mother.
6. Mother’s mother’s father’s widow (step great grand-mother).
7. Mother’s father’s mother.
8. Mother’s father’s father’s widow (step great grand-mother).
9. Father’s mother.
10. Father’s father’s widow (step-grandmother).
11. Father’s mother’s mother.
12. Father’s mother’s father’s widow (step great grand-mother).
13. Father’s father’s mother.
14. Father’s father’s father’s widow (step great grand-mother).
15. Daughter.
16. Son’s widow.
17. Daughter’s daughter.
18. Daughter’s son’s widow.
19. Son’s daughter.
20. Son’s son’s widow.
21. Daughter’s daughter’s daughter.
22. Daughter’s daughter’s son’s widow.
23. Daughter’s son’s daughter.
24. Daughter’s son’s son’s widow.
25. Son’s daughter’s daughter.
26. Son’s daughter’s son’s widow.
27. Son’s son’s daughter.
28. Son’s son’s son’s widow.
29. Sister.
30. Sister’s daughter.
31. Brother’s daughter.
32. Mother’s sister.
33. Father’s sister.
34. Father’s brother’s daughter.
35. Father’s sister’s daughter.
36. Mother’s sister’s daughter.
37. Mother’s brother’s daughter.

Explanation.—For the purposes of this Part, the expression “widow” includes a divorced wife.

PART II

1. Father.
2. Mother's husband (step-father).
3. Father's father.
4. Father's mother's husband (step grand-father).
5. Father's father's father.
6. Father's father's mother's husband (step great grand-father).
7. Father's mother's father.
8. Father's mother's mother's husband (step great grand-father).
9. Mother's father.
10. Mother's mother's husband (step grand-father).
11. Mother's father's father.
12. Mother's father's mother's husband (step great grand-father).
13. Mother's mother's father.
14. Mother's mother's mother's husband (step great grand-father).
15. Son.
16. Daughter's husband.
17. Son's son.
18. Son's daughter's husband.
19. Daughter's son.
20. Daughter's daughter's husband.
21. Son's son's son.
22. Son's son's daughter's husband.
23. Son's daughter's son.
24. Son's daughter's daughter's husband.
25. Daughter's son's son.
26. Daughter's son's daughter's husband.
27. Daughter's daughter's son.
28. Daughter's daughter's daughter's husband.
29. Brother.
30. Brother's son.
31. Sister's son.
32. Mother's brother.
33. Father's brother.
34. Father's brother's son.
35. Father's sister's son.
36. Mother's sister's son.
37. Mother's brother's son.

Explanation.—For the purposes of this part, the expression “husband” includes a divorced husband.

THE SECOND SCHEDULE
(See section 5)

NOTICE OF INTENDED MARRIAGE

To

Marriage Officer for theDistrict.

We hereby give you notice that a marriage under the Special Marriage Act, 1954, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling place	Permanent place dwelling if present dwelling place not permanent	Length of residence
A.B.	Unmarried Widower Divorcee					
C.D.	Unmarried Widow Divorcee					

Witness our hands thisday of.....20.....

(Sd.) A.B.,

(Sd.) C.D.,

THE FOURTH SCHEDULE
(See section 13)

CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the.....day of
.....20.....,A.B. and C.D¹ appeared before me and
that each of them, in my presence and in the presence of three witnesses who have signed
hereunder, made the declarations required by section 11 and that a marriage under this Act was
solemnized between them in my presence.

(Sd.) E.F.,
Marriage Officer for

(Sd.) A.B.,
Bridegroom

(Sd.) C.D., *Bride.*

(Sd.) G.H. }
(Sd.) I.J. } *Three witnesses*
(Sd.) K.L. }

Dated the *day of* *20*

¹Herein give particulars of the parties.

THE FIFTH SCHEDULE
(See section 16)

CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS

I, E.F., hereby certify that A.B. and CD.¹ appeared before me thisday of.....
20 and that each of them, in my presence and in the presence of three witnesses who have signed
hereunder have declared that a ceremony of marriage has been performed between them and that
they have been living together as husband and wife since the time of their marriage, and that in
accordance with their desire to have their marriage registered under this Act, the said marriage has,
this day of 20..... been registered under this Act, having effect as from.

(Sd.) E.F.,

Marriage Officer for

(Sd.) A.B.,

Husband.

(Sd.) C.D.

Wife.

(Sd.) G.H. }

(Sd.) IJ. } *Three witnesses.*

(Sd.) K.L. }

20.

Dated the

day of

¹ Herein give particulars of the parties.

THE HINDU MARRIAGE ACT, 1955

ARRANGEMENT OF SECTIONS

PRELIMINARY

SECTIONS

1. Short title and extent.
2. Application of Act.
3. Definitions.
4. Overriding effect of Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.
6. [Omitted.].
7. Ceremonies for a Hindu marriage.
8. Registration of Hindu marriages.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right.
10. Judicial separation.

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages.
12. Voidable marriages.
13. Divorce.
- 13A Alternate relief in divorce proceedings.
- 13B. Divorce by mutual consent.
14. No petition for divorce to be presented within one year of marriage.
15. Divorced persons when may marry again.
16. Legitimacy of children of void and voidable marriages.
17. Punishment of bigamy.
18. Punishment for contravention of certain other conditions for a Hindu marriage.

JURISDICTION AND PROCEDURE

19. Court to which petition shall be presented.
20. Contents and verification of petitions.

- 21. Application of Act 5 of 1908.
 - 21A Power to transfer petitions in certain cases.
 - 21B. Special provision relating to trial and disposal of petitions under the Act.
 - 21C. Documentary evidence.
- 22. Proceedings to be in camera and may not be printed or published.
- 23. Decree in proceedings.
 - 23A Relief for respondent in divorce and other proceedings.
- 24. Maintenance pendente lite and expenses of proceedings.
- 25. Permanent alimony and maintenance.
- 26. Custody of children.
- 27. Disposal of property.
- 28. Appeals from decrees and orders.
 - 28A. Enforcement of decrees and orders.

SAVINGS AND REPEALS SECTIONS

- 29. Savings.
 - 30. [Repealed.]
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THE HINDU MARRIAGE ACT, 1955

Act No. 25 of 1955¹

[18th May, 1955.]

An act to amend and codify the law relating to marriage among Hindus.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India ^{2***}, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.—(1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions.—In this Act, unless the context otherwise requires,—

¹ The Act has been extended to Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Schedule I and to Pondicherry (w.e.f. 1-10-1963) with modifications by Reg. 7 of 1963, s. 3 and the Schedule I.

² The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

- (a) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

- (b) “district court” means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;
- (c) “full blood” and “half blood”—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;
- (d) “uterine blood”—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In clauses (c) and (d), “ancestor” includes the father and “ancestress” the mother;

- (e) “prescribed” means prescribed by rules made under this Act;
- (f) (i) “*sapinda* relationship” with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;
- (ii) two persons are said to be “*sapindas*” of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them;
- (g) “degrees of prohibited relationship”—two persons are said to be within the “degrees of prohibited relationship”—
- i. if one is a lineal ascendant of the other; or
 - ii. if one was the wife or husband of a lineal ascendant or descendant of the other; or
 - iii. if one was the wife of the brother or of the father’s or mother’s brother or of the grandfather’s or grandmother’s brother of the other; or
 - iv. if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.—For the purposes of clauses (f) and (g), relationship includes—

- (i) relationship by half or uterine blood as well as by full blood;
- (ii) illegitimate blood relationship as well as legitimate;
- (iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

- (a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- ¹[(ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity ^{2***};
- (iii) the bridegroom has completed the age of ³[twenty-one years] and the bride, the age of ⁴[eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;

* * * * *

6. [*Guardianship in marriage.*]—Omitted by the *Child Marriage Restraint (Amendment) Act, 1978, (2 of 1978), s. 6 and Schedule (w.e.f. 1-10-1978).*

7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

¹ Subs. by Act 68 of 1976, s. 2, for clause (ii) (w.e.f. 27-5-1976).

² The words “or epilepsy” omitted by Act 39 of 1999, s. 2 (w.e.f. 29-12-1999).

³ Subs. by Act 2 of 1978, s. 6 and Schedule for “eighteen years” (w.e.f. 1-10-1978).

⁴ Subs. by s. 6 and Schedule, *ibid.*, for “fifteen years” (w.e.f. 1-10-1978).

⁵ Clause (vi) omitted by s. 6 and Schedule, *ibid.* (w.e.f. 1-10-1978).

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right.—¹** * When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

²[*Explanation.*—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

³* * * * *

10. Judicial separation.—⁴[(1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages.—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto ⁵[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Voidable marriages.—(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

¹ The brackets and figure “(1)” omitted by Act 68 of 1976, s. 3 (w.e.f. 27-5-1976).

² Ins. by s. 3, *ibid.* (w.e.f. 27-5-1976).

³ Sub-section (2) omitted by s. 3, *ibid.* (w.e.f. 27-5-1976).

⁴ Subs. by Act 68 of 1976, s. 4, for sub-section (1) (w.e.f. 27-5-1976).

⁵ Ins. by s. 5, *ibid.* (w.e.f. 27-5-1976).

¹ [(a) that the marriage has not been consummated owing to the importance of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner ²[was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force ³[or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

- i. the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or
- ii. the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of ⁴[the said ground].

13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

⁵[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

⁶ [(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

¹ Subs. by s. 6, *ibid.*, for clause (a) (w.e.f. 27-5-1976).

² Subs. by Act 2 of 1978, s. 6 and Schedule, for “is required under section 5” (w.e.f. 1-10-1978).

³ Subs. by Act 68 of 1976, s. 6, for “or fraud” (w.e.f. 27-5-1976).

⁴ Subs. by s. 6, *ibid.*, for “the grounds for a decree” (w.e.f. 27-5-1976).

⁵ Subs. by Act 68 of 1976, s. 7, for clause (i) (w.e.f. 27-5-1976).

⁶ Subs. by s. 7, *ibid.*, for clause (iii) (w.e.f. 27-5-1976).

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

¹* * * * *

(v) has ²* * * been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; ³***

⁴* * * * *

⁵[*Explanation.*—In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

⁶[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of ⁷[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of ⁷[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

¹ Clause (iv) omitted by Act 6 of 2019, s. 5 (w.e.f. 1-3-2019).

² Certain words omitted by s. 7, *ibid.* (w.e.f. 27-5-1976).

³ The word “or” omitted by Act 44 of 1964, s. 2, *ibid.* (w.e.f. 20-12-1964).

⁴ Clauses (viii) and (ix) omitted by s. 2, *ibid.* (w.e.f. 20-12-1964).

⁵ Ins. by Act 68 of 1976, s. 7 (w.e.f. 27-5-1976).

⁶ Ins. by Act 44 of 1964, s. 2 (w.e.f. 20-12-1964).

⁷ Subs. by Act 68 of 1976, s. 7, for “two years” (w.e.f. 27-5-1976).

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

- (ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or ¹[bestiality; or]
- ²[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;
- (iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]

³[**13A. Alternate relief in divorce proceedings.**—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

13B. Divorce by mutual consent.—(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

14. No petition for divorce to be presented within one year of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, ⁴[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented ⁴[before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to

¹ Subs. by Act 68 of 1976, s. 7, for “bestiality” (w.e.f. 27-5-1976).

² Ins. by s. 7, *ibid.* (w.e.f. 27-5-1976).

³ Ins. by s. 8, *ibid.* (w.e.f. 27-5-1976).

⁴ Subs. by Act 68 of 1976, s. 9, for certain words (w.e.f. 27-5-1976).

the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the ¹[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after ²[expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the ³[expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the ⁴[said one year].

15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

5* * * * * *

⁶[16. Legitimacy of children of void and voidable marriages.—(1) Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

17. Punishment of bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.

¹ Subs. by s. 9, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

² Subs. by s. 9, *ibid.*, for “expiration of the said one year” (w.e.f. 27-5-1976).

³ Subs. by s. 9, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

⁴ Subs. by s. 9, *ibid.*, for “said three years” (w.e.f. 27-5-1976).

⁵ Proviso omitted by s.10, *ibid.* (w.e.f. 27-5-1976).

⁶ Subs. by s. 11, *ibid.*, for s. 16 (w.e.f. 27-5-1976).

18. Punishment for contravention of certain other conditions for a Hindu marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), ¹[and (v)] of section 5 shall be punishable—

²[(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.]

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both; ^{3****}

^{4*} * * * * *

JURISDICTION AND PROCEDURE

⁵[**19. Court to which petition shall be presented.**—Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- ⁶[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded ⁷[and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred to as evidence.

21. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

⁸[**21A. Power to transfer petitions in certain cases.**—(1) Where—

¹ Subs. by Act 2 of 1978, s. 6 and Schedule, for “(v) and (vi)” (w.e.f. 1-10-1978).

² Subs. by Act 6 of 2007, s. 20 (w.e.f. 30-10-2007).

³ The word “and” omitted by Act 2 of 1978, s. 6 and Schedule (w.e.f. 1-10-1978).

⁴ Clause (c) omitted by s. 6 and Schedule, *ibid.* (w.e.f. 1-10-1978).

⁵ Subs. by Act 68 of 1976, s. 12, for s. 19 (w.e.f. 27-5-1976).

⁶ Ins. by Act 50 of 2003, s. 4 (w.e.f. 23-12-2003).

⁷ Subs. by Act 68 of 1976, s. 13, for “and shall also State” (w.e.f. 27-5-1976).

⁸ Ins. by Act 68 of 1976, s. 14 (w.e.f. 27-5-1976)

- (a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and
- (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

- (a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;
- (b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

21B. Special provision relating to trial and disposal of petitions under the Act.—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

21C. Documentary evidence.—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

¹**[22. Proceedings to be in camera and may not be printed or published.**—(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

¹ Subs. by s. 15, *ibid.*, for s. 22 (w.e.f. 27-5-1976).

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

- (a) any of the grounds for granting relief exists and the petitioner ¹[except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
- (b) where the ground of the petition is the ground specified ²* * * in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and
- ³[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]
- (c) ⁴[the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and
- (d) there has not been any unnecessary or improper delay in instituting the proceeding, and
- (e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

⁴[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

⁴[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

⁵[**23A. Relief for respondent in divorce and other proceedings.**—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner’s adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

¹ Ins. by s. 16, *ibid.* (w.e.f. 27-5-1976).

² The words, bracket, letter of figure “in clause (f) of sub-section (1) of section 10 or” omitted by Act 68 of 1976, s. 16, (w.e.f. 27-5-1976).

³ Subs. by s. 16, *ibid.*, for “the petition” (w.e.f. 27-5-1976).

⁴ Added by s. 16, *ibid.* (w.e.f. 27-5-1976).

⁵ Ins. by s. 17, *ibid.* (w.e.f. 27-5-1976)

24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

¹[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall ²* * * pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant ³[the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, ⁴[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

⁵[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

¹ Ins. by Act 49 of 2001, s. 8 (w.e.f. 24-9-2001).

² The words "while the applicant remains unmarried" omitted by Act 68 of 1976, s. 18 (w.e.f. 27-5-1976).

³ Subs. by Act 68 of 1976, s. 18, for certain words. (w.e.f. 27-5-1976).

⁴ Subs. by s. 18, *ibid*, for "it shall rescind the order"(w.e.f. 27-5-1976).

⁵ Ins. by Act 49 of 2001, s. 9 (w.e.f. 24-9-2001).

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

¹**28. Appeals from decrees and orders.**—(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a ²[period of ninety days] from the date of the decree or order.

28A. Enforcement of decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being in forced.]

SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra or pravara* or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. [Repeals].—*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-12-1960).*

¹ Subs. by Act 68 of 1976, s. 19 (w.e.f. 27-5-1976).

² Subs. by Act 50 of 2003, s. 5, for “period of thirty days” (w.e.f. 23-12-2003).

HINDU MARRIAGE AND DIVORCE (HIMACHAL PRADESH) RULES, 1982

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

No. HHC.Admn.22(7).78-

Dated 10.01.1983

NOTIFICATION

In exercise of the powers conferred by Sections 14 and 21 of the Hindu Marriage Act, 1955 (Act No. 25 of 1955), and all other powers enabling in this behalf, the High Court of Himachal Pradesh, with the prior approval of the Govt. of H.P. hereby makes the following Rules to regulate the proceedings under the said Act:-

1. Short title and commencement:- 1) These Rules may be called the 'Hindu Marriage and Divorce (Himachal Pradesh) Rules, 1982.'

2) These Rules shall come into force with effect from the date of their publication in the Himachal Pradesh Rajpatra.

2. Definitions:- In these Rules:-

- (a) 'Act' means the Hindu Marriage Act, 1955 (Act No. 25 of 1955) as amended from time to time.
- (b) 'Code' means the code of Civil Procedure, 1908 as amended or modified from time to time.
- (c) 'Court' means the court mentioned in section 3(b) of the Act.
- (d) 'Form' means a form appended to these Rules.
- (e) 'Section' and 'Sub-section' means respectively section and sub-section of the Act.
- (f) All other terms and expressions used herein but not defined shall have the meaning respectively assigned to them in the Act.

3. Form of Proceeding:- 1) The following proceedings under the Act shall be instituted by petitions. Each petition shall be numbered as Hindu Marriage Petition No. _____ of 20_____-:-

- i. Under Section 9 of the Act for restitution of conjugal rights;
- ii. Under Sub-section (1) of Section 10 for Judicial Separation;
- iii. Under Sub-Section (2) of Section 10 for rescinding a decree for Judicial Separation;
- iv. Under Section 11 for declaring a marriage null and void;
- v. Under Section 12 for annulment of marriage by a decree of nullity;
- vi. Under Sections 13 & 13(B) for divorce;
- vii. Under Section 14 for leave to present a petition for divorce before the expiration of one year from the date of marriage;
- viii. Under Section 25 for the grant of permanent alimony and maintenance;
- ix. Under Section 26 for making, revoking, suspending or varying orders and provisions with respect to the custody, maintenance and education of minor children.

2) Every other proceeding subsequent to the petition shall be treated as an interlocutory application and shall not be registered separately.

4. Petition:- 1) Every petition, application, affidavit, decree or order under the Act shall be headed by a cause titled in form I and 3 shall set forth the provision of the Act and/or the rules under which it is made.

2) Every petition under the Act shall be accompanied by either a certified extract from the Hindu Marriage Register maintained under Section 8 of the Act where the marriage has been registered under the Act or in the absence of the same, an affidavit to the effect that the petitioner was married to the respondent.

3) Every petition for divorce on any of the grounds mentioned in clauses (i) and (ii) of Sub-Section (1-A) of Section 13 of the Act, shall be supported by certified copy of the decree for Judicial separation or for restitution of conjugal rights, as the case may be.

4) Every petition under the Act shall, so far as practicable, conform to the forms appended to these rules.

5. Contents of Petition:- In addition to the particulars required to be given under Order VII, Rule 1 of the Code and Section 20(1) of the Act, all petitions under Sections 9 to 14 of the Act shall state:-

- (a) The place and date of marriage;
- (b) Whether the petitioner and the respondent were Hindus by religion at the time of marriage and whether they continue to be so upto the date of filing of the petition;
- (c) The name, status, domicile of the parties to the marriage before the marriage and at the time of filing the petition;
- (d) The place(s) and addresses where the parties to the marriage have cohabited, including the address at the time of presentation of the petition and where they last resided together;
- (e) Whether there have been previous proceedings with regard to the marriage by or on behalf of any party, if so, the result of those proceedings;
- (f) Whether any children were born of the marriage and, if so, the date and place of birth, name and sex of each child separately and whether alive or dead;
- (g) The matrimonial offences charged or other grounds, upon which relief is sought, setting out with sufficient particularity, the time and place of the acts alleged, and other facts relied upon, but not the evidence by which they are to be proved, e.g.:
 - (i) If the petition is for restitution of conjugal rights, the date on or from which and the circumstances under which respondent withdrew from the society of the petitioner;
 - (ii) If the petition is for judicial separation/ divorce by either of the spouse on the ground that the other party has, after the solemnization of the marriage had voluntarily sexual intercourse with any other person, other than his or her spouse, the petitioner shall state the name, occupation and place of residence of such person or persons, so far as they can be ascertained, the specific act of sexual intercourse and the occasion when and the place where such acts were committed;
 - (iii) In case of the desertion, the date and circumstances in which it began;
 - (iv) In the case of cruelty, the specific acts of cruelty and the occasion when and the place where such acts were committed and that the petitioner has not in any manner condoned such acts of the respondent;
 - (v) In a petition for decree of nullity of marriage on the grounds specified in clauses (c) and (d) of sub-section (1) of section 12 of the Act, the particulars of force or fraud and the circumstances in which force or fraud had been practiced along with the time when the facts relied upon were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;

- (vi) In the case of unsoundness of mind or mental disorder, the time when such mental disorder or unsoundness of mind began to manifest itself and the nature and period of curative steps taken;
- (vii) In the case of virulent and incurable form of leprosy or venereal disease in a communicable form, when such ailment began to manifest itself and the nature and the period of curative 6 steps taken;
- (viii) In the case of conversion to another religion or of renouncing the world by entering any religious order, the date of renunciation or conversion and the particulars of religion or of religious order to which the respondent has entered into;
- (ix) In the petition on the ground specified in clause (vii) of sub-section (1) of section 13, the date and place where the respondent was last seen or heard alive and the steps, if any, taken to ascertain his or her whereabouts;
- (x) Where the petition is founded on any of the grounds specified in clause (ii) of sub-section (2) of section 13 of the Act, the occasion, place where and the name and address of the persons with whom the acts of rape or sodomy were committed or the particulars of the beast with whom the husband had been guilty of bestiality. In case of conviction for committing rape or sodomy, the particulars thereof;
- (xi) In a petition for divorce on the ground specified in clause (iii) of subsection (2) of section 13 of the Act, particulars of the decree under section 18 of the Hindu Adoptions and Maintenance Act, 1956, or of an order under Section 125 of the Code of Criminal Procedure, 1973 together with an affidavit that since the passing of such decree or order, there has been no co-habitation between the parties for a period of one year or upwards;
- (xii) In the case of a petition under clause (iv) of sub-section (2) of section 13 of the Act, the date and place of birth of the wife together with the date and place of repudiation and its mode;
- (xiii) The property mentioned in Section 27 of the Act, if any;
- (xiv) The relief or relief's prayed for.

6. Affidavits:- 1) Every petition under Section 13 (B) of the Act, the grounds of consent for divorce narrated in the petition shall be supported by separate affidavits of the parties stating that the consent has not been obtained by force, fraud or undue influence;

2) Every petition except petitions under Sections 11 and 13-B, shall be accompanied by an affidavit to the effect that it is not presented or prosecuted in collusion with the respondent.

3) The petition for divorce/judicial separation on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, shall be supported by an affidavit to the effect that the petitioner has not, in any manner, been an accessory to or connived at or condoned the act or acts complained of.

4) The petition on the ground specified in clause (a) of sub-section (1) of section 13 or on the ground of cruelty, shall be accompanied by an affidavit to the effect that the petitioner has not condoned the act or acts complained of or has not in any manner condoned the cruelty.

5) Every petition under clause (i) of subsection (1-A) of section 13 of the Act, shall be accompanied by an affidavit made by the petitioner that there has been no resumption of co-habitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in the proceedings to which they were parties.

6) Every petition under clause (ii) of subsection (1-A) of section 13 of the Act shall be accompanied by an affidavit made by the petitioner to the effect that there has been no restitution of the conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in the proceedings to which they were parties.

7. Necessary Parties:- 1) In every petition for judicial separation or divorce on the ground that the respondent has, after the solemnization of marriage, had voluntary sexual intercourse with any person other than his/her spouse, the petitioner shall make the alleged adulterer or adulteress a co-respondent. 9 Provided that the joinder of such adulterer or adulteress as a correspondent may be dispensed with by the Court, on the application of the petitioner on the following grounds:-

- (a) That the name of such person is unknown to the petitioner although he/she made due efforts for discovery;
- (b) That such person is dead;
- (c) That the respondent-wife is leading a life of a prostitute and that the petitioner knows of no person with whom voluntary sexual intercourse has been committed; or
- (d) Any other reason that the court considers sufficient.

2) In every petition under section 11 of the Act, on the ground that the respondent had a spouse living at the time of his/her marriage with the petitioner, such other spouse shall be made a correspondent.

3) In every petition under Section 13 (2) (i) of the Act, the petitioner shall make “the other wife” mentioned in that section a co-respondent.

8. Petitions by or against a person suffering from Mental Disorders:- A person suffering from mental disorder will be treated in all respect as a person of unsound mind for the purpose of Order XXXII of the Code.

9. Petition of Minor:- 1) Where the petitioner is minor, he/she shall sue through his/her next friend, 10 to be approved by the Court, and no petition under the Act on behalf of the minor shall be filed until the next friend has undertaken in writing to be liable for costs. Such undertaking shall be filed in Court alongwith the petition, and the next friend shall thereupon be liable for costs in the same manner and to the extent as if he were a plaintiff in an ordinary suit.

2) Every petition on behalf of the minor shall be supported by an affidavit of the next friend stating:-

- (a) the age and date of birth of the minor;
- (b) that the next friend has no interest adverse to that of the minor;
- (c) that the next friend is a fit and proper person to act as such; and
- (d) the relationship, if any, of the next friend with the minor.

3) The Court shall on consideration of the affidavit and such other evidence, as it may require, record its approval to the representation of the minor by the next friend or pass such orders as it may deem fit.

10. Presentation of petition:- Every petition or application under the Act shall be presented to the Court in person or through Advocate or pleader or a recognized agent.

11. Notice to respondent:- 1) A notice of every petition or application under the Act shall be issued to the respondent(s) in ‘Form II’ to appear and answer the claim on a day to be specified

11 therein; Provided that no such notice would be necessary when the respondent appears, either in person or through counsel or Agent, at the time of presentation of the petition or application.

2) Every notice issued under Sub-Rule (1) above shall be accompanied by a copy of the petition or application and the affidavit, if any. The petitioner or applicant shall, along with the petition or application, file the required number of copies of the petition or application and the affidavit, if any, together with the process fee prescribed under the law.

12. Application for Leave:- 1) Every application under Section 14 of the Act for Leave shall be supported by an affidavit of the applicant stating:-

- (a) The grounds on which the application is made;
- (b) The particulars of the exceptional hardship and depravity alleged;
- (c) Whether there has been any previous application under the said section, if so, with what result;
- (d) Whether there are living children of the marriage, if so, the names and dates of birth of ages of such children, sex and where and with whom such children are residing;
- (e) Whether there has been any attempt at reconciliation;
- (f) The circumstances which may assist the court to determine the question whether there is a reasonable probability of a reconciliation between the parties;

2) Notice of the application shall be given to the respondent who may contest the same by filing counter affidavit.

3) Evidence, if any, in support or against the application may, unless the court otherwise directs, be given by affidavits.

4) The court may, if necessary in exceptional circumstances, either of its own motion or on the application of the party, order a deponent to be cross examined on his/her affidavit.

5) Every application under section 14 of the Act, shall be accompanied by the petitioner intended to be filed.

6) On the leave having been granted by the Court, the petition shall be deemed to have been duly filed on the date of the said order, provided the court fee thereon is paid within the time allowed by the Court.

13. Contents of written statement:- 1) Every written statement in answer to a petition shall set out the particulars, as far as may be, set out in rule 5 above.

2) Where a counter claim is made in terms of section 23-A of the Act, it shall comply with the rules applicable to the petition on the like grounds.

14. Intervener's petitions:- 1) Unless the court for good cause shown otherwise directs, where the written statement of the respondent alleges adultery by the petitioner with a named man or woman, a certified copy of such statement or such material portion thereof containing such allegations, shall be served on such man or woman accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the case.

2) Every application for leave to intervene in the case shall be accompanied by an affidavit of the intervener.

3) Notice of the application together with a copy of the application and affidavit shall be served on all parties who shall be at liberty to file counter affidavits.

4) If, after hearing all the parties, the court grants leave, the intervener may take part in the trial subject to such terms and conditions as the court may deem fit to impose.

5) Person to whom leave to intervene has been granted, may file in the court an answer to the petition or written statement containing the charges against such intervener.

6) Thenceforth the intervener shall be treated as a party to the proceedings and shall be liable or entitled to costs, as the case may be, according to law.

15. Mode of taking evidence:- The Witnesses in all proceedings under the Act before the court shall be examined orally and any party may offer himself or herself as a witness and shall be examined and may be cross examined and re-examined like any other witness;

16. Applications for alimony and maintenance:- Every application for maintenance pendent lite, permanent alimony and maintenance or for custody, maintenance and education expenses of minor children shall be supported by an affidavit and shall state:-

- (a) The average monthly income of the petitioner;
- (b) The sources of their income;
- (c) Particulars of other moveable and/or immoveable property owned by them jointly or severally;
- (d) The details of liabilities, if any, alongwith the number of their dependents, if any, and the names and ages of such dependents.

17. Custody of Children:- The petitioner or respondent spouse or the guardian of any child of marriage may, at any time either before or after the decree, apply to the court for the custody or education of the children of the marriage and the court may pass such orders as may be deemed fit subject to the provisions of section 26 of the Act.

18. Costs against Correspondent:- 1) The court may also direct the whole or any part of the costs of the petition be paid by the co-respondent:

Provided that a co-respondent shall not be ordered to pay the petitioners' costs:-

- (a) If the co-respondent had, at the time of commission of such acts, no reasons to believe the respondent to be a married woman; or
- (b) If the respondent-wife, at the time of voluntary intercourse, was living apart from her husband and leading the life of a prostitute.

2) The court may assess costs and make an order for payment thereof notwithstanding that the respondent or the co-respondent or both of them have remained ex-parte.

19. Pleader's fee:- Pleader's fee may be fixed by the court as it may consider appropriate taking into consideration the nature of the proceedings and the status of the parties.

20. Taxation of Costs:- Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in a civil suit.

21. Register to be maintained:- Every court shall maintain a register in which the details regarding petitions shall be entered and shall conform to civil register No. III maintained for Divorce and Matrimonial cases.

22. Supply of Certified Copies:- 1) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties. The copy so supplied shall be authenticated as “true copy” by the Reader of the Court passing the decree.

2) The court shall maintain a register where the particulars of the decree shall be incorporated and signatures of the parties or their Advocates or agents shall be obtained in token of their having received a copy of the decree.

3) The Court shall send a certified copy of every decree for divorce or nullity of marriage or dissolution of marriage, where the marriage had been registered under Section 8 of the Act, to the 16 Registrar of Marriages in charge of the Hindu Marriage Act Register, if any.

23. Forms:- The forms given in the Appendix to these rules shall, with such modifications and variations as the circumstances of each case may require, be used in the proceedings under the Act.

24. Trial:- The trial of a petition under the Act, so far as is practicable, be continued from day to day until its conclusion and every endeavour shall be made to conclude the trial within six months from the service of the notice of the petition on the respondent.

25. Appeal:- Appeals to the High Court from the decrees and orders of the Court shall be governed by the appellate side rules of the High Court as far as they may be applicable.

26. Repeal:- The rules framed by the erstwhile court of Judicial Commissioner, Himachal Pradesh, as published under Notification No. JC.16(148)59, dated 17th December, 1959 and the rules contained in Chapter I-E, Part-E, Vol. II, of the Punjab High Court Rules and Orders, as applicable to Himachal Pradesh, shall stand repealed.

BY ORDER OF THE COURT
REGISTRAR

FORM No. 1

In the Court ofat
H.M. Petition No. of 19

In the matter of Hindu Marriage Act, 1955,

A.B.Petitioner
Versus
C.D.Respondent
.....Co-respondent

Petition under section of the Hindu Marriage Act,
1955 and Rule of the Rules under the Hindu Marriage Act.

FORM No. 2

In the Court of at
H.M. Petition No. of 19

In the matter of Hindu Marriage Act, 1955.

.....Petitioner
Versus
.....Respondent(s)

To

.....
.....
.....

Take notice that the petitioner, above named, has presented a petition/application against you for under Section of the Hindu Marriage Act, 1955 (Act No. 25 of 1955). Copy of the said petition/application is sent herewith.

You are hereby directed to appear in this Court on day of 19..... at 10 A.M. to answer the said petition/application either in person or by a recognized agent or an Advocate duly instructed and able to answer all material questions relating to the case and you are further directed to produce on that day all the documents upon which you intend to rely in support of your defence. Written statement/reply, if any, be filed on the said date.

You are further informed that in default of your appearance on the day and in the manner above mentioned, the petition/application shall be heard and determined ex-parte.

Given under my hand and seal of the Court, this day of, 19..... Judge At..... 19

Judge
At

FORM No. 3

In the District Court at

.....Petitioner.

Versus

.....Respondent.

Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The petitioner prays as follows:-

1. A marriage was solemnized between the parties on at A certified extract from the Hindu Marriage Register/an affidavit duly attested is filed herewith.

2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
ii) At the time of filing the petition.				

(Whether a party is a Hindu by religion or not is a part of his or her status. Also State whether bachelor/spinster, widow(er) or divorcee).

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated).

.....
.....

4. The respondent has, without reasonable excuse, withdrawn 20 from the society of the petitioner with effect from(cause of the estrangement, as known to the petitioner may be stated.)

5. The petition is not presented in collusion with the respondent.

6. There has not been any unnecessary or improper delay in filing this petition.

7. There is no other legal ground why relief should not be granted.

8. There has not been any previous proceeding with regard to the marriage by or on behalf of any party,

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:

Sr. No.	Name of parties	Nature of proceedings with section of the Act.	Number & date and year of the case	Name and location of court.	Result
1.					
2.					
3.					
4.					

9. The marriage was solemnized at

Or

The husband and wife resided at

Or

The husband and wife last resided together at

within the local limits of the ordinary original civil jurisdiction of this Court.

10. The petitioner prays for a decree for restitution of conjugal rights against the respondent.

Sd/-
Petitioner

VERIFICATION

The above named petitioner states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioners information and belief.

Verified at (Place)

Dated

Sd/-
(Petitioner)

FORM No. 4

In the District Court at

.....Petitioner.

Versus

.....Respondent.

.....Co-respondent.

Petition for Judicial Separation under Section 10 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The petitioner prays as follows:-

1. A marriage was solemnized between the parties on atA certified extract from the Hindu Marriage Register/an affidavit, duly attested is filed herewith.

2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

(i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(ii) At the time of filing the petition.				

(Whether a party is a Hindu by religion or not is a part of his or her status.)

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated.)

.....

4. The respondent has (any one or more of the grounds specified in section 10 may be pleaded here. The matrimonial offences charged should be set in separate paragraphs, with times and 23 places of their alleged commission. The facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits. If adultery is pleaded, the petitioner should give particulars, as nearly as he can of the acts of adultery alleged to have been committed).

5. (Where the ground of petition is the ground specified in section 13 (1) (i), the petitioner should state that he has not in any manner been accessory to or connived at or condoned the act(s) complained of).

6. (Where the ground of petition is cruelty). The petitioner has not in any manner condoned the cruelty.

7. The petition is not presented in collusion with the respondent.

8. There has not been any unnecessary or improper delay in filing this petition.

9. There is no other legal ground why the relief should not be granted.

10. There has not been any previous proceeding with regard to the marriage by or on behalf of any party,

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:-

Sr. No.	Name of parties	Nature of proceedings with section of the Act.	Number & year of the case	Name and location of court.	Result

11. The marriage was solemnized at

Or

The husband and wife reside at

Or

The husband and wife last resided together at within the local limits of the ordinary original civil jurisdiction of this Court.

12. The petitioner, therefore, prays for a decree for judicial separation against the respondent.
Sd/- Petitioner.

VERIFICATION

The above named petitioner states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioners information and belief.

Verified at

Sd/-
(Petitioner)

FORM No. 5

In the District Court at

.....Petitioner.

Versus

.....Respondent.

Petition for a decree of nullity of Marriage under Section 11 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The petitioner prays as follows:-

1. A marriage was solemnized between the parties after the commencement of the Hindu Marriage Act, on atA certified extract from the Hindu Marriage Register/ affidavit duly attested, is filed herewith.

2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

(i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(ii) At the time of filing the petition.				

(Whether a party is a Hindu by religion or not is a part of his or her status.)

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated).

.....

4. The respondent had a spouse living at the time of the marriage (State full particulars).

Or

The parties are within the degrees of prohibited relationship and there is no custom or usage governing each of them which permits of marriage between the two. (Exact relationship between the parties should be given.)

Or

The parties are Sapindas of each other and there is no custom or usage governing each of them which permits of a marriage between the two. (Exact relationship between the parties should be specified).

(One or more of the above grounds may be pleaded and portions which are not applicable should be scored out. Facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits. The matrimonial offences charged should be set in separate paragraph with times and places of their alleged commission.)

5. There has not been any unnecessary or improper delay in filing this petition.

6. There is no other legal ground why the relief should not be granted.

7. There has not been any previous proceeding with regard to the marriage by or on behalf of any party,

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:-

Sr. No.	Name of parties	Nature of proceedings with section of the Act.	Number & year of the case	Name and location of court.	Result

8. The marriage was solemnized/parties reside/parties last resided together atwithin the local limits of the ordinary original civil jurisdiction of this Court.

9. The petitioner, therefore, prays that the marriage solemnized between the parties being null and void may be so declared by the Court by a decree of nullity.

Sd/-
Petitioner

VERIFICATION

The above named petitioner states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioners information and belief.

Verified at(Place)

Dated

Sd/-
Petitioner

FORM No. 6

In the District Court at

.....Petitioner.

Versus

.....Respondent.

Petition for the annulments of a marriage under section 12 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The petitioner prays as follows:-

1. A marriage was solemnized between the parties on at A certified extract from the Hindu Marriage Register/ an affidavit duly attested, is filed herewith.
2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

(i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(ii) At the time of filing the petition.				

(Whether a party is a Hindu by religion or not is a part of his or her status.)

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated).
.....

4. The respondent was impotent at the time of the marriage and continued to be so until the institution of these proceedings.

Or

The respondent was an idiot/lunatic at the time of marriage. The consent of the petitioner/guardian of the petitioner was obtained by force/fraud and the petition presented within one year after the force has ceased to operate/fraud had been discovered and the petitioner has not with his/her full consent, 29 lived with the other party to the marriage as husband/wife after the force has ceased to operate/fraud had been discovered.

Or

The respondent was at the time of the marriage pregnant by some person other than the petitioner and the petitioner was at the time of marriage ignorant of this fact and the proceedings have been instituted within one year from the date of the marriage and marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of respondent's pregnancy by some person other than the petitioner.

(One or more of the above grounds may be pleaded and portions which are not applicable should be scored out. Facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits. The matrimonial offence charged should be set in separate paragraph with time and place of their alleged commission.)

5. The petition is not instituted in collusion with the respondent.
6. There has not been any unnecessary or improper delay in filing this petition.
7. There is no other legal ground why the relief should not be granted.
8. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:-

Sr. No.	Name of parties	Nature of proceedings with section of the Act.	Number & year of the case	Name and location of court.	Result

9. The marriage was solemnized/the parties reside/the parties last resided together atwithin the local limits of the ordinary original civil jurisdiction of this Court.
10. The petitioner, therefore, prays that the marriage between the parties being voidable may be annulled by the court by a decree of nullity.

Sd/-
Petitioner

VERIFICATION

The above named petitioner states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioner's information and belief.

Verified at(Place)

Dated

Sd/-
Petitioner

FORM No. 7

In the District Court at

.....Petitioner.

Versus

.....Respondent.

.....Co-respondent

Petition for dissolution of marriage by a decree for divorce under section 13 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The petitioner prays as follows:-

1. A marriage was solemnized between the parties on at A certified extract from the Hindu Marriage Register/ an affidavit duly attested, is filed herewith.

2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

(i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(ii) At the time of filing the petition.				

(Whether a party is a Hindu by religion or not is a part of his or her status).

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated).

.....

4. The respondent (One or more of the above grounds specified in section 13 may be pleaded here. The facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits. If adultery is pleaded the petitioner should give particulars as nearly as he can, of the acts of adultery alleged to have been committed. The matrimonial offences charged should be set in separate paragraph with times and places of their alleged commission.) If the ground specified in clause (viii) of section 13 (1) is pleaded to the petition should be accompanied by an affidavit of the petitioner to the effect that he or she has not resumed cohabitation for a period of one year or upwards of the passing of the decree for judicial separation).

5. (Where the ground of petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act(s) complained of.

6. (Where the ground of petition is cruelty). The petitioner has not in any manner condoned the cruelty.

7. Any other ground mentioned in section 13.

8. The petition is not presented in collusion with the respondent.

9. There has not been any unnecessary or improper delay in filing this petition.

10. There is no other legal ground why the relief should not be granted.

11. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:-

Sr. No.	Name of parties	Nature of proceedings with section of the Act.	Number & year of the case	Name and location of court.	Result

12. The marriage was solemnized/the husband and the wife reside/the husband and wife last resided together at within the limits of the ordinary original civil jurisdiction of this Court.

13. The petitioner, therefore, prays that the marriage solemnized between the petitioner and the respondent may be dissolved by a decree of divorce.

Sd/-
Petitioner.

VERIFICATION

The above named petitioner states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioners information and belief.

Verified at(Place)

Dated

Sd/-
(Petitioner)

FORM No. 8

In the District Court at

.....Applicant.

Versus

.....Respondent.

Application under section 14 of the Hindu Marriage Act, 1955 (No. 25 of 1955) praying that a petition of divorce may be allowed to be presented before one year has elapsed since the date of marriage.

The applicant prays as follows:-

1. A marriage was solemnized between the parties on atA certified extract from the Hindu Marriage Register/ an affidavit duly attested, is filed herewith.
2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

(i) Before marriage	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(ii) At the time of filing the petition.				

3. (In this paragraph particulars and place(s) of cohabitation between husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and fact whether alive or dead should also be stated).
.....
.....

4. This is a case of exceptional hardship to the petitioner/exceptional depravity on the part of the respondent as (state as distinctly as the nature of the case permits the particulars about the exceptional hardship or depravity, as the case may be).

5. The marriage was solemnized/the parties reside/ the parties last resided together atwithin the ordinary original civil jurisdiction of this Court.

6. The applicant, therefore, prays that he/she may be allowed to present a petition for divorce before one year has elapsed since the date of marriage.

Petitioner

VERIFICATION

The above named applicant states on solemn affirmation that Paras 1 to of the petition are true to the best of the applicant’s information and belief.

Verified at(Place)

Dated

(Applicant)

FORM No. 9

In the District Court at

.....Applicant.

Versus

.....Respondent.

Application for maintenance pendente lite and for expenses of proceedings under section 24 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The applicant prays as follows:-

1. A proceeding for under section of the Hindu Marriage Act, 1955, is pending between the parties in this court. The particulars are as follows:-

No. & year of the case	Name of parties	Next date of hearing	Remarks

2. The applicant owns no other movable or immovable property and has no other source of income except..... (give particulars of the petitioners property and income).

3. The applicant has no independent income sufficient for his/her support and the necessary expenses of the proceedings. No provision has been made by respondent for the maintenance of the petitioner.

4. The respondent has sources of income and owns property mentioned below:-
..... (give full particulars about respondent's income and property).

5. The only person dependent upon the respondent is the petitioner himself/herself or the petitioner and..... (give the details of the liabilities, if any, of the parties alongwith the details of dependents, if any, with the names, sex and ages of such dependents.)

6. The petitioner prays that the respondent should be ordered to pay a sum of Rs..... as the petitioner's expenses of the proceedings and a sum of Rs..... monthly for petitioner's maintenance during the proceedings.

Petitioner.

VERIFICATION

The above named applicant states on solemn affirmation that Paras 1 to of the petition are true to the best of the petitioners information and belief.

Verified at(Place)

Dated

(Applicant)

FORM No.10

In the District Court at

.....Applicant.

Versus

.....Respondent.

Application for permanent alimony and maintenance under section 25 of the Hindu Marriage Act, 1955 (No. 25 of 1955).

The applicant prays as follows:-

1. A proceeding between the parties for..... under section of the Hindu Marriage Act, 1955, is pending/in/was decided by this court, particulars of which are given below:-

No. & year of the case	Name of parties	Next date of hearing	Remarks

2. The applicant owns no other movable or immovable property and has no other source of income except..... (give full particulars about respondent's income and property). No provision has been made by the respondent for the maintenance of the petitioner.

3. The respondent has sources of income and owns property mentioned below:-
..... (Give full particulars about respondent's income and property).

4. The applicant has not remarried and has not been guilty of any conduct which would disentitle him/her to receive maintenance from the respondent.

5. The petitioner prays that the respondent should be ordered to pay a sum of Rs..... as the petitioner's expenses of the proceedings and a sum of Rs. monthly for petitioner's maintenance during the proceedings.

6. The applicant prays that having regard to the income of the parties and their conduct, and other circumstances of the case, the respondent may be ordered to pay to the petitioner for his/her maintenance and support until death or remarriage a gross/monthly/periodical sum of Rs. and (score out if not necessary) such payment may be secured by a charge on the immoveable property of the respondent.

Applicant

VERIFICATION

The above named applicant states on solemn affirmation that Paras 1 to of the petition are true to the best of the applicant's information and belief.

Verified at(Place)

Dated

(Applicant)

FORM No. 11

In the District Court at

In the matter of:

.....Petitioner.

Versus

.....Respondent.

Petition for dissolution of marriage by a decree of divorce by mutual consent, as provided under Section 13(B) (1) of the Hindu Marriage Act, 1955, as amended by (Act 68 of 1976)-The Marriage Laws (Amendment) Act, 1976.

The petitioner and the respondent both pray as follows:-

1. A marriage was solemnized between them (petitioner and respondent) at on according to Hindu rites, their affidavits to that effect are enclosed. (Or a certified copy of the extract from the Hindu Marriage Register is filed herewith).
2. That the status and place of residence of the parties to the marriage, before the marriage and at the time of filing the petition were as follows:

1. Before marriage 2. At the time of filing the petition.	Husband		Wife	
	Status	Place of residence	Status	Place of residence

(Whether a party is a Hindu by religion or not is a part of his or her status).

3. (In this paragraph particulars and place(s) of stay and cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child, and fact whether alive or dead should also be stated).

4. That the parties to the petition have been living separately since and have not been able to live together since then.

5. That the parties have mutually agreed that their marriage should be dissolved.

6. That the consent has not been obtained by force, fraud or undue influence.

7. That there have not been an unnecessary or improper delay in the institution of the proceedings.

8. That there is no other legal ground why the relief prayed for should not be granted.

9. That there has not been any previous proceedings between the parties with regard to the marriage.

Or.

That there has been the following previous proceedings between the parties with regard to marriage:-

Sr.No.	Name of parties	Nature of Proceedings with section of the Act.	Number & year of the case	Name of the court.	result with the date of decision

10. That the marriage was solemnized at The parties last resided together at The parties are now residing at within the local limits of ordinary jurisdiction of this Court. The Court has jurisdiction to entertain this petition.

11. The parties, therefore, pray that the marriage between them may be dissolved by a decree of divorce.

Sd/- Petitioner.
Sd/- Respondent.

VERIFICATION

The above named parties state on solemn affirmation that Paras 1 to of the petition are true to their knowledge and paras to are true to their information received and believed by them to be true.

Verified at(Place)

Dated

Sd/- Petitioner
Sd/- Respondent

FORM No.12

In the Court ofat.....
H.M. Misc. Petition No. of 20.....

In the matter of Hindu Marriage Act, 1955

.....Petitioner.

Versus

.....Respondent.

This petition coming on for final hearing before this Court in the presence of Sh. Advocate, for the petitioner and Sh. Advocate, for the respondent, the court being satisfied that (here set out all or any of the ground specified in Section 23 of the Act, as the particular case may require which the court considers exist for granting relief) it is ordered and decreed that (here give the description of the order).

Given under my hand and the seal of the Court this day of 20
.....

Seal

District Judge

THE HIMACHAL PRADESH REGISTRATION OF MARRIAGES ACT, 1996

ARRANGEMENT OF SECTIONS

SECTIONS:

**CHAPTER-I
PRELIMINARY**

1. Short title, extent and commencement.
2. Definitions.

**CHAPTER-II
REGISTRATION ESTABLISHMENT**

3. Chief Registrar of Marriages.
4. District Registrars of Marriages.
5. Registrar of Marriages.

**CHAPTER -III
REGISTRATION OF MARRIAGES**

6. Every marriage to be registered.
7. Memorandum of marriage.
8. Memorandum of marriages submitted after 30 days.
9. Places of registration of marriages.
10. Voluntary registration of marriages contracted in areas in which this Act is not applicable.
11. Registration of foreign marriages.
12. Non-registration not to invalidate marriages.

**CHAPTER IV
MAINTENANCE OF REGISTERS AND RECORDS AND
CORRECTIONS THEREOF**

13. Maintenance of registers in the prescribed forms.
14. Correction or cancellation of entry in the marriage register.
15. Search of marriage registers.

**CHAPTER-V
PENALTIES**

16. Penalty for neglecting to comply with provisions of section 7 or making any false statement in the memorandum.
17. Penalty for failing to file memorandum.
18. Penalty for secreting, destroying or altering marriage register.

**CHAPTER VI
MISCELLANEOUS**

19. Registrar to be public servants.
 20. Indemnity to persons acting under this Act.
 21. Previous sanction of the Government.
 22. Power of State Government to make rules.
 23. Provisions not to be derogatory to certain laws.
-

THE HIMACHAL PRADESH REGISTRATION OF MARRIAGES ACT, 1996
(ACT NO. 21 OF 1997)¹

(Received the assent of the President of India on the 22nd September, 1997 and was published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 18th October, 1997, pp. 4191-4209)

An Act to provide for registration of marriages and for certain other matters connected therewith.

Amended, repealed or otherwise effected by.-

H.P. Act No. 13 of 2006², assented to by the Governor on the 10th October, 2006, published both in Hindi and English in Rajpatra, Himachal Pradesh (Extra-ordinary), dated 15th July, 2006, pp. 1811-1814.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-seventh Year of Republic of India, as follows:-

CHAPTER-I
PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Registration of Marriages Act, 1996.

(2) it extends to the whole of the Himachal Pradesh.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Chief Registrar Marriages” means the Chief Registrar of Marriages appointed by the ‘State Government under section 3 of this Act;
- (b) “to contract a marriage” means to solemnize or enter into a marriage in any form or manner;
- (c) “District Registrar of Marriages” means the District Registrar of Marriages appointed by the State Government for a District under section 6 of this Act;
- ³[(cc) “Magistrate” means the Executive Magistrate appointed by the State Government under section 20 of the Code of Criminal Procedure;]
- (d) “marriage ” includes re-marriage;
- (e) “marriage register” means a register of marriages maintained under this Act;
- (f) “Priest” means any person who solemnizes a marriage;
- (g) “Registrar of Marriages” means a Registrar of Marriages appointed by the State Government under section 5 of this Act;
- (h) “Schedule” means the Schedule to this Act.

¹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see Rajpatra, Himachal Pradesh (Extra-ordinary), dated 5th December, 1996 pp. 5462 and 5471.

² Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see Rajpatra, Himachal Pradesh (Extra-ordinary), dated 2nd March, 2006, pp. 7556 and 7558.

³ Clause (cc) inserted vide Act No. 13 of 2006.

CHAPTER-II REGISTRATION ESTABLISHMENT

3. Chief Registrars of Marriages.- (1) The State Government shall, by notification in the Official Gazette, appoint a Chief Registrar of Marriages for the State.

(2) The State Government may also appoint such other officers with such designations as it thinks fit for the purpose of discharging under the superintendence and direction of the Chief Registrar of Marriages, such of his functions as he may, from time to time, authorise them to discharge.

(3) The Chief Registrar of Marriages shall be the Chief Executive authority in the State for carrying into execution the provisions of this Act and the rules and orders made thereunder subject to the directions, if any, given by the State Government.

(4) The Chief Registrar of Marriages shall take steps, by the issue of suitable instructions or otherwise, to co-ordinate, unify and supervise the work of registration in the State for securing an efficient system of registration and shall prepare and submit to the State Government, in such manner and at such intervals as may be prescribed, a report on the working of this Act in the State.

4. District Registrars of Marriages.- (1) The State Government may appoint a District Registrar of Marriages for each revenue District and such number of Additional District Registrars of Marriages as it thinks fit, who shall, subject to the general control and direction of the District Registrar of Marriages discharge such functions of the District Registrar of Marriages, as the District Registrar of Marriages may from time to time authorise them to discharge.

(2) The District Registrar of Marriages shall superintend, subject to the direction of the Chief Registrar of Marriages, the registration of marriages and shall be responsible for carrying into execution in the District the provisions of this Act and the orders of the Chief Registrar of Marriages issued from time to time for the purposes of this Act.

5. Registrar of Marriages.- (1) The State Government may appoint a Registrar of Marriages for each local area comprising the area within the jurisdiction of a tehsil or taluka or a municipal corporation, municipality or a cantonment board or any other local authority or a combination of any two or more of them;

Provided that the State Government may appoint in the case of municipal corporation, municipality or other local authority, any officer or other employees thereof as a Registrar of Marriages under this Act.

(2) Every Registrar of Marriages shall, without fee or reward, enter in the Marriage Register maintained under this Act and shall also take steps to inform himself carefully of every marriage, which takes place in his jurisdiction and to ascertain and register the particulars required to be registered.

(3) Every Registrar of Marriages shall have an office in the local area for which he is appointed.

(4) Every Registrar shall attend his office for the purpose of registering marriages on such days and at such hours as the Chief Registrar of Marriages may direct and shall cause to be placed in conspicuous place on or near the out door of the office of the Registrar of Marriages a board bearing, in the local language, his name with the addition of Registrar of Marriages for the local area for which he is appointed, and the days and hours of his attendance.

CHAPTER-III
REGISTRATION OF MARRIAGES

6. Every marriage to be registered.- After the date on which the provisions of this Act have been brought into force in any area under subsection (3) of section 1, every marriage contracted in Himachal Pradesh shall be registered in the manner provided in section 7 of this Act.

7. Memorandum of marriage.- (1) The parties to a marriage or their fathers or guardians when they shall not have completed the age of 21 years, shall prepare and sign a memorandum in the form in the Schedule and shall deliver or send by registered post the said memorandum in duplicate to the Registrar of Marriages of the area, within a period of 30 days from the date of the marriage:

Provided that where the marriage is contracted without the consent of the father or guardian of a party, such party and not the father or guardian shall comply with the provisions of this sub-section.

(2) The memorandum shall also be signed by the officiating priest, if any and where such marriages is solemnised before a Marriage Officer, the memorandum shall be supported by certified copies of the entries made in the Marriage Certificate Book being maintained by the said Marriage Officer under any other enactment for the time being in force.

(3) The Memorandum shall be accompanied by a fee of rupees five.

(4) On receipt of the Memorandum, the Registrar of Marriages shall file the same in the marriage register maintained by him and shall send the duplicate copy thereof to the Chief Registrar of Marriages.

8. Memorandum of marriages submitted after 30 days.- (1) A memorandum, accompanied by a fee, not exceeding rupees ten as may be prescribed, regarding any particular marriage may be, submitted to the Registrar of Marriages after the expiry of period of 30 days specified under sub-section (1) of section 7 and the Registrar of Marriages shall file the same in the marriage register maintained by him and shall also send the duplicate copy thereof to the Chief Registrar of Marriages as provided in section 7.

(2) Nothing in sub-section (1) shall affect the liability of any person who has wilfully omitted or neglected to deliver or send the memorandum within the period specified in sub-section (1) of section 7 to any penalty under section 16 of this Act.

(3) Any marriage of which delayed information is given to the Registrar of Marriages after ninety days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of prescribed fee and production of an affidavit made before a Notary Public or any other officer authorised by the State Government in this behalf.

(4) Any marriage which has not been registered within one year of its occurrence shall be registered only on an order made by a Magistrate of the First Class after verifying the correctness of marriage and on payment of the prescribed fee:

Provided that nothing contained in this sub-section shall apply to the registration of a foreign marriage under section 11.

9. Places of registration of marriages. - The registration shall be affected in the office of the Registrar of Marriages within whose jurisdiction the marriage was solemnized or within whose jurisdiction, either or both parties to the marriage have their permanent place of residence or at any place outside his office provided there is any application in writing in this behalf and signed by either of the parties to the marriage and the additional fee prescribed therefore is paid and the hour is not unreasonable.

10. Voluntary registration of marriages contracted in areas in which this Act is not applicable.- (1) In any area in which the provisions of this Act are not in force the parties to a marriage contracted in that area, or that their fathers or guardians when they shall not have completed the age of 21 years, may if they so desired, prepare and sign a memorandum in the form in the Schedule and deliver or send by registered post the said Memorandum in duplicate to such Registrar of Marriages, as the State Government may, from time to time by notification in the Official Gazette, specify in this behalf.

(2) The Memorandum shall also be signed by the officiating priest, if any, and where such marriage is solemnized before a Marriage Officer, the memorandum shall be supported by certified copies of entries made in the Marriage Certificate Book being maintained by the said Marriage Officer under any other enactment for the time being in force.

(3) The Memorandum shall be accompanied by a fee of rupees five if it is sent or delivered within a period of 30 days from the date of marriage and a fee, not exceeding rupees ten, as may be prescribed if it is sent or delivered after the expiry of 30 days from the date of marriage.

(4) On receipt of any such memorandum, the Registrar of Marriages shall file the same in the Marriage Register maintained by him and shall send the duplicate copy thereof to the Chief Registrar of Marriages as provided in section 7.

11. Registration of foreign marriages.- (1) Where –

- (a) the Chief registrar of Marriages is satisfied that a marriage has been duly solemnized in a foreign country in accordance with the law of that country between the parties of whom one at least was a citizen of India; and
- (b) a party to the marriage submits a Memorandum in the form given in the Schedule, along with a certificate from the Indian Consulate, in the country where marriage has been solemnized, that the marriage is valid and has been duly solemnized, and informs the Chief Registrar of Marriages, that he or she desires the marriage to be registered, the Chief registrar of Marriages may upon payment of prescribed fee, register the marriage.

(2) No marriage shall be registered under this section unless at the time of registration it satisfies the conditions laid down in section 4 of the Foreign Marriage Act, 1969.

(3) The Chief Registrar of Marriages may, for reasons to be recorded in writing, refuse to register a marriage under this Act on the ground that in his opinion the marriage is inconsistent with international law or the comity of nations.

(4) Where the Chief Registrar of Marriages accepts the application, he shall, cause the marriage to be registered.

(5) Where a party to a marriage happens to be outside India and he returns to India with a view to settling therein, he may, at any time within 60 days from the date of their arrival in India,

get the marriage registered under this Act in the same manner as if the marriage has been solemnized in India and the provisions of section 8 shall apply to such a marriage after the expiry of the said period of 60 days.

12. Non-registration not to invalidate marriages.- No marriage contracted in the areas to which this Act applies shall be deemed to be invalid solely by reason of the fact that it was not registered under this Act or that the memorandum was not delivered or sent to the Registrar of Marriages or that such memorandum was defective, irregular or incorrect.

CHAPTER-IV MAINTENANCE OF REGISTERS AND RECORDS AND CORRECTIONS THEREOF.

13. Maintenance of registers in the prescribed forms.- (1) Every Registrar of Marriages shall keep in the prescribed form a register of marriages for the registration area or any part thereof in relation to which he exercises jurisdiction.

(2) The Chief Registrar of Marriages shall cause to be printed and supplied a sufficient number of register books for making entries of marriages according to such forms and instructions as may, from time to time, be prescribed; and a copy of such forms in the local language shall posted in some conspicuous place or near the outer door of the office.

14. Correction or cancellation of entry in the marriage register.- If it is found to the satisfaction of the Registrar of Marriages that any entry of a marriage in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may subject to such rules as may be made by the State Government with respect to the condition on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and thereto add the date of the correction or cancellation.

15. Search of marriage registers.- (1) Subject to any rules made in this behalf by the State Government including rules relating to the payment of fees and postal charges, any person may-

- (a) cause a search to be made by the Registrar of Marriages for any entry in a register of marriages; and
- (b) obtain an extract from such register relating to any marriage.

(2) All extracts given under this section shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 and shall be admissible in evidence for the purposes of proving the marriage to which it relates.

CHAPTER V PENALTIES

16. Penalty for neglecting to comply with the provisions of section 7 or making any false statement in the memorandum.- Any person who-

- (i) Willfully omits or neglects to deliver or send memorandum as required by section 7; or
- (ii) makes any statement in such memorandum which is false in material particular, and which he knows or has reason to believe to be false.

shall on conviction, be punished with fine which may extend to two hundred rupees.

17. Penalty for failing to file memorandum.- Any Registrar of Marriages, who fails to file the memorandum pursuant to section 7 shall, on conviction, be punished with rigorous imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

18. Penalty for secreting, destroying or altering marriage register.- Any person secreting, destroying, or dishonestly or fraudulently altering the marriage register or any part thereof shall, on conviction, be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine.

CHAPTER-VI MISCELLANEOUS

19. Registrars to be public servants.- The Chief Registrar of Marriages, District Registrars of Marriages, Additional District Registrars of Marriages, Registrars of Marriages and other officers appointed under this Act, shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

20. Indemnity to persons acting under this Act.- No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

21. Previous sanction of the Government.- No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the State Government.

22. Power of State Government to make rules.- (1) The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act-

- (a) the terms and conditions of appointment; and duties and powers of the Chief Registrar of Marriages, District Registrars of Marriages, Registrars of Marriages, and other officers and staff appointed to assist them;
- (b) the forms and manner in which registers or records, required to be kept by or under this Act, shall be maintained;
- (c) the custody in which the registers and records are to be kept and the preservation of such registers and records;
- (d) the fees to be paid under this Act; and
- (e) any other matter which is to be, or may be, prescribed by the State Government under this Act.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislative Assembly, while it is in session, for a total period of fourteen 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 sessions or the successive sessions aforesaid, the Assembly agrees in making any modification 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. Provisions not to be derogatory to certain laws.- The provisions of this Act shall be in addition to, and not in derogation of the provisions of the Special Marriage Act, 1954, the Indian Christian Marriage Act, 1972, the Parsi Marriage and Divorce Act, 1936 and Foreign Marriage Act, 1969.

**THE SCHEDULE
FORM**

(See section 7)

MEMORANDUM OF MARRIAGE

1. Date of marriage.
 2. Place of marriage (with sufficient particulars to locate the place).
 3.
 - (a) Full name of the bridegroom.
 - (b) His age.
 - (c) Usual place of residence.
 - (d) Address.
 - (e) Status of the bridegroom at the time of marriage (whether unmarried/widower/divorced/married, if so, how many wives are alive.)
 - (f) Signatures of the bridegroom with date.
 4.
 - (a) Full name of the bride.
 - (b) Her age.
 - (c) Usual place of residence.
 - (d) Address.
 - (e) Status of the bride at the time of marriage (whether unmarried/widow/divorced/ married, if so, husband is alive)
 - (f) Signatures of the bride, with date.
 5.
 - (a) Full name of the father or guardian of the bridegroom.
 - (b) His age.
 - (c) Usual place of residence.
 - (d) Address.
 - (e) Signature of the father or guardian of the bridegroom with date.
 6.
 - (a) Full name of the father or guardian of the bride.
 - (b) His age.
 - (c) Usual place of residence.
 - (d) Address.
 - (e) Signature of the father or guardian of the bride, with date.
 7.
 - (a) Full name of the officiating priest.
 - (b) His age.
 - (c) Usual place of residence.
 - (d) Address
 - (e) Signatures of the officiating Priest, with date.
-

THE HIMACHAL PRADESH REGISTRATION OF MARRIAGES RULES, 2004.

(Authoritative English Text of this Department Notification No. WLF-A (3) -1/97, dated 17-12-2004 as required under clause (3) of Article 348 of the Constitution of India).

SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT

NOTIFICATION

Shimla-1, the 17th December, 2004

No. WLF-A(3) 1/97- Whereas the draft "Himachal Pradesh Registration of Marriage Rule's 2004" were published in the Rajpatra, Himachal Pradesh (extra Ordinary) dated 14th June, 2004 vide this Department notification of even number dated 28th May, 2004 in pursuance of the provisions of section 22 of the Himachal Pradesh Registration of Marriages Act, 1996 (Act No. 21 of 1997) for inviting objection (s) and suggestion(s) from the general public;

And whereas no objection (s) or suggestion(s) has been received within the stipulated period in this behalf;

Now, therefore, the Governor of Himachal Pradesh, in exercise of the powers conferred by section 22 of the aforesaid Act, is pleased to make the following rules, namely:-

1. Short title- these rules may be called the Himachal Pradesh Registration of Marriages Rules, 2004.

2. Definitions:- (1) In these rules, unless to context otherwise requires-

- (a) "Act" means the Himachal Pradesh Registration of Marriages Act, 1996 (Act No. 21 of 1997);
- (b) "State Government" means the Government of Himachal Pradesh;
- (c) "form" means the form appended to these rules ; and
- (d) " section" means the section of the Act.

(2) The words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Act.

3. Duties of Chief Registrar of Marriages/ District/ Additional Registrar and Registrar of Marriages - The Chief Registrar of Marriages shall have the following duties and powers namely:-

(1)

- (a) He shall have over all control over the District Registrar of Marriages, Additional Registrar of Marriages and Registrar of Marriages;
- (b) He shall cause to be implemented the directions issued by the State Government or himself through District Registrar, Additional Registrar of Marriages ;
- (c) He may call for any information from the District Registrar, Additional Registrar and Registrar of Marriages;
- (d) He may inspect records, registers and accounts lying with District Registrar Additional Registrar and Registrar of Marriages;
- (e) He shall submit annual report to the State Government by 31st March of succeeding year in form –II; and
- (f) He shall supply forms and registers to the Registrar of Marriages.

2.

- (a) The District Registrar of Marriages shall have overall control over the offices of Additional Registrar of Marriages and Registrar of Marriages within his jurisdiction;
- (b) He shall causes to be implemented the directions issued by the State Government or the Chief Registrar of Marriage or by himself through the Additional Registrar of Marriages and Registrar of Marriages;
- (c) He may inspect records, registers and accounts lying with Additional Registrar of Marriages and Registrar of Marriages; and
- (d) The Additional Registrar of Marriages shall have overall control over the offices of the Registrars of Marriages within His Jurisdiction;

4. Fee for registration of marriage- (1) Memorandum for marriage under subsection (1) of section 8 shall be accompanied by registration fee of Rs. 5/- if memorandum for registration of marriage is received after the expiry of thirty days but before ninety days a registration fee of Rs. 10/- shall be charged.

(2) The marriage solemnized or contracted and not reported within ninety days but reported before one year shall be registered with the written permission of District Registrar of marriages and a sum of Rs. 50/- shall be charged as registration fee:

Provided that if the marriages which have not been registered within one year of its occurrence, the same shall be registered only on an order made by Magistrate of the 1st Class after verifying the correctness of marriage on payment of fee of Rs. 50/- by the Registrar of marriages.

(3) The Registration fee shall be deposited either in cash or through money order in favour of Registrar of Marriages and on receipt of such fee, the Registrar of Marriages shall issue a receipt in form –IV.

(4)The memorandum for registration of Voluntary Marriage shall be accompanied by a fee of Rs. 10/- if the same is sent or delivered after the expiry of 30 days from the date of marriage.

(5) The memorandum for registration of foreign marriage shall be accompanied by a registration fee of Rs. 100/-

5. Supply of forms of memorandum- Forms memorandum of marriage shall be supplied free of charge to the parties to a marriage by the Registrar of Marriages.

6. Maintenance of Record- (1) The Registrar of Marriages shall maintain a Marriage Registration Register in form-I

(2) No correction or over writing shall be made in the Register of Marriage. However, under unavoidable circumstances, the Registrar of Marriages Shall record in writing the reasons for any correction, overwriting made in the Marriage Register in the remarks column of Register of Marriage, with the permission of the District Registrar of Marriages.

(3) The Registrar of Marriages shall keep the Register of Marriages in a safe custody and the record maintained by him shall be destroyed after the expiry of the period specified in each item under column No. 3 below, namely:-

Sr. No.	Name of the record	Period (in year)
1.	Receipt Book	5 years
2.	Postal acknowledgement receipts in respect of references sent to the Chief Registrar of Marriage	5 years
3.	Application for extracts from the Register	5 years
4.	Cash Book	5 years
5.	Account of forms and registers	3 years
6.	Register of Marriage	60 years

7. Issuance of Marriage Registration Certificate- The Registrar of Marriages on demand shall provide the Marriage Registration Certificate to the concerned person(s) on Form-III under his hand and seal.

8. Inspection of registers and obtaining certified copies thereof- (1) The register shall be open for inspection for all members of public. Any person desirous of inspecting the Register of Marriage may do so, on an application made in this behalf to the Registrar on payment of Rs. 10/-

(2) Any person desirous of obtaining certified copy of an extract of the Register of Marriage shall make an application therefore and pay to the Registrar a fee of Rs. 10/- for each copy.

9. Money how to be deposited- The revenue realized as fee shall be deposited in Government Treasury by the Registrar of Marriages under Receipt Head of Accounts "0235-00-800-03".

Form-I

Marriage Registration Register

[see rule 6(I)]

Register of Marriage for the year.....

Sr. No.	Date of Marriage & Place of Marriage	Name & Address of Husband	His age at the time of Marriage	Religion & caste of Husband
1	2	3	4	5
Name & Address of wife	Her age at the time of marriage	Religion & caste of wife	Date of Registration marriage	Remarks
6	7	8	9	10

Signature of Registrar of marriages with stamp.

Form-II

Marriage Registration Register

[see rule 3(I)(e)]

Annual Report under Marriage Registration Act to be sent to Government

Sr. No.	Name of District	Name of Tehsil	No. of marriages registered during the year	No. of registration refused	Reasons for refusal	Remarks
1	2	3	4	5	6	7

Signature of Chief Registrar of Marriages.

Form-III

Marriage Registration Certificate

[see rule 7]

Certified that Sh. S/o Sh.
R/o has been married to Smt...
..... r/o on(date)
at Village P.O Tehsil District
..... State..... and the said marriage has been registered on
..... under registration No

Issued under my hand and seal on

Signature of Chief Registrar of Marriages.

Form-IV

[see rule 4(3)]

Receipt Received a sum of Rs..... (in figures rupees)
..... (in words) on account of
fee for registration of marriage from Sh./ Smt. Son/daughter of
Sh. resident of Date
.....

Signature of Chief Registrar of Marriages.

By order,
Sd-Pr. Secretary (SJ&E),
to the Govt. of HP.

(Authoritative English Text of this Department Notification No. WLF-A (3) -1/97-III dated 05-01-2012 as required under clause (3) of Article 348 of the Constitution of India).

Government of Himachal Pradesh
Department of Social Justice & Empowerment

No. W.L.F.-A (3)-1/97-III,

Dated: Shimla-2, the 5th January, 2012.

NOTIFICATION

In supersession of this Department's Notification No. W.L.F.- A(3)-1/97-I, dated: 14-10-2004 and in exercise of the powers conferred by Section-3(1) of the Himachal Pradesh Registration of Marriages Act, 1996, the Governor, Himachal Pradesh is pleased to appoint Director of Women and Child Development, Himachal Pradesh as Chief Registrar of Marriages for the State.

In exercise of the powers conferred by Section-4(1) of the aforesaid Act, the Governor, Himachal Pradesh is also pleased to appoint Deputy Commissioner of the concerned District as "District Registrar of Marriages" and Sub Divisional Officer as "Additional Distt. Registrar of Marriages" for each Revenue Sub Division.

Future in exercise of the powers conferred by Section 5(1) of the aforesaid Act, the Governor, Himachal Pradesh is pleased to appoint the following as Registrar of Marriages, within the jurisdiction of Tehsil or Municipal Corporation or Municipal Council or Cantonment Board or Panchayat or a Local Authority:-

1. Joint Commissioner/Assistant Commissioner of Municipal Corporation.
2. Executive Officer, Municipal Council.
3. Secretary, Cantonment Board.
4. Secretary, Nagar Panchayat.
5. Secretary, Gram Panchayat.

The above Distt. Registrars of Marriage/Addl. Distt. Registrars of Marriages/Marriage Registrars will perform the functions as conferred on them by the aforesaid Act.

By Order

Principal Secretary (SJ&E) to the
Government of Himachal Pradesh.

Endst. No. As above-

Dated: Shimla-2, the 5th January, 2012.

Copy forwarded to :-

1. All the Secretary to the Govt. of Himachal Pradesh.
2. All the Heads of Departments, Himachal Pradesh.
3. All the Deputy Commissioner/Addl. Deputy Commissioner/Sub Divisional Magistrate/Tehsildar/Naib Tehsildar/Assistant Commissioner, Municipal Corporation/Secretary, Municipal Council/ Secretary, Cantonment Board/Secretary, Nagar Panchayat/Secretary, Gram Panchayat.
4. The Controller, Printing & Stationary, Himachal Pradesh, Shimla-5 for publication in Rajpatra.
5. Guard file.

-sd-

Deputy Secretary (SJ&E) to the
Government of Himachal Pradesh

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

—————
ARRANGEMENT OF SECTIONS
—————

**CHAPTER I
PRELIMINARY**

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1. Short title and extent.
2. Application of Act.
3. Definitions.
4. Overriding effect of Act.

**CHAPTER II
ADOPTION**

5. Adoptions to be regulated by this Chapter.
6. Requisites of a valid adoption.
7. Capacity of a male Hindu to take in adoption.
8. Capacity of a female Hindu to take in adoption.
9. Persons capable of giving in adoption.
10. Persons who may be adopted.
11. Other conditions for a valid adoption.
12. Effects of adoption.
13. Right of adoptive parents to dispose of their properties.
14. Determination of adoptive mother in certain cases.
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16. Presumption as to registered documents relating to adoptions.
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MAINTENANCE**

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19. Maintenance of widowed daughter-in-law.
20. Maintenance of children and aged parents.
21. Dependants defined.
22. Maintenance of dependants.
23. Amount of maintenance.
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THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

ACT NO. 78 OF 1956¹

[21st December, 1956.]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

**CHAPTER I
PRELIMINARY**

1. Short title and extent.—(1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956.

(2) It extends to the whole of India ^{2***}.

2. Application of Act.—(1) This Act applies—

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; ^{3* * *}
- ⁴[(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and]
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366

¹ This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and First Schedule.

This Act has been amended in U.P. Act 57 of 1976. This Act shall, from a date to be notified by the administrator, come into force in Pondicherry, subject to the following modification:

In section 2, after sub-section (2), insert:—

“(2A) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the renoncants of the Union territory of Pondicherry.”

² The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

³ The word “and” omitted by Act 45 of 1962, s. 2 (w.e.f. 19-11-1962). 4. Ins. by s. 2, ibid. (w.e.f. 19-11-1962).

⁴ Ins. by s. 2, ibid. (w.e.f. 19-11-1962).

of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family;

- (b) “maintenance” includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

- (c) “minor” means a person who has not completed his or her age of eighteen years.

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

- (e) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

- (f) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

CHAPTER II ADOPTION

5. Adoptions to be regulated by this Chapter.—(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. Requisites of a valid adoption.—No adoption shall be valid unless—

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to take on or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the word or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

¹**[8. Capacity of a female Hindu to take in adoption.**—Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

9. Persons capable of giving in adoption.—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

²[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

3* * * * *

⁴[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother; ⁵* * *

¹ Subs. by Act 30 of 2010, s. 3, for section 8 (w.e.f. 31-8-2010).

² Subs. by s. 3, *ibid.*, for sub-section (2) (w.e.f. 31-8-2010).

³ Sub-section (3) omitted by s. 3, *ibid.* (w.e.f. 31-8-2010).

⁴ Subs. by Act 45 of 1962, s. 3, for sub-section (4) (w.e.f. 29-11-1962).

⁵ The word “and” omitted by s. 3, *ibid.* (w.e.f. 29-11-1962).

¹[(*ia*) “guardian” means a person having the care of the person of a child or of both his person and property and includes—

- (a) a guardian appointed by the will of the child's father or mother, and
- (b) a guardian appointed or declared by a court; and]

(iii) “court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more persons;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth ²[or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption: Provided that the performance of dattahomam shall not be essential to the validity of an adoption.

12. Effects of adoption.—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

¹ Ins. by s. 3, *ibid.*(w.e.f. 29-11-1962).

² Ins. by Act 45 of 1962, s. 4 (w.e.f. 29-11-1962).

Provided that—

- (g) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (h) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- (i) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

13. Right of adoptive parents to dispose of their properties.—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will.

14. Determination of adoptive mother in certain cases.—(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where an adoption has been made with the consent of more than one wife, the senior most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

15. Valid adoption not to be cancelled.—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

16. Presumption as to registered documents relating to adoption.—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

17. Prohibition of certain payments.—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

CHAPTER III MAINTENANCE

18. Maintenance of wife.—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,—

- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;
- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
- (c) ¹* * * * *
- (d) if he has any other wife living;
- (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- (f) if he has ceased to be a Hindu by conversion to another religion;
- (g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

19. Maintenance of widowed daughter-in-law.—(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

- (a) from the estate of her husband or her father or mother, or
- (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.

20. Maintenance of children and aged parents.—(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

¹ Clause (c) omitted by Act 6 of 2019, s. 6 (w.e.f. 1-3-2019).

Explanation.—In this section “parent” includes a childless step-mother.

21. Dependants defined.—For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—

- (vii) his or her father;
- (viii) his or her mother;
- (ix) his widow, so long as she does not re-marry;
- (x) his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great-grandson, from the estate of his father or mother or father’s father or father’s mother;
- (xi) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father’s or mother’s estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father’s mother;
- (xii) his widowed daughter: provided and to the extent that she is unable to obtain maintenance—
 - (a) from the estate of her husband; or
 - (b) from her son or daughter if any, or his or her estate; or
 - (c) from her father-in-law or his father or the estate of either of them;
- (xiii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband’s estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson’s widow, also from her father-in-law’s estate;
- (xiv) his or her minor illegitimate son, so long as he remains a minor;
- (xv) his or her illegitimate daughter, so long as she remains unmarried.

22. Maintenance of dependants.—(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were

enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

23. Amount of maintenance.—(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged on infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu.—No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

25. Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

26. Debts to have priority.—Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

27. Maintenance when to be a charge.—A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

28. Effect of transfer of property on right to maintenance.—Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of

the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

CHAPTER IV REPEALS AND SAVINGS

29. [Repeals.]—Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-11-1960).

30. Savings.—Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title and extent.
2. Act to be supplemental to Act 8 of 1890.
3. Application of Act.
4. Definitions.
5. Over-riding effect of Act.
6. Natural guardians of a Hindu minor.
7. Natural guardianship of adopted son.
8. Powers of natural guardian.
9. Testamentary guardians and their powers.
10. Incapacity of minor to act as guardian of property.
11. De facto guardian not to deal with minor's property.
12. Guardian not to be appointed for minors undivided interest in joint family property.
13. Welfare of minor to be paramount consideration.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

ACT NO. 32 OF 1956

[25th August, 1956.]

An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

1. Short title and extent.—(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India ^{1***} and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Act to be supplemental to Act 8 of 1890.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890 (8 of 1890).

¹ The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

3. Application of Act.—(1) This Act applies,—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) to any person who is a Buddhist, Jain or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jains, or Sikhs by religion, as the case may be:—

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (iii) any person who is convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the members of any scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

¹[(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.]

(3) The expression “Hindu”, in any provision of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

4. Definitions.—In this Act,—

- (a) “minor” means a person who has not completed the age of eighteen years;
- (b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—
 - (i) a natural guardian,
 - (ii) a guardian appointed by the will of the minor’s father or mother,
 - (iii) a guardian appointed or declared by a court, and
 - (iv) a person empowered to act as such by or under any enactment relating to any Court of wards.
- (c) “natural guardian” means any of the guardians mentioned in section 6.

5. Over-riding effect of Act.—Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

¹ Ins. by Act 26 of 1968, s. 3(1) and the Schedule (w.e.f. 24-5-1968).

- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
- (c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

- (a) if he has ceased to be a Hindu, or
- (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expressions “father” and “mother” do not include a step-father and a step-mother.

7. Natural guardianship of adopted son.—The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

- (2) The natural guardian shall not, without the previous permission of the court,—
 - (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or
 - (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;
- (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and
- (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the Acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, “Court” means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers.—(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor’s guardian after the death of the minor’s father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

10. Incapacity of minor to act as guardian of property.—A minor shall be incompetent to act as guardian of the property of any minor.

11. De facto guardian not to deal with minor’s property.—After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.

12. Guardian not to be appointed for minors undivided interest in joint family property.— Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration.—(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969

ARRANGEMENT OF SECTIONS

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SECTIONS

1. Short title, extent and commencement.
2. Definitions and interpretation.

CHAPTER II REGISTRATION ESTABLISHMENT

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4. Chief Registrar.
5. Registration divisions.
6. District Registrar.
7. Registrars.

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8. Persons required to register births and deaths.
9. Special provisions regarding births and deaths in a plantation.
10. Duty of certain persons to notify births and deaths and to certify cause of death.
11. Informant to sign the register.
12. Extracts of registration entries to be given to informant.
13. Delayed registration of births and deaths.
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15. Correction or cancellation of entry in the register of births and deaths.

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17. Search of births and deaths register
18. Inspection of registration offices.
19. Registrars to send periodical returns to the Chief Registrar for compilation.

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20. Special provision as to registration of births and deaths of citizens outside India.
21. Power of Registrar to obtain information regarding birth or death.
22. Powers to give directions.
23. Penalties.
24. Power to compound offences.
25. Sanction for prosecution.
26. Registrars and Sub-Registrars to be deemed public servants.

27. Delegation of powers.
28. Protection of action taken in good faith.
29. Act not to be in derogation of Act 6 of 1886.
30. Power to make rules.
31. Repeal and saving.
32. Power to remove difficulty.

THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969 ACT NO. 18 OF 1969

[31st May, 1969.]

An Act to provide for the regulation of registration of births and deaths and for matters connected therewith.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Registration of Births and Deaths Act, 1969.

(2) It extends to the whole of India.

(3) It shall come into force in a State on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

¹ 1st October, 1970, vide notification No. G.S.R. 1718, dated 22nd, November, Gazette of India, Extraordinary, Part II, sec. 3(i) in the following areas of the State of Jammu and Kashmir:—

the area comprised within the jurisdiction of the Police Station of Ramnagar in Udhampur district.

the area comprised within the jurisdiction of the Police Station of Kupwara in Baramulla district.

the area comprised within the limits of the Municipalities of Jammu and Srinagar.

the area comprised within the limits of Town Area Committees of Anantnag, Kathua and Leh.

1st May, 1974 vide notification No. G.S.R. 379, dated 22-3-1974 in the Union territory of Mizoram.

1st January, 1971 vide notification No G.S.R. 1927, dated 21-11-1970, see Gazette of India, Extraordinary, Part II, sec. 3(i) in the Union territory of Goa, Daman and Diu.

1st January, 1971 vide notification No. G.S.R. 2027, dated 24-11-1970, see Gazette of India, Part II, sec. 3(i) in the Union territory of Manipur.

1st April, 1974, vide notification No. G.S.R. 106, dated 16-1-1971, see Gazette of India, Part II, sec. 3(i) in the Union territory of Andaman and Nicobar Islands.

1st October, 1971, in the whole of the State of Nagaland vide notification No. G.S.R. 1324, dated 30-8-1971, see Gazette of India, Part II, sec. 3(i), dated 11-9-1971.

1st July, 1972, in the Union territory of Arunachal Pradesh vide notification No. G.S.R. 552, dated 11-4-1972, see Gazette of India, Part II, sec. 3(i).

1st April, 1972, in the whole of State of Tripura vide notification No. G.S.R. 202(E), dated 17-3-1972, see Gazette of India, Extraordinary, Part II, sec. 3(i).

1st December, 1972 vide Notification No. G.S.R. 463(E), dated 21-11-1972, see Gazette of India, Extraordinary, Part II, sec. 3(i) also in the area comprised within the limits of cantonments of Barrackpore, Labong and Jalapahar in the State of West Bengal

1st July, 1970, vide notification No. G.S.R. 973, dated 26th June, 1972, extended to the Union territory of Delhi.

1st April, 1970, vide notification No. G.S.R. 514, dated 21st March, 1970, Gazette of India, sec. 3(i), in the areas of the State of

Assam except:—

(i) the district of United Khasi & Jaintia Hills excluding the areas comprised within the limits of:

Provided that different dates may be appointed for different parts of a State.

2. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—

- (a) “birth” means live-birth or still-birth;
- (b) “death” means the permanent disappearance of all evidence of life at any time after live-birth has taken place;
- (c) “foetal death” means absence of all evidence of life prior to the complete expulsion or extraction from its mother of a product of conception irrespective of the duration of pregnancy;
- (d) “live-birth” means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or show any other evidence of life, and each product of such birth is considered live-born;
- (e) “prescribed” means prescribed by rules made under this Act;
- (f) “State Government”, in relation to a Union territory, means the Administrator thereof;
- (g) “still-birth” means foetal death where a product of conception has attained at least the prescribed period of gestation.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II REGISTRATION ESTABLISHMENT

3. Registrar-General, India.—(1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Registrar-General, India.

-
- (a) Municipality of Shillong
 - (b) Contonment of Shillong
 - (ii) the entire district of Garo Hills
 - (iii) the entire district of United Mikir and North Cachar Hills
 - (iv) the entire district of Mizo Hills.

In the State of West Bengal except:

- (i) The area comprised within the limits of Corporation of Calcutta;
- (ii) the area comprised within the limits of Howrah Municipality;
- (iii) Fort Villiam; and
- (iv) the area comprised, within the limits of cantonments of Barrackpore, Labong and Jalapahar.

1st April, 1970, vide notification No. G.S.R. 461, dated 7th March, 1970, see Gazette of India, sec. 3(i), in the States and the Union territories:

- | STATES | |
|-------------------|--------------------|
| 1. Andhra Pradesh | 8. Mysore |
| 2. Bihar | 9. Orissa |
| 3. Gujrat | 10. Punjab |
| 4. Haryana | 11. Rajasthan |
| 5. Kerala | 12. Tamil Nadu |
| 6. Madhya Pradesh | 13. Uttar Pradesh. |
| 7. Maharashtra | |

UNION TERRITORIES.

- 1. Chandigarh
- 2. Dadra and Nagar Haveli
- 3. Himachal Pradesh
- 4. Laccadive, Minicoy and Amindivi Islands.

(2) The Central Government may also appoint such other officers with such designations as it thinks fit for the purpose of discharging under the superintendence and direction of the Registrar-General, such functions of the Registrar-General under this Act as he may, from time to time, authorise them to discharge.

(3) The Registrar-General may issue general directions regarding registration of births and deaths in the territories to which this Act extends, and shall take steps to co-ordinate and unify the activities of Chief Registrars in the matter of registration of births and deaths and submit to the Central Government an annual report on the working of this Act in the said territories.

4. Chief Registrar.—(1) The State Government may, by notification in the Official Gazette, appoint a Chief Registrar for the State.

(2) The State Government may also appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Chief Registrar, such of his functions as he may, from time to time, authorise them to discharge.

(3) The Chief Registrar shall be the chief executive authority in the State for carrying into execution the provisions of this Act and the rules and orders made thereunder subject to the directions, if any, given by the State Government.

(4) The Chief Registrar shall take steps, by the issue of suitable instructions or otherwise, to co-ordinate, unity and supervise the work of registration in the State for securing an efficient system of registration and shall prepare and submit to the State Government, in such manner and at such intervals as may be prescribed, a report on the working of this Act in the State along with the statistical report to in sub-section (2) of section 19.

5. Registration divisions.—The State Government may, by notification in the Official Gazette, divide the territory within the State into such registration divisions as it may think fit and prescribe different rules for different registration divisions.

6. District Registrar.—(1) The State Government may appoint a District Registrar for each revenue district and such number of Additional District Registrars as it thinks fit who shall, subject to the general control and direction of the District Registrar, discharge such functions of the District Registrar as the District Registrar may, from time to time, authorise them to discharge.

(2) The District Registrar shall superintend, subject to the direction of the Chief Registrar, the registration of births and deaths in the district and shall be responsible for carrying into execution in the district the provisions of this Act and the orders of the Chief Registrar issued from time to time for the purposes of this Act.

7. Registrars.—(1) The State Government may appoint a Registrar for each local area comprising the area within the jurisdiction of a municipality, panchayat or other local authority or any other area or a combination of any two or more of them: Provided that the State Government may appoint in the case of a municipality, panchayat, or other local authority, any officer or other employee thereof as a Registrar.

(2) Every Registrar shall, without fee or reward, enter in the register maintained for the purpose all information given to him under section 8 or section 9 and shall also take steps to inform himself carefully of every birth and of every death which takes place in his jurisdiction and to ascertain and register the particulars required to be registered.

(3) Every Registrar shall have an office in the local area for which he is appointed.

(4) Every Registrar shall attend his office for the purpose of registering births and deaths on such days and at such hours as the Chief Registrar may direct and shall cause to be placed in some conspicuous place on or near the outer door of the office of the Registrar a board bearing, in the local language, his name with the addition of Registrar of Births and Deaths for the local area for which he is appointed, and the days and hours of his attendance.

(5) The Registrar may, with the prior approval of the Chief Registrar, appoint Sub-Registrars and assign to them any or all of his powers and duties in relation to specified areas within his jurisdiction.

CHAPTER III REGISTRATION OF BIRTHS AND DEATHS

8. Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—

- (a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e) the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;
- (b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;
- (c) in respect of births and deaths in a jail, the jailor in charge;
- (d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;
- (e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;
- (f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause.

9. Special provision regarding births and deaths in a plantation.—In the case of births and deaths in a plantation, the superintendent of the plantation shall give or cause to be given to the Registrar the information referred to in section 8:

Provided that the persons referred to in clauses (a) to (f) of sub-section (1) of section 8 shall furnish the necessary particulars to the superintendent of the plantation.

Explanation.—In this section, the expression “plantation” means any land not less than four hectares in extent which is being prepared for the production of, or actually produces, tea, coffee, pepper, rubber, cardamom, cinchona or such other products as the State Government may, by notification in the Official Gazette, specify and the expression “superintendent of the plantation” means the person having the charge or supervision of the labourers and work in the plantation, whether called a manager, superintendent or by any other name.

10. Duty of certain persons to notify births and deaths and to certify cause of death.—
(1) It shall be the duty of—

- (i) the midwife or any other medical or health attendant at a birth or death,
- (ii) the keeper or the owner of a place set apart for the disposal of dead bodies or any person required by a local authority to be present at such place, or
- (iii) any other person whom the State Government may specify in this behalf by his designation, to notify every birth or death or both at which he or she attended or was present, or which occurred in such areas as may be prescribed, to the Registrar within such time and in such manner as may be prescribed.

(2) In any area, the State Government, having regard to the facilities available therein in this behalf, may require that a certificate as to the cause of death shall be obtained by the Registrar from such person and in such form as may be prescribed.

(3) Where the State Government has required under sub-section (2) that a certificate as to the cause of death shall be obtained, in the event of the death of any person who, during his last illness, was attended by a medical practitioner, the medical practitioner shall, after the death of that person, forthwith, issue without charging any fee, to the person required under this Act to give information concerning the death, a certificate in the prescribed form stating to the best of his knowledge and belief the cause of death; and the certificate shall be received and delivered by such person to the Registrar at the time of giving information concerning the death as required by this Act.

11. Informant to sign the register.—Every person who has orally given to the Registrar any information required under this Act shall write in the register maintained in this behalf, his name, description and place of abode, and, if he cannot write, shall put his thumb mark in the register against his name, description and place of abode, the particulars being in such a case entered by the Registrar.

12. Extracts of registration entries to be given to informant.—The Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information under section 8 or section 9 and extract of the prescribed particulars under his hand from the register relating to such birth or death.

13. Delayed registration of births and deaths.—(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefore, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.

14. Registration of name of child.—Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the Registrar either orally or in writing and thereupon the Registrar shall enter such name in the register and initial and date the entry.

15. Correction or cancellation of entry in the register of births and deaths.—If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.

CHAPTER IV MAINTENANCE OF RECORDS AND STATISTICS

16. Registrars to keep registers in the prescribed form.—(1) Every Registrar shall keep in the prescribed form a register of births and deaths for the registration area or any part thereof in relation to which he exercises jurisdiction.

(2) The Chief Registrar shall cause to be printed and supplied a sufficient number of register books for making entries of births and deaths according to such forms and instructions as may, from time to time, be prescribed; and a copy of such forms in the local language shall be posted in some conspicuous place on or near the outer door of the office of every Registrar.

17. Search of births and deaths register.—(1) Subject to any rules made in this behalf by the State Government, including rules relating to the payment of fees and postal charges, any person may—

- (a) cause a search to be made by the Registrar for any entry in a register of births and deaths; and
- (b) obtain an extract from such register relating to any birth or death:

Provided that no extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the register.

(2) All extracts given under this section shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872), and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

18. Inspection of registration offices.—The registration offices shall be inspected and the registers kept therein shall be examined in such manner and by such authority as may be specified by the District Registrar.

19. Registrars to send periodical returns to the Chief Registrar for compilation.—(1) Every Registrar shall send to the Chief Registrar or to any officer specified by him, at such intervals and in such form as may be prescribed, a return regarding the entries of births and deaths in the register kept by such Registrar.

(2) The Chief Registrar shall cause the information in the returns furnished by the Registrars to be compiled and shall publish for the information of the public a statistical report on the registered births and deaths during the year at such intervals and in such form as may be prescribed.

CHAPTER V MISCELLANEOUS

20. Special provision as to registration of births and deaths of citizens outside India.—(1) The Registrar-General shall, subject to such rules as may be made by the Central Government in this behalf, cause to be registered information as to births and deaths of citizens of India outside India received by him under the rules relating to the registration of such citizens at Indian Consulates made under the Citizenship Act, 1955 (57 of 1955), and every such registration shall also be deemed to have been duly made under this Act.

(2) In the case of any child born outside India in respect of whom information has not been received as provided in sub-section (1), if the parents of the child return to India with a view to settling therein, they may, at any time within sixty days from the date of the arrival of the child in India, get the birth of the child registered under this Act in the same manner as if the child was born in India and the provisions of section 13 shall apply to the birth of such child after the expiry of the period of sixty days aforesaid.

21. Power of Registrar to obtain information regarding birth or death.—The Registrar may either orally or in writing require any person to furnish any information within his knowledge in connection with a birth or death in the locality within which such person resides and that person shall be bound to comply with such requisition.

22. Powers to give directions.—The Central Government may give such directions to any State Government as may appear to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made thereunder.

23. Penalties.—(1) Any person who—

- (a) fails without reasonable cause to give any information which it is his duty to give under any of the provisions of sections 8 and 9; or
- (b) gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered; or

- (c) refuses to write his name, description and place of abode or to put his thumb mark in the register as required by section 11, shall be punishable with fine which may extend to fifty rupees.

(2) Any Registrar or Sub-Registrar who neglects or refuses, without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any returns as required by sub-section (1) of section 19 shall be punishable with fine which may extend to fifty rupees.

(3) Any medical practitioner who neglects or refuses to issue a certificate under sub-section (3) of section 10 and any person who neglects or refuses to deliver such certificate shall be punishable with fine which may extend to fifty rupees.

(4) Any person who, without reasonable cause, contravenes any provision of this Act for the contravention of which no penalty is provided for in this section shall be punishable with fine which may extend to ten rupees.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this section shall be tried summarily by a magistrate.

24. Power to compound offences.—(1) Subject to such conditions as may be prescribed, any officer authorised by the Chief Registrar by a general or special order in this behalf may, either before or after the institution of criminal proceedings under this Act, accept from the person who has committed or is reasonably suspected of having committed an offence under this Act, by way of composition of such offence a sum of money not exceeding fifty rupees.

(2) On the payment of such sum of money, such person shall be discharged and no further proceedings shall be taken against him in respect of such offence.

25. Sanction for prosecution.—No prosecution for an offence punishable under this Act shall be instituted except by an officer authorised by the Chief Registrar by general or special order in this behalf.

26. Registrars and Sub-Registrars to be deemed public servants.—All Registrars and Sub-Registrars shall, while acting or purporting to act in pursuance of the provisions of this Act or any rule or order made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

27. Delegation of powers.—The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act (except the power to make rules under section 30) or the rules made thereunder shall, subject to such conditions, if any, as may be specified in the direction, be exercisable, also by such officer or authority subordinate to the State Government as may be specified in the direction.

28. Protection of action taken in good faith.— (1) No suit, prosecution or other legal proceeding shall lie against the Government, the Registrar-General, any Registrar, or any person exercising any power or performing any duty under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance, of this Act or any rule or order made thereunder.

29. Act not to be in derogation of Act 6 of 1886.— Nothing in this Act shall be construed to be in derogation of the provisions of the Births, Deaths and Marriages Registration Act, 1886.

30. Power to make rules.— (1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

- (a) the forms of registers of births and deaths required to be kept under this Act;
- (b) the period within which and the form and the manner in which information should be given to the registrar under section 8;
- (c) the period within which and the manner in which births and deaths shall be notified under sub-section (1) of section 10;
- (d) the person from whom and the form in which a certificate as to cause of death shall be obtained;
- (e) the particulars of which extract may be given under section 12;
- (f) the authority which may grant permission for registration of a birth or death under sub-section (2) of section 13;
- (g) the fees payable for registration made under section 13;
- (h) the submission of reports by the Chief Registrar under sub-section (4) of section 4;
- (i) the search of birth and death registers and the fees payable for such search and for the grant of extracts from the registers;
- (j) the forms in which and the intervals at which the returns and the statistical report under section 19 shall be furnished and published;
- (k) the custody, production and transfer of the registers and other records kept by Registrars;
- (l) the correction of errors and the cancellation of entries in the register of births and deaths;
- (m) any other matter which has to be, or may be, prescribed.

¹[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

31. Repeal and saving.— (1) Subject to the provisions of section 29, as from the coming into force of this Act in any State or part thereof, so much of any law in force therein as relates to the matters covered by this Act shall stand repealed in such State or part, as the case may be.

(2) Notwithstanding such repeal, anything done or any action taken (including any instruction or direction issued, any regulation or rule or order made) under any such law shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions aforesaid, as if they were in force when such thing was done or such action was taken, and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

32. Power to remove difficulty.— If any difficulty arises in giving effect in a State to the provisions of this Act in their application to any area, the State Government may, with the approval of the Central Government, by order make such provisions or give such directions not inconsistent

¹ Ins. by Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986).

with the provisions of this Act as appears to the State Government to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section in relation to any area in a State after the expiration of two years from the date on which this Act comes into force in that area.

- **THE INDIAN FOREST ACT, 1927**
- **THE INDIAN FOREST (HIMACHAL PRADESH AMENDMENT) ACT, 1968**
- **THE HIMACHAL PRADESH FOREST (SETTLEMENT) RULES, 1965**
- **THE FOREST (CONSERVATION) ACT, 1980**
- **THE FOREST (CONSERVATION) RULES, 2022**
- **THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**
- **THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) RULES, 2007**
- **THE HIMACHAL PRADESH FOREST PRODUCE (REGULATION OF TRADE) ACT, 1982**
- **THE HIMACHAL PRADESH LAND PRESERVATION ACT, 1978**
- **THE HIMACHAL PRADESH LAND PRESERVATION RULES, 1983**

THE INDIAN FOREST ACT, 1927

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THE INDIAN FOREST ACT, 1927

ACT NO. 16 OF 1927

[21st September, 1927.]

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce; It is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Short title and extent.— (1) This Act may be called the Indian Forest Act, 1927.

¹[(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the Official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force.]

2. Interpretation clause.— In this Act, unless there is anything repugnant in the subject or context, —

(1) “cattle” includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) “Forest-officer” means any person whom ^{2***} the ³[State Government] or any officer empowered by ^{2***} the ³[State Government] in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;

(3) “forest-offence” means an offence punishable under this Act or under any rule made thereunder;

(4) “forest-produce” includes—

(a) the following whether found in, or brought from, a forest or not, that is to say:—
timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds ⁴[, kuth] and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say:—

- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

¹ Subs. by the A.O. (No. 3) 1956, for sub-sections (2) and (3).

² The words “the G.G. in C. or” rep. by the A.O. 1937.

³ Subs. by the A.O. 1950, for “Provincial Government”.

⁴ Ins. by Act 26 of 1930, s. 2.

- (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);

¹[(4A) “owner” includes a Court of Wards in respect of property under the superintendence or charge of such Court;]

(5) “river” includes any stream, canal, creek or other channels, natural or artificial;

(6) “timber” includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and

(7) “tree” includes palms, ²***, stumps, brush-wood and canes.

CHAPTER II OF RESERVED FORESTS

3. Power to reserve forests.—The ³[State Government] may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by ³[State Government].—(1) Whenever it has been decided to constitute any land a reserved forest, the ³[State Government] shall issue a notification in the ⁴[Official Gazette]—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called “the Forest Settlement-officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the ³[State Government] from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

5. Bar of accrual of forest-rights.—After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some

¹ Ins. by Act 3 of 1932. S.2

² The word “bamboos” omitted by Act 5 of 2018

³ Subs. by the A.O. 1950, for “Provincial Government”.

⁴ Subs. by the A.O. 1937, for “Local Official Gazette”.

person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the ¹[State Government] in this behalf.

6. Proclamation by Forest Settlement-officer.—When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. Inquiry by Forest Settlement-officer.—The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement-officer.—For the purpose of such inquiry, the Forest Settlement officer may exercise the following powers, that is to say:—

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under section 6 and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

10. Treatment of claims relating to practice of shifting cultivation.—(1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the ¹[State Government] may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

¹ Subs. by the A.O. 1950, for “Provincial Government”.

- (b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the ¹[State Government].

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the ¹[State Government].

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right-of-way or right of pasture, or a right to forest-produce or a watercourse, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

- (2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—
 - (i) exclude such land from the limits of the proposed forest; or
 - (ii) come to an agreement with the owner thereof for the surrender of his rights; or
 - (iii) (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894(1 of 1894).

- (3) For the purpose of so acquiring such land—
 - (a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894).
 - (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
 - (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
 - (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

12. Order on claims to rights of pasture or to forest produce.—In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

13. Record to be made by Forest Settlement-officer.—The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,—

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where he admits claim.— If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

¹ Subs. by the A.O. 1950, for "Provincial Government".

15. Exercise of rights admitted.— (1) After making such record the Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement-officer may— (a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the ¹[State Government].

16. Commutation of rights.— In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the ¹[State Government] may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

17. Appeal from order passed under section 11, section 12, section 15 or section 16.— Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the ¹[State Government] in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the ¹[State Government] may, by notification in the ²[Official Gazette], appoint to hear appeals from such orders:

Provided that the ¹[State Government] may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and, when the Forest Court has been so established, all such appeals shall be presented to it.

18. Appeal under section 17.— (1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties and shall hear such appeal accordingly.

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² Subs. by the A.O. 1937, for “Local Official Gazette”.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the ¹[State Government], be final.

19. Pleadings.— The ¹[State Government], or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

20. Notification declaring forest reserved.— (1) When the following events have occurred, namely:—

- (a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement-officer;
- (b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and
- (c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11 elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act.

the ¹[State Government] shall publish a notification in the ²[Official Gazette], specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

21. Publication of translation of such notification in neighbourhood of forest.— The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under section 15 or section 18.— The ¹[State Government] may, within five years from the publication of any notification under section 20 revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings, specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

23. No right acquired over reserved forest, except as here provided.— No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the ³[Government] or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction.— (1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the ⁴[State Government]:

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² Subs. by the A.O. 1937, for “Local Official Gazette”.

³ Subs. the A.O. 1950, for “Crown”.

⁴ Subs. by the A.O. 1950, for “Provincial Government”.

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. Power to stop ways and watercourses in reserved forests.— The Forest-officer may, with the previous sanction of the ¹[State Government] or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the ¹[State Government] deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

26. Acts prohibited in such forests.—(1) Any person who—

- (a) makes any fresh clearing prohibited by section 5, or
 - (b) sets fire to a reserved forest, or, in contravention of any rules made by the ¹[State Government] in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;
- or who, in a reserved forest—
- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;
 - (d) trespasses or pastures cattle, or permits cattle to trespass;
 - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
 - (f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;
 - (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
 - (h) clears or breaks up any land for cultivation or any other purpose;
 - (i) in contravention of any rules made in this behalf by the ¹[State Government] hunts, shoots, fishes, poisons water or sets traps or snares; or
 - (j) in any area in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

- (a) any act done by permission in writing of the Forest-officer, or under any rule made by the ¹[State Government]; or
- (b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the ¹[State Government] may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

¹ Subs. by the A.O. 1950, for "Provincial Government".

27. Power to declare forest no longer reserved.—(1) The ¹[State Government] may, ^{2***} by notification in the ³[Official Gazette], direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III OF VILLAGE-FORESTS

28. Formation of village-forests.—(1) The ¹[State Government] may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The ¹[State Government] may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

CHAPTER IV OF PROTECTED FORESTS

29. Protected forests.—(1) The ¹[State Government] may, by notification in the ³[Official Gazette], declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a “protected forests”.

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the ¹[State Government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the ¹[State Government] thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the ¹[State Government] may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

30. Power to issue notification reserving trees, etc.—The ¹[State Government] may, by notification in the ²[Official Gazette],—

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² The words “subject to the control of the G.G. in C.” rep. by the A.O. 1937

³ Subs., *ibid*, for “Local Official Gazette”.

- (a) declare any trees or class of trees in a protected forests to be reserved from a date fixed by the notification;
- (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the ¹[State Government] thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

31. Publication of translation of such notification in neighbourhood.—The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forests comprised in the notification.

32. Power to make rules for protected forests.—The ¹[State Government] may make rules to regulate the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons;
- (c) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber laying in such forests and of trees reserved under section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants Preservation Act, 1879 (6 of 1879), is not in force;
- (k) the protection and management of any portion of a forest closed under section 30; and
- (l) the exercise of rights referred to in section 29.

33. Penalties for acts in contravention of notification under section 30 or of rules under section 32.— (1) Any person who commits any of the following offences, namely:—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

¹ Subs. by the A.O. 1950, for “Provincial Government”.

- (b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;
- (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;
- (e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (g) permits cattle to damage any such tree;
- (h) infringes any rule made under section 32;

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

34. Nothing in this Chapter to prohibit acts done in certain cases.—Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

35. Protection of forests for special purposes.— (1) The ¹[State Government] may, by notification in the ²[Official Gazette], regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes:—
 - (i) for protection against storms, winds, rolling stones, floods and avalanches;
 - (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
 - (iii) for the maintenance of a water-supply in springs, rivers and tanks;
 - (iv) for the protection of roads, bridges, railways and other lines of communication;
 - (v) for the preservation of the public health.

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² Subs., *ibid*, for “Local Official Gazette”.

(2) The ¹[State Government] may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the ¹[State Government].

36. Power to assume management of forests.— (1) In case of neglect of, or willful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the ¹[State Government] may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

37. Expropriation of forests in certain cases.—(1) In any case under this Chapter in which the ¹[State Government] considers that, in lieu of placing the forest or land under the control of a Forest officer, the same should be acquired for public purposes, the ¹[State Government] may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the ¹[State Government] shall acquire such forest or land accordingly.

38. Protection of forests at request of owners.—(1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

- (a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the ¹[State Government] may, by notification in the ²[Official Gazette], apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER VI

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

39. Power to impose duty on timber and other forest-produce.— (1) The ³[Central Government] may levy a duty in such manner, at such places and at such rates as it may declare by notification in the ⁴[Official Gazette] on all timber or other forest-produce—

¹ Subs. by the A.O. 1950, for "Provincial Government".

² Subs., *ibid*, for "Local Official Gazette".

³ Subs. by the A.O. 1937, for "L.G.".

⁴ Subs. by the A.O. 1937, for "Local Official Gazette".

- (a) which is produced in ¹[the territories to which this Act extends], and in respect of which the ²[Government] has any right;
- (b) Which is brought from any place outside ³[the territories to which this Act extends]:
- ^{3*} * * *

(2) In every case in which such duty is directed to be levied ad valorem, the ¹[Central Government] may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the ⁴[State Government], shall be deemed to be and to have been duly levied under the provisions of this Act.

⁵[(4) Notwithstanding anything in this section, the ⁶[State Government] may, until provision to the contrary is made by ⁶[Parliament], continue to levy any duty which it was lawfully levying before the commencement⁹ of ⁷[the Constitution], under this section as then in force:

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the ⁸[State] and similar produce of the locality outside the ¹⁰[State] discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the ¹⁰[State], discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.]

40. Limit not to apply to purchase money or royalty.— Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

41. Power to make rules to regulate transit of forest produce.— (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the ⁶[State Government], and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within ⁹[the State];
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefore;

¹ Subs. by the A.O. (No. 3) 1956, for “Part A States and Part C States”.

² Subs. by the A.O. 1950, for “Crown”.

³ The Proviso rep. by the A.O. 1937.

⁴ Subs. by the A.O. 1950, for “Provincial Government”.

⁵ Ins. by the A.O. 1937.

⁶ That is, 26th January, 1950.

⁷ Subs. by the A.O. 1950, for the “Part III of the Government of India Act, 1935”.

⁸ Subs. *ibid.*, for “Province”.

⁹ Subs. by the A.O. 1937, for “British India”.

- (d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to the ¹[Government] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.]

²[41A. Powers of Central Government as to movements of timber across customs frontiers.— Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from ³[the territories to which this Act extends] across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section.]

42. Penalty for breach of rules made under section 41.— (1) The ⁴[State Government] may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. Government and Forest-officers not liable for damage to forest-produce at depot. — The ¹[Government] shall not be responsible for any loss or damage which may occur in respect

¹ Subs. by the A.O. 1950, for “Crown”.

² Ins. by the A.O. 1937.

³ Subs. by the A. O. (No. 3) 1956, for “Part A States and Part C States”.

⁴ Subs. by the A.O. 1950, for “Provincial Government”.

of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

44. All persons bound to aid in case of accident at depot.— In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the ¹[Government] or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.— (1) All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise;

and in such areas as the ¹[State Government] directs, all unmarked wood and timber; shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The ²[State Government] may, by notification in the ²[Official Gazette], exempt any class of timber from the provisions of this section.

46. Notice to claimants of drift timber.— Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. Procedure on claim preferred to such timber.— (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and, retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him;

¹ Subs. by the A.O. 1950, for "Provincial Government".

² Subs. by the A.O. 1937, for "Local Official Gazette".

but no person shall recover any compensation or costs against the ¹[Government], or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. Disposal of unclaimed timber.— If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the ¹[Government], or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him.

49. Government and its officers not liable for damage to such timber.— The ¹[Government] shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. Payments to be made by claimant before timber is delivered to him.— No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive if such sum on account thereof as may be due under any rule made under section 51.

51. Power to make rules and prescribe penalties.— (1) The State Government ²[may, by notification in the Official Gazette, make rules] to regulate the following matters, namely:—

- (a) the salving, collection and disposal of all timber mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for marking such timber. ³[(1A) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

(2) The ⁴[State Government] may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER IX PENALTIES AND PROCEDURE

52. Seizure of property liable to confiscation.— (1) When there is reason to believe that a forest offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, maybe seized by any Forest-officer or Police-officer.

¹ Subs. by the A.O. 1950, for “Crown”.

² Subs. by Act 4 of 2005, s. 2 and the Schedule, for “may make rules”.

³ Ins. by s. 2 and the Schedule, *ibid*.

⁴ Subs. by the A.O. 1950, for “Provincial Government”.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Power to release property seized under section 52.— Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

54. Procedure thereupon.— Upon the receipt of any such report, the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

55. Forest-produce, tools, etc., when liable to confiscation.— (1) All timber or forest-produce which is not the property of ¹[Government] and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

56. Disposal on conclusion of trial for forest-offence, of produce in respect of which it was committed.— When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of ²[Government] or has been confiscated, be taken charge of by a Forest-officer, and, in any other case, may be disposed of in such manner as the Court may direct.

57. Procedure when offender not known or cannot be found.— When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest officer or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

58. Procedure as to perishable property seized under section 52.— The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

¹ Subs. by the A.O. 1950, for "Crown".

59. Appeal from orders under section 55, section 56 or section 57.— The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

60. Property when to vest in ¹[Government].— When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the ¹[Government] free from all incumbrances.

61. Saving of power to release property seized.—Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the ²[State Government] from directing at any time the immediate release of any property seized under section 52.

62. Punishment for wrongful seizure.—Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.— Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code (45 of 1860),—

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the ¹[Government] or of some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or (c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

64. Power to arrest without warrant.— (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police-station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

¹ Subs. by the A.O. 1950, for “Crown”.

² Subs. by the A.O. 1950, for “Provincial Government”.

65. Power to release on a bond a person arrested.— Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

66. Power to prevent commission of offence.— Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

67. Power to try offences summarily.— The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the ¹[State Government] may try summarily, under the Code of Criminal Procedure, 1898 (5 of 1898), any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

68. Power to compound offences.— (1) The ¹[State Government] may, by notification in the ²[Official Gazette], empower a Forest officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of subsection (1) shall in no case exceed the sum of fifty rupees.

69. Presumption that forest-produce belongs to ³ [Government].—When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the ³[Government], such produce shall be presumed to be the property of the ³[Government] until the contrary is proved.

CHAPTER X CATTLE-TRESPASS

70. Cattle-trespass Act, 1871, to apply.— Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871 (1 of 1871), and may be seized and impounded as such by any Forest-officer or Police-officer.

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² Subs. by the A.O. 1937, for “Local Official Gazette”.

³ Subs. by the A.O. 1950, for “Crown”.

71. Power to alter fines fixed under that Act.—The ¹[State Government] may, by notification in the ²[Official Gazette], direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding the following, that is to say:—

For each elephant ten rupees. For each buffalo or camel two rupees. For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer-one rupee. For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid eight annas

CHAPTER XI OF FOREST-OFFICERS

72. State Government may invest Forest-officers with certain powers.— (1) The ²[State Government] may invest any Forest-officer with all or any of the following powers, that is to say:—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898); and
- (d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

73. Forest-officers deemed public servants.— All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

74. Indemnity for acts done in good faith.— No suit shall lie against any public servant for anything done by him in good faith under this Act.

75. Forest-officers not to trade.— Except with the permission in writing of the ³[State Government], no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease or any forest or in any contract for working any forest, whether in or outside ⁴[the territories to which this Act extends].

CHAPTER XII SUBSIDIARY RULES

76. Additional powers to make rules.— The ¹[State Government] may make rules—

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

¹ Subs. by the A.O. 1950, for “Provincial Government”.

² Subs. by the A.O. 1937, for “Local Official Gazette”.

³ Subs. by the A.O. 1950, for “Provincial Government”.

⁴ Subs. by the A.O. (No. 3) 1956, for “Part A States and Part C States”.

- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally, to carry out the provisions of this Act.

77. Penalties for breach of rules.— Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

78. Rules when to have force of law.— All rules made by the ¹[State Government] under this Act shall be published in the ¹[Official Gazette], and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

CHAPTER XIII MISCELLANEOUS

79. Persons bound to assist Forest-officers and Police-officers.— (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and every person in any village contiguous to such forest who is employed by the ²[Government], or who receives emoluments from the ²[Government] for services to be performed to the community, shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forthwith take steps, whether so required by any Forest-officer or Police officer or not,—

- (a) to extinguish any forest fire in such forest of which he has knowledge or information;
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest, and shall assist any Forest-officer or Police-officer demanding his aid—
- (c) in preventing the commission in such forest of any forest-offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

- (a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);
- (b) to take steps as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;
- (c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or
- (d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

¹ Subs. by the A.O. 1937, for “Local Official Gazette”.

² Subs. by the A.O. 1950, for “Crown”.

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

80. Management of forests the joint property of ¹[Government] and other persons.—

(1) If the ¹[Government] and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the ²[State Government] may either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the ²[State Government] undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the ³[Official Gazette] , declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

81. Failure to perform service for which a share in produce of ¹[Government] forest is employed.— If any person be entitled to a share in the produce of any forest which is the property of ¹[Government] or over which the ¹[Government] has proprietary rights or to any part of the forest produce of which the Government is entitled upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the ²[State Government] that such service is no longer so performed:

Provided that no such share be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the ²[State Government] .

82. Recovery of money due to Government.— All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

83. Lien on forest-produce for such money.— (1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to ¹[Government].

84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.— Whenever it appears to the State Government that any

¹ Subs. by the A.O. 1950, for "Crown".

² Subs. by the A.O. 1950, for "Provincial Government".

³ Subs. by the A.O. 1937, for "Local Official Gazette".

land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

85. Recovery of penalties due under bond.— When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of land-revenue.

¹**[85A. Saving for rights of Central Government.**— Nothing in this Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.]

86. [Repeals].— Rep. by the Repealing and Amending Act, 1948 (2 of 1948), s. 2 and the Schedule.

THE SCHEDULE.—[Enactments repealed.] Rep. by s. 2 and the Schedule, *ibid.*

¹ Subs. by the A.O. 1950, for section 85A. Earlier it was inserted by the A.O. 1937.

**HIMACHAL PRADESH GOVERNMENT
(FOREST DEPARTMENT)**

NOTIFICATION

No. Ft. 29-241-BB/49

Dated Simla-4, the 25th February, 1952

In exercise of the powers conferred by section 29 of the Indian Forest Act, (XVI of 1927) as applied to Himachal Pradesh, read with the Government of India, Ministry of States Notification No. 146-J dated the 6th December, 1950, the Chief Commissioner, Himachal Pradesh is pleased to declare the provisions of Chapter IV of the Act *which are the property of Govt. or over which the Government had proprietary rights or to the whole or any part of the produce of which the Government is entitled as recorded in the Forest Settlements or land revenue settlements or land revenue records of the integrated states, or otherwise, except to the following areas:-

*Applicable to all forest lands or waste lands in Himachal Pradesh.

1. Rantu Saliana, Chambi Kupar, Kalala and Temru of Kotkhai ilaqa and Nagkelu of Kotgarh ilaqa declared as reserved forests in the Punjab Govt. Notification No. 175 dated 15th April, 1885;
2. Chamba State forests declared reserved forests vide Chamba Darbar's Notification No. W-76-43, dated the 10th Nov., 1945.

Sirmur State Forests declared reserved forests Sirmur Darbar's Notification:-

- | | |
|--|---------|
| 1. No. 1 dated the 17 th Jaith, 1968 | Bikrami |
| 2. No. 2 dated the 23 rd Chait, 1991 | -do- |
| 3. No. 14 dated the 17 th Sawan, 1990 | -do- |
| 4. No. 38 dated the 27.12.1992 | -do- |
| 5. No. nil dated 1 st Chait, 1937 | -do- |
| 6. No. nil dated 1 st chair 1947 | -do- |
| 7. No. II dated 2 nd Poh, 1949 | -do- |
| 8. No. I dated 17 th Jaith, 1952 | -do- |
| 9. No. nil dated 11 th Bhadon 1992 | -do- |

3. This notification applies to all lands in old Mandi State containing the growth except such lands have been excluded in the forest settlement as cultivated or as in the Malguzari of a private person.

By order

Sd/-

C.C.F. and Secretary (Forest Department)
to the Commissioner, H.P., Administration.

Dated Simla-4, the February, 1952.

No. Ft. 29-241-BB/49

Copy forwarded to:-

1. All Deputy Commissioners in Himachal Pradesh.
2. All Conservator of Forest in Himachal Pradesh.
3. All Divisional Forest Officers in Himachal Pradesh.
4. The Manager, Government of India Press, Simla for favour of publication in part III section 3 of Govt. of India Gazette.

Sd/-

C.C.F. and Secretary (Forest Department)
to the Commissioner, H.P., Administration.

**HIMACHAL PRADESH GOVERNMENT
(FOREST DEPARTMENT)**

NOTIFICATION

No. Ft. 29-241-BC/49.

Dated Shimla-4, the 25th February, 1952

In exercise of the powers conferred by section 30 (a) of the Indian Forest Act, (XVI of 1927) as applied to Himachal Pradesh, read with the Government of India, Ministry of States Notification No. 146-J dated the 6th December, 1950, the Chief Commissioner, Himachal Pradesh is pleased to declare all trees to be reserved in the forests declared protected by Himachal Pradesh Government Notification No. No. Ft. 29-241-BC/49 Dated Shimla-4, the 25th February, 1952.

By order
C.C.F. and Secretary (Forest Department)
to the Chief Commissioner, H.P.

No. Ft. 29-241-BB/49

Dated Simla-4, the February, 1952.

Copy forwarded to:-

1. All Deputy Commissioners in Himachal Pradesh.
2. All Conservator of Forest in Himachal Pradesh.
3. All Divisional Forest Officers in Himachal Pradesh for information.
4. The Manager, Government of India Press, Simla for favour of publication in Part III Section 3 of Govt. of India Gazette.

C.C.F. and Secretary (Forest Department)
to the Chief Commissioner, H.P.

**GOVERNMENT OF HIMACHAL PRADESH
DEPARTMENT OF FOREST.**

No. FFE-B(F)-8-76/96-Loose-

Dated Shimla-2, the 24th August, 98

NOTIFICATION

In continuation of this Department Notification No. Ft.29-241-BB/49- dated 25th February, 1952 the Governor, Himachal Pradesh is pleased to clarify that areas classified as “gair mumkin” and “charagah bila drakhtan” in the revenue records are not included in ‘Waste Lands’ for the purpose of this notification dated 25th February, 1952.

By order
Commissioner-cum-Secy(Forests) to the
Government of Himachal Pradesh.

Endst. No. FFE-B-(F)-8-76/96-Loose

Dated Simla-2, the 24th August. 1998.

Copy forwarded to:-

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-171002.
2. All the Divisional Commissioners in H.P.
3. All the Head of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.
5. The Controller, H.P. Printing and Stationary Department, H.P. Shimla-5 for publication in the Rajpatra (Extra-ordinary).
6. Guard File.

Sd/-
C.C.F. and Secretary (Forest Department)
to the Chief Commissioner, H.P.

GOVERNMENT OF HIMACHAL PRADESH
Forest Department.

...

No. FFE-B(F)-8-76/96-Loose

Dated Shimla-2, the 5th December, 1998.

NOTIFICATION

In continuation of this Department Notification No. FFE-B(F)-8-76/96-Loose dated 24th August, 1998 the Governor, Himachal Pradesh is pleased to clarify that areas classified as “Na Kabal Charand” in the revenue records of Sirmour District are not included in “Waste Lands” for the purpose of Notification No. Ft.29-241-BB/49 dated 25th February, 1952.

By order

Commissioner-cum-Secy(Forests) to the
Government of Himachal Pradesh.

Endst. No. FFE-B-(F)-8-76/96-Loose
Copy forwarded to:-

Dated Simla-2, the 5th December, 1998.

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-171002.
2. All the Divisional Commissioners in H.P.
3. All the Head of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.
5. The Controller, H.P. Printing and Stationary Department, H.P. Shimla-5 for publication in the Rajpatra (Extra-ordinary).
6. Guard File.

Sd/-

C.C.F. and Secretary (Forest Department)
to the Chief Commissioner, H.P.

**GOVERNMENT OF HIMACHAL PRADESH
DEPARTMENT OF FOREST.**

No. FFE-B(F)-8-76/96-Loose

Dated :9th September, 2003.

NOTIFICATION

In exercise of the powers conferred by Section 29 of the Indian Forest Act, 1927 read with Section 21 of the General Clauses Act, 1897 the Governor, Himachal Pradesh is pleased to rescind the notification No. No. FFE-B(F)-8-76/96-Loose dated 24th August, 1998 and No. FFE-B(F)-8-76/96-Loose dated 5th December, 1998 with immediate effect.

By order
Principal Secretary(Forests) to the
Government of Himachal Pradesh.

Endst. No. FFE-B-(F)-8-76/96-Loose

Dated Simla-2, the 9th September, 2003.

Copy forwarded to:-

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-171002.
2. All the Divisional Commissioners in H.P.
3. All the Head of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.
5. The Controller, H.P. Printing and Stationary Department, H.P. Shimla-5 for publication in the Rajpatra (Extra-ordinary).
6. Guard File.

Sd/-
Principal Secretary (Forest Department)
to the Chief Commissioner, H.P.

THE INDIAN FOREST (HIMACHAL PRADESH AMENDMENT) ACT, 1968

ARRANGEMENT OF SECTIONS

Sections:

1. Short title and extent.
2. Amendment of section 1.
3. Amendment of section 38.
4. Amendment of sections 52, 53 and 55.
5. Substitution of section 82.
6. Insertion of new section 84-A.
7. Repeal and Savings.

THE INDIAN FOREST (HIMACHAL PRADESH AMENDMENT) ACT, 1968

(ACT NO. 25 OF 1968)¹

(Received the assent of the President on the 13th December, 1968 and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 17th February, 1969, pp. 131-135).

An Act to amend the Indian Forest Act, 1927 (Central Act 16 of 1927) in its application to Himachal Pradesh.

Amended, repealed or otherwise affected by-

The Himachal Pradesh Adoption of Laws (State and Concurrent Subjects) Order, 1973, published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 20th January, 1973, pp. 91- 112.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:-

1. Short title and extent.- (1) This Act may be called the Indian Forest (Himachal Pradesh Amendment) Act, 1968.

(2) It shall extend to the whole of Himachal Pradesh.

2. Amendment of section 1.- In section 1 of the Indian Forest Act, 1927 (16 of 1927), in its application to the ²[State] of Himachal Pradesh (hereinafter referred to as the principal Act), after sub-section (2), the following sub-section shall be inserted, namely:-

"(2-A) Notwithstanding anything contained in sub-section (2), it also extends to such territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union, and have since merged with Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966)."

¹ For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 13th August, 1968, p. 816.

² Substituted for "Union Territory" vide A.O. 1973.

3. Amendment of section 38.- In sub-section (1) of section 38 of the principal Act, for the words 'the owners of shares therein amounting in the aggregate to atleast two thirds thereof', the words 'the owners of the majority of shares therein' shall be substituted.

4. Amendment of sections 52, 53 and 55.- In sections 52,53 and 55 of the principal Act, for the word 'carts' wherever it occurs, the word 'vehicles' shall be substituted.

5. Substitution of Section 82.-For section 82 of the principal Act, the following section shall be substituted, namely:-

"82. Recovery of money due to Government.- (1) All money payable to the State Government under this Act or under any rule made under this Act or on account of the price of timber, or other forest produce, or of expenses incurred in execution of this Act in respect of timber and other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered under the law for the time being in force, as if it were an arrear of land revenue.

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall also apply to all cases of recovery which are either pending at the commencement of the Indian Forest (Himachal Pradesh Amendment) Act, 1968 or are initiated thereafter in respect of contracts entered into prior to such commencement, any judgment, decree or order of any court to the contrary notwithstanding."

6. Insertion of new section 84.A.- After section 84 of the principal Act, the following section shall be inserted, namely:-

"84-A. Validity of settlements etc. of covenanting States.- For the removal of doubts, it is hereby declared that every settlement or arrangement made before the 20th August, 1948, under the authority of the Government of any covenanting State forming part of the territories referred to in sub-section (2A) of section 1, with respect to any claims or rights of any persons admitted by the Government of that State to be in existence in any of the forests or waste lands which were the property of that Government or over which that Government had proprietary rights or to the whole or part of the forest produce of which that Government was entitled, shall be deemed to be a settlement of claims and rights made under this Act and all such claims and rights shall be deemed to be claims and rights duly inquired into and admitted for the purposes of this Act and shall be deemed always to have been so inquired and admitted for the purposes of the Patiala Forest Act, 1999 Bk, and it shall not be, and shall be deemed never to have been necessary to determine the rights of persons in accordance with chapters II and IV, as the case may be, for declaring any forest or waste land to be a reserved or protected forest or a first or a second class forest."

7. Repeal and savings.- (1) The Indian Forest (East Punjab Amendment) Act, 1948 (7 of 1948), the Indian Forest (Punjab Amendment) Act, 1954 (20 of 1954) and the Indian Forest (Punjab

Amendment) Act, 1962 (13 of 1962) in so far as these apply to the areas merged in Himachal Pradesh under section 5 of the Punjab Re-organization Act, 1966 (31 of 1966), are hereby repealed:

Provided that such repeal shall not affect-

- (a) the previous operation of the Acts so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Acts so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Acts so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; or
- (e) operation of section 39 of the Patiala Forest Act, 1999 Bk, which is a saving under section 7 of the Indian Forest (Punjab Amendment) Act, 1962 (13 of 1962),

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of sub-section (1), anything done or any action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, bye-law or form framed) so far as it is not inconsistent therewith, shall be deemed to have been done or taken under the principal Act as so amended:

Provided that all forests which, immediately before the commencement of the Indian Forest (Punjab Amendment) Act, 1962 (13 of 1962), are deemed to be, first and second class forests under the Acts repealed by sub-section (1) shall, respectively, be deemed to be reserved and protected forests for the purposes of the principal Act as amended by this Act.

THE HIMACHAL PRADESH FOREST (SETTLEMENT) RULES 1965

NOTIFICATION

Shimla, 25 Aug. 1966

No. Ft.162-1/61-II(M).-In exercise of the powers conferred by section 76 of the Indian Forest Act, 1927, the Lieut. Governor, Himachal Pradesh is pleased to make the following rules namely:-

RULES

PART I

PRELIMINARY

1. Short title and repeal:- (1) These rules may be called the Himachal Pradesh Forest (Settlement) Rules, 1965.

(2) All rules corresponding to or covered by those rules shall stand repealed.

2. Definition.- In these rules, unless the context required otherwise;

(1) "Act" means the Indian Forest Act, 1927.

(2) "Form" means a form appended to these rules, and

(3) "Forest Settlement Officer" means Collector, Forest Department, Himachal Pradesh and includes an officer appointed as such under Rules of these Rules.

3. Control of the Chief Conservator over forest Settlement.- Forest settlement is concerned with the constitution of Government forests and waste-lands into Reserve and Protected Forest in accordance with the procedure laid down in Chapter II and IV of the Act. The administrative Control over Forest settlement will vest in the Chief Conservator of Forest. The preliminary demarcation of forest boundaries will be carried out under his directions.

4. Appointment of Forest settlement Officer and their jurisdiction: -(i) For the purpose of Forest Settlement the Government, may appoint as many Forest Settlement Officers as it may deem necessary. These Officers shall ordinarily be persons not holding any forest office except that of Forest Settlement officer and will be drawn from the State Civil service.

(ii) The jurisdiction of Forest Settlement Officer will be decided by the Government on the recommendation of the Chief Conservator of Forests.

PART II

DEMARCATON & SURVEY

5.(i) The State Government may at any time declare as Reserved forest and any forest land or waste land which is the property of Government or over which the Government has proprietary rights or to the whole or any part of the forest produce of which the Government is entitled.

(ii) Proposal for issuing a notification under section 4 of the Act will be submitted to the Government by the Chief Conservator of Forests.

(iii) The notification under section 4 shall be in the Form 'A'.

6. Preliminary Demarcation.-(i) After a notification under section 4 is issued the areas should be demarcated by fixing temporary cairns or pillars or such other marks as may be convenient. Such cairns, pillars or any other marks should be visible, one from the other.

(ii) The preliminary demarcation need not necessarily be of so permanent a character as the final demarcation, but it should be a definite and continuous line sufficient to show to the Forest Settlement Officer and the villagers concerned where and how it runs.

(iii) The Forest Boundary pillars will mark the actual limits of the reserve and should be placed on the other edge of the boundary line.

(iv) The demarcation of forests will be carried out by the Forest Department. The boundary marks will be maintained properly till the preliminary inquiry is completed and are replaced by suitable the Divisional Forest Officer of the Division and it will be the "duty of the Forest Department to look after and maintain them properly.

(v) The boundary pillars will generally be of dry stone masonry of such size and specifications as may be prescribed by the Conservator of Forests of the Circle keeping in view the local conditions and availability of the material. All pillars should bear a serial number. The numbering of the pillars should be clockwise.

(vi) The boundary description should be given in one of the following two forms:-

Description form.-From pillar No.1 situated on as per by straight line from pillars to pillar No. 38 on the bank of a Nala. Thence along the western side of the Nala No. 30 on a ridge etc.; back to pillar No.1.

Tabular form.-Pillar No.1 to Pillar No.2, 10 karmas westward or north direction. Pillar No.2 to Pillar No.3.

Note-If lengths are measured in Karma the length of the Karm must be specified.

7. The demarcation or survey of Forest boundaries will be undertaken on Patwar or Forest Survey maps, for this purpose the Forest Settlement Officer will arrange to get the tracings of the latest Settlement map of the village having the said reserve or from the original survey sheet and proceed with the work of demarcation or survey as the case may be by taking compact areas.

The Patwari will be first proceed to the village in North West of the Forest and start work with the help of neighbouring, Mustkil points viz; walls, boundary pillars, Mustkil paths and survey the former boundary by preparing the field Book. He will plot the day's work every day and the Forest Kanungo in his weekly inspection will check the work on the traces. The details of the boundary line with regard to the checking will be recorded in the Inspection Book. The Patwari, Pardhan Gram Panchayat or the village Lambardar and the Forest Guard will also remain with the Forest Patwari. The Forest Naib Tehsildar will not ink the line of dispute and will report such case to the Forest Settlement Officer. On receipt of his final order the disputed line will be inked. The record will work will be done during the rainy season or in any other season keeping in view the climatic conditions of the area.

In unsurveyed areas where survey also has been undertaken the Patwari will prepare the Surhadi register of the Forest as per Form 'I' which will also be checked by the Forest Naib-Tehsildar, the Tehsildar and the Forest Settlement Officer at the time of their respective inspections of the forest.

PART III

COMPILATION OF RECORD

8. (a) The following records will be prepared for every forest:-

- (i) Village wise Khasra of the forest as given in form 'B'
- (ii) A general statement as given in form 'C'.
- (iii) Allot of ways and paths open to public throughout the year vide form 'D'.
- (iv) Allot of temples open to public for worship vide form 'E'.

(b) All those papers will be signed by the Forest Settlement Officer. The Forest Settlement Officer will finalise the inquiry and in case of the Reserved Forest submit a draft for final notification as required under section 20 of the Act. The summary report will be drawn in Form 'F'.

(c) After publication of the final notification in official Gazette, the Forest Settlement Officer will arrange to send a copy of the village map alongwith a list of khasra numbers included in the Reserved Forest and the statement of the rights and concessions admitted therein to the Divisional Forest officer and the District Collector for making necessary entries in the Revenue Records. On the expiry of a period of one year from the date of a final notification, the records will be deposited with the District Collector concerned.

(d) The final notification shall be in the form 'G'.

CASE WORK

9. (a) Files.-: There will be a general file for every forest and separate files for each village for which claims are filed by persons in their joint or individual capacity.

General forest file will contain the following papers:-

- (i) The title page.
- (ii) Order sheet.
- (iii) A copy of the Government Notification under section 4 of the Indian Forest Act.
- (iv) The boundary description prepared.
- (v) The letter of authority from the Divisional Forest Officer.
- (vi) A copy of the proclamation under section 6.
- (vii) A consolidated sketch map of the forest.
- (viii) A consolidated village wise Khasra of the Forest.
- (ix) A list of ways and paths open to the public.
- (x) A list of temples.
- (xi) A list of boundary pillars.
- (xii) Acknowledgement from the Range Officer that alteration made preliminary boundary have been explained to him.
- (xiii) A summary of proceedings giving the gist of the claims preferred admitted or rejected.
- (xiv) A copy of the Draft Final Notification alongwith boundary description and Schedules of concessions and rights admitted.

The village file will contain the following papers:-

- (i) Title page.
- (ii) Copy of proclamation duly served.
- (iii) Plaint or claim preferred in writing or orally.
- (iv) Written statement or reply of the Forest Department.

- (v) Evidence adduced.
- (vi) Order sheet and decision.
- (vii) A tracing of the Revenue map of the village showing the forest boundary line.
- (viii) Miscellaneous papers.

(b) Registers.- Two separate registers 'A' and 'B' will be prepared in the prescribed form as shown in the form 'B'.

10. Procedure for drafting Final Notification under Section 20 of the Act.- (a) When all the claims preferred by the villagers have been inquired into and decided and the limitation period prescribed under section 17 of the Act is over, the Forest Settlement Officer will take up the draft of the final notification under section 20 of the Act which will be drawn separately.

- (i) Where no claims (neither rights nor concessions) have been admitted.
- (ii) Where claims (rights) have been admitted.
- (iii) Where concessions only have been admitted.
- (iv) Where both rights and concessions have been admitted.

(b) These drafts will be accompanied by the abstract lists of right and concessions as per annexures attached to the form 'G'.

PART IV

INVESTIGATION OF CLAIMS

11. Data to be collected by Forest Settlement Officer.-(i) After publication of a notification under Section 4 of the Act the Forest Settlement Officer will collect the following information with the assistance of the Divisional Forest Officer.

- (a) Sketch map of the forest illustrating the demarcation line.
- (b) A description of the boundary.
- (c) Proclamation by the Forest Settlement Officer:-

The first step to be taken by the Forest Settlement Officer is the publication of a proclamation under section 6 of the Act as given in Form specifying the situation and limits of the proposed Reserved forest as published in the Official Gazette, explaining the consequences which will ensue on the reservation of the forest and requiring all persons claiming any rights in or over such forests to specify within the prescribed period either in writing or verbally the nature of such rights and the amount and the particulars or the compensation (if any) claimed in respect thereof. A period of at least three months from the date of publication of the proclamation must be allowed for the presentation of claims and the proclamation must be published in Hindi and posted in every town and village in the vicinity of the proposed reserve forest and it will also be done by beat of drum or in any other manner convenient. Copies of the proclamation should be sent to the Divisional Forest Officer, Tehsildar and the President of the Gram Panchayat concerned and copies of the acknowledgement of the receipt of such proclamation will be placed in the village file. The Forest Settlement Officer should, moreover, not only publish and distribute the proclamation as above, but also explain its meaning at every convenient opportunity to the villagers concerned.

12. Inquiry by the Forest Settlement Officer. - (a) As soon as practicable after issue of the proclamation, the Forest Settlement Officer should visit the village in the neighbourhood of the proposed Reserve Forest. He should inspect as much as possible of it and afford the people likely to be affected by the proposed reservation, full opportunity for putting forward their claims for the spot.

(b) The Forest Settlement Officer is bound by law to make down writing all statements of the claims made under section 6 of the Act and to enquire into the same; and even in the case of practices not actually brought to his notice, under section 6, it will be his duty to ascertain all that may be ascertainable on the subject from the records of the Administration and the evidence of the persons likely to be acquainted with the same and to deal with such practices as if the claim thereto had been formerly preferred under section 6. Forest Officer attending the inquiry if application is made to compel attendance of witnesses the production of documents.

(j) The Forest Officer standing the inquiry shall have power similar to those of a defendant in civil suit. He may cross-examine witnesses, may produce evidence to rebut claims, and may comment on any documents or evidence and no court fees shall be required of him. If he desires to prefer an appeal against any decision, the Forest Settlement Officer shall give him duly certified copy of such decision and will meet the cost from the contingencies of the Forest Settlement Budget.

(k) The Forest Settlement Officer shall give reasonable notice to the Divisional Forest Officer of the dates fixed by him for inquiry into claims. If the Divisional Forest Officers is himself unable to attend on those occasion or to depute a suitable representative in his place, he may forward to the Forest Settlement Officer any statement he may wish to make in writing with any documents he may wish to put in. He may in such cases, if he so desires depute a subordinate to explain if necessary, the statement submitted by him. The Forest Settlement Officer shall as far as may be convenient meet the wishes of the Forest Department by adjourning inquiries to give time to consult the conservator or the Chief Conservator.

(l) The views of the Deputy Commissioner in cases regarding land (the claims to which are being investigated under section II of the Act or of the Conservation on any question which may arise, should be placed before the Forest Settlement Officer by the Divisional Forest Officer in the form of a written note. Such written note shall be read aloud and shall form part of the record and shall be explained to the claimants in their vernacular language if they do not understand English.

13. (a) The claims on which the Forest Settlement Officer will have to adjudicate will usually be of two classes:-

- (i) claims to land;
- (ii) claims to rights of the nature of easements, specified in section 12 of the, Act.

(b) He will record the evidence and decide on the claim in each case in the manner prescribed by the Code of Civil Procedure to be followed in appealable cases. He will also maintain two registers (A&B) as prescribed in form 'H' and will enter in the former all claims as they are received and in the latter all claims as they are disposed of, Register 'B' or fair Signed copy thereof must, upon the completion of the operations be forwarded to the Government through the Chief Conservator of Forests with the draft notification under section 20 of the Act together with (1) an abstract statement of admitted claims (for publication to the Gazette) in the Form 'G' (or such corresponding form as the special conditions of the case will admit), (2) A summary report of the Forest Settlement Officer's proceedings, which should contain his recommendations, if any, for sanctioning, as of privilege, the continuance of practices which although not claimable as of right and consequently not entered in the abstract as admitted rights, are in the opinion of the Forest Settlement Officer advisable in the interest of the Welfare of the people such concessions should be indicated by the letter, 'C' in the abstract); (3) the boundary map or tracing of the proposed reserve with a detailed description of the same showing in a clear and unmistakable manner the boundaries of the reserve as ultimately adopted by him and specified in his final draft notification under section 20 of the Act.

(c) When a claim comes partly under section 11 and partly under section 12 of the Act, the Forest Settlement Officer will separate those parts of it which fall under section 11 from those which fall under section 12 and will enter them in his register as distinct claims.

(d) In cases in which appeals are preferred against his decisions the Forest Settlement Officer will obtain copies of the appellate decisions, which should form part of the settlement period. A brief abstract of each appellate judgement should also be prepared and entered in the appropriate column of register 'B' reference being made in the 'remarks' column to the number and date of such judgement.

14. When the Forest Settlement Officer has admitted a claim, the Forest Officer attending the inquiry or failing such, the Divisional Forest Officer will state which among the courses provided in section 10(1), 11, 15 and 16 of the Act it is desirable to follow and may apply for an adjournment to enable him to make advice of his superior authority before doing so. The Forest Settlement Officer will hear the claimant whose claim has been admitted before deciding what action he will take in the matter.

15. The grant under section 10(1), 11, 15 and 16 of the Act, by the Forest Settlement Officer of unreserved land or of rights over such land in exchange for land or in commutation of rights admitted in a reserved forest, would require the concurrence of the Deputy Commissioner, while the grant from reserved forests or rights over it requires the sanction of the Government.

16. When the Forest Settlement Officer acts under section 16 and commutes a right of pasture or of forest produce by a grant of money or land such commutation shall ordinarily be calculated as follows:-

- (a) If in money, at 20 years purchase of the annual value of the right as ascertained by the Forest Settlement Officer.
- (b) If paid for land, the assessment of the land should be equal to the annual value of the commuted right as estimated by the Forest Settlement Officer.

PART V

DETERMINATION OF RIGHTS AND CONCESSIONS

17. Rights are those claims which are supported by documentary evidence such as Sanad, Patta or an entry into the official record. These will be treated as Concessions. Concessions are terminable as and when necessary by the Government. While dealing with the claims made, it will be found that they will be one or other of the following kinds.

A claim to whole land itself, or (more likely) one or more plots of land within the proposed forest. In such a case, the claim likely to be put forward is to the ownership of the land itself or some part of it. If the claim should affect the whole of the proposed forest greater part of it, it would follow that the proposal to create forest under the Act could not be carried out the proceedings would then be closed, on decision going in favour of the claimant, unless indeed it some special case in which the Forest is on public ground, so desirable, that Government will be justified in declaring public utility and proceeding to acquire the estate under the Land Acquisition Act.

In such a case the Forest Settlement Officer will send his report to the Chief Conservator of Forests informing him that on the ground mentioned in his decision it is not possible to constitute a forest estate of the block.

Generally what happens is that one (or many plots) inside the forest block are either claimed under proprietary right or tenancy right or as Charagah earmarked for the village cattle. If the claim is allowed then either :

(1) it will be bought out by consent or acquired under the Land Acquisition Act, if the Divisional Forest Officer makes a move that it would be in the interest of Forest Conservator to do so, or

(2) will be exchanged for some other suitable piece of land, or

(3) will be excluded from the forest boundary, if this can conveniently be done, or

(4) will be 1st alone in such a case the plot or plots would be shown by interior lines both on the map as well as on the spot.

Sometimes, small plots are cleared and cultivation established without proper authority. If the case is shown to be one of unauthorized clearing or a case of equating with no equitable title, the claim would be disallowed.

Claims to a right of the class which does not involve taking produce from the estate e.g. a right of way, Cattle-drive, a right to have water course (canal out or drain channel) across the land, a right to have access to or use of water such as spring for house-hold purpose or cattle watering or to worship at a temple and to hold Mela within the forest limit as these being mostly, Necessary Rights, their record and description is all that is possible and needful.

In case of right of way, it should be specially recorded whether it is for a private person or a whole village or people at large. It will also be desirable to specify whether it is a way for passage of human beings for driving cattle, or for taking cart along; and in such case it may be desirable to record the width of the way allowed.

In case of right to water course or drainage, particulars (in case of a canal or ditch) such as regards access for purpose of clearing, or deposit of the silt cleared out or the like; as well as the width of channel and its necessary margin or bank space should be recorded.

In case of right to use water where a spring or pool in the forest is main place which neighbouring cattle can get water at, or at which house-hold water can be obtained, should be recorded as a right of necessity. As far as possible; if such places are near the edge of the forest, they may be excluded from proposed forest by altering its boundary unless these are the only places where wild animals come to drink water which necessitates the inclusion of such spots in the forest boundary for the purpose of saving the wild life from destruction.

Claims to right of worship and right to holding mela are of necessity and should be recognized as such. In case of right of holding mela, the dates and the places should be specified.

A claim to practice of shifting cultivation: The procedure provided under section 10 is in detail and should be followed.

Rights in the nature of the easement or otherwise which involve taking some produce or part of the estate e.g. to dig clay, lime stone, to cut turf or code, to burn lime or charcoal, to extract chilgoza to cut grass, to pasture cattle, to cut wood and in fact very class of the well-known forest rights or easements may be of the following forms: -

1. Rights to wood.-

(i) For residential buildings and cattle-sheds,

(ii) For industry and agricultural purposes.

(iii) For fuel (Brush wood, billet-wood dead-wood, Torches)

(iv) For fencing.

(i) Wood for residential buildings and cattle sheds:- For this, reference has always to be made to the usual style of building in the locality and there is never any need to allow the best or costly woods for indoor or other work where an inferior timber will do. The quantity cannot always be prescribed. The intervals at which wood may be demanded will be fixed with reference to the number of years each kind of building will ordinarily last. The quantum of this right will be fixed for well defined tracts in consultation with the Divisional Forest Officer of the area and keeping in view the various local conditions and usages.

(ii) Wood for Industrial and Agricultural Purposes.-In Himachal Pradesh, the right to wood for industrial purposes does not exist for Agricultural purposes wood from forests is generally extracted wither as a matter of right or as concession and in all such cases, it will be found that these are customary kinds and sizes of wood used for particular purposes and can easily be prescribed to the satisfaction of all parties. The extent in terms of cubic feet of wood required for agricultural purposes, can be determined on the basis of number of ploughs.

A complete plough requires about 1ft and so far as other implements of agriculture are concerned, the quantity and kind of wood differs from place to place and has to be assessed according to local conditions of the area. These concessions should not exceed the limit of 3 ploughs per family.

(iii) Wood for fuel-Normally the right is confined to the removal of brush wood, dry fallen wood of trees subject to availability, Trunks of fallen trees of valuable species and useful timber are not taken, although branches can be removed. This right is exercised to meet bonafide domestic purposes as fuel wood is seldom sold in villages. In rare cases where fuel wood can be taken away for sale, a clear mention of the same and its extent shall be recorded.

(iv) Fencing Thorny-bushes and twings, such as of per (*Zizybus*) *jujuba*, *Karaunda* (*Carissa opaca*) and *Kashmal* (*Derbaris spp*) are taken by cultivators fencing fields or cowshed. It is not practicable to fix any quantity for it. This depends upon the availability or the material and the extent to which fencing as necessary.

2. Rights of pasture or Grazing:- This rights may be of two kind (1) Right of the adjoining villages or local right holders and (2) that of migratory herds. Grazing facilities are allowed mainly for bulls, oxen, cow and buffaloes. There is no direct prohibition of the grazing of goats, sheep and camels, but since these ore destructive to the forest, their numbers be restricted as far as possible. Mules, horses, donkey are not common and they may be treated on the same footing as cows and buffaloes.

The maximum number and kind of cattle admitted to graze must always be specific and estimated at the rate of 2 acres per cow and four acres per buffalo. In barren areas or where the stocking of forest is very poor, the unit will be 5 acres per cow. The latest cattle Census figures may be taken as the basis of determining the maximum number. The season to grazing may also be specified.

While admitting the cattle for grazing, the Forest Settlement Officer will keep in view the scale his opinion whether the forest can stand the burden and give his suggestion.

3. Right of Grass Cutting. - This right is not recognized for the purpose of stock above the actual domestic requirements. As the grass is cut and brought from the forest in head-loads only for milch cows and buffaloes or calves or oxen, the number of head-loads may be determined at the rate

of one head-load for two cows or for one buffalo or for a pair of oxen or for four young calves per day. The season may also be specified during which head-loads of grass may be cut. For estimating the quantity, 100 head-loads per year per family may be taken as a rough guide. The period closed to grazing or grass cutting should be specifically mentioned.

4. Right of Litter and of Lopping. - The definition will consist in describing the nature of right. As to lopping if for fodder, the kind of trees and the places where it can be exercised should be defined. This should be permitted only if it has been long standing practice. Lopping is generally for (1) milch buffalo e.g. leaves of Kharki-Karyali etc. (2) Young ones of goats and sheep who cannot go out for grazing. As to the former one head-load such green leaves for one milch buffalo and for the latter one head-load for a heard of fifty heads may form the basis for determining the quantity per day.

At places where pine-twings are collected for thatching the number of head-loads may be ascertained by examining the need of the right-holder. Roughly, five head-loads per year should suffice for thatching a shed for 10 cattle heads. The species of trees as well as the extent to which leaves may be removed should be defined. Lopping of branches of broad leaves species upto one inch, girth and upto lower of their crown may be allowed.

Right to collect Minor Produce: - Right to collect minor forest produce consists of collection of gums and resin, wax and honey, hides and horns wood oil, medicinal herbs, flowers and leaves, fruits and seeds, bark, fiber, clay, sand gravel. lime stone pebbles, slate etc.

The produce will be removed only to the extent of personal bonafide requirements.

Right of Hunting and Fishing - Such rights do not exist, except for the Rulers of the Former States. These rights are governed by the terms of the privileges recognized separately in each case by the Govt.

18. Guiding Principle.-All these rights and concessions are meant for the satisfaction of personal bonafide requirements and subject to the condition that forests are to be maintained in perpetuity. The right of user or easement is always a limited one; it can never extend so as to destroy the servient estate. The right exists so long as the (servient) property is safe or continues to exist, because if the (servient) estate ceases to exist, the right ceases with it.

So while dealing with the claims, the Forest Settlement Officer should see that the forests are not unduly burdened.

19. After the issue of a notification under section 4, no fresh clearing for cultivation or for any other purpose shall be made in the land included in the said notification.

Provided that the Collector may with the previous concurrence of the Chief Conservator of Forests permit such clearings for rehabilitating displaced persons and landless tenants and for irrigation projects.

20. ¹(i) Usually all Government forest lands and waste lands, the protection of which is necessary, will be continued as Protected Forests.

(ii) The Conservator of Forests will send a proposal with sketches to the Collector Forests with regard to areas which are required declared as Protected Forests. The areas under near

¹ Substituted vide amendment H.P. Govt. Notification No. 15-2/73-S.F. dated 03.10.1975.

cultivated lands and ABADIS may not be proposed to be declared as Protected Forests sufficient areas are to be left out for legitimate use of the right holders. As soon as the proposals are received, the Collector Forest shall depute Forest Settlement Staff under him to measure and demarcate the proposed area and the responsible Forest Officer by fixing boundary pegs or stone cairns.

(iii) The Collector Forests shall get prepared the following records for each forest with the help of revenue settlement record:-

- (a) Map of the forest.
- (b) Field Book.
- (c) Jamabandi.
- (d) Khasra Bandobast as per form 'B'.
- (e) A general statement as per form 'C'.
- (f) A list of ways and paths open to Public throughout the year as per form 'D'.
- (g) A list of religious places open to public for worship as per form 'E'.

All this record will be checked 100% by the Kanungo and to a minimum of 30% and 25% by the Naib Tehsildar and Tehsildar respectively and results recorded in the Inspection Note Book. The record mentioned at (d), (e), (f) and (g) above will be signed by the Collector Forests also which will be attached with the Forest file concerned at the time of file construction.

(iv) After the demarcation and completion of record as mentioned above, the Collector Forests will issue a proclamation in form 'L' under section 29 of the Act, inviting claims and objections of the right holders pertaining to their rights into the said forests to be filled within 30 days from the date of issue of the proclamation.

The publicity of the proclamation shall be made by the beat of drum through the Tehsildar Mohal concerned. Copy of the proclamation will also be sent to the concerned Divisional Forest Officer as well as to the Gram Panchayat concerned.

(v) After the expiry of period of 30 days, the Collector Forests shall hold enquiry into the rights of Govt. and of the private persons at a convenient place as close to the concerned forests as possible. The date and place of enquiry shall be intimated in advance to the concerned parties.

(vi) Concerned Divisional Forest Officer or his nominee will appear, plead and act on behalf of the Government before the Collector Forests and furnish written statements regarding rights and concession exercised by the right holders such like matters.

The enquiry shall not be elaborated. Abstracts of rights and concessions as admitted shall also be reproduced as per annexure of form 'G'.

(vii) The Collector Forests will prepare for each forest, one file containing the following documents:-

- (a) title page.
- (b) Order sheet.
- (c) Khasra Bandobast vide form 'B'.
- (d) a general statement as given in form 'C'.
- (e) a list of ways and paths open to public throughout the year as per form 'D'.
- (f) a list of religious places open to public for worship as per form 'E'.
- (g) proclamation issued under sub-rule (iv).
- (h) claims and objects, if any received under sub-rule (iv).
- (i) summons issued under sub-rule (v).
- (j) statements of parties etc., recorded under sub-rule (vi).

- (k) any other document relevant with the case, and
- (l) abstract of rights and concessions as per annexure of form 'G'.

"**21.**¹(1) After the file as per Rule 21(vii) is prepared and completed, the Collector Forests shall draw summary report of the proceedings in the form 'N'. After expiry of period of appeal and revision he will also prepare draft for notification in form 'M'. Alongwith these two forms, he will also submit copies of abstract of right and concessions in form 'G' and his orders to the Chief Conservator of Forest through the Conservator of Forests concerned for getting notification issued by the Government under Section 29(1) of the Act.

(2) Simultaneously Boundary Register of Forests also be compiled and authenticated by the Collector Forests and the Divisional Forests Officer concerned which will remain with the Divisional Forest Officer".

"**22.**²On receipt of record mentioned in Rule-21(1) the Chief Conservator of Forests will submit the same to the Government for issuance of notification under provisions of the Act."

"**23.**³The State Government shall publish the notification in the Official Gazette and thereafter the Collector Forests shall arranged to send a copy each of the Forests map, Field Book, a list of Khasra Numbers included in the Protected Forest, his orders, abstract of right and concession in form 'G' and Government Notification to the District Collector concerned for making entries in the revenue record. A copy each of record mentioned in clauses (d), (e), (f), (g), (j), (k) and (l) of Rule 20 (vii) alongwith a copy of forest map and Govt. notification shall also be sent to the Divisional Forest Officer concerned. Thereafter the forest file as referred to in Rule 20(vii) and the record referred to in clauses (a), (b) and (c) of Rule 20(ii) together with Inspection Note Books etc., and Govt. notification will be properly indexed catalogued and bound in suitable volumes and deposited with the District Collector concerned.

24. Rectification.-Before publication of notification in the Official Gazette under rule 23 if some clerical or arithmetical error is found to have crept into the order of the Collector Forests, the same may be rectified by him by a proper order.

25. Appeal Review and Revision. -(1) An appeal from the original order of Collector Forests under these rules shall lie to the Commissioner within 60 days from the date of order to be appealed against and that to the Financial Commissioner, when the order is made by the Commissioner, within 90 days from the date of order of Commissioner:

Provided that when an original order is confirmed on first appeal, further appeal shall not lie.

(2) The Collector Forests may either of his own motion or on the application of any party interests, review and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office.

Provided that-

- (a) an application for review shall not be entertained unless it is made within 30 days from the passing of the Forests that he had sufficient cause for not making the application within the said period of 30 days.
- (b) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.

(3)

¹ Substituted vide amendment H.P. Govt. Notification No. 15-2/73-S.F. dated 03.10.1975.

² Inserted vide amendment H.P. Govt. Notification No. 15-2/73-S.F. dated 03.10.1975.

³ Inserted vide amendment H.P. Govt. Notification *ibid*.

- (a) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by the Collector Forests, or the Commissioner.
- (b) The Commissioner may call for the record of case pending before or disposed of by the Collector Forests.
- (c) If in any case in which a Commissioner has called for a record, he is of opinion that the proceedings taken in order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.
- (d) The Financial Commissioner may in any case called for under clause or reported to him under clause pass such order as he thinks fit:

Provided that he shall not pass an order reversing or modifying any proceedings order of the Collector Forests or the Commissioner and affecting any question of right between private persons without giving those persons an opportunity of being heard.

The Schedule

List of forests recommended for final notification

Range Division Tehsil District

Sr. No.	Name of Forest	Protected Mohal	Khasra Number	Area in acres	General Descriptions
(1)	(2)	(3)	(4)	(5)	(6)

PART VII

MISCELLANEOUS

The Divisional Forest Officer or their nominees are authorized to appear, plead and act on behalf of the Govt. before the Forest Settlement Officer or the appellate authority in the course of any inquiry or appeal pertaining to their respective areas under section 19 of the Act.

FORM 'A'

Vide Rule 5(iii)

Whereas the forest land or the waste land specified in the schedule appended hereto are the properties of the Government or the Government has proprietary rights therein or the Govt. is entitled to the whole or any part of the forest produce thereof;

And whereas the Government proposes to constitute the aforesaid forest land or waste land as Reserve Forest under section 3 of the Indian Forest Act, 1927.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the said act, the Lieut. Governor (Administrator) hereby declares that it has been decided to constitute said land as Reserved Forest and Further appoints the Forest Settlement Officer to inquire into the determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce and to deal with the same as provided in Chapter 11 of the said Act.

THE SCHEDULE

Note:- The description of the boundary under section 4(1) should be such that it can be located on ground with reasonable accuracy. It shall be sufficient to describe the limits of the forests by roads, rivers and ridges or other well-known or readily intelligible boundaries.)

Sr. No.	Name of the	Name of the	Name of the	Boundaries	Remarks
(1)	(2)	Tehsil (3)	District (4)	(5)	(6)

By order of the Lt. Governor,
Secretary (Forests) to the
H.P. Government.

Vide Rule 8(a)(i)
Khasra Bandobast

Name of Village		Tehsil	District	
Khasra Number	Area	Soil-Class	Name of owner or tenant if any	Remarks
(1)	(2)	(3)	(4)	(5)

FORM "C"

VIDE Rule 8(a) (ii)

General Statement Regarding Forest (name & number).

1. No. of the forest.
2. Name of the forest.
3. Name of the Range.
4. Name of Tehsil.
5. Name of the District.
6. Area of the Forest.
7. Number and date of the Rajpatra wherein published.
8. Description of Demarcation line and number of pillars fixed on the spot and running line.
9. Neighbouring Villages.
10. Area of respective villages included in the Forest.
11. Total of the village-wise area.
12. Area outside the forest in particular village left out for free grazing.
13. What is the practice for taking particular type of timber and fire wood.
14. The number of the cattle of the villages having sites in the Forest.
15. Any religious place inside the Forest.

FORM "D"

Vide Rule B(a) (iii)

List of ways and paths open to public throughout the year.

Sr. No.	Name of Forest	Name of ways or paths	Details of the ways or the paths	Remarks
(1)	(2)	(3)	(4)	(5)

FORM "E"

Vide Rule 8(a) (iv) Rule, (iii)

List of Religious Places

Sr. No.	Name of Forest	Name of Religious Place	Details of religious Place	Name of the route which	The date of the Puja and Fair	Area left out for religious worship and other related activity	Remarks
1	2	3	4	5	6	7	8

FORM 'F'

Vide Rule 8(b), Rule 20(vi)

Summary Report of the Forest Settlement Officer.

To

.....

Subject-Final notifications under section 20 of the pertaining to Forest No. In Range District

A preliminary notification for declaring the aforesaid Forest as reserved Forest under section 4 of the Indian Forest Act, was issued by the Himachal Pradesh Government vide Forest Department, Notification No Dated published in the Himachal Rajpatra dated

Under section 6 of the Act a proclamation in the adjoining villages of the Forest was issued for inviting objections within a period of one month.

The Forest Settlement Officer heard the objection on the spot and decided the cases. The decisions on each files are appended.

Period for filling objections is over and no appeal under section 17 of the Act is pending with the Appellate Authority.

The final draft under section 20 of the Act alongwith a statement of Rights and. concessions and a map is enclosed for approval and publication in the Official Gazette.

Signature of Forest
Settlement Officer,

FORM 'G'

Vide Rule 8(d)

NOTIFICATION

(Under Section 20)

Dated Shimla, the December, 1962.

No/..... whereas it was proposed by Notification No Dated to constitute the land specified below as Reserved Forest under the Indian Forest Act. (Act. XVI of 1927).

And whereas the period fixed by the said Act, for the presentation of claims to rights in these lands has expired and all claims, if any made have been disposed off.

And whereas the period for appeal from the order passed, the said claims has elapsed and all appeals presented within such period have been disposed of, and whereas all lands, if any acquired for inclusion in the proposed forest have become vested in the Govt. under the law of compulsory acquisition.

Now, therefore, in exercise of the powers conferred by section 20 of the said Act, the lieut. Governor (Administrator) H.P. do hereby declare the said land to be Reserved Forest with effect from the date of this notification subject to the provision that the villages named hereinafter shall have no rights/continue to have the said rights to the extent appearing in the Abstract List and enjoy no concession/concessions to the extent appearing in the Abstract list (2) at such seasons within such portions of the said forests and under such rules as may from time to time be prescribed by the Government.

By order of Lt. Governor,
Secretary (Forest) to
H.P. Government.

District	Tehsil	Specification of Land Mauza	Approximate area	Remarks
(1)	(2)	(3)	(4)	(5)

Boundary description of Forest

Sr. No.	From Pillar No.	To Pillar No.	Distance in Chain & links Chains Links	Direction	Nature of boundary line to next Pillar.
(1)	(2)	(3)	(4)	(5)	(6)

Note:- (1) Chain is equal to 5 Karams or 23 ft. 4 inches or of any other length as recognized by the Revenue Department.

(2) Measurement herein is of measurement on the ground.

FORM 'H'
Vide Rule 9(b)
Register 'A'

Register of claims preferred to lands rights to forest produce or easements in the proposed reserved Forests.

Sr. No.	Names of claimants	Description & address of claimants	Date of presentation of claims	Nature and extent of claims preferred	No. in Register 'B'	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

FORM 'H'
Vide Rule 9(b)
Register 'B'

Register of claims to lands, rights to forest produces or easements in the proposed reserved forest.

Sr. No.	Name of Claimants	Date of presentation of claims	No. of claim in Register	Nature and extent of claims preferred	Brief summary of the evidence adduced in support of claims	Brief summary of the Div. Forest officers arguments and evidence produced by him	Brief abstract of the decision of the Forest Settlement Officer	Brief abstract of decision if any, of final appeal settlement	Remarks
1	2	3	4	5	6	7	8	9	10

FORM 'I'
(VIDE Rule 7)

Forest Settlement Officer

Khasra Hadbast Block Range
Forest Division Tehsil District

Sr. No.	Name of Village adjoining the block.	Number of survey Stm. with distance	Name of the Pillar	Distance or Chanda line from which off-set taken	Off-Set		Distance from Pillar to Pillar	Remarks
					Right	Left		
1	2	3	4	5	6	7	8	9

FORM 'J'

Vide Rule II (1) (c)

Office of the Forest Settlement Officer

NOTIFICATION

(Under section 6 of the Act)

Whereas a notification under section to constitute the land specified below as Reserved Forest has been issued by the Government and published in the Official Gazette No Dated Now under section 9 of the said Act 9 Forest Settlement Officer do hereby publish and explain the following consequences which ensure on the reservation of this Forest:-

- (1) No fresh clearing or breaking of land for cultivated or any other purpose will be conducted.
- (2) No fire will be kindled, kept or carried.
- (3) No felling or burning of a tree or removing of bark or any other kind of damage will be caused to the tree.
- (4) No trespass by any person or cattle will be done.
- (5) No quarrying of stone burning of lime or charcoal or collecting subjecting to any manufacturing process or removing of any forest produce will be performed.
- (6) No hunting, shooting or fishing, poisoning of water or setting traps or share will be done.

It is, therefore notified for the information of all concerned that any person claiming any right in or over the land or forest produce may within a period of 3 months from the date of this proclamation either present to me a written notice or appear before and state the nature of such rights and the amount and particulars the compensation if any claimed in respect thereof.

No claim will be entertained after the expiry of the stipulated period.

Signature of the Forest
Settlement Officer.

FORM 'K'

Deleted

FORM 'L'

Proclamation

कार्यालय वन भू-व्यवस्था अधिकारी

घोषणा पत्र

चूँकि वन की भूमि और निरर्थक भूमि निम्नलिखित सूची में दी गई है। जिस पर हिमाचल सरकार का अधिकार है, या सरकार उसकी मालिक है या वन उत्पत्ति के भाग पर हिमाचल सरकार का पूरा या कुछ अधिकार है। और धारा 29 इंडियन फोरेस्ट ऐक्ट, 1927 के अधिनियम के अनुसार निम्नलिखित वन भूमि, निरर्थक भूमि, को डिमारकेटिड प्रोटेक्टिड फोरेस्ट बनाना चाहती है, और जिस निम्नलिखित वन भूमि और निरर्थक भूमि पर हिमाचल सरकार का व अन्य लोगों का अधिकार हो, उसके लिए यह आवश्यक समझा गया है, कि उसके हर प्रकार के अधिकारों की पूछताछ की जावे, यह सर्वसाधारण को सूचित किया जाता है कि संबंधित व्यक्ति जिनका निम्नलिखित भूमि या निरर्थक भूमि या किसी वन उत्पत्ति पर किसी भी प्रकार का अधिकार है तो वह इस घोषणा के जारी होने से 30 दिन के अन्दर लिखित रूप में भेजे या स्वयं इस कार्यालय में आकर अपने अधिकारों के बारे में विवरण प्रस्तुत करें कोई भी अधिकार निर्धारित समय के पश्चात कदापि नहीं सुना जायेगा।

सूची

परिक्षेत्र मण्डल तहसील जिला

क्रम संख्या	नाम जंगल	नाम मुहाल मय नं० ह० व०	खसरा नम्बर	क्षेत्रफल हैक्टेयरों में	मुख्य सीमा
1	2	3	4	5	6

उत्तर
पूर्व
दक्षिण
पश्चिम

वन भू-व्यवस्था अधिकारी।

FORM 'M'

[Vide rule 21(1)]

Whereas the nature and extent of the rights of the Government and of private persons in or over forest land and waste land comprised in the Schedule hereto appended have been enquired into and recorded under sub-section (3) of section 29 of Indian Forest Act. 1927;

Now therefore in exercise of the powers conferred by sub-section (1) of section 29 of the said Act, the Governor does hereby declare that the provisions of Chapter IV of the said Act shall apply to the said forest land waste land which shall hereafter be called a protected forest.

By order of the Governor,

Secretary (Forest)
to H.P. Government.

FORM 'N'

Vide Rule *(1)

SUMMARY REPORT OF COLLECTOR FOREST

To

.....

Subject:-

Final Notification section 29 (1) of Indian Forest Act, 1927 pertaining to Forest
..... in Range Division District
.....

The Himachal Pradesh Government intends to declare the provision of Chapter IV of Indian Forest Act, applicable to the aforesaid Forest section 29 (1) to the said Act.

Proclamation was issued inviting claims and objections within a period of 30 days.

The Collector Forest was enquired into and recorded the nature and extent of right of Government and of private persons in or over the forest land and waste land comprised therein.

The final draft notification under section 29 (1) of the Act, alongwith copy of the decision of the file and a statement of the rights and concession is enclosed for approval and publication in the official Gazette.

-sd-

Forest Settlement Officer

THE FOREST (CONSERVATION) ACT, 1980

ARRANGEMENT OF SECTIONS

Last updated: 04th August, 2023

SECTIONS

1. Short title, extent and commencement.
2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.
 - 2A. Appeal to National Green Tribunal.
3. Constitution of Advisory Committee.
 - 3A. Penalty for contravention of the provisions of the Act.
 - 3B. Offences by authorities and Government departments.
4. Power to make rules.
5. Repeal and saving.

THE FOREST (CONSERVATION) ACT, 1980

ACT NO. 69 OF 1980

[27th December, 1980.]

PREAMBLE¹

WHEREAS, the importance of forests is to be realised to enable achievement of national targets of Net Zero Emission by 2070 and maintain or enhance the forest carbon stocks through ecologically balanced sustainable development;

AND WHEREAS, Nationality Determined Contribution targets of the country envisage creating carbon sink of additional 2.5 to 3.0 billion tons of CO₂ equivalent by 2030;

AND WHEREAS, the country envisages an increase in the forest and tree cover to one-third of its land area, which is to be given impetus with an enhanced growth trajectory;

AND WHEREAS, India has a rich tradition of preserving forests and their bio-diversity, and, therefore, enhancing forest based economic, social and environmental benefits, including improvement of livelihoods for forest dependent communities is envisaged;

AND WHEREAS, it is necessary to provide for provisions relating to conservation management and restoration of forests, maintaining ecological security, sustaining cultural and traditional values of forests and facilitating economic needs and carbon neutrality.

An Act further to amend the Forest (Conservation) Act, 1980.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

¹ Preamble inserted vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

1. Short title, extent and commencement.— (1) This Act may be called the ¹[Van (Sanrakshan Evam Samvardhan) Adhiniyam], 1980.

(2) It extends to the whole of India ^{2***}.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

³**1A. Act to cover certain land.**— (1)The following land shall be covered under the provisions of this Act, namely:-

- (a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;
- (b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest purpose on or before the 12th December, 1996 in pursuance of an order, issued by any authority authorized by a State Government or an Union territory Administration in that behalf.

Explanation.—For the purposes of this sub-section, the expression “Government record” means record held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognized by the State Government or Union territory Administration.

(2) The following categories of land shall not be covered under the provisions of this Act, namely:-

- (a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case:
- (b) such tree, tree plantation or reforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1); and
- (c) such forest land,-
 - (i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the case may be, proposed to be used for construction of strategic linear project of national importance and concerning national security; or
 - (ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or
 - (iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Lift Wing Extremism affected area as may be notified by the Central Government.

¹ Substituted vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

² The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

³ Inserted Section 1A. vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

(3) The exemption provided under sub-section (2) shall be subject to such terms and conditions, including the conditions of planting trees to compensate felling of trees undertaken on the lands, as the Central Government may, by Gujidelines, specify.']

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.— (1) Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
- ¹[(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization ²[subject to such terms and conditions, as the Central government may, by order specify];
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

³[*Explanation.*— For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) ⁴[but does not include any work relating to or ancillary to conservation, development and management of forest and wildlife, such as-
 - (i) silvicultural operations including regeneration operations;
 - (ii) establishment of check-posts and infrastructure for the front line forest staff;
 - (iii) establishment and maintenance of fire lines;
 - (iv) wireless communication;
 - (v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;
 - (vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;
 - (vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Schedme of that area; and
 - (viii) any other like purposes, which the Central Government may, by order, specify.”;]

⁵[(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose.]

¹ Ins. by Act 69 of 1988, s. 2 (w.e.f. 15-3-1989).

² Inserted vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

³ Subs. by s. 2, *ibid.*, for the Explanation (w.e.f. 15-3-1989).

⁴ Subs. vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

⁵ Inserted vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

¹[**2A. Appeal to National Green Tribunal.**— Any person aggrieved, by an order or decision of the State Government or other authority made under section 2, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]

3. Constitution of Advisory Committee.— The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to—

- (i) the grant of approval under section 2; and
- (ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

²[**3A. Penalty for contravention of the provisions of the Act.**— Whoever contravenes or abets the contravention or any of the provisions of section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

3B. Offences by authorities and Government departments.— (1) Where any offence under this Act has been committed—

- (a) by any department of Government, the head of the department; or
- (b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part, of, any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.]

³[**3C. Power of Central Government to issue directions.**— The Central Government may, from time to time, issue such directions, to any authority under the Central Government, State Government or Union territory Administration, or to any organization, entity or body recognized by the Central Government, State Government or Union territory Administration, as may be necessary for the implementation of this Act.]

4. Power to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

¹ Ins. by Act 19 of 2010, s. 36 and Schedule III (w.e.f. 18-10-2010).

² Ins. by Act 69 of 1988, s. 3. (w.e.f. 15-3-1989).

³ Inserted vide Amendment Act, No. 15 of 2023 (w.e.f. 4th August, 2023).

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. Repeal and saving.— (1) The Forest (Conservation) Ordinance, 1980 (17 of 1980) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Government of Himachal Pradesh
Forest Department

NOTIFICATION

No. FFE-B-E(3)-31/2001-I

Dated: Shimla-2, the

19th February, 2011.

Whereas, the Expert Committee constituted by the State Government in Compliance of interim order dated 12.12.1996 of the Hon'ble Apex Court in Writ Petition (C) 202 of 1995 titled – T.N. Godaverman Vs Union of India and others decided that the 'compact wooded block' above 5 hac. Which are not recorded as 'forest' in the revenue record shall be treated as 'forest'.

2. And Whereas, during the hearing of Civil Appeals No. 8133, 8134 and 8135 of 2003 on 01.02.2010 in the Central Empowered Committee constituted by the Hon'ble Supreme Court of India in Writ Petition (C) 202 of 1995 titled- T.N. Godaverman Vs Union of India and others, it was suggested by the Central Empowered Committee that the definition of 'Forests' as defined by the State of Himachal Pradesh needs further clarification by way of certain definable parameters.

3. And Whereas the Central empowered Committee vide its recommendations dated 7th September, 2010 communicated to the Hon'ble Apex Court that the CEC is in agreement with the definition of the 'compact wooded block' decided by the State and recommended that the Civil Appeals No. 8133, 8134 and 8135 of 2003 may be decided with the direction that the State of Himachal Pradesh will notify the definition of 'compact wooded block' decided by it immediately.

4. And Whereas on the recommendations/Report of the Central Empowered Committee, the Hon'ble Supreme Court of India on 22/11/2010 in the above matter has passed following order:-

“The CEC vide its report dated 7th September, 2005 inter alia observed that it will be appropriate that the State of Himachal Pradesh notifies the definition of Compact Wooded Block as decided by the Himachal Pradesh Forest Department.

Learned counsel for the State of H.P. submits that so far the State did not issue any such Notification. In such circumstances, we direct the State of H.P. to examine the issue and issue appropriate Notification accepting the said definition of Compact Wooded Block as

has already been decided by the Forest Department. The appropriate Notification in this regard shall be issued within three months from today.”

5. Now therefore, in compliance of the above order of the Hon’ble Apex Court, the definition of ‘forest’/‘compact wooded block’ is notified as under:-

1. **“If the private area is notified under Indian Forest Act, 1927 or other Act or is entered as van/ban/vani/jungle in the revenue record it will be treated as forest.”**
2. **For other type of areas not recorded as indicated in point 1.**

There are two components under this definition:-

Compactness of the area 5 Hac. and

Woodiness in this area above 5 Hac.

(a) **Compactness** of an area above 5 Hac. would be an area of private land with itself or in contiguity with other adjacent private khasras only.

(b) **Woodiness** in this area of above 5 Hac. would be as defined below:-

Accordingly, the definition in different agro-climatic zones would be as under:-

i) **Temperate areas:-** These areas consisting of conifer forests of deodar, fir, spruce, kail, and of oaks rhododendrons and other broad leaved species will be defined as under:-

“A compact wooded private area of more than five hectares constituted by itself or in contiguity with private khasras of one or more than one land owners and having more than 400 trees of natural origin and not of plantation origin per hectare of Class-III and above in this compact wooded block will constitute a forest.”

ii) **Sub-tropical areas:-** These areas consisting of chil, khair and other broad leaved forest species will be defined as under:-

Chil forests:- The above definition for temperate area will hold good in these forest.

Khair and other broad leaved species: A compact wooded private area of more than five hectares constituted by itself or in contiguity with private khasras of one or more than one land owners and having more than 800 trees of natural origin and not of plantation origin per hectares of less than class III or for a mixed crop (mature and young) the trees being worked out by taking one mature tree equal to two young trees and vice versa in this compact wooded block will constitute a forest.”

By Order

Principal Secretary (Forests) to the
Government of Himachal Pradesh

THE FOREST (CONSERVATION) RULES, 2022.

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 28th June, 2022

G.S.R. 480(E).—In exercise of the powers conferred by sub-section (1) of section 4 of the Forest (Conservation) Act, 1980 (69 of 1980) and in supersession of the Forest (Conservation) Rules, 2003, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title, extent and commencement. - (1) These rules may be called the Forest (Conservation) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - (1) In these rules, unless the context otherwise requires, -

- (a) “Accredited Compensatory Afforestation” means a system of proactive afforestation to be used for obtaining prior approval under section 2 of the Act.
- (b) "Act" means the Forest (Conservation) Act, 1980 (69 of 1980);
- (c) “Advisory Committee” means the Advisory Committee constituted under section 3 of the Act;
- (d) “Chairperson" means the Chairperson of the Advisory Committee;
- (e) “Compensatory Afforestation” means afforestation done in lieu of the diversion of forest land for no forest purpose under the Act;
- (f) “Compensatory Levies” includes all money and funds specified in clauses (iii) and (iv) of sub-section (3) of section 4 of the Compensatory Afforestation Fund Act, 2016 (38 of 2016);
- (g) “Conservator of Forests” means Conservator of Forests, Chief Conservator of Forests, the Regional Chief Conservator of Forests or an officer equivalent to Conservator of Forests appointed by the State Government or Union territory Administration to hold the charge of a forest circle having jurisdiction over the forest land for which the prior approval of the Central Government is required;
- (h) “dereservation” means an order issued by the State Government or Union territory Administration or any authority thereof, for change in the legal status of a land statutorily or otherwise recognised as forest to any other category of land;
- (i) “diversion” means an order issued by the State Government or Union territory Administration or any authority thereof for the use of any forest land for non-forest purpose or assignment of a lease of any forest land for non-forest purpose;
- (j) "District Collector" means an officer appointed by the State Government or the Union territory Administration, as the case may be, and includes District Collector, Deputy Commissioner, to hold the charge of the Administration of the revenue district having jurisdiction over the forest land for which the prior approval of the Central Government under the Act is required;
- (k) “Divisional Forest Officer” means Divisional Forest Officer, Deputy Conservator of Forests or an officer equivalent to the Divisional Forest Officer or Deputy Conservator of Forests appointed by the State Government or Union territory Administration to hold the charge of a Forest Division having jurisdiction over the

forest land for which the prior approval of the Central Government under the Act is required;

- (l) “Integrated Regional Office” means an Integrated Regional Office established by, and controlled under the Central Government for the purpose of these rules;
- (m) “Land bank” means the lands identified or earmarked, as the case may be, by the State Government and Union territory Administration for raising Compensatory Afforestation in lieu of forest land proposed for diversion or diverted under the Act;
- (n) “Linear project” means project involving linear diversion of forest land for the purposes such as roads, pipelines, railways, transmission lines, etc.;
- (o) “Member” means a Member of the Advisory Committee and includes the Chairperson;
- (p) “member” means a member of the Regional Empowered Committee or Project Screening Committee and includes the chairperson of the Regional Empowered Committee or Project Screening Committee, as the case may be;
- (q) “National Working Plan Code” means a code prepared by the Central Government for the preparation of Working Plans;
- (r) “Nodal Officer” means any officer not below the rank of Additional Principal Chief Conservator of Forests, authorised by the State Government or Union territory Administration, as the case may be, or the senior most officer in the Forest Department of the concerned Union territory, if there is no post of Additional Principal Chief Conservator of Forests or above in the Department, for the purpose of implementation of Act and rules thereof and to deal with and to make correspondence with the Central Government, in the matter of forest conservation;
- (s) “Project Screening Committee” means the Project Screening Committee constituted under rule 8 to screen project proposals for use of forest land for the non-forest purpose for making recommendations to the State Government or Union territory Administration, as the case may be;
- (t) “Regional Empowered Committee” means the Regional Empowered Committee constituted under sub rule (1) of rule 6;
- (u) “Regional Officer” means head of the Integrated Regional Office appointed by the Central Government;
- (v) “section” means a section of the Act;
- (w) “Survey” means any activity to be taken up prior to initiating commissioning of a project or any activity undertaken for the purpose of exploring, locating or proving mineral deposits including coal, petroleum and natural gas before carrying out actual mining in the forest land, that includes survey, investigation, prospecting, exploration, including drilling therefore, etc.;
- (x) “user agency” means any person, organisation or legal entity or company or Department of the Central Government or State Government or Union territory Administration making a request for dereservation, diversion or assignment of lease of forest land under the provisions of the Act or the rules made thereunder;
- (y) “Working Plan” means the document prepared as per the provisions of the National Working Plan Code published by the Central Government from time to time and having prescriptions for scientific management of the forests of a particular Forest Division for a specified period;

(2) Words and expressions used herein and not defined in these rules but defined in the Act shall have the same meaning as respectively assigned to them in the Act.

3. Constitution of Advisory Committee. - (1) The Central Government may, by an Order, constitute an Advisory Committee to advise with regards to (i) grant of approval under section 2 in respect of proposals referred under sub clause (b) of clause 5 of rule 9; and (ii) any matter

connected with the conservation of forests referred to the Advisory Committee by the Central Government.

(2) The Advisory Committee shall consist of the following persons, namely: -

(1)	(2)	(3)
1.	Director General of Forests, Ministry of Environment, Forest and Climate Change	Chairperson;
2.	Additional Director General of Forests (Forest Conservation), Ministry of Environment, Forest and Climate Change	Member;
3.	Additional Director General of Forests (Wildlife), Ministry of Environment, Forest and Climate Change	Member;
4.	Additional Commissioner (Soil Conservation), Ministry of Agriculture and Farmers' Welfare	Member;
5.	Three experts to be nominated by the Central Government representing one each from the fields of ecology, engineering and development economics	Non-official Members;
6.	Inspector General of Forests dealing with Forest Conservation	Member Secretary.

(3) The Chairperson may co-opt the domain experts as special invitees to a meeting of the Advisory Committee.

(4) The Chairperson shall preside over the meeting of the Advisory Committee and in his absence, the Additional Director General of Forests (Forest Conservation), Ministry of Environment, Forest and Climate Change shall preside over the meeting.

4. Terms and conditions of non-official Members of the Advisory Committee. – The terms and conditions of the non-official Members of the Advisory Committee shall be as follows, namely:-

- (a) a non-official Member shall hold his office for a period of two years from the date of his nomination;
- (b) a non-official Member shall cease to hold office if he becomes of unsound mind, or insolvent or is convicted for an offence which involves moral turpitude;
- (c) a non-official Member may be removed from his office if he fails to attend three consecutive meetings of the Advisory Committee without any sufficient cause or reason;
- (d) any vacancy caused by any reason mentioned in clauses (b) and (c) shall be filled by the Central Government for the remaining term of two years; and
- (e) the non-official Members of the Advisory Committee shall be entitled to a travelling allowance and daily allowance as are admissible to an officer of the Government of India holding Group 'A' post carrying the same scale of pay:

Provided that the payment of travelling allowance and daily allowance to a member who is a Member of the Parliament or a Member of a State Legislature shall be regulated in accordance with the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954) or the respective provisions of law pertaining to the member of the concerned State Legislature, as the case may be.

5. Conduct of business of the Advisory Committee.- The Advisory Committee shall conduct its business as follows, namely:-

- (a) the Chairperson shall call the meeting of the Committee whenever considered necessary, but not less than once a month;
- (b) the meeting of the Committee shall ordinarily be held at New Delhi provided that in a case where the Chairperson is satisfied that inspection of site of forest land proposed to be used for non-forest purposes shall be necessary or expedient in connection with the consideration of the proposal referred to the Committee, he may direct that the meeting of the Committee to be held at a place other than New Delhi from where such inspection of site is required;
- (c) every question upon which the Central Government is required to be advised shall be considered in the meeting of the Committee, provided that in urgent cases, the Chairperson may direct those documents may be circulated and sent to the members for their opinion within the stipulated time;
- (d) the quorum of the meeting of the Committee shall be five including the Chairperson; and
- (e) the user agency may be allowed to remain present in the meeting of the Advisory Committee for such duration as may be necessary to furnish such information or clarify any issue which may pertain to it.

6. Constitution of Regional Empowered Committee. - (1) The Central Government may, by an Order, constitute a Regional Empowered Committee at each of the Integrated Regional Offices to examine proposals referred to under sub-clause (a) of clause 5 of rule 9 and grant approval or rejection of proposals under section 2.

(2) The Regional Empowered Committee at each of the Integrated Regional Offices shall consist of the following persons, namely: -

(1)	(2)	(3)
1.	Regional Officer	chairperson;
2.	Three non-official members from amongst eminent persons who are experts in the field of forestry and allied disciplines	non-official members;
3.	The senior-most officer amongst officers of the rank of Conservator of Forests and Deputy Conservator of Forests in the Integrated Regional Office	member - secretary.

(3) The chairperson of the Regional Empowered Committee may co-opt the domain experts as special invitees to the meeting.

(4) One representative each from the Forest Department and Revenue Department not below the rank of Director to the Government of India, shall be invited by the Regional Empowered Committee to attend the meeting as a special invitee, in the examination of the proposals.

(5) Terms and conditions of non-official members of the Regional Empowered Committee shall be as follows: -

- (a) a non-official member shall hold his office for a period of two years from the date of his nomination;
- (b) a non-official member shall cease to hold office if he becomes of unsound mind, insolvent, or is convicted for an offence involving moral turpitude;
- (c) a non-official member may be removed from his office if he fails to attend three consecutive meetings of the Committee without any sufficient cause or reason;

- (d) any vacancy in the Regional Empowered Committee caused by any reason mentioned in sub-clauses (b) and (c) shall be filled by the Central Government for the remaining term of two years; and
- (e) the non-official members of the Regional Empowered Committee shall be entitled to a travelling allowance and daily allowance as are admissible to an officer of the Government of India holding Group 'A' post carrying the same scale of pay:

Provided that the payment of travelling allowance and daily allowance to a member who is a Member of the Parliament or a Member of a State Legislature shall be regulated in accordance with the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954) or the respective provisions of law pertaining to the member of the concerned State Legislature, as the case may be.

7. Conduct of Business of Regional Empowered Committee. - The Advisory Committee shall conduct its business as follows, namely:-

- (a) the chairperson of the Regional Empowered Committee shall hold the meeting whenever considered necessary, but not less than twice a month;
- (b) the meetings of the Regional Empowered Committee shall be held at the headquarters of the Integrated Regional Office:

Provided that where the chairperson of the Regional Empowered Committee is satisfied that inspection of site of forest land proposed to be used for non-forest purposes shall be necessary or expedient in connection with the consideration of the proposal referred, he may direct that the meetings of the Regional Empowered Committee be held at a place other than headquarters of the Integrated Regional Office for such inspection of site;

- (c) the chairperson of the Regional Empowered Committee shall preside over every meeting of the Regional Empowered Committee and in his absence, the senior-most member not below the rank of the Conservator of Forests shall act as the chairperson;
- (d) every proposal referred to the Regional Empowered Committee for advice or decision shall be considered in the meeting of the Regional Empowered Committee: Provided that in urgent case, the chairperson of the Regional Empowered Committee may direct that documents may be circulated and sent to the members of the Regional Empowered Committee for their opinion within the stipulated time;
- (e) the quorum of the meeting of the Regional Empowered Committee shall be three; and
- (f) the user agency may be allowed to remain present for such duration during a meeting as may be necessary to furnish such information or clarify any issue which may pertain to it.

8. Constitution of Project Screening Committee. - (1) The State Government and Union territory Administration may, by an Order, constitute a Project Screening Committee to examine the completeness of the proposal submitted under clauses (i), (ii) or (iii) of section 2 of the Act.

(2) The Project Screening Committee shall consist of the following persons, namely:-

(1)	(2)	(3)
1.	Nodal Officer	chairperson;
2.	Concerned Chief Conservator of Forests/ Conservator of Forests	member;

3.	Concerned Divisional Forest Officer	member;
4.	Concerned District Collector or his representative (Not below the rank of Deputy Collector)	member;
5.	Divisional Forest Officer in the office of Nodal Officer	member -secretary.

(3) The Project Screening Committee shall meet at least twice every month and the quorum of the meeting of the Project Screening Committee shall be three.

(4) The Project Screening Committee shall, after examination of the proposals, make recommendation to the State Government or Union territory Administration, as the case may be.

9. Proposals for Prior Approval of the Central Government.- (1) The approval shall be accorded by the Central Government in two stages, namely (i) 'In- Principle' approval; and (ii) 'Final' approval.

(2) The user agency shall make an application to the State Government or Union territory Administration for approval of the Central Government under section 2 of the Act for dereservation of forest land, use of forest land for non-forest purposes or for assignment of lease, in the specified online Forms, to be notified by the Central Government.

(3) The copy of the proposal shall be simultaneously forwarded to the concerned Divisional Forest Officers, District Collectors, Conservator of Forests, Chief Conservator of Forests and the Nodal Officer of the State Government or Union territory Administration each of whom shall independently and separately undertake preliminary examination of the completeness of documentation of the proposal for the purpose of examination by the Project Screening Committee.

(4)

- (a) the Project Screening Committee shall examine the proposal received from the State Government or Union territory Administration, except proposals involving forest land of five hectares or less, without going into the merit of the proposal, that the proposal is complete in all respects and the proposed activity is not in any restricted area or category for the purpose of screening and ascertaining, and the Project Screening Committee may call the user agency for clarification or additional documents, if any, during the meeting and the minutes of the meeting shall be uploaded online;
- (b) the Project Screening Committee shall examine the proposal for its completeness and correctness and ensure that deficiencies in the proposal, if any, are identified and the member-secretary shall inform in this regard to the user agency;
- (c) the user agency shall re-submit the proposal, if returned under clause (b), and the same shall be reexamined by the Project Screening Committee; an incomplete proposal so re-submitted under this sub clause shall stand deregistered;
- (d) a Proposal Identity Number shall be generated for a proposal which is found complete in all respects by the Project Screening Committee and the Identity Number shall be used for all future references;
- (e) the complete proposal with the proposal Identity Number shall be forwarded to the concerned Divisional Forest Officers, District Collectors, Conservator of Forests or Chief Conservator of Forests for field verification;
- (f) where the forest land or part thereof included in the proposal is not under the management control of the Forest Department, the District Collector shall get the land schedule and map of the forest land included in the proposal authenticated in the online form through joint verification by officers of Revenue Department and Forest Department;

- (g) in addition to, every proposal verified in the field by the concerned Divisional Forest Officer, field inspection shall be simultaneously undertaken for every proposal that involves more than forty hectares of forest land by the concerned Conservator of Forests and for every proposal that involves more than hundred hectares of forest land by the Nodal Officer if the proposal;
- (h) the proposal, except proposals involving forest land of five hectares or less, shall come up for consideration of the Project Screening Committee within the period specified in Schedule II, annexed to these rules, from submission of the completed proposal under clause (c) or clause (e), as the case may be, and the Project Screening Committee shall examine the feasibility of the proposal for the purpose of recommending it to the State Government or Union territory Administration along with mitigation measures to be adopted by the user agency:

Provided that the Project Screening Committee may seek from the user agency any clarification, additional detail or modification of the proposal in terms of change in forest land proposed for diversion on account of reasons such as minimising the requirement of forest land or minimising adverse impact on forest and wildlife, change in Compensatory Afforestation land proposed or change in measures proposed to be adopted by the user agency to mitigate the adverse impact of the project, and for this purpose it may ask the user agency to make a presentation:

Provided further that the proposal shall be considered after submission of the clarification or additional detail provided by the user agency online, and in case the proposal has been modified in terms of the first proviso, within the time period specified in this clause after repeating the steps in clauses (b) to (f) as applicable and in case new forest land has been proposed for diversion in the modified proposal, the steps in clause (g) shall also be repeated.

- (i) Where the user agency fails to submit correct information, additional detail or a modified proposal within the period as specified, the proposal shall stand rejected:

Provided that if the user agency satisfies the Project Screening Committee that the reason for the delay was beyond its control, the Project Screening Committee may reconsider the proposal, after the reasons to be recorded in writing and recommend it to the State Government or Union territory Administration, as the case may be;

- (j) proposal involving forest land of less than five hectares, shall after examination at the level of Divisional Forest Officer be forwarded by him directly to the Nodal Officer and the Nodal Officer shall forward such proposals to the State Government or Union territory Administration along with his recommendations and a copy of the same shall also be forwarded to the Integrated Regional Office;
- (k) proposal involving forest land of five hectares or more, shall be forwarded by the Nodal Officer, with the approval of the Principal Chief Conservator of Forests, to the State Government or Union territory Administration, along with the Project Screening Committee's recommendation and a copy of the same shall be forwarded to the Integrated Regional Office;
- (l) where the State Government or Union territory Administration, as the case may be, decides not to dereserve, divert for non-forest purposes or assign on lease the forest land as indicated in the proposal, the same shall be intimated to the user agency by the Nodal Officer; and
- (m) where the State Government or Union territory Administration agrees 'In-Principle' to dereserve the forest land, divert for non-forest purposes or assign on lease the forest land as indicated in the proposal shall forward its recommendation to the Central Government.

(5) 'In-Principle' approval of the proposal: -

- (a) Except the proposals related to:
 - (i) dereservation
 - (ii) mining involving forest land of more than 5 hectares
 - (iii) regularisation of encroachment and
 - (iv) violation of the provisions of the Act, all other proposals related to:
 - (i) linear projects,
 - (ii) forest land up to forty hectares and
 - (iii) use of forest land having canopy density up to 0.7 irrespective of their extent for the purpose of survey, shall be examined in the Integrated Regional Office and disposed off in the manner specified in clause (c);

Provided that, no approval is required for assignment of Petroleum Exploration license or Petroleum Mining Lease where neither physical possession nor breaking of forest land is involved, however, for all activities such as the establishment of exploration or developmental wells and connected activities on the forest land, approval under clause (ii) of section 2 of the Act shall be obtained for the actual impact area as per the procedure specified under these rules, subject to provisions of guidelines issued by the Central Government.

- (b) all proposals other than those referred to in sub-clause (a) above shall be examined and shall be disposed of in the manner specified under these rules;
- (c) proposals received under sub-clause (a) shall be examined by the Integrated Regional Office in the following manner:-
 - (i) all proposals involving forest land up to five hectares, shall be examined by the Integrated Regional Office for its completeness and after enquiry as deemed necessary and giving due regard to the aspects listed under sub-clause (ii) of clause (e), 'In-Principle' may be granted by the Integrated Regional Office or may be rejected after the reasons to be recorded in writing;
 - (ii) all linear proposals involving forest land of more than five hectares, all proposals for use of forest land having canopy density upto 0.7 for the purpose of 'survey' irrespective of their extent and all other proposals involving the use of more than five hectares and up to forty hectares forest land, shall be referred, after examination of its completeness, by the Integrated Regional Office to the Regional Empowered Committee constituted under rule 6;
 - (iii) the Regional Empowered Committee shall examine all proposals referred to it under sub-clause (a) above and after further enquiry as deemed necessary and giving due regard to the aspects listed under sub-clause (ii) of clause (e), may grant 'In-Principle' or reject the same by recording reasons;
- (d) site inspection report shall be prepared for proposals specified in sub-clause (b) by the Integrated Regional Office and the same shall be submitted to the Central Government for consideration by the Advisory Committee;
- (e) proposals received by the Central Government shall be examined in the following manner:-
 - (i) all proposals received under clause (b) along with the site inspection report as required under clause (d), shall be referred, after examination of its completeness, to the Committee;

- (ii) the Advisory Committee shall examine, all proposals referred to it in clause (b), giving due regards, but not limited to, the following, and after further enquiry, as deemed necessary, shall make recommendation to the Central Government for consideration for approval:-
 - (A) the proposed use of the forest land is not for any non-site specific purpose such as agricultural purpose, office or residential purpose or for the rehabilitation of persons displaced for any reason;
 - (B) the State Government or the Union territory Administration, as the case may be, has certified that it has considered all alternatives and that no other alternative in the circumstances is feasible and that the required area is the minimum needed;
 - (C) the State Government or the Union territory Administration, as the case may be, before making his recommendation, has considered all issues having direct and indirect impacts on the diversion of forest land on the forest, wildlife and the environment;
 - (D) concerned mandates under the National Forest Policy;
 - (E) whether adequate justification has been given and appropriate mitigation measures have been proposed by the State Government or the Union territory Administration, as the case may be, if the forest land proposed to be used for non-forest purposes forms part of a national park, wildlife sanctuary, tiger reserve, designated or identified tiger or wildlife corridor, or habitat of any endangered or threatened species of flora and fauna or of an area lying in the severely eroded catchment; and
 - (F) the State Government or the Union territory Administration, as the case may be, undertakes to provide at its cost or at the cost of the user agency the requisite extent of appropriate land as per sub-rule (1) of rule 11 and afforestation thereof, for the purpose of carrying out Compensatory Afforestation;
- (iii) while making recommendations as per sub-clause (ii), the Committee may also impose conditions or restrictions and such mitigation measures, which in its opinion would offset the adverse environmental impact;
- (iv) the Central Government shall, after considering the recommendation of the Advisory Committee, grant 'In-Principle' approval subject to fulfillment of stipulated conditions or reject and communicate the same to the concerned State Government or the Union territory Administration, as the case may be, and to the user agency;

(f)

- (i) in case the proposal is found incomplete or information provided is found to be incorrect after its examination, the Central Government shall inform the State Government or Union territory Administration and user agency for furnishing the required information within a specified period;
- (ii) the State Government or Union territory Administration on receipt of communication under sub-clause (i), may furnish the complete information, after which the proposal shall be considered for 'In-Principle' approval under these rules:

Provided, if the information sought pertains to the user agency, the user agency may directly furnish the requisite information to the Central Government with a copy to the State Government or Union territory Administration, and upon receipt of such information from the user agency, the Central Government, if it considers necessary, may seek comments of the concerned State

Government or Union territory Administration, as the case may be, on the information furnished by the user agency or consider granting 'In-Principle' approval.

(6) 'Final' approval of the proposal:-

(a)

- (i) the Nodal Officer may, after receipt of the 'In-Principle' approval from the Central Government, communicate the same to the concerned Divisional Forest Officers, District Collectors and Conservator of Forests;
- (ii) on receipt of a copy of the 'In-Principle' approval, the Divisional Forest Officer shall prepare a demand note containing the item-wise amount of Compensatory Levies, as applicable, to be paid by the user agency and communicate the same to the user agency, along with a list of documents, certificates and undertakings required to be submitted by them in compliance with the conditions stipulated in 'In-Principle' approval;
- (iii) the user agency shall, after receipt of the communication, make payment of Compensatory Levies and hand over the land identified for Compensatory Afforestation, a compliance report along with copies of documentary evidence including undertaking and certificate in respect of the payment of Compensatory Levies and handing over of Compensatory Afforestation land to the Divisional Forest Officer;
- (iv) the Divisional Forest Officer, after having received the compliance report and satisfied with the completeness, shall recommend the compliance report for final approval and forward it to the Conservator of Forests;
- (v) the Conservator of Forests, after having received the compliance report as referred to in sub clause (iv) above, shall make his recommendations on the compliance report and forward the same to the Nodal Officer;
- (vi) the Nodal Officer, after having received the compliance report, ensuring its completeness and obtaining approval of the Principal Chief Conservator of Forests of the State Government or head of the Department in case of Union territory Administration, shall forward such report with his recommendations to the State Government or Union territory Administration, as the case may be.

(b)

- (i) the Central Government after having received the compliance report and ensuring its completeness may accord 'Final' approval under section 2 of the Act and communicate such decision to the State Government or Union territory Administration and the user agency;
- (ii) The State Government or Union territory Administration, as the case may be, after receiving the 'Final' approval of the Central Government under Section 2 of the Act, and after fulfillment and compliance of the provisions of all other Acts and rules made thereunder, as applicable including ensuring settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. 2 of 2007), shall issue order for diversion, assignment of lease or dereservation, as the case may be.

(c)

- (i) the final order of dereservation under clause (i) of Section 2 of the Act, wherever accorded, shall be effected through a Gazette notification by the State Government or Union territory Administration, as the case may be, informing dereservation of the forest land;
- (ii) the whole process of obtaining approval shall be carried out in the online portal developed for this purpose.

- (d)
- (i) where compliance of condition imposed in the 'In-principle' approval is awaited from the State Government or Union territory Administration, as the case may be, for more than two years, the 'In-Principle' approval shall be deemed to be null and void:

Provided the Central Government may, for the reasons to be recorded in writing, in respect of proposals involving forest land of more than thousand hectares, where 'In-Principle' approval has been obtained, may consider grant of phase-wise 'Final' approval by the competent authority subject to compliance in respect of:

(1) payment of Compensatory Levies and notification of land identified and accepted for raising Compensatory Afforestation, proportional to the part area for which compliance is submitted; and

(2) any other specific condition that the Central Government may deem fit to have been complied with.

- (e) after issue of final approval under sub- clause (ii) of clause (b) and Gazette notification under sub clause (i) of clause (c), the concerned forest land may be handed over or assigned, as the case may be, to the user agency by the State Government or Union territory Administration;
- (f) the concerned Integrated Regional Office shall monitor the compliance of all conditions imposed at the time of granting 'In-Principle' approval and the State Government or Union territory Administration and the user agency shall also monitor, at least once every year, the compliance of conditions imposed during 'In-Principle' approval and upload the monitoring report in the online portal.

10. Proposal seeking prior approval of the Central Government for working plan.- (1)

- (a) The Nodal Officer of the State Government or Union territory Administration shall submit the draft Working Plan of a Forest Division, duly prepared in accordance with the provisions of the National Working Plan Code, along with the recommendation of the State Consultative Committee, in the online portal for prior approval of the Central Government;
- (b) the draft Working Plan shall include, inter alia, details of forest land diverted, corresponding Compensatory Afforestation lands and status of afforestation thereon;
- (c) the draft Working Plan submitted to the Central Government shall be examined by the concerned Integrated Regional Office for its conformity with National Working Plan Code, the National Forest Policy, 1988 and the Integrated Regional Office may accord prior approval to the draft Working Plan along with conditions or without conditions or accord 'In-Principle' approval along with modification of the provision contained in the draft Working Plan and for a period as it deems fit, or reject the same by recording the reasons therefore;
- (d) the State Government or Union territory Administration or its designated officer shall carry out the prescriptions of the Working Plan to which the 'In-Principle' approval has been accorded by the Integrated Regional Office with respect to all or specific provision of the Working Plan and for the period for which the Working Plan has been approved;
- (e) the State Government or Union territory Administration shall undertake a mid-term review of the approved Working Plan and submit the review report along with its recommendation to the Integrated Regional Office and the Integrated Regional Office may, after examination, modify the condition of 'In Principle' approval or issue a fresh prior approval by modifying the provision of the previously approved

Working Plan for the remaining period or reject the recommendations of mid-term review by recording reasons therefore; and

- (f) the Integrated Regional Office may also consider and approve eligible Annual Working Schemes, in case submitted by the State Government or Union territory Administration.

(2) (a) all proposals under clause (iv) of section 2, irrespective of the size of forest land involved, shall be submitted online by the State Government or Union territory Administration to the concerned Integrated Regional Office;

(b) proposals received under clause (a) of sub-rule (1) shall be examined by the Integrated Regional Office and may grant 'In-Principle' approval after enquiry or reject the same by recording the reasons thereof;

(c) proposals involving whole or part of forest land bearing a canopy density of 0.4 or more or proposals involving clear-felling of forest land of size more than twenty hectares in plains and ten hectares in hills irrespective of canopy density, shall be forwarded to the Regional Empowered Committee and the Regional Empowered Committee shall deal in the manner specified under these rules and while examining the proposal, the Integrated Regional Office shall ensure that the final decision is in conformity with the National Forest Policy, 1988, and the National Working Plan Code;

Explanation.- For the purpose of these rules "clear-felling of forest land" means removal of all natural vegetation in whatever form occurring, by felling, uprooting or burning them and removing them from the forest land over one hectare in size or more, but other types of felling of trees of specified size or species, including their selection felling or coppice felling shall not be considered as clear felling.

11. Creation of Compensatory Afforestation.- (1) (a) An user agency shall provide land which is neither notified as forest under the Indian Forest Act, 1927 (16 of 1927) or any other law nor managed as forest by the Forest Department and it shall also bear the cost of raising Compensatory Afforestation over such land and the requirement of Compensatory Afforestation land shall be as per the Schedule I annexed to these rules:

Provided that in case the non-forest land or portion thereof provided by the user agency is not fit for raising Compensatory Afforestation of a specified density, then additional Compensatory Afforestation shall be raised on a degraded notified or unclassified forest land under the management control of the Forest Department which is twice in size of such shortfall in the given Compensatory Afforestation land and the user agency shall also bear the additional cost on such account:

Provided further that if the non-forest land being made available for Compensatory Afforestation already bears vegetation of 0.4 canopy density or more, there shall not be an additional requirement of planting of trees on such land but a programme for improvement of the forest crop shall be implemented by the Forest Department in a time-bound manner:

Provided further that in exceptional circumstances when the suitable land required for Compensatory Afforestation under this clause is not available and the certificate to this effect is given by the State Government or Union territory Administration, as the case may be, the Compensatory Afforestation may be considered on degraded forest land which is twice in extent to the area proposed to be diverted in case of Central Government agencies or Central Public Sector Undertakings on case to case basis:

Provided further that in exceptional circumstances when the suitable land required for Compensatory Afforestation under this clause is not available, and the certificate to this effect is given by the State Government or Union territory Administration, as the case may be, the Compensatory Afforestation may be considered on degraded forest land which is twice in extent to the area proposed to be diverted in case of State Public Sector Undertakings for captive coal blocks on case to case basis:

Provided further that in case the user agency acquires any non-forest land for the execution of the project, the exceptions in case of Central Government agencies, Central Public Sector Undertakings and State Public Sector Undertakings as above shall not be applicable.

Explanation.- The specified density for raising Compensatory Afforestation under this clause shall be such as to develop, a forest of a minimum canopy density of 0.4 or more in the fifth year of start of Compensatory Afforestation operation, and the area has sufficient vegetation stock to enable it to mature into land with canopy density of minimum 0.7;

- (b) The land specified under clause (a), shall be demarcated by concrete pillars of suitable size and handed over, free from all encumbrances to the State Forest Department or Union territory Forest Department and the same shall be notified as protected forest under Section 29 of Indian Forest Act, 1927 (Act No. 16 of 1927) or under any other law for the time being in force before the Final approval is granted under the Act;
- (c) The land identified and earmarked for Compensatory Afforestation shall be treated and afforested by the State Government or Union territory Administration or user agency as per the Compensatory Afforestation plan approved as part of the said forest diversion proposal and the work of Compensatory Afforestation shall start within one year of issue of order of diversion of the corresponding forest land and the Central Government may issue guidelines on the modalities of Compensatory Afforestation, including agencies that may undertake Compensatory Afforestation;
- (d) Subject to the consent of concerned State Governments or Union territory Administrations, in case the forest land to be diverted is in a hilly or mountainous State or Union territory having forest cover of more than two-third of its geographical area or situated in any other State or Union territory having forest cover of more than one-third of its geographical area, the Compensatory Afforestation under this sub-rule may be taken up in another State or Union territory, having forest cover less than twenty per cent of its total geographical area. Similarly, the Accredited Compensatory Afforestation or Land bank may be taken up in another State or Union territory:

Provided that, the money towards Compensatory Afforestation in such cases shall be transferred to the State Compensatory Afforestation Fund of the State or Union territory in which the Compensatory Afforestation land has been identified and the remaining money of the Compensatory Levies shall be deposited in the Compensatory Afforestation Fund Management and Planning Authority Fund of the State Government or Union territory Administration in which the forest land has been proposed to be diverted.

(2) (a) A State Government or Union territory Administration as the case may be, may for the purpose of Compensatory Afforestation create a Land bank under the administrative control of the Department of Forest;

- (b) The minimum size of the Land bank shall be a single block of twenty five hectares:

Provided that in case a Land bank is in continuity of a land declared or notified as forest under the Indian Forest Act, 1927 (16 of 1927) or under any other law for time being in force, Protected Area, Tiger Reserve or within a designated or identified tiger or wildlife corridor, there shall be no restriction on size of the land;

(c) The lands covered under Accredited Compensatory Afforestation earned under sub-rule (3) may be included in the Land bank.

(3) (a) The Central Government may formulate an Accredited Compensatory Afforestation mechanism to be used for obtaining prior approval under section 2;

- (b) Accredited Compensatory Afforestation may be earned by a person if he has established afforestation over land on which the Act is not applicable and is free from all encumbrances;
- (c) an afforestation shall be counted towards Accredited Compensatory Afforestation if such land has vegetation composed predominantly of trees having canopy density of 0.4 or more and the trees are at least five years old;
- (d) Accredited Compensatory Afforestation shall be earned by developing afforestation of one-hectare area with 0.4 or more canopy density, but there shall be no Accredited Compensatory Afforestation for developing an area below 0.4 canopy density or below one-hectare land;
- (e) Accredited Compensatory Afforestation may be swapped for Compensatory Afforestation proposed under sub-rule (1):

Provided the Accredited Compensatory Afforestation cover a block of minimum of ten hectares and has been fenced as per norms specified for Compensatory Afforestation in that area:

Provided further that Accredited Compensatory Afforestation over land of any size situated in the continuity of land declared or notified as forest under any law, Protected Area, Tiger Reserve or within a designated or identified tiger or wildlife corridor, may be swapped for Compensatory Afforestation.

- (f) Accredited Compensatory Afforestation earned out of vacation of non-forest lands on account of voluntary relocation of a village from a National Park, Wildlife Sanctuary or Tiger Reserve and designated or identified tiger or wildlife corridors shall qualify for Compensatory Afforestation as per Schedule –I annexed to these rules, and this provision may also be used by a user agency in lieu of Compensatory Afforestation under sub-rule (1);
- (g) Accredited Compensatory Afforestation identified under this rule shall be demarcated with concrete pillars of suitable size and handed over, free from all encumbrances to Forest Department of the State Government or Union territory Administration and the same shall be notified as Protected Forest under section 29 of Indian Forest Act, 1927 or under the provision of any other law for the time being in force before the Final approval is granted under the Act;
- (h) The Central Government may issue detailed guidelines on creation of Accredited Compensatory Afforestation, its stock registry and management for the purpose of its swap for Compensatory Afforestation land and cost of maintenance thereof up to a period specified by the Central Government.

12. General Instructions.-

- (1) Felling of trees on forest lands approved for use for the non-forest purpose under these rules shall be restricted to a bare minimum and to an unavoidable number and

shall be done under the supervision of the local Forest Department and the forest produce obtained therefrom shall be handed over to the local Forest Department for disposal in the manner specified by the State Government or Union territory Administration which shall give preference to distribution to local villagers for meeting their domestic bonafide requirement.

- (2) Forest land diverted for non-forest purpose under these rules shall be appropriately surveyed jointly by the user agency and the Forest Department or the land-owning Department, demarcated on the ground by way of appropriate permanent boundary marks at the cost of the user agency and handed over by the Forest Department or land-owning Department to the user agency prior to starting of any non-forest use.
- (3) For the purpose of forest cover under these rules, the figures and description used in the latest India State of Forest Report published by Forest Survey of India shall be referred.
- (4) The Central Government may cancel approval accorded in respect of a proposal, with or without the request of the State Government Union territory Administration and may decide to refund the Compensatory Levies deposited, on case to case basis.
- (5) The conditions imposed by Central Government for diversion of forest land for the non-forest purpose shall not be changed or modified after a period of two years from the date of grant of final approval unless some exceptional circumstances arise or the Central Government considers it necessary to impose any additional clause of compliance.

SCHEDULE I

[See rule 11 (1) and rule 11 (3)]

Provisions for the requirement of land related to Compensatory Afforestation

Sr. No.	Description of Compensatory Afforestation Land	Size of Compensatory Afforestation land as compared to forest land to be diverted for non-forest purpose
(1)	(2)	(3)
1.	Land to which provisions of the Act are not applicable.	Equivalent.
2.	Land recorded as 'forest' in Government record but does not fulfill all of the following conditions:- (a) notified as forest under any other law for the time being in force (b) managed as forest by Forest Department. <i>(This dispensation is allowed to proposals of Central Government and State Government or Union territory Administration only.)</i>	Two times.
3.	Degraded notified or unclassed forest land. <i>(This dispensation is in case of State Public Sector Undertakings for captive coal blocks on case to case basis and Central Government Agencies/Central Public Sector Undertakings on case to case basis)</i>	Two times
4.	Land, qualifying for Compensatory Afforestation	Five percent less for every

	<p>under Sl. No. (1), provided is of size of twenty-five hectares or more in one block.</p> <p>Compensatory Afforestation land of less than ten hectares shall not be accepted unless the requirement of Compensatory Afforestation land is less than ten hectares in which case the user agency has to bear the additional cost of protection of Compensatory Afforestation so raised for a period of twenty years from the date of planting.</p>	<p>additional block size of ten hectares or part thereof subject to a maximum of twenty-five per cent rebate.</p>
5.	<p>Land, qualifying for Compensatory Afforestation under Sl. No. (1), that is less than 25 hectares size but more than 10 hectares size in one block.</p> <p>If the requirement of Compensatory Afforestation land is less than twenty-five hectares but more than ten hectares in size, the provision of excess land for Compensatory Afforestation shall not be applicable but the user agency has to bear the additional cost of protection of Compensatory Afforestation so raised for a period of twenty years from the date of planting.</p>	<p>Five percent more for every five hectares smaller block size or part thereof.</p>
6.	<p>Land qualifying for Compensatory Afforestation under Sl. No. (1) above and is located within the notified boundary of a protected area</p>	<p>Twenty-five percent less</p>
7.	<p>. Land qualifying for Compensatory Afforestation under Serial No. (1) or (2) and is located in continuity of a notified boundary of a National Park or a Wildlife Sanctuary or area linking one protected area or tiger reserve with another protected area and designated or identified tiger or wildlife corridors.</p>	<p>Fifteen percent less.</p>
8.	<p>Land qualifying for Compensatory Afforestation under Sl. No. (1) or (2) and is located adjacent to a forest land notified as forest under Indian Forest Act, 1927 (16 of 1927) or any other law.</p> <p>Accredited Compensatory Afforestation land of any size may be accepted in case it is contiguous to a forest land notified under any law.</p>	<p>Ten percent less</p>
9.	<p>Compensatory Afforestation land made available from complete and voluntary relocation of a village/ habitation (situated in non-forest land) from a Wildlife Sanctuary, National Park or Tiger Reserve, to a non-forest land outside such Sanctuary, Park or Reserve or area linking protected area or tiger reserve with another protected area and designated or identified tiger or wildlife corridors, as the case may be.</p>	<p>(a) Exemption from payment of Net Present Value of forest land equivalent to the Compensatory Afforestation land by way of vacation of village or habitation from National Park/Wildlife Sanctuary/ Tiger Reserve.</p> <p>Note: "Net Present Value" shall have the same meaning as</p>

		<p>assigned in clause (j) of section 2 of the Compensatory Afforestation Fund Act, 2016 (38 of 2016).</p> <p>(b) Accredited Compensatory Afforestation in the ratio of 1:1.25 (Non-forest land: Accredited Compensatory Afforestation earned) so vacated by a village by way of voluntary relocation (<i>provided that the same shall be notified as part of the Wildlife Sanctuary, National Park or Tiger Reserve and also notified as Protected Forest or Reserved Forest</i>).</p> <p>(c) Additional Accredited Compensatory Afforestation at the rate of 0.5 ha per relocated family.</p>
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Note 1: The user agency or Accredited Compensatory Afforestation developer shall ensure that relocation is voluntary.

Note 2: No compensation under relevant schemes of the Central Government or State Government would be payable to relocatees or user agency or Accredited Compensatory Afforestation developer.

Note 3: The State Government can also use this provision, provided no central assistance on such scheme is availed.

SCHEDULE-II**[See rule 8 (2) and rule 9(4)]**

Time Period of examination of proposals for use of forest land for non-forest purpose by the Project Screening Committee

Sr. No	Size of forest land proposed for dereservation/diversion for non-forest purpose (in hectares)	Nature of non-forest use	Time Period (Maximum Working Days prescribed)
(1)	(2)	(3)	(4)
1.	More than 5 and upto 40	All usage (except mining)	60
2.	More than 5 and upto 40	Mining	75
3.	More than 40 and upto 100	All usage (except mining)	75
4.	More than 40 and upto 100	Mining	90
5.	More than 100	All usage (except mining)	120
6.	More than 100	Mining	150

Note-1: Time period (working days) counted from the date of final submission of proposal as accepted by the Project Screening Committee [see rule 9(4) (e)].

Note-2: Project Screening Committee or the Divisional Forest Officer shall examine a proposal only after an approved special plan, such as Wildlife Management Plan, Catchment Area Treatment Plan Stream/River Protection Plan, etc. , if specified at the time of screening of proposal under clause (h) of sub-rule (4) of rule 9, has been submitted to the concerned authorities.

Note-3: All proposals related to mining and proposals other than mining involving forest area upto 5 ha specified under sub clause (j) of clause (4) of rule 9, shall be processed within maximum working days of 45 and 30, respectively.

[F. No. FC- 11/118/2021-FC]

RAMESH KUMAR PANDEY, Inspector General of Forests

**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS
(RECOGNITION OF FOREST RIGHTS) ACT, 2006**

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ARRANGEMENT OF SECTIONS

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**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS
(RECOGNITION OF FOREST RIGHTS) ACT, 2006**

ACT NO. 2 OF 2007

[29th December, 2006.]

An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.— In this Act, unless the context otherwise requires,—

- (a) “community forest resource” means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;
- (b) “critical wildlife habitat” means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the

¹ 31st December, 2007, vide notification No. S. O. 2224(E), dated 31st December, 2007, see Gazette of India Extraordinary, Part II, sec 3(ii)

purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from subsections (1) and (2) of section 4;

- (c) “forest dwelling Scheduled Tribes” means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;
- (d) “forest land” means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;
- (e) “forest rights” means the forest rights referred to in section 3;
- (f) “forest villages” means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;
- (g) “Gram Sabha” means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;
- (h) “habitat” includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;
- (i) “minor forest produce” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (j) “nodal agency” means the nodal agency specified in section 11;
- (k) “notification” means a notification published in the Official Gazette;
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “Scheduled Areas” means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;
- (n) “sustainable use” shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002 (18 of 2003);
- (o) “other traditional forest dweller” means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation.— For the purpose of this clause, “generation” “means a period comprising of twenty-five years;

- (p) “village” means—
 - (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996); or
 - (ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
 - (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
 - (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

- (q) “wild animal” means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 (53 of 1972) and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.— (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:—

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
- (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:—

- (a) schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill upgradation or vocational training centres;
- (l) roads; and
- (m) community centres:

Provided that such diversion of forest land shall be allowed only if,—

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.— (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—

- (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
- (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils

- the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
 - (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980 (69 of 1980), requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

5. Duties of holders of forest rights.—The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

- (a) protect the wild life, forest and biodiversity;
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.— (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

7. Offences by members or officers of authorities and Committees under this Act.—Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

8. Cognizance of offences.—No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

9. Members of authorities, etc., to be public servants.—Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

10. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

11. Nodal agency.—The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

12. Power of Central Government to issue directions.—In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

13. Act not in derogation of any other law.—Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996), the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

14. Power to make rules.— (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) procedural details for implementation of the procedure specified in section 6;
- (b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;
- (c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;
- (d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS
(RECOGNITION OF FOREST RIGHTS) RULES, 2007**

(TO BE PUBLISHED IN THE GAZETTE OF INDIA,

**EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)
OF DATED 1st JANUARY, 2008)**

With Amendments on 6th September 2012

**GOVERNMENT OF INDIA
MINISTRY OF TRIBAL AFFAIRS**

New Delhi, the 1st January, 2008

NOTIFICATION¹

G.S.R. No. 1(E) WHEREAS the draft of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 were published, as required by sub-section (1) of Section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) under the notification of the Government of India in the Ministry of Tribal Affairs number G.S.R. 437 (E), dated the 19th June 2007 in the Gazette of India, Part II, Section 3, sub-section (i) of the same date, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of the period of thirty days from the date on which the copies of the Gazette containing the said notification are made available to the public;

AND WHEREAS the copies of the said Gazette were made available to the public as on 25.06.2007.

AND WHEREAS the objections and suggestions received from the public in respect of the said draft rules have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-sections (1) and (2) of Section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the Central Government hereby makes the following rules for recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers residing in such forests, namely:-

1. Short title, extent and commencement.- (1) These rules may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007².

(2) They shall extend to the whole of India except the State of Jammu and Kashmir.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

¹ Note: The symbol “#” represents the original formulation of Rules issued in 2007 and notified on January 1, 2008; and has also been reproduced for easy reference.

² Note that these Rules have been substantially amended by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

- a) “Act” means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- b) “bona fide livelihood needs” means fulfillment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of surplus produce arising out of exercise of such rights;¹
- c) “claimant” means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;
- ‘(ca) “community rights” means the rights listed in clauses (b), (c), (d), (e), (h), (i), (j), (k) and (l) of sub-section (1) of Section 3.²
- d) “disposal of minor forest produce” under clause (c) of sub-section (1) of Section 3 shall include right to sell as well as individual or collective processing, storage, value addition, transportation within and outside forest area through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood;

Explanation:

- (1) The transit permit regime in relation to transportation of minor forest produce shall be modified and given by the Committee constituted under clause (e) of sub-rule (1) of rule 4 or the person authorized by the Gram Sabha,
 - (2) This procedural requirement of transit permit in no way shall restrict or abridge the right to disposal of minor forest produce,
 - (3) The collection of minor forest produce shall be free of all royalties or fees or any other charges³
- e) “Forest Rights Committee” means a committee constituted by the Gram Sabha under rule 3;
 - f) “section” means the section of the Act

(2) The words and expressions used and not defined in these rules but defined in the Act, shall have the meanings respectively assigned to them in the Act.

2A. Identification of hamlets or settlements and process of their consolidation.- The State Government shall ensure that, -

- (a) every panchayat, within its boundaries, prepares a list of group of hamlets or habitations, unrecorded or unsurveyed settlements or forest villages or taungya villages, formally not part of any Revenue or Forest village record and have this list passed by convening Gram Sabha of each such habitation, hamlets or habitations included as villages for the purpose of the Act through a resolution in the Panchayat and submit such list to Sub Division Level Committee.

¹ Substituted by Rule 2(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 2(1) (b) “bonafide livelihood needs” means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of sub-section (1) of Section 3 of the Act;

² Inserted by Rule 2(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

³ Substituted by Rule 2(iii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 2(1)(d) “disposal of minor forest produce” under clause (c) of sub-section (1) of Section 3 of the Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood;

- (b) the Sub-Divisional Officers of the Sub Division Level Committee consolidate the lists of hamlets and habitations which at present are not part of any village but have been included as villages within the Panchayat through a resolution, and are formalised as a village either by adding to the existing village or otherwise after following the process as provided in the relevant State laws and that the lists are finalised by the District Level Committee after considering public comments, if any.
- (c) on finalisation of the lists of hamlets and habitations, the process of recognition and vesting of rights in these hamlets and habitations is undertaken without disturbing any rights, already recognized.¹

3. Gram Sabha.- (1) The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least two-third members shall be the Scheduled Tribes.²

Provided that not less than one-third of such members shall be women:

Provided further that where there are no Scheduled Tribes, at least one-third of such members shall be women.

(2) The Forest Rights Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.

(3) When a member of the Forest Rights Committee is also a claimant of individual forest right, he shall inform the Committee and shall not participate in the verification proceedings when his claim is considered.

(4) The Forest Rights Committee shall not reopen the forest rights recognized or the process of verification of the claims already initiated before the date of coming into force of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendments Rules, 2012.³

4. Functions of the Gram Sabha.- (1) The Gram Sabha shall –

- (a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;
- (b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;
- (c) pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee;
- (d) consider resettlement packages under clause (e) of sub-section (2) of Section 4 of the Act and pass appropriate resolutions; and

¹ Inserted by Rule 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

² Substituted by the words of Rule 4(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 3 (1) “.....wherein at least one-third members shall be the Scheduled Tribes”

³ Inserted by Rule 4 (b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

- (e) Constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of Section 5 of the Act.
- (f) monitor and control the committee constituted under clause (e) which shall prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of forest dwelling Scheduled Tribes and other Traditional Forest Dwellers and integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee.
- (g) Approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of produce, or modification of management plans.¹

(2) The quorum of the Gram Sabha meeting shall not be less than one-half of all members of such Gram Sabha:

Provided that at least one-third of the members present shall be women:

Provided further that where any resolutions in respect of claims to forest rights are to be passed, at least fifty per cent of the claimants to forest rights or their representatives shall be present:

Provided also that such resolutions shall be passed by a simple majority of those present and voting.²

(3) The Gram Sabha shall be provided with the necessary assistance by the authorities in the State.

5. Sub-Divisional Level Committee.- The State Government shall constitute Sub-Divisional Level Committee with the following members, namely:-

- (a) Sub-Divisional Officer or equivalent officer - Chairperson;
- (b) Forest Officer in charge of a Sub-division or equivalent officer - member;
- (c) three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member; and
- (d) an officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs.

¹ Inserted by Rule 5(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

² Substituted by Rule 5(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

Rule 4 (2) The quorum of the Gram Sabha meeting shall be not less than two thirds of all members of such Gram Sabha:

Provided that where there is a heterogeneous population of Scheduled Tribes and non Scheduled Tribes in any village, the members of the Scheduled Tribe, primitive tribal groups (PTGs) and pre-agricultural communities shall be adequately represented.

6. Functions of the Sub-Divisional Level Committee.- The Sub-Divisional Level Committee (SDLC) shall –

- (a) provide information to each Gram Sabha about their duties and duties of holder of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected;
- (b) provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee;
- (c) collate all the resolutions of the concerned Gram Sabhas;
- (d) consolidate maps and details provided by the Gram Sabhas;
- (e) examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;
- (g) hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;
- (h) co-ordinate with other Sub-Divisional Level Committees for inter sub-divisional claims;
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;
- (k) raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules;
- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A, B and C) of these rules.¹
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.

7. District Level Committee.- The State Government shall constitute District Level Committee (DLC) with the following members, namely:-

- (a) District Collector or Deputy Commissioner - Chairperson;
- (b) concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;
- (c) three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and
- (d) an officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.

8. Functions of District Level Committee.- The District Level Committee shall

¹ Substituted by Rule 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 6 (l) “ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A & B) of these rules”.

- (a) ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee;
- (b) examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;
- (c) consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;
- (d) hear petitions from persons aggrieved by the orders of the Sub-Divisional Level Committee;
- (e) co-ordinate with other districts regarding inter-district claims;
- (f) issue directions for incorporation of the forest rights in the relevant government records including record of rights;
- (g) ensure publication of the record of forest rights as may be finalized (**)¹
- (h) ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III to these rules, is provided to the concerned claimant and the Gram Sabha respectively and²
- (i) ensure that a certified copy of the record of the right to community forest resource and title under the Act, as specified in Annexure IV to these rules, is provided to the concerned Gram Sabha or the community whose rights over community forest resource have been recognized under clause (i) of sub-section (1) of Section 3.³

9. State Level Monitoring Committee. - The State Government shall constitute a State Level Monitoring Committee with the following members, namely:-

- (a) Chief Secretary - Chairperson;
- (b) Secretary, Revenue Department - member;
- (c) Secretary, Tribal or Social Welfare Department - member;
- (d) Secretary, Forest Department - member;
- (e) Secretary, Panchayati Raj - member;
- (f) Principal Chief Conservator of Forests - member;
- (g) three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
- (h) Commissioner, Tribal Welfare or equivalent who shall be the Member-Secretary.

10. Functions of the State Level Monitoring Committee.- The State Level Monitoring Committee shall –

- (a) devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;
- (b) monitor the process of recognition, verification and vesting of forest rights in the State;

¹ The word “and” omitted by Rule 7(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

² The word “and” inserted by Rule 7 (ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

³ Inserted by Rule 7(iii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

- (c) meet at least once in three months to monitor the process of recognition, verification and vesting of forest rights, consider and address the field level problems, and furnish a quarterly report in the format appended as Annexure V to these rules, to the Central Government on their assessment regarding the status of claims, the compliance with the steps required under the Act, details of claims approved, reasons for rejection, if any and the status of pending claims.¹
- (d) on receipt of a notice as mentioned in Section 8 of the Act, take appropriate actions against the concerned authorities under the Act;
- (e) monitor resettlement under sub-section (2) of Section 4 of the Act.
- (f) Specifically monitor compliance of the provisions contained in clause (m) of sub-section (1) of Section 3 and sub-section (8) of Section 4.²

11. Procedure for filing, determination and verification of claims by the Gram Sabha.-

(1) The Gram Sabhas shall :-

- (a) call for claims and authorize the Forest Rights Committee to accept the claims in the Form as provided in Annexure-I of these rules and such claims shall be made within a period of three months from the date of such calling of claims along with at least two of the evidences mentioned in rule 13, shall be made within a period of three months: Provided that the Gram Sabha may, if considers necessary, extend such period of three months after recording the reasons thereof in writing.
- (b) fix a date for initiating the process of determination of its community forest resource and intimate the same to the adjoining Gram Sabhas where there are substantial overlaps, and the Sub-Divisional Level Committee.

(2) The Forest Rights Committee shall assist the Gram Sabha in its functions to

- (i) receive, acknowledge and retain the claims in the specified form and evidence in support of such claims;
- (ii) prepare the record of claims and evidence including maps;
- (iii) prepare a list of claimants on forest rights;
- (iv) verify claims as provided in these rules;
- (v) present their findings on the nature and extent of the claim before the Gram Sabha for its consideration.

(3) Every claim received shall be duly acknowledged in writing by the Forest Rights Committee.

(4) The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for “community forest rights in Form B and the right over community forest resource under clause (i) of sub-section (1) of Section 3 in Form C.”³

¹ Substituted by Rule 8 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 10 (c). “furnish a six monthly report on the process of recognition, verification and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by the nodal agency”.

² Inserted by Rule 8(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

³ The word “community forest rights in Form B” substituted by Rule 9 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 11(4) “community forest rights in Form B”

(5) The Gram Sabha shall on receipt of the findings under clause (v) of sub-rule (2), meet with prior notice, to consider the findings of the Forest Rights Committee, pass appropriate resolutions, and shall forward the same to the Sub-Divisional Level Committee.

(6) The Secretary of Gram Panchayat will also act as Secretary to the Gram Sabhas in discharge of its functions.

12. Process of verifying claims by Forest Rights Committee.- (1) The Forest Rights Committee shall, after due intimation to the concerned claimant and the Forest Department:-

- (a) visit the site and physically verify the nature and extent of the claim and evidence on the site;
- (b) receive any further evidence or record from the claimant and witnesses;
- (c) ensure that the claim from pastoralists and nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present;
- (d) ensure that the claim from member of a primitive tribal group or pre-agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, are verified when such communities or their representatives are present; and
- (e) prepare a map delineating the area of each claim indicating recognizable landmarks.
- (f) delineate the customary boundaries of the community forest resource with other members of the Gram Sabha including elders who are well versed with such boundaries and customary access
- (g) prepare a community forest resource map with recognizable land marks and through substantial evidence as enumerated in sub-rule (2) of rule 13 and thereafter, such community forest resource claim shall be approved by a resolution of the Gram Sabha passed by a simple majority.

Explanation: The delineation of community forest resource may include existing legal boundaries such as reserve forest, protected forest, National Parks and Sanctuaries and such delineation shall formalize and recognize the powers of the community in access, conservation and sustainable use of such community forest resources.”¹

(2) The Forest Rights Committee’ shall then record its findings on the claim and present the same to the Gram Sabha for its consideration.

(3) If there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing: Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub Divisional Level Committee for its resolution.

(4) On a written request of the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities shall provide an authenticated copy of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate its clarification, if required, through an authorized officer.

¹ Inserted by Rule 10 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

12 A. Process of recognition of rights.-

- (1) On receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue departments shall remain present during the verification of the claims and the verification of evidences on the site and shall sign the proceedings with their designation, date and comments, if any.
- (2) If any objections are made by the Forest or Revenue departments at a later date to a claim approved by the Gram Sabha, for the reason that their representatives were absent during field verification, the claim shall be remanded to the Gram Sabha for re-verification by the committee where objection has been raised and if the representatives again fail to attend the verification process the Gram Sabha's decision on the field verification shall be final.
- (3) In the event of modification or rejection of a claim by the Gram Sabha or a recommendation for modification or rejection of a claim forwarded by the Sub-Divisional Level Committee to the District Level Committee, such decision or recommendation on the claim shall be communicated in person to the claimant to enable him to prefer a petition to the Sub-Divisional Level Committee or District Level Committee as the case may be, within a period of sixty days which shall be extendable to a period of thirty days at the discretion of the above said committees.
- (4) If any other state agency desires to object to a decision of the Gram Sabha or the Sub-Divisional Level Committee, it shall file an appeal before the Sub-Divisional Level Committee or the District Level Committee, as the case may be, which shall be decided by the Committee (in the absence of the representative of the concerned agency, if any) after hearing the claimant.
- (5) No petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to present anything in support of his claim.
- (6) The Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.
- (7) In cases where the resolution passed by the Gram Sabha, recommending a claim, with supporting documents and evidence, is upheld by the Sub-Divisional Level Committee with or without modifications, but the same is not approved by the District Level Committee, the District Level Committee shall record detailed reasons for not accepting the recommendations of the Gram Sabha or the Sub-Divisional Level Committee as the case may be, in writing, and a copy of the order of the District Level Committee along with the reasons shall be made available to the claimant or the Gram Sabha or the Community as the case may be.
- (8) The land rights for self-cultivation recognised under clause (a) of sub-section (1) of Section 3 shall be, within the specified limit, including the forest lands used for allied activities ancillary to cultivation, such as, for keeping cattle, for winnowing and other post-harvest activities, rotational fallows, tree crops and storage of produce.

- (9) On completion of the process of settlement of rights and issue of titles as specified in Annexure II, III and IV of these rules, the Revenue and the Forest departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the specified period of record updation under the relevant State laws or within a period of three months, whichever is earlier.
- (10) All decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution or recommendation of the Sub-Divisional Level Committee shall give detailed reasons for such modification or rejection, as the case may be: Provided that no recommendation or rejection of claims shall be merely on any technical or procedural grounds: Provided further that no committee (except the Gram Sabha or the Forest Rights Committee) at the Block or Panchayat or forest beat or range level, or any individual officer of any rank shall be empowered to receive claims or reject, modify, or decide any claim on forest rights.
- (11) The Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in rule 13 while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.

Explanation:

1. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation by whatever name called, arisen during prior official exercise, or the lack thereof, shall not be the sole basis for rejection of any claim.
2. The satellite imagery and other uses of technology may supplement other form of evidence and shall not be treated as a replacement.¹

12 B. Process of Recognition of Community Rights.-

(1) The District Level Committee shall, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups as described in clause (e) of sub-section (i) of Section 3 amongst the forest dwellers, ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and their claims for habitat rights are filed before the concerned Gram Sabhas, wherever necessary by recognizing floating nature of their Gram Sabhas.

(2) The District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities as described in clause (d) of sub-section (i) of Section 3 before the concerned Gram Sabhas.

(3) The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of Section 3 relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued.

¹ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

(4) In case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee.

(5) The conversion of forest villages, unrecorded settlement under clause (h) of Section 3 shall include the actual land use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces.¹

13. Evidence for determination of forest rights.- (1) The evidence for recognition and vesting of forest rights shall, inter alia, include –

- (a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;
- (b) Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
- (c) physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;
- (d) quasi-judicial and judicial records including court orders and judgments;
- (e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
- (f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
- (g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
- (h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
- (i) Statement of elders other than claimants, reduced in writing.

(2) An evidence for “Community Forest Resource”² inter alia, include –

- (a) community rights such as nistar by whatever name called;
- (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;
- (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;
- (d) Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests
- (e) Earlier or current practice of traditional agriculture.³

¹ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

² Substituted by Rule 12(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012) # Rule 13 “community forest rights”

³ Inserted by Rule 12 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012)

(3) The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.

14. Petitions to Sub-Divisional Level Committee.-

- (1) Any person aggrieved by the resolution of the Gram Sabha may within a period of sixty days from the date of the resolution file a petition to the Sub-Divisional Level Committee.
- (2) The Sub-Divisional Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Gram Sabha in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The Sub-Divisional Level Committee may either allow or reject or refer the petition to concerned Gram Sabha for its reconsideration.
- (4) After receipt of such reference, the Gram Sabha shall meet within a period of thirty days, hear the petitioner, pass a resolution on that reference and forward the same to the Sub-Divisional Level Committee.
- (5) The Sub-Divisional Level Committee shall consider the resolution of the Gram Sabha and pass appropriate orders, either accepting or rejecting the petition.
- (6) Without prejudice to the pending petitions, Sub-Divisional Level Committee shall examine and collate the records of forest rights of the other claimants and submit the same through the concerned Sub-Divisional Officer to the District Level Committee.
- (7) In case of a dispute between two or more Gram Sabhas and on an application of any of the Gram Sabhas or the Sub-Divisional Level Committee on its own, shall call for a joint meeting of the concerned Gram Sabhas with a view to resolving the dispute and if no mutually agreed solution can be reached within a period of thirty days, the Sub-Divisional Level Committee shall decide the dispute after hearing the concerned Gram Sabhas and pass appropriate orders.

15. Petitions to District Level Committee.-

- (1) Any person aggrieved by the decision of the Sub-Divisional Level Committee may within a period of sixty days from the date of the decision of the Sub-Divisional Level Committee file a petition to the District Level Committee.
- (2) The District Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Sub-Divisional Level Committee in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The District Level Committee may either allow or reject or refer the petition to concerned Sub Divisional Level Committee for its reconsideration.
- (4) After receipt of such reference, the Sub-Divisional Level Committee shall hear the petitioner and the Gram Sabha and take a decision on that reference and intimate the same to the District Level Committee.
- (5) The District Level Committee shall then consider the petition and pass appropriate orders, either accepting or rejecting the petition.

- (6) The District Level Committee shall send the record of forest rights of the claimant or claimants to the District Collector or District Commissioner for necessary correction in the records of the Government.
- (7) In case there is a discrepancy between orders of two or more Sub-Divisional Level Committees, the District Level Committee on its own, shall call for a joint meeting of the concerned Sub-Divisional Level Committees with a view to reconcile the differences and if no mutually agreed solution can be reached, the District Level Committee shall adjudicate the dispute after hearing the concerned Sub-Divisional Level Committees and pass appropriate orders.

16. Post Claim support and handholding to holders of forest rights.- The State Government shall ensure through its departments especially tribal and social welfare, environment and forest, revenue, rural development, panchayati raj and other departments relevant to upliftment of forest dwelling scheduled tribes and other traditional forest dwellers, that all government schemes including those relating to land improvement, land productivity, basic amenities and other livelihood measures are provided to such claimants and communities whose rights have been recognized and vested under the Act.¹

Dr. Bachittar Singh, Joint Secretary
[F. No.17014/02/2007-PC&V (Vol.VII)]
The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Rules, 2007
Government of India
Ministry of Tribal Affairs
.....
[F. No. 23011/32/2010-(Vol. II)]
Dr. Sadhana Rout, Joint Secretary
The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Amendment Rules, 2012

¹ Inserted by Rule 13 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E). dated 6th September, 2012

Annexure-I

[See Rule 6(1)]
FORM-A
CLAIM FORM FOR RIGHTS TO FOREST LAND
 [See Rule 11(1)(a)]

1. Name of the claimant (s) :
2. Name of the spouse :
3. Name of father/mother:
4. Address :
5. Village :
6. Gram Panchayat:
7. Tehsil/Taluka:
8. District:
9. (a) Scheduled Tribe: Yes/No (Attach authenticated copy of Certificate)
 (b) Other Traditional Forest Dweller: Yes/No
 (If a spouse is a Scheduled Tribe (attach authenticated copy of Certificate)
10. Name of other members in the family with age:
 (including children and adult dependents)

Nature of claim on land:

1. Extent of forest land occupied
 (a) For habitation
 (b) For self-cultivation, if any:
 (See Section 3(1)(a) of the Act.)
2. Disputed lands if any:
 (See Section 3(1)(f) of the Act.)
3. Pattas/ Lease/ grants, if any:
 (See Section 3(1)(g) of the Act.)
4. Land for in situ rehabilitation or alternative land, if any:
 (See Section 3(1)(m) of the Act.)
5. Land from where displaced without land compensation:
 (See Section 4(8) of the Act.)
6. Extent of land in forest villages, if any:
 (See Section 3(1)(h) of the Act.)
7. Any other traditional right, if any:
 (See Section 3(1)(l) of the Act.)
8. Evidence in support:
 (See Rule 13)
9. Any other information:

Signature/Thumb Impression of the Claimant(s):

The Scheduled Tribes and Other Traditional Forest Dwellers
 (Recognition of Forest Rights) Rules, 2007
 Government of India
 Ministry of Tribal Affairs

FORM – B
CLAIM FORM FOR COMMUNITY RIGHTS
[See Rule 11(1)(a) and (4)]

1. Name of the claimant(s):
 - (a) FDST community: Yes/No
 - (b) OTFD community: Yes/No
2. Village:
3. Gram Panchayat:
4. Tehsil/Taluka:
5. District:

Nature of community rights enjoyed:

1. Community rights such as nistar, if any:
(See Section 3(1)(b) of the Act.)
2. Rights over minor forest produce, if any:
(See Section 3(1)(c) of the Act.)
3. Community rights
 - (a) Uses or entitlements (fish, water bodies), if any:
 - (b) Grazing, if any
 - (c) Traditional resource access for nomadic and pastoralist, if any:
(See Section 3(1)(g) of the Act.)
4. Community tenures of habitat and habitation for PTGs and pre-agricultural communities, if any:
(See Section 3(1)(e) of the Act.)
5. Right to access biodiversity, intellectual property and traditional knowledge, if any:
(See Section 3(1)(k) of the Act.)
6. Other traditional right, if any:
(See Section 3(1)(l) of the Act.)
7. Evidence in support:
(See Rule 13)
8. Any other information.

Signature/Thumb Impression of the Claimant(s):

The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Rules, 2007
Government of India
Ministry of Tribal Affairs

FORM - C¹
 CLAIM FORM FOR RIGHTS TO COMMUNITY FOREST RESOURCE
 [See Section 3(1)(i) of the Act And Rule 11(1) and 4(a)]

1. Village/Gram Sabha:
2. Gram Panchayat:
3. Tehsil/Taluka:
4. District:
5. Name(s) of members of the gram sabha [Attach as separate sheet, with status of Scheduled Tribes/ Other Traditional Forest Dwellers indicated next to each member.]

Presence of few Scheduled Tribes/Other Traditional Forest Dwellers is sufficient to make the claim.

We the undersigned residents of this Gram Sabha hereby resolve that the area detailed below and in the attached map comprises our Community Forest Resource pover which we are claiming recognition of our forest rights under Section 3(1)(i).

(Attach a map of the community forest resource, showing location, landmarks within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities to which the community had traditional access and which they have been traditionally protecting, regenerating, conserving and managing for sustainable use. Please note that this need not correspond to existing legal boundaries.)

6. Khasra/ Compartment No.(s), if any and if known:
7. Bordering villages:
 - (i)
 - (ii)
 - (iii)

(This may also include information regarding sharing of resources and responsibilities with any other villages.)
8. List of Evidence in Support (Please see Rule 13)

Signature/Thumb Impression of the Claimant(s):

The Scheduled Tribes and Other Trditional Forest Dwellers
 (Recognition of Forest Rights) Rules, 2007
 Government of India
 Ministry of Tribal Affairs

¹ Inserted by Rule 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No. G.S.R. No. 669 (E). dated 6th September, 2012)

Annexure-II

[See Rule 8(h)]

TITLE FOR FOREST LAND UNDER OCCUPATION

1. Name(s) of holder(s) of forest rights (including spouse):
2. Name of the father/mother:
3. Name of dependents:
4. Address:
5. Village/Gram Sabha:
6. Gram Panchayat:
7. Tehsil/Taluka:
8. District:
9. Whether Scheduled Tribe or Other Traditional Forest Dweller
10. Area:
11. Description of boundaries by prominent landmarks including khasra/compartament No.:
This title is heritable, but not alienable or transferable under sub-section (4) of Section 4 of the Act.

We, the undersigned, hereby, for and on behalf of the Government of (Name of the State)
..... affix our signatures to confirm the above forest right.

**Divisional Forest Officer/
Deputy Conservator of Forests**

District Tribal Welfare Officer

District Collector/Deputy Commissioner

Annexure-III

[See Rule 8(h)]

TITLE TO COMMUNITY FOREST RIGHTS

1. Name(s) of the holder(s) of community forest right:
2. Village/Gram Sabha:
3. Gram Panchayat:
4. Tehsil/Taluka:
5. District:
6. Scheduled Tribe/ Other Traditional Forest Dweller:
7. Nature of community rights:
8. Conditions if any:
9. Description of boundaries including customary boundary and/or by prominent landmarks including khasra/compartament No.

Name(s) of the holder(s) of community forest right:

1.
2.
3.

We, the undersigned, hereby, for and on behalf of the Government of (Name of the State) affix our signatures to confirm the forest right as mentioned in the Title to the above mentioned holders of community forest rights.

**Divisional Forest Officer/
Deputy Conservator of Forests**

District Tribal Welfare Officer

District Collector/Deputy Commissioner

Annexure-IV¹**TITLE TO COMMUNITY FOREST RESOURCES**

[See Rule 8(i)]

1. Village/Gram Sabha:
2. Gram Panchayat:
3. Tehsil/Taluka:
4. District:
5. Scheduled Tribe/ Other Traditional Forest Dweller: Scheduled Tribes community/Other Traditional Forest Dwellers community/Both.
6. Description of boundaries including customary boundary, by prominent landmarks, and by khasra/compartment No.

Within the said area, this community has the right to protect, regenerate or conserve or manage, and this (to be named) community forest resources which they have been traditionally protecting and conserving for sustainable used as per Section 3(1)(i) of the Act. No conditions are being imposed on this right other than those in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act and the Rules framed thereunder.

We, the undersigned, hereby, for and on behalf of the Government affix our signatures to confirm the community forest resource (to be named and specified in extent, quantum, area, whichever is applicable) as mentioned in the Title to the above mentioned gram sabha/community(ies).

**Divisional Forest Officer/
Deputy Conservator of Forests**

(District Tribal Welfare Officer)

District Collector/Deputy Commissioner

¹ Inserted by Rule 15 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No. G.S.R. No. 669 (E). dated 6th September, 2012)

Annexure-V¹

FORMAT FOR FURNISHING QUARTERLY REPORT
[See Rule 10(c)]

1. Name of State
2. Status of Claims
 - a) Individual Rights
 - Filed
 - Accepted
 - Rejected
 - Pending
 - Reasons for rejection with examples
 - Corrective measures suggested
 - Any other observations
 - Extent of forest land covered (in Ha.)
 - Status of updation of forest and revenue records under Section 3(1)(a) of the Act (in Ha.)
 - b) Community Forest Rights
 - Filed
 - Accepted
 - Rejected
 - Pending
 - Extent of forest land covered
 - Status of updation of forest and revenue record under Section 3(1)(b) to 3(1)(l) of the Act (in Ha.)
 - Reasons for rejections with example
 - Corrective measures suggested
 - Any other observations
 - c) Details of Community Forest Resource being managed and by whom
 - d) Good Practices (if any)
 - e) Area diverted under Section 3(2) of the Act (in Ha.)
 - f) Any other Remarks.

(Chairman)
State Level Monitoring Committee

(Member Secretary)
State Level Monitoring Committee

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (i), vide number G.S.R. 1(E), dated the 1st January, 2008.

[F.No.23011/32/2010-(Vol.II)]

Dr. Sadhana Rout, Joint Secretary

¹ Inserted by Rule 15 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No. G.S.R. No. 669 (E). dated 6th September, 2012)

**THE HIMACHAL PRADESH FOREST PRODUCE (REGULATION OF TRADE) ACT,
1982**

ARRANGEMENT OF SECTIONS

SECTIONS:

CHAPTER-I
PRELIMINARY

1. Short title, extent and commencement.
2. Definitions.

CHAPTER-II
REGULATION OF THE TRADE OF FOREST PRODUCE

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**THE HIMACHAL PRADESH FOREST PRODUCE (REGULATION OF TRADE) ACT,
1982**

(ACT NO. 5 OF 1982)¹

(Received the assent of the Governor, Himachal Pradesh on 30th April, 1982 and was published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 4th May, 1982, pp. 361-377).

An Act to make provisions for regulating in the public interest the trade of certain forest produce by creation of full State control in such trade.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-third Year of the Republic of India, as follows:-

**CHAPTER-I
PRELIMINARY**

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall be deemed to have come into force with effect from the 1st day of October, 1981.

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

- (a) "agent" means an agent appointed under section 3;
- (b) "committee" means an advisory committee constituted under sub-section (1) of section 6;
- (c) "division" means a territorial Forest Division as for the time being constituted or may be delimited, from time to time, by special or general order of the State Government;
- (d) "forest produce" means trees of any of the species standing, felled or otherwise fashioned, specified in the Schedule annexed to this Act and any other produce declared as such by the State Government from time to time by a notification published in the Official Gazette;
- (e) "owner" means any person other than the State Government authorised by virtue of ownership of land as per entries in revenue records prepared under the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954) or by any other authority of law to own or to have in his possession the forest produce;
- (f) "purchase" with all its grammatical variations and cognate expressions means the acquisition of forest produce for cash or deferred payment or for other valuable consideration;

Explanation.- Purchase of forest produce on installment system of payment shall, notwithstanding that the seller retains a title to forest produce as security for payment of the purchase money, be deemed to be a purchase; and

¹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 1st April, 1982, pp. 209 and 218.

- (g) "sale" with all its grammatical variations and cognate expressions means any transfer of forest produce by one person to another for cash or for deferred payment or for other valuable consideration and includes a transfer of forest produce on hire-purchase or other system of payment by installment.

(2) All other words and expression used herein, but not defined in the Act, shall have the meanings assigned to them in the Indian Forest Act, 1927, as applied to this State.

CHAPTER-II

REGULATION OF THE TRADE OF FOREST PRODUCE

3. Appointment of agents.- The State Government may, for the purchase of, and trade in, forest produce on its behalf, appoint one or more agents in respect of different divisions for all or any specified forest produce on such terms and conditions as may be laid by the Government from time to time.

- 4. Restriction on sale, purchase and transportation.-** On the commencement of this Act,-
- (a) no owner of forest produce shall effect sale of any forest produce to a person other than the State Government or the agent appointed under section 3;
 - (b) no person other than the State Government through its authorised officer or agent appointed under section 3 shall purchase forest produce from any owner; and
 - (c) no person shall transport forest produce to any place within or outside the division without permit issued in that behalf by such authority, in such manner and subject to such terms and conditions as are prescribed under sections 41 and 42 of the Indian Forest Act, 1927 (16 of 1927) and the rules made there-under by the State Government.

5. State Govt. to purchase all forest produce offered for sale.- (1) Subject to the provisions of section 8, the State Government through its authorised officer or agent appointed under section 3 shall purchase at the price fixed under section 7 all forest produce offered for sale by the owner during the normal hours of business at such places or premises as may be specified by the State Government through its authorised officer or its agent.

(2) Notwithstanding anything contained in sub-section (1), where the officer-in-charge of the division has reason to believe that any forest produce offered for sale belongs to the State Government, such forest produce may be appropriated without payment of price.

6. Constitution of Advisory Committee.- (1) The State Government shall from time to time, constitute for each division in which forest produce is grown or found, an Advisory Committee which shall consist of not more than 5 members nominated by the State Government.

(2) The Advisory Committee for each such division shall advise the State Government in the matter of fixation from time to time of a fair and reasonable price at which forest produce offered for sale may be purchased by or on behalf of the State Government in that division and also on such other matters as may be referred to it by the State Government.

(3) The business of the Committee shall be conducted in such manner as may be prescribed.

7. Government to fix price in consultation with the Committee.- The State Government shall after consultation with the committee constituted under section 6, fix the price at which forest produce shall be purchased at various places by it or by any of its authorised officers or agent from

the owner of the forest produce and shall publish the same in the Official Gazette or in such other manner as may be prescribed. The price so fixed shall remain in force upto the end of each financial year and shall not be altered during that financial year:

Provided that if the committee fails to tender advice by the 15th of February preceding the financial year, the State Government may proceed to fix the price without consultation of the committee:

Provided further that the State Government through its authorised officer or agent may purchase the forest produce till the constitution of the Committees at a price mutually agreed upon between the parties to the sale.

8. State Government or agent to purchase forest produce as per programme.- (1) The authorised officer or an agent shall purchase from the owner of the forest produce offered for sale according to the felling programme, as may be formulated under the Himachal Pradesh Land Preservation Act, 1978 at the price fixed under section 7.

(2) The State Government through its authorised officer or the agent may make such advances of money on such terms and conditions as may be prescribed to the owners whose forest produce is covered by the felling programme under the Himachal Pradesh Land Preservation Act, 1978.

9. Disposal of forest produce.- Forest produce purchased by the State Government through its authorised officer or agent shall be sold or otherwise disposed of in such manner as the State Government may direct.

10. Delegation of powers.-The State Government may, by special or general order, delegate any of its powers or functions under this Act or the rules made thereunder, except the power to make rules under section 17, to any officer not below the rank of the Assistant Conservator of Forests, who shall exercise or perform the same, subject to such conditions and restrictions, if any, as the State Government may specify in the order.

11. Powers of entry, search, seizure etc.- (1) Any Forest Officer not below the rank of the Forest Ranger or any Police Officer not below the rank of Sub-Inspector or any other person authorised by the State Government in this behalf may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with,-

- (i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of forest produce;
- (ii) enter and search any place; and
- (iii) seize the forest produce in respect of which he suspects that any provision of this Act or the rules made thereunder has been, is being, or is about to be contravened along with receptacle containing such produce, as well the animals, vehicles or boats used in carrying such produce.

(2) The provisions of section 100 of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

12. Penalty.- Any person contravening any of the provisions of this Act or the rules made thereunder-

- (a) shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both; and
- (b) the forest produce in respect of which such contravention has been made shall be forfeited to the Government.

13. Attempts and abetment.- Any person who attempts to contravene or abets the contravention of any provision of this Act or the rules made thereunder shall be deemed to have contravened such provision.

14. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by any Forest Officer not below the rank of the Divisional Forest Officer or any other officer as may be authorised by the State Government in this behalf.

15. Compounding of offences.- (1) The State Government may, by notification, empower a Forest Officer not inferior in rank to that of a Divisional Forest Officer-

- (a) to accept from any person against whom a reasonable suspicion exists that he had committed an offence punishable under this Act, a sum of money by way of compensation in lieu of prosecution for the offence which such person is suspected to have committed; and
- (b) when any property other than forest produce has been seized as liable to confiscation, to release the same on payment of the value thereof as may be determined by such officer.

(2) On the payment of such compensation or such value, or both, as the case may be, to such officer, the suspected person shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) The sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case be less than rupees five hundred and exceed rupees two thousand.

(4) No case hereunder shall be compounded by any authority competent to compound without providing for the forfeiture of the forest produce involved in the said case to the Government.

16. Savings in respect of acts done in good faith.- (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be so done in pursuance of this Act or the rules made thereunder.

(2) No suit or other legal proceedings shall lie against the State Government for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of the provisions of this Act or by anything which is in good faith done or intended to be so done in pursuance of this Act or the rules made thereunder.

17. Powers to make rules.- (1) The State Government may, subject to the condition of previous publication, make rules or issue directions to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the terms and conditions and the procedure for appointment of agents under section 3;
- (b) the manner of the conduct of business of the Advisory Committee under section 6 (3);
- (c) the publication of the price list of the forest produce under section 7;
- (d) the terms and conditions governing the payments of advances under section 8 (2);
- (e) the manner in which the forest produce shall be disposed of under section 9;
- (f) the terms and conditions subject to which, and the manner in which, the permit may be granted under section 19 (1); and
- (g) any other matter which is to be or may be prescribed.

(3) 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 not less than ten days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18. Power to add or exclude any forest produce from the operation of the Act.- The State Government may, by notification, from time to time, add or exclude any species of forest produce covered by this Act.

19. Transitory provision.- (1) Notwithstanding anything to the contrary contained in section 4, the State Government or its authorised officer may, on such terms and conditions and in such manner as be prescribed, permit any person who had purchased the extracted forest produce for the purpose of further sale or had extracted forest produce or had obtained the orders of demarcation and marking for its extraction before the commencement of this Act, to fell, convert, transport and sell such forest produce to any person other than the State Government, or an authorised officer or agent and permit any person other than the State Government or its authorised officer or agent to purchase and transport the same. The permission so accorded shall lapse after the 30th November, 1982.

(2) Where at any time before the commencement of this Act, any person had entered into any contract for the sale of forest produce to any trader and obtained an advance from such trader towards the price of the forest produce accepted to be delivered to the trader under such contract, then notwithstanding that by virtue of the provisions of section 4, such contract shall have become void on the commencement of the Act, the said person and trader may make a joint application before the Divisional Forest Officer or an officer authorised by him or the agent, in that behalf, giving particulars of such advance and thereupon the said officer, on being duly satisfied that the transaction is genuine one, may direct the officer of the State Government or the agent to pay on behalf of the said person to such trader a sum equivalent to the said advance (less the amount already re-paid by the said person to such trader) without any interest or compensation out of the price due to the said person for the forest produce sold under section 5, and the liability of the State Government or the agent to the said person and of the said person to the trader shall, to the extent of such payment, stand discharged and the said person shall not be liable to pay any interest or compensation in respect of such advance. Such claims shall lapse after the 30th November, 1982.

20. Repeal and savings.- The Himachal Pradesh Forest Produce (Regulation of Trade) Ordinance, 1981 is hereby repealed:

Provided that anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 1st October, 1981.

SCHEDULE-I

[See section 2 (d)]

1. Bird-cherry (*Prunus cornata*)
2. Chil (*Pinus roxburgil*).
3. Deodar (*Cedrus deodara*)
4. Fir (*Abies Pindrow*)
5. Horn beam (Khirkee) (*Carpinus Spp.*)
6. Horse chestnut (*Aesculus indica*)
7. Kail (*Pinus wallichiana*)
8. Maple (*Acer Spp.*)
9. Sain (*Terminalia tementosa*)
10. Sal (*Shorea robusta*)
11. Shisham (*Dalbergia sisso*)
12. Spruce (*Picea symthiana*)
13. Walnut (*Juglan regia*)
14. Ash (*Fraxinus Spp.*)
- ¹[15. and 16xxxxxxxxxxxxxxxxx]
- ²[17. Oak Species;
 - (i) Ban(*Quercus incana*)
 - (ii) Mohru (*Quercus dilatata*)
 - (iii) Kharsu (*Quercus seme carpifolia*)
18. Pipal (*Ficus religiosa*).
19. Bar (*Ficus bengalensis*)
- ³[Khair (*A cacia Catechu*)]

¹ Item No. 15 and 16 excluded from the Schedule vide Notification No. Fts (A) 3- 1/84-Part., dated 8th February, 1991, published in the Rajpatra, Himachal Pradesh (Extra-ordinary) dated 20th March, 1991 p. 416.

² Item Nos. 17, 18 and 19 added vide Notification No. Fts.(A) 3-1/84 (part), dated 27th March, 1986, published in the Rajpatra, Himachal Pradesh, dated 13th November, 1993, p. 2339.

³ Item Khair (*A cacia Catechu*) included vide Notification No. Fts. (F) 12-34-83- Part, dated 30th April, 1991, published in the Rajpatra, Himachal Pradesh, dated 21st August, 1993, p. 1542 and excluded as S. No. 18 vide Notification No. Fts. (F) 12-34/83 Part, dated 18th November, 1991, published in the Rajpatra, Himachal Pradesh dated 11th January, 1992, p. 52.

THE HIMACHAL PRADESH LAND PRESERVATION ACT, 1978**ARRANGEMENT OF SECTIONS**

SECTIONS:

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.
2. Definitions.

**CHAPTER II
NOTIFICATION AND REGULATION OF AREAS**

3. Notification of areas.
4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.
5. Power in certain cases to regulate, restrict or prohibit, by special order, within notified areas, certain further matters.
6. Power to require execution of works and taking of measures.
7. Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 or 6 and publication of order.
8. Proclamation of regulations, restrictions and prohibitions and admission of claims for compensation for rights which are restricted or prohibited.
9. Power to fix time within which work to be executed, etc.

**CHAPTER III
POWER TO ENTER UPON AND DELIMIT NOTIFIED
AREAS AND BEDS**

10. Power to enter upon, survey and demarcate local areas notified under section 3.

**CHAPTER IV
INQUIRY INTO CLAIMS AND AWARDS OF
COMPENSATION**

11. Inquiry into claims and awards thereupon.
12. Method of awarding compensation and effect of such award.

**CHAPTER V
PROCEDURE, RECORDS AND APPEAL**

13. Record-of-rights in respect of notified areas.
14. Mode of proclaiming notifications and of serving notices, orders and processes, issued under the Act.
15. Appeal, review and revision.

**CHAPTER VI
PUNISHMENT, BAR OF SUITS AND RULES**

16. Punishments for offences.
 17. Applications of provisions of the Indian Forest Act, 1927.
 18. Power to try offences summarily.
 19. Power to compound offences.
 20. Bar to suits.
 21. Power to make rules.
 22. Repeal and savings.
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THE HIMACHAL PRADESH LAND PRESERVATION ACT, 1978

(ACT NO. 28 OF 1978)¹

(Received the assent of the President of India on the 4th August, 1978 and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 26th August, 1978, pp. 1119-1129.)

An Act to provide for the better preservation and protection of certain portions of the territories of Himachal Pradesh.

It hereby enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-ninth Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Land Preservation Act, 1978.

(2) It shall extend to the whole of the State of Himachal Pradesh.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless a different intention appears from subject or context,-

- (a) "land" means land within any area preserved and protected or otherwise dealt with in the manner provided in this Act and includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
- (b) "cho" means a stream or torrent flowing through or from the mountainous ranges within Himachal Pradesh;
- (c) "tree", "timber", "forest produce" and "cattle", respectively, shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, 1927 (16 of 1927);
- (d) "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act;
- (e) "Deputy Commissioner" includes any officer or officers at any time specially appointed by the State Government to perform the functions of the Deputy Commissioner under this Act;
- (f) "right-holder" includes-
 - (i) persons not being tenants or mortgagees having rights to, or in land; and
 - (ii) persons having rights of collection of forest produce or of grazing of pasture; and
- (g) "erosion" includes the removal or displacement of earth, soil, stones or other materials by the action of wind or water.

CHAPTER II NOTIFICATION AND REGULATION OF AREAS

3. Notification of areas.- Whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become subjected to erosion, the State Government may, by notification published in the Official Gazette, make a direction accordingly.

¹ For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extraordinary), dated 8th April, 1978, p. 326.

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.- In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may, by general or special order, temporarily regulate, restrict or prohibit-

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause(b) of this section, of any forest produce other than grass save for bona-fide domestic or agricultural purposes of a right holder in such area;
- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep, goats or camels;
- (f) the examination of forest produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area to take any tree, timber or forest produce for their own use therefrom or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases to regulate, restrict or prohibit by special order, within notified areas, certain further matters.- In respect of any specified village or villages or part or parts thereof comprised within the limits of any area notified under section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit-

- (a) the cultivation of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes; and
- (d) the admission, herding, pasturing or retention of cattle generally other than sheep, goats and camels or of any class or description of such cattle.

6. Power to require execution of works and taking of measures.- In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may, by general or special order, direct-

- (a) the leveling, terracing, drainage and embanking of fields;
- (b) the construction of earth works in fields and ravines;
- (c) the provision of drains for stream water;
- (d) the protection of land against the action of wind or water;
- (e) the training of streams; and
- (f) the execution of such other works and the carrying out of such other measures, as may, in the opinion of the State Government be necessary for carrying out the purposes of this Act.

7. Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 or 6 and publication of order.- Every order made under sections 4, 5 or 6 shall be published in the Official Gazette and shall set forth that the State Government is satisfied, after due inquiry, that regulations, restrictions, prohibitions or directions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

8. Proclamation of regulations, restrictions and prohibitions and admission of claims for compensation for rights which are restricted or prohibited.- (1) When in respect of any area a notification has been published under section 3, and –

- (a) upon such publication any general order made under section 4 or section 6 becomes applicable to such area, or
- (b) any special order under section 4, 5 or 6 is made in respect of such area,

the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given, and if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited, a proclamation stating the regulations, restrictions and prohibitions, which have been imposed by any such order, within the limits of such area or in any part or parts thereof, fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1), shall be rejected:

Provided that with the previous sanction of the Commissioner, the Deputy Commissioner may admit any such claim as if it had been made within such period.

9. Power to fix time within which work to be executed, etc..- (1) When an order has been issued under section 6, the Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such a notice as aforesaid may, within thirty days from the service of such notice or within such longer period as the Deputy Commissioner may allow in this behalf, serve a notice of his objections on the Deputy Commissioner in such manner as may be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Deputy Commissioner shall dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds that is to say-

- (a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;
- (b) that some other person, being the owner, occupancy-tenant, mortgagee with possession, or lessee, or farm-holder, or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;
- (c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

the objector shall serve a copy of his notice of objection on each other person referred to, in clauses (a) to (c) and on the hearing of the objection of Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner under sub-section (6) are to be borne by the objector and such other persons:

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard.

In exercising his power under this sub-section the Deputy Commissioner shall have regard-

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works and measures required, and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary contained in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 15, if the person required by the notice to execute the works or to take measures fails to execute the works and take measures indicated within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing:

Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of an objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section.

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner, as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Deputy Commissioner, may, by general or special order, authorise any revenue officer subordinate to him to enquire into any objection that may be brought under this section:

Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In making an order on objections brought under this section, Deputy Commissioner shall be guided by such rules, if any, as the State Government may make in this behalf.

(12) For the purposes of this section, the expression “estate” shall have the meaning assigned thereto in the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954).

CHAPTER III POWER TO ENTER UPON AND DELIMIT NOTIFIED AREAS AND BEDS.

10. Power to enter upon, survey and demarcate local areas notified under section 3.- It shall be lawful for the Deputy Commissioner and any other person, as may be authorized by him, from time to time, as occasion may require,-

- (a) to enter upon and survey any land comprised within any area in regard to which any notification has been issued under section 3 or in regard to which a notification is proposed to be issued under section 6;
- (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such area; and
- (c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act:

Provided that reasonable compensation, to be assessed and determined in the manner in this Act provided, shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section.

CHAPTER IV INQUIRY INTO CLAIMS AND AWARDS OF COMPENSATION

11. Inquiries into claims and awards thereupon.- (1) The Deputy Commissioner shall-

- (a) fix a date for inquiring into all claims made under section 8 and may in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;
- (b) record in writing all statements made under section 8;
- (c) inquire into all claims duly preferred under section 8; and
- (d) make and award upon such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent, if any, to which, and the person or persons in whose favour, the right established, the extent to which it is to be restricted or prohibited and the nature and amount of the compensation, if any, awarded.

(2) For the purposes of every such inquiry the Deputy Commissioner may exercise all or any of the powers of a civil court in the trial of suits under the Code of Civil Procedure (5 of 1908).

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

12. Method of awarding compensation and effect of such award.- (1) In determining the amount of compensation the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (1 of 1894), and as to matters which cannot be dealt with under those provisions, by what is just and reasonable in the circumstances of each case.

(2) The Deputy Commissioner may, with the sanction of the State Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) If in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such rights is so prohibited.

CHAPTER V PROCEDURE, RECORDS AND APPEAL

13. Record-of-rights in respect of notified areas.- (1) For every area, notified under section 3, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5 -

- (a) existing within such area at the time of the publication of the notification relating thereto under section 3;
- (b) regulated, restricted, or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 11 its effect upon any right shall also be recorded therein.

(3) The record prepared under this section shall be presumed to be correct until contrary is proved or a new entry lawfully substituted therefore.

14. Mode of proclaiming notifications and of serving notices, orders and processes, issued under the Act.- (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates.

(2) The procedure prescribed in sections 21, 22 and 23 of the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954), shall be followed, as far as may be, in proceeding under this Act.

15. Appeal, review and revision.- Every order passed and every award made by the Deputy Commissioner under this Act shall for the purposes of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 14, 15, 16 and 17 of the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954):

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any civil court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

CHAPTER VI PUNISHMENTS, BAR OF SUITS AND RULES

16. Punishment for offences.- Any person who, within the limits of any area notified under section 3, commits any breach of any regulation made, restrictions or prohibitions imposed, order passed or requisition made under sections 4, 5, 6 or 9 or obstructs or resists in any way whatever the execution of acts or things done under section 10, shall be punished with imprisonment for a term which may extend to 6 months, or with a fine which may extend to five hundred rupees, or with both.

17. Applications of provisions of the Indian Forest Act, 1927.- The provisions of sections 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64 (excluding last sentence), 66 and 73 of the Indian Forest Act, 1927 (16 of 1927) shall, so far as applicable, be read as part of this Act and for the purposes of those provisions, every offence punishable under section 16 shall be deemed to be a “forest offence” and every officer employed in the management of any area notified under section 3 as caretaker or otherwise, shall be deemed to be a forest officer.

18. Power to try offences summarily.- The Chief Judicial Magistrate or any Judicial Magistrate of the first class specially empowered in this behalf by the State Government shall try summarily, under the Code of Criminal Procedure, 1973 (2 of 1974), any forest offence punishable with imprisonment for a term not exceeding six months, or with a fine not exceeding five hundred rupees, or with both.

19. Power to compound offences.- (1) The State Government may, by notification in the Official Gazette, empower a Gazetted Forest Officer-

- (a) to accept from any person, against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 62 of the Indian Forest Act, 1927 (16 of 1927), a sum of money by way of compensation for the offence which such person is suspected to have committed; and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceeding shall be taken against such person or property.

(3) The sum of money accepted as compensation under clause (a) subsection (1) shall in no case exceed the sum of five hundred rupees in each case.

20. Bar to suits.- No suit shall lie against the State Government for anything done under this Act, and no suit shall lie against any public servant, for anything done, or purporting to have been done, by him, in good faith, under this Act.

21. Power to make rules.- (1) The State Government may make rules, consistent with this Act,-

- (a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Official Gazette.

(3) 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 not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. Repeal and Savings.- The Punjab Preservation Act, 1900 (2 of 1900), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) and the Mandi State Ant Erosion Act, 2004 B.K.(4 of 2004 B.K.), as in force in the areas comprised in the erstwhile princely State of Mandi, are hereby repealed:

Provided that anything done or any action taken, including rules made, notifications issued or proceedings commenced or continued under the provisions of the Acts hereby repealed shall, unless it is inconsistent with the provision of this Act, be deemed to have been done, taken, made, issued, commenced or continued under the corresponding provisions of this Act.

THE HIMACHAL PRADESH LAND PRESERVATION RULES, 1983

GOVERNMENT OF HIMACHAL PRADESH

DEPARTMENT OF FOREST FARMING AND ENVIRONMENTAL CONSERVATION

Authoritative text of English Version of this Deptt. Notification No. Fts (A)3-1/81, dated 1st June, 1983 as published under Article 348(3) of the Constitution of India for the general information of the public.

In exercise of powers conferred under section 21 of the Himachal Pradesh Land Preservation Act, 1978 (Act No 28 of 1978), the Governor, Himachal Pradesh is pleased to make the following rules for purposes of carrying into effect the provisions of the said Act.

1. Short title and commencement.- (1) These rules may be called the Himachal Pradesh Land Preservation Rules, 1983.

(2) These rules shall come into force with immediate effect.

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

- (a) "Act" means the "Himachal Pradesh Land Preservation Act, 1978" (28 of 1978);
- (b) "Section" means the section of the Act;
- (c) "Chief Conservator of Forests" means the Chief Conservator of Forests, Himachal Pradesh;
- (d) "Divisional Forest Officer" means the Forest Officer incharge of a territorial Forest Division;
- (e) "Range Officer" means the Forest Officer, incharge of a territorial Forest Range;
- (f) "Forest Guard" means the Forest Guard incharge of a territorial Forest beat;
- (g) "Form" means a form appended to these rules;
- (h) "Term" bonafide domestic or agricultural purposes shall not include:-
 - (i) Removal and use of timber for construction work, or any other forest produce other than grass outside the Revenue Estate in which the land is situated;
 - (ii) Use of firewood for burning of bricks, manufacture of katha or any other manufacturing process except burning of charcoal for domestic local use; and
- (i) All other words and expressions used herein but not defined and defined in the Himachal Pradesh Land Preservation Act, 1978, have the meanings respectively assigned to them in that Act.

3. Procedure to be adopted for holding enquiry under section 7 before issuing a Notification/order under Section 4, 5 and 6.-

(1) Before issuing a Notification in respect of any area under Section 4,5 or 6, an enquiry shall be held by a gazetted Officer nominated by the Chief Conservator of Forest to ascertain the facts for issue of such notification.

(2) The said Officer shall visit the area(s) to be notified and among other things, may examine the following aspects:-

- (i) The situation of the area;
- (ii) Configuration and condition of the area;

- (iii) Present land use practices and their effect on general sub-soil water table.
- (iv) Extent and degree of water and wind erosion and reasons of erosion.
- (v) Attitude of the public regarding imposing of restrictions.
- (vi) Whether the existing management is adequate to maintain and improve the soil status or not.

(3) And or base his enquiry on the overall damage caused to property, land and tree growth which may have been assessed as a consequences of any study made in regard to damage caused due to floods or other natural calamities.

(4) After the completion of enquiry, the Chief Conservator of Forests shall forward the same to the State Government with his recommendations.

(5) The State Government after satisfying itself may issue a Notification, to temporarily regulate, restrict or prohibit any action, under section 4,5 or 6, for a period not more than 30 years.

4. Procedure for issue of permits for removal of Forest Produce from area closed under Sections 4 & 5.-

(1) For bonafide Domestic & Agricultural Purposes:

- (a) There will be no restriction on the use of forest produce for bonafide domestic purposes of fuel and fodder.
- (b) The owners for their bonafide domestic and agricultural use may fell trees as per procedure and extent of trees specified under notifications issued under section 4 or 5 of the Act.
- (c) The trees allowed for feeling for bonafide Domestic and Agricultural use will be marked as per instructions of Chief Conservator of Forests, Himachal Pradesh.
- (d) The owners shall send written information regarding the trees felled without permission to the Range Office concerned, through beat guard. Range Office shall send a copy of such information to Divisional Forest Officer for his record.
- (e) The Beat guard shall maintain a proper record on a register of all such fellings done for domestic and agricultural use with or without permission as per Notification issued under Section 4 and shall affix his hammer mark in such felled stumps. The produce of such trees may be checked by him from time to time till it is consumed for the purpose for which it has been converted. No export of any part of the produce of such trees will be allowed.

(2) For Sale:

- (a) The trees of all species for sale shall be felled by the owners in accordance with the felling cycle prescribed vide notification issued under section 4 of the Act.
- (b) Permission for removal of trees for sale shall be accorded by various functionaries as per limit and extent prescribed under above referred Notification.
- (c) Application of felling of trees and removal of forest produce shall be submitted to the Divisional Forest Officer concerned by the owners.
- (d) The area from where the trees are intended to be sold by the owner shall be demarcated by the Revenue Officer not below the rank of Naib Tehsildar in the presence of Range Officer of the area concerned and nominee of the Agent. Provided that where Naib Tehsildar is not posted, the demarcation of the area shall be carried out by Field Kanungo.

- (e) The silvicultural making of the trees shall be done as per rules framed/instructions issued by the Chief Conservator of Forests, Himachal Pradesh from time to time. No clear felling of the areas shall be allowed even for purpose of raising orchards.
- (f) The Divisional Forest Officer shall issue permission for felling of trees and permit for collection or removal of forest produce.
- (g) While issuing felling permission/permits, Divisional Forest Officer may impose such restrictions/conditions as he may consider necessary in the interest of forest conservancy and misuse of forest produce to extracted.
- (h) The Divisional Forest Officer while issuing the permission for felling of trees may indicate the number and species of the plants to be planted as compensatory plantation as provided under rule 4(c).
- (i) The provisions of H.P. Forest Produce (Regulation of Trade) Act, 1982 and the rules made there under shall apply as such for the sale of trees.

(3) Compensatory Plantations:

- (a) Any person(s) felling the trees either for domestic or agricultural use or for sale shall be required to plant at least 3 trees for one tree felled. In case, however, a fruit orchard is planted in such area, it shall be planted according to the norms laid down by the State Horticultural Department for complete stocking of the area. The success of such plants planted shall be the responsibility of the owners which shall be checked frequently by the staff of Forest/Horticulture Department.
- (b) Divisional Forest Officer may require the owner to deposit such amount not exceeding Rs. 3.00 per plant (to be planted) for carrying out compensatory planting so that plants could be planted if the owner(s) fails to plant 3 plants for every tree felled, within one year of felling.

(4) No tree shall be granted to such owner(s) from the Government forests at the right holders rate for the next 10 years who sell trees from their private lands.

(5)

- (a) the extraction of resin will be undertaken with the written permission of the Divisional Forest Officer concerned in accordance with the instructions issued by the Chief Conservator of Forests, Himachal Pradesh from time to time laying down the period of extraction, number of blazes, length, width and depth of blazes and other related matters.
- (b) No resin so extracted shall be removed /exported by any person from the area under tapping without obtaining an export permit from the Divisional Forest Officer concerned as per rules framed.
- (c) The provisions of Himachal Pradesh Resin & Resin Products (Regulation of Trade) Act, 1981 and rules, made thereunder shall apply as such for the extraction of Resin by owners.

5. Issue of notice under section 8 and 9.- (1) The notice under section 8 & 9 shall be issued by the Deputy Commissioner in the form given in Annexure-I. This notice shall be in the local language of the area and will be served through Gram Panchayats concerned.

(2) Any person aggrieved by an order contained in such a notice given under section 8 & 9 may serve a notice of his objection, alongwith necessary evidence, to the Deputy Commissioner. Before passing final orders, the Deputy Commissioner shall consult the Divisional Forest Officer regarding technical aspects.

(3) Every order issued under section 8 & 9 shall be sent to the land owners through registered post. Copies of the order shall also be displayed at conspicuous places.

(4) The Deputy Commissioner while making an order on objections brought under section 9 shall be guided by the following:-

- (i) Necessity of treatment of catchment area as a whole;
- (ii) Potential damage to the adjoining lands as a result of soil erosion in the said area;
- (iii) Effect (of soil erosion) on the sub soil water table;
- (iv) Siltation in water reservoirs within or adjoining the area due to soil erosion;
- (v) Need for safe guarding, and protection of lines of communication against any danger due to degradation of areas;
- (vi) Need for improvement in Forest conservancy environment and ecological status.

6. Measures to regulate control over works to be executed.- (1) Before issuing a notice/notification in respect of any land under section 9(1) and 9(2), an enquiry by an officer not below the rank of Assistant Conservator of Forests shall be held.

(2) The said officer shall visit the area and among other things shall study the following aspects:-

- (i) The necessity of getting the works executed and fixing the time limit for the execution of such works;
- (ii) The nature of damage being done to the adjoining property including habitation by the stream/Cho;
- (iii) Necessity of regulating the flow of water by draining the streams to minimize the damage;
- (iv) Desirability & feasibility of reclaiming the land in the stream Cho bed;
- (v) Desirability and feasibility of execution of other works and measures for such execution of works;

(3) The said officer shall make proposals indicating the nature and extent of remedial measures.

(4) After completion of such an enquiry, the enquiry report alongwith recommendations of the enquiry Officer shall be submitted to the Deputy Commissioner of the area concerned through the concerned Conservator of Forest for appropriate orders.

Secretary (Forests) to the
Govt. of Himachal Pradesh

ANNEXURE-I

Office of Deputy Commissioner District Himachal Pradesh.

Notice Information or Warning

Under sections 8 and 9 of the Himachal Pradesh Land Preservation Act, 1978 (Act No 28 of 1978) the following area of village Tehsil is closed under section 4, 5 and 6 (delete which is not applicable) in accordance with Notification No..... dated (copy enclosed) and restrictions and restraints as specified in the aforesaid notification are imposed.

Description of Area:

Name of village:

Hadbast No.

Khasra No.

2. These restrictions shall remain in force from to

3. Therefore, under section 8 and 9 of the Himachal Pradesh Land Preservation Act, 1978 (Act No 28 of 1978) this notice is being issued to every such person who has objection/claim against these restrictions/restraints which can be filed by him in writing or orally before He shall also inform the mode and type of compensation acceptable to him.

4. The above mentioned area has been demarcated on the spot and its boundaries/location can be ascertained from village Sarpanch/Lambardar or other concerned official. Necessary information may also be obtained from halqua Patwari as well.

- **THE DISASTER MANAGEMENT ACT, 2005**
- **THE HIMACHAL PRADESH DISASTER MANAGEMENT AND RELIEF MANUAL, 2012**
- **THE REVISED RELIEF NORMS HPSDMA, 2022**
- **THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977**
- **THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING RULES, 2014**
- **THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016**
- **THE REAL ESTATE (REGULATION AND DEVELOPMENT) RULES, 2017**
- **THE HIMACHAL PRADESH REQUISITION OF IMMOVABLE PROPERTY ACT, 1987**
- **THE TRANSFER OF PROPERTY ACT, 1882**
- **THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002**
- **THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST RULES, 2002**

THE DISASTER MANAGEMENT ACT, 2005

ARRANGEMENT OF SECTIONS

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THE DISASTER MANAGEMENT ACT, 2005

ACT NO. 53 OF 2005

[23rd December, 2005.]

An Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Disaster Management Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette appoint; and different dates² may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “affected area” means an area or part of the country affected by a disaster;
- (b) “capacity-building” includes—
 - (i) identification of existing resources and resources to be acquired or created;
 - (ii) acquiring or creating resources identified under sub-clause (i);
 - (iii) organisation and training of personnel and coordination of such training for effective management of disasters;
- (c) “Central Government” means the Ministry or Department of the Government of India having administrative control of disaster management;
- (d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;
- (e) “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—
 - (i) prevention of danger or threat of any disaster;
 - (ii) mitigation or reduction of risk of any disaster or its severity or consequences;

¹ 28th July, 2006 (ss. 2, 3, 4, 5, 6, 8, 10, 75, 77, 79), vide notification No. S.O. 1216(E), dated 28th July, 2006;

² 1st August, 2007 [ss. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 38, 39, 40, 41, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, sub-sec. (2) of s. 70, 71, 72, 73, 74, 78, 79], vide notification No. S.O. 722(E), dated 7th May, 2007;

17th March, 2008 (ss. 44, 45), vide notification No. 517(E), dated 17th March, 2008;

18th October, 2011 (s. 46), vide notification No. S.O. 2397(E), dated 18th October, 2011, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

5th February, 2021, sub-sec. (1) of s. 47, vide notification No. S.O. 564(E), dated 5th February, 2021, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

- (iii) capacity-building;
 - (iv) preparedness to deal with any disaster;
 - (v) prompt response to any threatening disaster situation or disaster;
 - (vi) assessing the severity or magnitude of effects of any disaster;
 - (vii) evacuation, rescue and relief;
 - (viii) rehabilitation and reconstruction;
- (f) “District Authority” means the District Disaster Management Authority constituted under sub-section (1) of section 25;
 - (g) “District Plan” means the plan for disaster management for the district prepared under section 31;
 - (h) “local authority” includes panchayati raj institutions, municipalities, a district board, cantonment board, town planning authority or Zila Parishad or any other body or authority, by whatever name called, for the time being invested by law, for rendering essential services or, with the control and management of civic services, within a specified local area;
 - (i) “mitigation” means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;
 - (j) “National Authority” means the National Disaster Management Authority established under sub-section (1) of section 3;
 - (k) “National Executive Committee” means the Executive Committee of the National Authority constituted under sub-section (1) of section 8;
 - (l) “National Plan” means the plan for disaster management for the whole of the country prepared under section 11;
 - (m) “preparedness” means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof;
 - (n) “prescribed” means prescribed by rules made under this Act;
 - (o) “reconstruction” means construction or restoration of any property after a disaster;
 - (p) “resources” includes manpower, services, materials and provisions;
 - (q) “State Authority” means the State Disaster Management Authority established under subsection (1) of section 14 and includes the Disaster Management Authority for the Union territory constituted under that section;
 - (r) “State Executive Committee” means the Executive Committee of a State Authority constituted under sub-section (1) of section 20;
 - (s) “State Government” means the Department of Government of the State having administrative control of disaster management and includes Administrator of the Union territory appointed by the President under article 239 of the Constitution;
 - (t) “State Plan” means the plan for disaster management for the whole of the State prepared under section 23.

CHAPTER II

THE NATIONAL DISASTER MANAGEMENT AUTHORITY

3. Establishment of National Disaster Management Authority.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.

(2) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following:—

- (a) the Prime Minister of India, who shall be the Chairperson of the National Authority, ex officio;
- (b) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority.

(3) The Chairperson of the National Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the National Authority.

(4) The term of office and conditions of service of members of the National Authority shall be such as may be prescribed.

4. Meetings of National Authority.—(1) The National Authority shall meet as and when necessary and at such time and place as the Chairperson of the National Authority may think fit.

(2) The Chairperson of the National Authority shall preside over the meetings of the National Authority.

(3) If for any reason the Chairperson of the National Authority is unable to attend any meeting of the National Authority, the Vice-Chairperson of the National Authority shall preside over the meeting.

5. Appointment of officers and other employees of the National Authority.—The Central Government shall provide the National Authority with such officers, consultants and employees, as it considers necessary for carrying out the functions of the National Authority.

6. Powers and functions of National Authority.—(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may —

- (a) lay down policies on disaster management;
- (b) approve the National Plan;
- (c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;
- (d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
- (e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;
- (f) coordinate the enforcement and implementation of the policy and plan for disaster management;
- (g) recommend provision of funds for the purpose of mitigation;
- (h) provide such support to other countries affected by major disasters as may be determined by the Central Government;
- (i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

- (j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

(3) The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise of such powers shall be subject to *ex post facto* ratification by the National Authority.

7. Constitution of advisory committee by National Authority.—(1) The National Authority may constitute an advisory committee consisting of experts in the field of disaster management and having practical experience of disaster management at the national, State or district level to make recommendations on different aspects of disaster management.

(2) The members of the advisory committee shall be paid such allowances as may be prescribed by the Central Government in consultation with the National Authority.

8. Constitution of National Executive Committee.—(1) The Central Government shall, immediately after issue of notification under sub-section (1) of section 3, constitute a National Executive Committee to assist the National Authority in the performance of its functions under this Act.

(2) The National Executive Committee shall consist of the following members, namely:—

- (a) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the disaster management, who shall be Chairperson, *ex officio*;
- (b) the Secretaries to the Government of India in the Ministries or Departments having administrative control of the agriculture, atomic energy, defence, drinking water supply, environment and forests, finance (expenditure), health, power, rural development, science and technology, space, telecommunication, urban development, water resources and the Chief of the Integrated Defence Staff of the Chiefs of Staff Committee, *ex officio*.

(3) The Chairperson of the National Executive Committee may invite any other officer of the Central Government or a State Government for taking part in any meeting of the National Executive Committee and shall exercise such powers and perform such functions as may be prescribed by the Central Government in consultation with the National Authority.

(4) The procedure to be followed by the National Executive Committee in exercise of its powers and discharge of its functions shall be such as may be prescribed by the Central Government.

9. Constitution of sub-committees.—(1) The National Executive Committee may, as and when it considers necessary, constitute one or more sub-committees, for the efficient discharge of its functions.

(2) The National Executive Committee shall, from amongst its members, appoint the Chairperson of the sub-committee referred to in sub-section (1).

(3) Any person associated as an expert with any sub-committee may be paid such allowances as may be prescribed by the Central Government.

10. Powers and functions of National Executive Committee.—(1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—

- (a) act as the coordinating and monitoring body for disaster management;
- (b) prepare the National Plan to be approved by the National Authority;
- (c) coordinate and monitor the implementation of the National Policy;
- (d) lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;
- (e) provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority;
- (f) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India;
- (g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects;
- (h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government;
- (i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness;
- (j) plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers;
- (k) coordinate response in the event of any threatening disaster situation or disaster;
- (l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster;
- (m) require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief;
- (n) advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management;
- (o) provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;
- (p) promote general education and awareness in relation to disaster management; and
- (q) perform such other functions as the National Authority may require it to perform.

11. National Plan.—(1) There shall be drawn up a plan for disaster management for the whole of the country to be called the National Plan.

(2) The National Plan shall be prepared by the National Executive Committee having regard to the National Policy and in consultation with the State Governments and expert bodies or organisations in the field of disaster management to be approved by the National Authority.

(3) The National Plan shall include—

- (a) measures to be taken for the prevention of disasters, or the mitigation of their effects;
- (b) measures to be taken for the integration of mitigation measures in the development plans;
- (c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;
- (d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c).

(4) The National Plan shall be reviewed and updated annually.

(5) Appropriate provisions shall be made by the Central Government for financing the measures to be carried out under the National Plan.

(6) Copies of the National Plan referred to in sub-sections (2) and (4) shall be made available to the Ministries or Departments of the Government of India and such Ministries or Departments shall draw up their own plans in accordance with the National Plan.

12. Guidelines for minimum standards of relief.—The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—

- (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;
- (ii) the special provisions to be made for widows and orphans;
- (iii) *ex gratia* assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;
- (iv) such other relief as may be necessary.

13. Relief in loan repayment, etc.—The National Authority may, in cases of disasters of severe magnitude, recommend relief in repayment of loans or for grant of fresh loans to the persons affected by disaster on such concessional terms as may be appropriate.

CHAPTER III STATE DISASTER MANAGEMENT AUTHORITIES

14. Establishment of State Disaster Management Authority.—(1) Every State Government shall, as soon as may be after the issue of the notification under sub-section (1) of section 3, by notification in the Official Gazette, establish a State Disaster Management Authority for the State with such name as may be specified in the notification of the State Government.

(2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the following members, namely:—

- (a) the Chief Minister of the State, who shall be Chairperson, *ex officio*;
- (b) other members, not exceeding eight, to be nominated by the Chairperson of the State Authority;
- (c) the Chairperson of the State Executive Committee, *ex officio*.

(3) The Chairperson of the State Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the State Authority.

(4) The Chairperson of the State Executive Committee shall be the Chief Executive Officer of the State Authority, *ex officio*:

Provided that in the case of a Union territory having Legislative Assembly, except the Union territory of Delhi, the Chief Minister shall be the Chairperson of the Authority established under this section and in case of other Union territories, the Lieutenant Governor or the Administrator shall be the Chairperson of that Authority:

Provided further that the Lieutenant Governor of the Union territory of Delhi shall be the Chairperson and the Chief Minister thereof shall be the Vice-Chairperson of the State Authority.

(5) The term of office and conditions of service of members of the State Authority shall be such as may be prescribed.

15. Meetings of the State Authority.—(1) The State Authority shall meet as and when necessary and at such time and place as the Chairperson of the State Authority may think fit.

(2) The Chairperson of the State Authority shall preside over the meetings of the State Authority.

(3) If for any reason, the Chairperson of the State Authority is unable to attend the meeting of the State Authority, the Vice-Chairperson of the State Authority shall preside at the meeting.

16. Appointment of officers and other employees of State Authority.—The State Government shall provide the State Authority with such officers, consultants and employees, as it considers necessary, for carrying out the functions of the State Authority.

17. Constitution of advisory committee by the State Authority.—(1) A State Authority may, as and when it considers necessary, constitute an advisory committee, consisting of experts in the field of disaster management and having practical experience of disaster management to make recommendations on different aspects of disaster management.

(2) The members of the advisory committee shall be paid such allowances as may be prescribed by the State Government.

18. Powers and functions of State Authority.—(1) Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.

(2) Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may—

- (a) lay down the State disaster management policy;

- (b) approve the State Plan in accordance with the guidelines laid down by the National Authority;
- (c) approve the disaster management plans prepared by the departments of the Government of the State;
- (d) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefore;
- (e) coordinate the implementation of the State Plan;
- (f) recommend provision of funds for mitigation and preparedness measures;
- (g) review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein;
- (h) review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.

(3) The Chairperson of the State Authority shall, in the case of emergency, have power to exercise all or any of the powers of the State Authority but the exercise of such powers shall be subject to *ex post facto* ratification of the State Authority.

19. Guidelines for minimum standard of relief by State Authority.—The State Authority shall lay down detailed guidelines for providing standards of relief to persons affected by disaster in the State:

Provided that such standards shall in no case be less than the minimum standards in the guidelines laid down by the National Authority in this regard.

20. Constitution of State Executive Committee.—(1) The State Government shall, immediately after issue of notification under sub-section (1) of section 14, constitute a State Executive Committee to assist the State Authority in the performance of its functions and to coordinate action in accordance with the guidelines laid down by the State Authority and ensure the compliance of directions issued by the State Government under this Act.

(2) The State Executive Committee shall consist of the following members, namely:—

- (a) the Chief Secretary to the State Government, who shall be Chairperson, *ex officio*;
- (b) four Secretaries to the Government of the State of such departments as the State Government may think fit, *ex officio*.

(3) The Chairperson of the State Executive Committee shall exercise such powers and perform such functions as may be prescribed by the State Government and such other powers and functions as may be delegated to him by the State Authority.

(4) The procedure to be followed by the State Executive Committee in exercise of its powers and discharge of its functions shall be such as may be prescribed by the State Government.

21. Constitution of sub-committees by State Executive Committee.—(1) The State Executive Committee may, as and when it considers necessary, constitute one or more sub-committees, for efficient discharge of its functions.

(2) The State Executive Committee shall, from amongst its members, appoint the Chairperson of the sub-committee referred to in sub-section (1).

(3) Any person associated as an expert with any sub-committee may be paid such allowances as may be prescribed by the State Government.

22. Functions of the State Executive Committee.—(1) The State Executive Committee shall have the responsibility for implementing the National Plan and State Plan and act as the coordinating and monitoring body for management of disaster in the State.

(2) Without prejudice to the generality of the provisions of sub-section (1), the State Executive Committee may—

- (a) coordinate and monitor the implementation of the National Policy, the National Plan and the State Plan;
- (b) examine the vulnerability of different parts of the State to different forms of disasters and specify measures to be taken for their prevention or mitigation;
- (c) lay down guidelines for preparation of disaster management plans by the departments of the Government of the State and the District Authorities;
- (d) monitor the implementation of disaster management plans prepared by the departments of the Government of the State and District Authorities;
- (e) monitor the implementation of the guidelines laid down by the State Authority for integrating of measures for prevention of disasters and mitigation by the departments in their development plans and projects;
- (f) evaluate preparedness at all governmental or non-governmental levels to respond to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness;
- (g) coordinate response in the event of any threatening disaster situation or disaster;
- (h) give directions to any Department of the Government of the State or any other authority or body in the State regarding actions to be taken in response to any threatening disaster situation or disaster;
- (i) promote general education, awareness and community training in regard to the forms of disasters to which different parts of the State are vulnerable and the measures that may be taken by such community to prevent the disaster, mitigate and respond to such disaster;
- (j) advise, assist and coordinate the activities of the Departments of the Government of the State, District Authorities, statutory bodies and other governmental and non-governmental organisations engaged in disaster management;
- (k) provide necessary technical assistance or give advice to District Authorities and local authorities for carrying out their functions effectively;
- (l) advise the State Government regarding all financial matters in relation to disaster management;
- (m) examine the construction, in any local area in the State and, if it is of the opinion that the standards laid for such construction for the prevention of disaster is not being or has not been followed, may direct the District Authority or the local authority, as the case may be, to take such action as may be necessary to secure compliance of such standards;
- (n) provide information to the National Authority relating to different aspects of disaster management;

- (o) lay down, review and update State level response plans and guidelines and ensure that the district level plans are prepared, reviewed and updated;
- (p) ensure that communication systems are in order and the disaster management drills are carried out periodically;
- (q) perform such other functions as may be assigned to it by the State Authority or as it may consider necessary.

23. State Plan.—(1) There shall be a plan for disaster management for every State to be called the State Disaster Management Plan.

(2) The State Plan shall be prepared by the State Executive Committee having regard to the guidelines laid down by the National Authority and after such consultation with local authorities, district authorities and the people's representatives as the State Executive Committee may deem fit.

(3) The State Plan prepared by the State Executive Committee under sub-section (2) shall be approved by the State Authority.

(4) The State Plan shall include,—

- (a) the vulnerability of different parts of the State to different forms of disasters;
- (b) the measures to be adopted for prevention and mitigation of disasters;
- (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;
- (d) the capacity-building and preparedness measures to be taken;
- (e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;
- (f) the roles and responsibilities of different Departments of the Government of the State in responding to any threatening disaster situation or disaster.

(5) The State Plan shall be reviewed and updated annually.

(6) Appropriate provisions shall be made by the State Government for financing for the measures to be carried out under the State Plan.

(7) Copies of the State Plan referred to in sub-sections (2) and (5) shall be made available to the Departments of the Government of the State and such Departments shall draw up their own plans in accordance with the State Plan.

24. Powers and functions of State Executive Committee in the event of threatening disaster situation.—For the purpose of, assisting and protecting the community affected by disaster or providing relief to such community or, preventing or combating disruption or dealing with the effects of any threatening disaster situation, the State Executive Committee may—

- (a) control and restrict, vehicular traffic to, from or within, the vulnerable or affected area;
- (b) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
- (c) remove debris, conduct search and carry out rescue operations;
- (d) provide shelter, food, drinking water, essential provisions, healthcare and services in accordance with the standards laid down by the National Authority and State Authority;

- (e) give direction to the concerned Department of the Government of the State, any District Authority or other authority, within the local limits of the State to take such measure or steps for rescue, evacuation or providing immediate relief saving lives or property, as may be necessary in its opinion;
- (f) require any department of the Government of the State or any other body or authority or person in charge of any relevant resources to make available the resources for the purposes of emergency response, rescue and relief;
- (g) require experts and consultants in the field of disasters to provide advice and assistance for rescue and relief;
- (h) procure exclusive or preferential use of amenities from any authority or person as and when required;
- (i) construct temporary bridges or other necessary structures and demolish unsafe structures which may be hazardous to public;
- (j) ensure that non-governmental organisations carry out their activities in an equitable and nondiscriminatory manner;
- (k) disseminate information to public to deal with any threatening disaster situation or disaster;
- (l) take such steps as the Central Government or the State Government may direct in this regard or take such other steps as are required or warranted by the form of any threatening disaster situation or disaster.

CHAPTER IV

DISTRICT DISASTER MANAGEMENT AUTHORITY

25. Constitution of District Disaster Management Authority.—(1) Every State Government shall, as soon as may be after issue of notification under sub-section (1) of section 14, by notification in the Official Gazette, establish a District Disaster Management Authority for every district in the State with such name as may be specified in that notification.

(2) The District Authority shall consist of the Chairperson and such number of other members, not exceeding seven, as may be prescribed by the State Government, and unless the rules otherwise provide, it shall consist of the following, namely:—

- (a) the Collector or District Magistrate or Deputy Commissioner, as the case may be, of the district who shall be Chairperson, *ex officio*;
- (b) the elected representative of the local authority who shall be the co-Chairperson, *ex officio*:
 Provided that in the Tribal Areas, as referred to in the Sixth Schedule to the Constitution, the Chief Executive Member of the district council of autonomous district, shall be the co-Chairperson, *ex officio*;
- (c) the Chief Executive Officer of the District Authority, *ex officio*;
- (d) the Superintendent of Police, *ex officio*;
- (e) the Chief Medical Officer of the district, *ex officio*;
- (f) not exceeding two other district level officers, to be appointed by the State Government.

(3) In any district where zila parishad exists, the Chairperson thereof shall be the co-Chairperson of the District Authority.

(4) The State Government shall appoint an officer not below the rank of Additional Collector or Additional District Magistrate or Additional Deputy Commissioner, as the case may be, of the district to be the Chief Executive Officer of the District Authority to exercise such powers and perform such functions as may be prescribed by the State Government and such other powers and functions as may be delegated to him by the District Authority.

26. Powers of Chairperson of District Authority.—(1) The Chairperson of the District Authority shall, in addition to presiding over the meetings of the District Authority, exercise and discharge such powers and functions of the District Authority as the District Authority may delegate to him.

(2) The Chairperson of the District Authority shall, in the case of an emergency, have power to exercise all or any of the powers of the District Authority but the exercise of such powers shall be subject to *ex post facto* ratification of the District Authority.

(3) The District Authority or the Chairperson of the District Authority may, by general or special order, in writing, delegate such of its or his powers and functions, under sub-section (1) or (2), as the case may be, to the Chief Executive Officer of the District Authority, subject to such conditions and limitations, if any, as it or he deems fit.

27. Meetings.—The District Authority shall meet as and when necessary and at such time and place as the Chairperson may think fit.

28. Constitution of advisory committees and other committees.—(1) The District Authority may, as and when it considers necessary, constitute one or more advisory committees and other committees for the efficient discharge of its functions.

(2) The District Authority shall, from amongst its members, appoint the Chairperson of the Committee referred to in sub-section (1).

(3) Any person associated as an expert with any committee or sub-committee constituted under sub-section (1) may be paid such allowances as may be prescribed by the State Government.

29. Appointment of officers and other employees of District Authority.—The State Government shall provide the District Authority with such officers, consultants and other employees as it considers necessary for carrying out the functions of District Authority.

30. Powers and functions of District Authority.—(1) The District Authority shall act as the district planning, coordinating and implementing body for disaster management and take all measures for the purposes of disaster management in the district in accordance with the guidelines laid down by the National Authority and the State Authority.

(2) Without prejudice to the generality of the provisions of sub-section (1), the District Authority may—

- (i) prepare a disaster management plan including district response plan for the district;
- (ii) coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan;
- (iii) ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are

undertaken by the departments of the Government at the district level as well as by the local authorities;

- (iv) ensure that the guidelines for prevention of disasters, mitigation of its effects, preparedness and response measures as laid down by the National Authority and the State Authority are followed by all departments of the Government at the district level and the local authorities in the district;
- (v) give directions to different authorities at the district level and local authorities to take such other measures for the prevention or mitigation of disasters as may be necessary;
- (vi) lay down guidelines for prevention of disaster management plans by the department of the Government at the districts level and local authorities in the district;
- (vii) monitor the implementation of disaster management plans prepared by the Departments of the Government at the district level;
- (viii) lay down guidelines to be followed by the Departments of the Government at the district level for purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefore;
- (ix) monitor the implementation of measures referred to in clause (viii);
- (x) review the state of capabilities for responding to any disaster or threatening disaster situation in the district and give directions to the relevant departments or authorities at the district level for their up gradation as may be necessary;
- (xi) review the preparedness measures and give directions to the concerned departments at the district level or other concerned authorities where necessary for bringing the preparedness measures to the levels required for responding effectively to any disaster or threatening disaster situation;
- (xii) organise and coordinate specialised training programmes for different levels of officers, employees and voluntary rescue workers in the district;
- (xiii) facilitate community training and awareness programmes for prevention of disaster or mitigation with the support of local authorities, governmental and non-governmental organisations;
- (xiv) set up, maintain, review and upgrade the mechanism for early warnings and dissemination of proper information to public;
- (xv) prepare, review and update district level response plan and guidelines;
- (xvi) coordinate response to any threatening disaster situation or disaster;
- (xvii) ensure that the Departments of the Government at the district level and the local authorities prepare their response plans in accordance with the district response plan;
- (xviii) lay down guidelines for, or give direction to, the concerned Department of the Government at the district level or any other authorities within the local limits of the district to take measures to respond effectively to any threatening disaster situation or disaster;
- (xix) advise, assist and coordinate the activities of the Departments of the Government at the district level, statutory bodies and other governmental and non-governmental organisations in the district engaged in the disaster management;

- (xx) coordinate with, and give guidelines to, local authorities in the district to ensure that measures for the prevention or mitigation of threatening disaster situation or disaster in the district are carried out promptly and effectively;
- (xxi) provide necessary technical assistance or give advise to the local authorities in the district for carrying out their functions;
- (xxii) review development plans prepared by the Departments of the Government at the district level, statutory authorities or local authorities with a view to make necessary provisions therein for prevention of disaster or mitigation;
- (xxiii) examine the construction in any area in the district and, if it is of the opinion that the standards for the prevention of disaster or mitigation laid down for such construction is not being or has not been followed, may direct the concerned authority to take such action as may be necessary to secure compliance of such standards;
- (xxiv) identify buildings and places which could, in the event of any threatening disaster situation or disaster, be used as relief centers or camps and make arrangements for water supply and sanitation in such buildings or places;
- (xxv) establish stockpiles of relief and rescue materials or ensure preparedness to make such materials available at a short notice;
- (xxvi) provide information to the State Authority relating to different aspects of disaster management;
- (xxvii) encourage the involvement of non-governmental organisations and voluntary social welfare institutions working at the grassroots level in the district for disaster management;
- (xxviii) ensure communication systems are in order, and disaster management drills are carried out periodically;
- (xxix) perform such other functions as the State Government or State Authority may assign to it or as it deems necessary for disaster management in the District.

31. District Plan.—(1) There shall be a plan for disaster management for every district of the State.

(2) The District Plan shall be prepared by the District Authority, after consultation with the local authorities and having regard to the National Plan and the State Plan, to be approved by the State Authority.

(3) The District Plan shall include—

- (a) the areas in the district vulnerable to different forms of disasters;
- (b) the measures to be taken, for prevention and mitigation of disaster, by the Departments of the Government at the district level and local authorities in the district;
- (c) the capacity-building and preparedness measures required to be taken by the Departments of the Government at the district level and the local authorities in the district to respond to any threatening disaster situation or disaster;
- (d) the response plans and procedures, in the event of a disaster, providing for—
 - (i) allocation of responsibilities to the Departments of the Government at the district level and the local authorities in the district;

- (ii) prompt response to disaster and relief thereof;
- (iii) procurement of essential resources;
- (iv) establishment of communication links; and
- (v) the dissemination of information to the public;

(e) such other matters as may be required by the State Authority.

(4) The District Plan shall be reviewed and updated annually.

(5) The copies of the District Plan referred to in sub-sections (2) and (4) shall be made available to the Departments of the Government in the district.

(6) The District Authority shall send a copy of the District Plan to the State Authority which shall forward it to the State Government.

(7) The District Authority shall, review from time to time, the implementation of the Plan and issue such instructions to different departments of the Government in the district as it may deem necessary for the implementation thereof.

32. Plans by different authorities at district level and their implementation.—Every office of the Government of India and of the State Government at the district level and the local authorities shall, subject to the supervision of the District Authority,—

(a) prepare a disaster management plan setting out the following, namely:—

- (i) provisions for prevention and mitigation measures as provided for in the District Plan and as is assigned to the department or agency concerned;
- (ii) provisions for taking measures relating to capacity-building and preparedness as laid down in the District Plan;
- (iii) the response plans and procedures, in the event of, any threatening disaster situation or disaster;

(b) coordinate the preparation and the implementation of its plan with those of the other organisations at the district level including local authority, communities and other stakeholders;

(c) regularly review and update the plan; and

(d) submit a copy of its disaster management plan, and of any amendment thereto, to the District Authority.

33. Requisition by the District Authority.—The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department shall be bound to carry out such order.

34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.—For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may—

- (a) give directions for the release and use of resources available with any Department of the Government and the local authority in the district;

- (b) control and restrict vehicular traffic to, from and within, the vulnerable or affected area;
- (c) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
- (d) remove debris, conduct search and carry out rescue operations;
- (e) provide shelter, food, drinking water and essential provisions, healthcare and services;
- (f) establish emergency communication systems in the affected area;
- (g) make arrangements for the disposal of the unclaimed dead bodies;
- (h) recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;
- (i) require experts and consultants in the relevant fields to advise and assist as it may deem necessary;
- (j) procure exclusive or preferential use of amenities from any authority or person;
- (k) construct temporary bridges or other necessary structures and demolish structures which may be hazardous to public or aggravate the effects of the disaster;
- (l) ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;
- (m) take such other steps as may be required or warranted to be taken in such a situation.

CHAPTER V

MEASURES BY THE GOVERNMENT FOR DISASTER MANAGEMENT

35. Central Government to take measures.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:—

- (a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organisations in relation to disaster management;
- (b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;
- (c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;
- (d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;
- (e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;
- (f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;

- (g) coordination with the United Nations agencies, international organisations and governments of foreign countries for the purposes of this Act;
- (h) establish institutions for research, training, and developmental programmes in the field of disaster management;
- (i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The Central Government may extend such support to other countries affected by major disaster as it may deem appropriate.

36. Responsibilities of Ministries or Departments of Government of India.—It shall be the responsibility of every Ministry or Department of the Government of India to—

- (a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority;
- (b) integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority;
- (c) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the guidelines of the National Authority or the directions of the National Executive Committee in this behalf;
- (d) review the enactments administered by it, its policies, rules and regulations, with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;
- (e) allocate funds for measures for prevention of disaster, mitigation, capacity-building and preparedness;
- (f) provide assistance to the National Authority and State Governments for—
 - (i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;
 - (ii) carrying out rescue and relief operations in the affected area;
 - (iii) assessing the damage from any disaster;
 - (iv) carrying out rehabilitation and reconstruction;
- (g) make available its resources to the National Executive Committee or a State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster situation or disaster, including measures for—
 - (i) providing emergency communication in a vulnerable or affected area;
 - (ii) transporting personnel and relief goods to and from the affected area;
 - (iii) providing evacuation, rescue, temporary shelter or other immediate relief;
 - (iv) setting up temporary bridges, jetties and landing places;
 - (v) providing, drinking water, essential provisions, healthcare, and services in an affected area;
- (h) take such other actions as it may consider necessary for disaster management.

37. Disaster management plans of Ministries or Departments of Government of India.—(1) Every Ministry or Department of the Government of India shall—

- (a) prepare a disaster management plan specifying the following particulars, namely:—
 - (i) the measures to be taken by it for prevention and mitigation of disasters in accordance with the National Plan;
 - (ii) the specifications regarding integration of mitigation measures in its development plans in accordance with the guidelines of the National Authority and the National Executive Committee;
 - (iii) its roles and responsibilities in relation to preparedness and capacity-building to deal with any threatening disaster situation or disaster;
 - (iv) its roles and responsibilities in regard to promptly and effectively responding to any threatening disaster situation or disaster;
 - (v) the present status of its preparedness to perform the roles and responsibilities specified in sub-clauses (iii) and (iv);
 - (vi) the measures required to be taken in order to enable it to perform its responsibilities specified in sub-clauses (iii) and (iv);
- (b) review and update annually the plan referred to in clause (a);
- (c) forward a copy of the plan referred to in clause (a) or clause (b), as the case may be, to the Central Government which Government shall forward a copy thereof to the National Authority for its approval.

(2) Every Ministry or Department of the Government of India shall—

- (a) make, while preparing disaster management plan under clause (a) of sub-section (1), provisions for financing the activities specified therein;
- (b) furnish a status report regarding the implementation of the plan referred to in clause (a) of sub-section (1) to the National Authority, as and when required by it.

38. State Government to take measures.—(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

(2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely:—

- (a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations;
- (b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities;
- (c) cooperation with, and assistance to, the Ministries or Departments of the Government of India in disaster management, as requested by them or otherwise deemed appropriate by it;

- (d) allocation of funds for measures for prevention of disaster, mitigation, capacity-building and preparedness by the departments of the Government of the State in accordance with the provisions of the State Plan and the District Plans;
- (e) ensure that the integration of measures for prevention of disaster or mitigation by the departments of the Government of the State in their development plans and projects;
- (f) integrate in the State development plan, measures to reduce or mitigate the vulnerability of different parts of the State to different disasters;
- (g) ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National Authority and the State Authority;
- (h) establishment of adequate warning systems up to the level of vulnerable communities;
- (i) ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures;
- (j) ensure that in a threatening disaster situation or disaster, the resources of different departments of the Government of the State are made available to the National Executive Committee or the State Executive Committee or the District Authorities, as the case may be, for the purposes of effective response, rescue and relief in any threatening disaster situation or disaster;
- (k) provide rehabilitation and reconstruction assistance to the victims of any disaster; and
- (l) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act.

39. Responsibilities of departments of the State Government.—It shall be the responsibility of every department of the Government of a State to—

- (a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority and the State Authority;
- (b) integrate into its development plans and projects, the measures for prevention of disaster and mitigation;
- (c) allocate funds for prevention of disaster, mitigation, capacity-building and preparedness;
- (d) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the State Plan, and in accordance with the guidelines or directions of the National Executive Committee and the State Executive Committee;
- (e) review the enactments administered by it, its policies, rules and regulations with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;
- (f) provide assistance, as required, by the National Executive Committee, the State Executive Committee and District Authorities, for—
 - (i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;
 - (ii) assessing the damage from any disaster;
 - (iii) carrying out rehabilitation and reconstruction;
- (g) make provision for resources in consultation with the State Authority for the implementation of the District Plan by its authorities at the district level;

- (h) make available its resources to the National Executive Committee or the State Executive Committee or the District Authorities for the purposes of responding promptly and effectively to any disaster in the State, including measures for—
- (i) providing emergency communication with a vulnerable or affected area;
 - (ii) transporting personnel and relief goods to and from the affected area;
 - (iii) providing evacuation, rescue, temporary shelter or other immediate relief;
 - (iv) carrying out evacuation of persons or live-stock from an area of any threatening disaster situation or disaster;
 - (v) setting up temporary bridges, jetties and landing places;
 - (vi) providing drinking water, essential provisions, healthcare and services in an affected area;
- (i) such other actions as may be necessary for disaster management.

40. Disaster management plan of departments of State.—(1) Every department of the State Government, in conformity with the guidelines laid down by the State Authority, shall—

- (a) prepare a disaster management plan which shall lay down the following :—
- (i) the types of disasters to which different parts of the State are vulnerable;
 - (ii) integration of strategies for the prevention of disaster or the mitigation of its effects or both with the development plans and programmes by the department;
 - (iii) the roles and responsibilities of the department of the State in the event of any threatening disaster situation or disaster and emergency support function it is required to perform;
 - (iv) present status of its preparedness to perform such roles or responsibilities or emergency support function under sub-clause (iii);
 - (v) the capacity-building and preparedness measures proposed to be put into effect in order to enable the Ministries or Departments of the Government of India to discharge their responsibilities under section 37;
- (b) annually review and update the plan referred to in clause (a); and
- (c) furnish a copy of the plan referred to in clause (a) or clause (b), as the case may be, to the State Authority.

(2) Every department of the State Government, while preparing the plan under sub-section (1), shall make provisions for financing the activities specified therein.

(3) Every department of the State Government shall furnish an implementation status report to the State Executive Committee regarding the implementation of the disaster management plan referred to in sub-section (1).

CHAPTER VI LOCAL AUTHORITIES

41. Functions of the local authority.—(1) Subject to the directions of the District Authority, a local authority shall—

- (a) ensure that its officers and employees are trained for disaster management;
- (b) ensure that resources relating to disaster management are so maintained as to be readily available for use in the event of any threatening disaster situation or disaster;

- (c) ensure all construction projects under it or within its jurisdiction conform to the standards and specifications laid down for prevention of disasters and mitigation by the National Authority, State Authority and the District Authority;
- (d) carry out relief, rehabilitation and reconstruction activities in the affected area in accordance with the State Plan and the District Plan.

(2) The local authority may take such other measures as may be necessary for the disaster management.

CHAPTER VII NATIONAL INSTITUTE OF DISASTER MANAGEMENT

42. National Institute of Disaster Management.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be constituted an institute to be called the National Institute of Disaster Management.

(2) The National Institute of Disaster Management shall consist of such number of members as may be prescribed by the Central Government.

(3) The term of office of, and vacancies among, members of the National Institute of Disaster Management and manner of filling such vacancies shall be such as may be prescribed.

(4) There shall be a governing body of the National Institute of Disaster Management which shall be constituted by the Central Government from amongst the members of the National Institute of Disaster Management in such manner as may be prescribed.

(5) The governing body of the National Institute of Disaster Management shall exercise such powers and discharge such functions as may be prescribed by regulations.

(6) The procedure to be followed in exercise of its powers and discharge of its functions by the governing body, and the term of office of, and the manner of filling vacancies among the members of the governing body, shall be such as may be prescribed by regulations.

(7) Until the regulations are made under this section, the Central Government may make such regulations; and any regulation so made may be altered or rescinded by the National Institute of Disaster Management in exercise of its powers.

(8) Subject to the provisions of this Act, the National Institute of Disaster Management shall function within the broad policies and guidelines laid down by the National Authority and be responsible for planning and promoting training and research in the area of disaster management, documentation and development of national level information base relating to disaster management policies, prevention mechanisms and mitigation measures.

(9) Without prejudice to the generality of the provisions contained in sub-section (8), the National Institute, for the discharge of its functions, may—

- (a) develop training modules, undertake research and documentation in disaster management and organise training programmes;
- (b) formulate and implement a comprehensive human resource development plan covering all aspects of disaster management;
- (c) provide assistance in national level policy formulation;

- (d) provide required assistance to the training and research institutes for development of training and research programmes for stakeholders including Government functionaries and undertake training of faculty members of the State level training institutes;
- (e) provide assistance to the State Governments and State training institutes in the formulation of State level policies, strategies, disaster management framework and any other assistance as may be required by the State Governments or State training institutes for capacity-building of stakeholders, Government including its functionaries, civil society members, corporate sector and people's elected representatives;
- (f) develop educational materials for disaster management including academic and professional courses;
- (g) promote awareness among stakeholders including college or school teachers and students, technical personnel and others associated with multi-hazard mitigation, preparedness and response measures;
- (h) undertake, organise and facilitate study courses, conferences, lectures, seminars within and outside the country to promote the aforesaid objects;
- (i) undertake and provide for publication of journals, research papers and books and establish and maintain libraries in furtherance of the aforesaid objects;
- (j) do all such other lawful things as are conducive or incidental to the attainment of the above objects; and
- (k) undertake any other function as may be assigned to it by the Central Government.

43. Officers and other employees of the National Institute.—The Central Government shall provide the National Institute of Disaster Management with such officers, consultants and other employees, as it considers necessary, for carrying out its functions.

CHAPTER VIII NATIONAL DISASTER RESPONSE FORCE

44. National Disaster Response Force.—(1) There shall be constituted a National Disaster Response Force for the purpose of specialist response to a threatening disaster situation or disaster.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner and, the conditions of service of the members of the Force, including disciplinary provisions therefore, be such as may be prescribed.

45. Control, direction, etc.—The general superintendence, direction and control of the Force shall be vested and exercised by the National Authority and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of the National Disaster Response Force.

CHAPTER IX FINANCE, ACCOUNTS AND AUDIT

46. National Disaster Response Fund.—(1) The Central Government may, by notification in the Official Gazette, constitute a fund to be called the National Disaster Response Fund for meeting any threatening disaster situation or disaster and there shall be credited thereto—

- (a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf provide;
- (b) any grants that may be made by any person or institution for the purpose of disaster management.

(2) The National Disaster Response Fund shall be made available to the National Executive Committee to be applied towards meeting the expenses for emergency response, relief and rehabilitation in accordance with the guidelines laid down by the Central Government in consultation with the National Authority.

47. National Disaster Mitigation Fund.—(1) The Central Government may, by notification in the Official Gazette, constitute a Fund to be called the National Disaster Mitigation Fund for projects exclusively for the purpose of mitigation and there shall be credited thereto such amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide.

(2) The National Disaster Mitigation Fund shall be applied by the National Authority.

48. Establishment of funds by State Government.—(1) The State Government shall, immediately after notifications issued for constituting the State Authority and the District Authorities, establish for the purposes of this Act the following funds, namely:—

- (a) the fund to be called the State Disaster Response Fund;
- (b) the fund to be called the District Disaster Response Fund;
- (c) the fund to be called the State Disaster Mitigation Fund;
- (d) the fund to be called the District Disaster Mitigation Fund.

(2) The State Government shall ensure that the funds established—

- (i) under clause (a) of sub-section (1) is available to the State Executive Committee;
- (ii) under sub-clause (c) of sub-section (1) is available to the State Authority;
- (iii) under clauses (b) and (d) of sub-section (1) are available to the District Authority.

49. Allocation of funds by Ministries and Departments.—(1) Every Ministry or Department of the Government of India shall make provisions, in its annual budget, for funds for the purposes of carrying out the activities and programmes set out in its disaster management plan.

(2) The provisions of sub-section (1) shall, *mutatis mutandis*, apply to departments of the Government of the State.

50. Emergency procurement and accounting.—Where by reason of any threatening disaster situation or disaster, the National Authority or the State Authority or the District Authority is satisfied that immediate procurement of provisions or materials or the immediate application of resources are necessary for rescue or relief,—

- (a) it may authorise the concerned department or authority to make the emergency procurement and in such case, the standard procedure requiring inviting of tenders shall be deemed to be waived;
- (b) a certificate about utilisation of provisions or materials by the controlling officer authorised by the National Authority, State Authority or District Authority, as the case may be, shall be deemed to be a valid document or voucher for the purpose of accounting of emergency, procurement of such provisions or materials.

CHAPTER X OFFENCES AND PENALTIES

51. Punishment for obstruction, etc.—Whoever, without reasonable cause—

- (a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or
- (b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

52. Punishment for false claim.—Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

53. Punishment for misappropriation of money or materials, etc.—Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

54. Punishment for false warning.—Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.

55. Offences by Departments of the Government.—(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained

the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

57. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 65, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

58. Offence by companies.—(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

59. Previous sanction for prosecution.—No prosecution for offences punishable under sections 55 and 56 shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be, or of any officer authorised in this behalf, by general or special order, by such Government.

60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—

- (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or
- (b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

CHAPTER XI MISCELLANEOUS

61. Prohibition against discrimination.—While providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion.

62. Power to issue direction by Central Government.—Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Central Government to issue direction in writing to the Ministries or Departments of the Government of India, or the National Executive Committee or the State Government, State Authority, State Executive Committee, statutory bodies or any of its officers or employees, as the case may be, to facilitate or assist in the disaster management and such Ministry or Department or Government or Authority, Executive Committee, statutory body, officer or employee shall be bound to comply with such direction.

63. Powers to be made available for rescue operations.—Any officer or authority of the Union or a State, when requested by the National Executive Committee, any State Executive Committee or District Authority or any person authorised by such Committee or Authority in this behalf, shall make available to that Committee or authority or person, such officers and employees as requested for, to perform any of the functions in connection with the prevention of disaster or mitigation or rescue or relief work.

64. Making or amending rules, etc., in certain circumstances.—Subject to the provisions of this Act, if it appears to the National Executive Committee, State Executive Committee or the District Authority, as the case may be, that provisions of any rule, regulation, notification, guideline, instruction, order, scheme or bye-laws, as the case may be, are required to be made or amended for the purposes of prevention of disasters or the mitigation thereof, it may require the amendment of such rules, regulation, notification, guidelines, instruction, order, scheme or bye-laws, as the case may be, for that purpose, and the appropriate department or authority shall take necessary action to comply with the requirements.

65. Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.—(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—

- (a) any resources with any authority or person are needed for the purpose of prompt response;
- (b) any premises are needed or likely to be needed for the purpose of rescue operations; or
- (c) any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction,

such authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section.

(3) In this section,—

- (a) “resources” includes men and material resources;
- (b) “services” includes facilities;
- (c) “premises” means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;
- (d) “vehicle” means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise.

66. Payment of compensation.— (1) Whenever any Committee, Authority or officer referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

- (i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;
- (ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression “person interested” means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65 in pursuance of that section requisitions any vehicle, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Central Government or the State Government, as the case may be, on the basis of the fares or rates prevailing in the locality for the hire of such vehicle:

Provided that where the owner of such vehicle being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Central Government or the State Government, as the case may be, in this behalf may decide.

67. Direction to media for communication of warnings, etc.—The National Authority, the State Authority, or a District Authority may recommend to the Government to give direction to any authority or person in control of any audio or audio-visual media or such other means of communication as may be available to carry any warning or advisories regarding any threatening disaster situation or disaster, and the said means of communication and media as designated shall comply with such direction.

68. Authentication of orders or decisions.—Every order or decision of the National Authority or the National Executive Committee, the State Authority, or the State Executive Committee or the District Authority, shall be authenticated by such officers of the National Authority or the National Executive Committee or, the State Executive Committee, or the District Authority, as may be authorised by it in this behalf.

69. Delegation of powers.—The National Executive Committee, State Executive Committee, as the case may be, by general or special order in writing, may delegate to the Chairperson or any other member or to any officer, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

70. Annual report.—(1) The National Authority shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament within one month of its receipt.

(2) The State Authority shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the State Government and that Government shall cause the same to be laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

71. Bar of jurisdiction of court.—No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act.

72. Act to have overriding effect.—The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

73. Action taken in good faith.—No suit or prosecution or other proceeding shall lie in any court against the Central Government or the National Authority or the State Government or the State Authority or the District Authority or local authority or any officer or employee of the Central Government or the National Authority or the State Government or the State Authority or the District Authority or local authority or any person working for on behalf of such Government or authority in respect of any work done or purported to have been done or intended to be done in good faith by such authority or Government or such officer or employee or such person under the provisions of this Act or the rules or regulations made thereunder.

74. Immunity from legal process.—Officers and employees of the Central Government, National Authority, National Executive Committee, State Government, State Authority, State Executive Committee or District Authority shall be immune from legal process in regard to any warning in respect of any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination.

75. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the composition and number of the members of the National Authority under sub-section (2), and the term of office and conditions of service of members of the National Authority under sub-section (4), of section 3;
- (b) the allowances to be paid to the members of the advisory committee under sub-section (2) of section 7;
- (c) the powers and functions of the Chairperson of the National Executive Committee under sub-section (3) of section 8 and the procedure to be followed by the National Executive Committee in exercise of its powers and discharge of its functions under sub-section (4) of section 8;
- (d) allowances to be paid to the persons associated with the sub-committee constituted by the National Executive Committee under sub-section (3) of section 9;
- (e) the number of members of the National Institute of Disaster Management under sub-section (2), the term of the office and vacancies among members and the manner of filling such vacancies under sub-section (3) and the manner of constituting the

Governing Body of the National Institute of Disaster Management under sub-section (4) of section 42;

- (f) the manner of constitution of the Force, the conditions of service of the members of the Force, including disciplinary provisions under sub-section (2) of section 44;
- (g) the manner in which notice of the offence and of the intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government or the other authority or officer under clause (b) of section 60;
- (h) the form in which and the time within which annual report is to be prepared under section 70;
- (i) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.

76. Power to make regulations.—(1) The National Institute of Disaster Management, with the previous approval of the Central Government may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) powers and functions to be exercised and discharged by the governing body;
- (b) procedure to be followed by the governing body in exercise of the powers and discharge of its functions;
- (c) any other matter for which under this Act provision may be made by the regulations.

77. Rules and regulations to be laid before Parliament.—Every rule made by the Central Government and every regulation made by the National Institute of Disaster Management under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

78. Power of State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the composition and number of the members of the State Authority under sub-section (2), and the term of office and conditions of service of the members of the State Authority under sub-section (5), of section 14;
- (b) the allowances to be paid to the members of the advisory committee under sub-section (2) of section 17;

- (c) the powers and functions of the Chairperson of the State Executive Committee under sub-section (3), and the procedure to be followed by the State Executive Committee in exercise of its powers and discharge of its functions under sub-section (4) of section 20;
- (d) allowances to be paid to the persons associated with the sub-committee constituted by the State Executive Committee under sub-section (3) of section 21;
- (e) the composition and the number of members of the District Authority under sub-section (2), and the powers and functions to be exercised and discharged by the Chief Executive Officer of the District Authority under sub-section (3) of section 25;
- (f) allowances payable to the persons associated with any committee constituted by the District Authority as experts under sub-section (3) of section 28;
- (g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House before that House.

79. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government or the State Government, as the case may be, by notification in the Official Gazette, make order not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament or the Legislature, as the case may be.

HIMACHAL PRADESH DISASTER MANAGEMENT AND RELIEF MANUAL (2012)

Abbreviations

BIS	–	Bureau of Indian Standards
CBOs	–	Community Based Organisations
CBRN	–	Chemical, Biological, Radiological and Nuclear
CSR	–	Corporate Social Responsibility
CRF	–	Calamity Relief Fund
CWC	-	Central Water Commission
DDMA	–	District Disaster Management Authority
DCMC	-	District Crisis Management Committee
DM	–	Disaster Management
DMC	-	Disaster Management Cell
EQR	-	Earthquake resistant
GSI	-	Geological Survey of India
GoI	–	Government of India
HFL	-	High flood level
IAG	-	Inter Agency Coordination
IMD	-	Indian Meteorology Department
IITs	–	Indian Institutes of Technology
NBC	-	National Building Codes
NCC	–	National Cadet Corps
NCCF	–	National Calamity Contingency Fund
NDMA	–	National Disaster Management Authority
NDRF	–	National Disaster Response Force
NGOs	–	Non-Governmental Organisations
NIDM	–	National Institute of Disaster Management
NIT	–	National Institutes of Technology
PRIs	–	Panchayati Raj Institutions
SAR	-	Search and Rescue
SASE	-	Snow and Avalanche Study Establishment
SCMC	-	State Crisis Management Committee
SDMA	–	State Disaster Management Authority
SDRF	–	State Disaster Response Fund
SEC	–	State Executive Committee
SOPs	–	Standard Operating Procedures
ULBs	–	Urban Local Bodies
VO	-	Voluntary Organisations

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Part I - Disaster Management Manual

Chapter – 1

Introduction

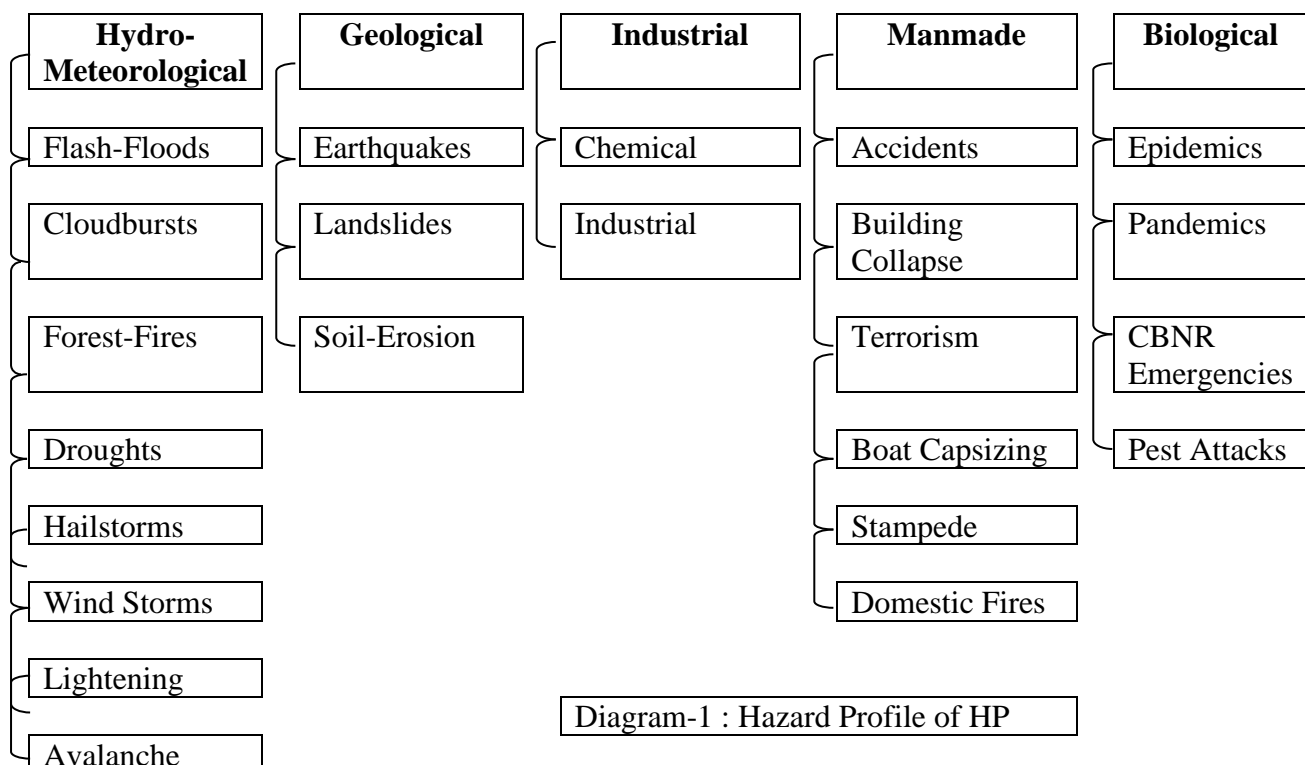
Hazard Profile of Himachal Pradesh – A Brief Overview

1.1 Himachal Pradesh is prone to various hazards both natural and manmade. Main hazards consist of earthquakes, landslides, flash floods, snow storms and avalanches, draughts, dam failures, fires-domestic and wild, accidents- road, rail, air, stampedes, boat capsizing, biological, industrial and hazardous chemicals etc. However, the hazard which poses the biggest threat to the state is that of earthquakes. Another form of the natural hazards in the state is the frequent occurrences of landslides. The hills and mountains of Himachal Pradesh are liable to suffer landslides during monsoons and also in high intensity earthquakes.

1.2 Although widespread floods problems do not exist in the state because of topographical nature, the incidences of flash floods are increasing and causing large scale damage. Besides, with the increase of road connectivity and number of vehicles plying on these roads in the State, the number of road accidents and loss of precious human lives is increasing day by day. Another major hazard that affects the state is forest fires. Over the years the forest wealth of the State is being destroyed by the incidences of fire attributed to both anthropogenic and other reasons. The destruction of rich flora and fauna of the State due to forest fires will have serious repercussions on the ecological balance of the State.

1.3 The State is known as land of Gods. Every year, large number of devotees visit temples and religious sites for pilgrimage and religious purposes. Sometimes, especially during the days of religious festivities, human stampedes pose a great risk to the lives of the devotees and tourists. In one such notable accident at the temple of Sri Naina Devi in district Bilaspur, 162 people died when a human stampede occurred on 3rd of August 2008. Possibility of such instances is always there if there is any laxity on the part of the management. Apart from the above-stated hazards, there are many instances when road accidents caused immense loss of lives. Boat-capsizing and Helicopter crash are some uncommon but not unprecedented types of anthropogenic disasters.

1.4 The diagrammatic (Diagram 1) representation of hazard profile of Himachal is as under:-



Note: Detailed hazard profile of State is available in HP SDMA Website: www.hpsdma.nic.in.

Paradigm Shift in Disaster Management

1.5 On 23rd December, 2005, the Government of India took a defining step by enacting the Disaster Management Act, 2005 (hereinafter referred to as the Act), which envisaged creation of the National Disaster Management Authority (NDMA) headed by the Prime Minister, State Disaster Management Authorities (SDMA) headed by the Chief Ministers, and District Disaster Management Authorities (DDMA) headed by the District Magistrates or Deputy Commissioners as the case may be, to spearhead and adopt a holistic and integrated approach to disaster management (DM). There will be a paradigm shift, from the erstwhile relief-centric response to a proactive prevention, mitigation and preparedness-driven approach for conserving development gains and to minimize loss of life, livelihood and property.

1.6 According to Section 2 (d) of the Act "disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area."

1.7 And Section 2 (e) of the Act defines disaster management as follows:-

"Section 2(e) "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for-

- (i) prevention of danger or threat of any disaster;
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;
- (iii) capacity-building;
- (iv) preparedness to deal with any disaster;
- (v) prompt response to any threatening disaster situation or disaster;
- (vi) assessing the severity or magnitude of effects of any disaster;
- (vii) evacuation, rescue and relief;
- (viii) rehabilitation and reconstruction."

(The copies of the DM Act, HP DM Rules and Policy 2011 is available at: www.hpsdma.nic.in)

Role of Relief Commissioner

1.8 The State Relief Commissioner through the office of the Department of Revenue plays a direct and active role in the disaster management programme of the State. For a disaster that impacts more than one district in the State, the State Relief Commissioner may coordinate and supervise relief measures. The State Relief Commissioner either directly or through District Magistrates, coordinates and monitors the disaster management activities and measures using all the resources available with the State Government. The State Relief Commissioner would:

- (i) Mobilise resources and response when the disaster is beyond the response capacity of the district (s);
- (ii) Supervise and undertake Preparedness, Prevention and Mitigation measures, if necessary, where disaster is declared; and
- (iii) Monitor rehabilitation and reconstruction work.

Role of District Collector in Disaster Management

1.9 The above definition encompasses the cycle of disaster management which has the elements of pre-disaster phase such as prevention, mitigation, preparedness and capacity building and emergency response, relief, rehabilitation and reconstruction as the post disaster management. The Act prescribes responsibilities to various authorities at all levels. The roles and responsibilities of DDMA has been elaborated in Section 30, 31, 33, and 34 of the Act. Keeping in view the provisions of the Act, the District Collector, the Chairman of the DDMA shall ensure the following:-

- (i) Preparation of the Disaster Management Plan (DDMP) for the District with the assistance of the DDMA and other experts as per the provisions of the Act, guidelines issued by the NDMA, SDMA and the State Executive Committee (SEC);
- (ii) Preparation of DMP by the departments of the Government and other agencies based on the DDMP;
- (iii) Periodic mock drill to test the efficacy of the DMPs;
- (iv) Integration of Disaster Risk Reduction (DRR) into development programmes and policies of all departments;
- (v) To monitor the implementation of the DDMA and regular updation of the same;
- (vi) Setting up the district control room and making it function effectively;
- (vii) Earmarking and entrusting responsibility to the various departments including Emergency Support Functions (ESF) and appointment of Nodal Officers by various departments to perform the ESFs;
- (viii) Coordination with all the line departments of the State, Central, Armed Forces and other agencies;
- (ix) Periodic review of preparedness of departments at all levels;
- (x) To liaise with the Government periodically about the disaster and the action taken;
- (xi) Integrating the MARG (Mutual Aid and Response Group) of the industrial belt with the disaster management committee;
- (xii) Equip and prepare the district machinery before the disaster;
- (xiii) Identification of building/open spaces for relief camps and setting up relief camps and transit camps whenever needed;
- (xiv) Conducting relief and rescue operations;
- (xv) Establishing GO-NGO Coordination during normal time so that it works during emergencies and to coordinate the actions of NGOs/CBOs, relief agencies and departments for effective disaster response and relief;
- (xvi) Organizing Training and conducting mock drills to the Government officials, community and other stakeholders;
- (xvii) Ensure public awareness on all the hazards which the district face regularly;
- (xviii) Transmission of Early Warning alters to the vulnerable community with the effective means of communication;
- (xix) Maintaining the supply of essential commodities;
- (xx) Stocking of minimum essential relief material for ready availability; and
- (xxi) Any other action which is needed for the requirement of the situation or to comply with the provisions of the DM Act and instructions issued by the NDMA, SDMA or the SEC.

Role of District Emergency Operation Centre

1.10 The District Collector would be assisted to perform the roles assigned to him and the DDAMA by the District Emergency Operation Centre (Control Room). The DEOC would perform the following functions:-

- (i) District control room would be the nerve centre for the disaster management;
- (ii) To monitor, coordinate and implement the actions for disaster management;
- (iii) Activate the ESF in the event of a disaster and coordinate the actions of various departments/agencies;
- (iv) Ensure that all warning, communication systems and instruments are in working conditions;
- (v) Receive information on a routine basis from the district departments on the vulnerability of the various places and villages (parts of the districts);
- (vi) Receive reports on the preparedness of the district level departments and the resources at their disposal to arrange and meet their requirements;
- (vii) Upgrade the Disaster Management Action according to the changing scenario;
- (viii) Maintain a web-based inventory of all resources through the India Disaster Resource Network (IDRN);
- (ix) Provide information to the Relief Commissioner' Office of the disaster/emergencies/accidents taking place in the district regularly and maintain a database of disasters and losses caused by them;
- (x) Monitor preparedness measures and training activities;
- (xi) Providing information at district level, local level and disaster prone areas through appropriate media;
- (xii) Brief the media of the situations and prepare day to day reports during the disasters;
- (xiii) To report the actual scenario and the action taken by the District Administration;
- (xiv) Maintain a database of trained personnel and volunteers who could be contacted at any time;
- (xv) Liaise with on-site operation centre, State EOC and other emergency services.

1.11 The Additional Magistrate (Assistant Commissioner to Deputy Commissioner for Kinnaur and Lahaul & Spiti), the Nodal Officer for Disaster Management would be incharge of the DEOC. A manual for the functioning and management of the EOCs has been prepared at the State Level and the district can refer to the manual for their use in the DEOC. It is available at: www.hpsdma.nic.in.

Role of Sub-Divisional Officer (Civil)

1.12 The Sub Divisional Officer will supervise Disaster Management operations within his jurisdiction. The Sub Divisional Officer will be in charge of disaster management in the sub division concerned. He will see that relief is being efficiently and economically administered, orders are properly carried out, provisions for medical relief, hospitals and dispensaries are adequate, special precautions are taken to guard the drinking water supply from contamination and pollution, to guard against breaking out epidemics in the disaster affected areas, that the provisions of the disaster management codes and orders of the State government are being fulfilled and that the provisions for the future is being duly made and reports properly submitted.

Role of PRIs and ULBs

1.13 The Disaster Management Act, 2005 enjoins upon the local authorities – PRIs, ULBs, etc. to render necessary assistance to the DDMA in disaster management. The Act also gives responsibility

of ensuring safe construction within their respective jurisdiction. The DDMA/District Magistrate can constitute relief committee at local level and allocate responsibilities.

General Measures to be taken for Disaster Management

Pre-Disaster Activities

1.14 Generally speaking the following measure would help in dealing with disasters in the district/local level effectively:-

- a) Institutionalization of disaster management and strengthening of DM institutions.
- b) Preparation of Disaster Management Plans at District and local Level.
- c) Preparation of disaster management plans by all the departments and agencies.
- d) Implementing of Disaster Management Plans.
- e) Holding regular mock drills to test and improve and DMPs.
- f) Holding regular meetings at District and Sub-Division level to reviewing the readiness of the administrative machinery to deal with disasters.
- g) Constitution of Relief Committees at all levels.
- h) Regular training programmes of Government functionaries, PRIs, ULBs and other stakeholders in various facets of disaster management as per the TNA carried out by the Revenue Department. TNA report is available at: www.hpsdma.nic.in.
- i) Public awareness and education vis a vis all hazards.
- j) Community training and empowerment at all level.
- k) Taking preventive and mitigation measures for the identified hazards.
- l) Integration of Disaster Risk Reduction (DRR) into on-going development programmes of all departments.
- m) Setting up and strengthening of EOCs at the District level and control rooms at local level.
- n) Establishing effective early warning system for the vulnerable areas and communities.
- o) Improving the response capacities of the search and rescue teams.
- p) Establishing inter-agency group (IAG) and inter-agency coordination mechanism for effective and coordinated response.
- q) Holding regular meetings with regional response centres, CPMFs and Army.
- r) Having clear policies about post disaster rehabilitation and reconstruction.
- s) Regular and periodic updation of contact details and resource inventory.
- t) Preparing inventory of relief camps – buildings, open spaces.

Action during Disasters

1.15 The suggested guidelines have been given in the forthcoming chapters, however, the following would be the broad guidelines for actions during disasters:-

- a) Assess the full extent of the disaster/calamity and the damages/losses incurred.
- b) Plan and supervise search and rescue operations.
- c) Provision of medical treatment of the injured.
- d) Allocate clear responsibilities to the officers and provide them necessary resources along with necessary delegations.
- e) Coordination of actions of all departments, agencies, CBO, NGOs, etc.
- f) Identification of victims and beneficiaries.

- g) Finalise the relief to be provided to the affected persons and ensure its timely distribution.
- h) Disposal of unclaimed bodies and carcass.
- i) Arrangement of relief camps, if needed.
- j) Mobilise resources from outside the district if the situation so warrants.
- k) Collect and maintain full information of the disaster and steps taken to tackle it.
- l) Last but not least, keeping informing the higher authorities about the whole incident

After the Disaster

1.16 Main activities suggested for post disaster phase are:-

- a) Preparing action plan and mobilizing resources of post disaster recovery, reconstruction, if the extent of disaster is large.
- b) Documentation of disaster – nature and extent of damage for future reference and record. It should be uploaded in the DDMA website for quick reference and easy access.
- c) Documentation of lessons learnt and best practices. It should be uploaded in the DDMA website for quick reference and easy access.

1.17 In the succeeding chapters suggestive action plans for various hazards to which the State of Himachal Pradesh is vulnerable is discussed.

Chapter – 2 Earthquakes

2.1 Though numerous hazards pose threat to the State, however, the hazard which poses biggest threat to the State is the earthquake hazard. The State has been shaken by more than 80 times by earthquakes having a magnitude of 4 and above on the Richter Scale as per the recorded history of earthquakes. According to seismic zoning map of the state five districts, namely Chamba (53.2%) Hamirpur (90.9%), Kangra (98.6%), Kullu (53.1%), Mandi (97.4%) have 53 to 98.6 percent of their area liable to the severest design intensity of MSK IX or more, the remaining area of these districts being liable to the next severe intensity VIII. Two districts, Bilaspur (25.3%) and Una (37.0%) also have substantial area in MSK IX and rest in MSK VIII. The remaining districts also are liable to intensity VIII. Broadly speaking, roughly 32% of the State falls in zone IV and rest of the State falls in Zone V as per the Seismic Zonation Map prepared by the Bureau of Indian Standards. Both these zones are highly susceptible to earthquake damages.

2.2 Unfortunately, inspite of the probable maximum seismic intensities being high, the house types mostly fall under Category A, consisting of walls of clay mud, unburnt bricks or random rubble masonry without any earthquake resisting features. All such houses are liable to total collapse if intensity IX or more actually occurs in future and will have severe damage called “destruction” with very large cracks and partial collapses even in Intensity VIII areas. Also, the burnt-brick houses, classified as Category B, as built in Himachal Pradesh do not have the earthquake resisting features, namely good cement mortar seismic bands and roof typing etc. therefore, they will also be liable to severe damage under intensity IX as well as in VIII whenever such an earthquake would occur. This became quite evident even in M 5.7 Dharamshala earthquake of 1986.

Action Plan for Earthquake

2.3 **Pre-Disaster Activities:** some of the activities suggested are as under:-

- (i) Preparation of earthquake catalogues and epicentral and geologic-tectonic maps to be obtained from scientific organizations such as IMD, GSI, WIHG, etc.
- (ii) Analysis of seismic risk and seismic zoning for general purposes may be done.

- (iii) Popularization and enforcement of building codes and safe construction practices.
- (iv) Training of engineers and architects in earthquake engineering principles and use of codes to be done (both government and private) through reputed Institutions such as NIT Hamirpur, CBRI Roorkee and IITs may be carried out. \
- (v) Promulgation building bye-laws for providing earthquake resistance feature in all new construction according to the codes may be enforced.
- (vi) Development of methods for seismic strengthening of existing structure, particularly in the structures considered critical for the community may be done.
- (vii) Development of simple methods for upgrading the seismic resistance of traditional non-engineered construction and their dissemination to the common builders and owners by mass communication media, demonstrations, extension work, etc. may be done.
- (viii) Popularisation of earthquake insurance for the privately owned buildings and structures to reduce the economic impact may be done by public awareness.

2.4 Risk Assessment: Regular monitoring of structural integrity of public buildings, water tanks, roads, bridges, dams and other built-up structures may be done involving technical and scientific institutions such as NIT and IITs.

2.5 Public Awareness: Awareness raising, particularly in vulnerable areas, of basic safety precautions to be undertaken, at the individual and organizational levels by the District Administration by way of –

- (i) Development and distribution of awareness leaflets.
- (ii) Exhibitions of simple techniques may be organized to make houses earthquake resistant.
- (iii) Demonstration of the Model Houses may be done.
- (iv) Screening of Awareness movies/documentaries through cable and local network.

2.6 Training and Orientation: Government officers and staff needs to be trained and oriented in response measures to earthquake disasters. Training needs to be imparted to all the Government functionaries, public representatives and other stakeholders as per their respective Training Needs Assessment (TNA) carried out by the Revenue Department.

2.7 Minimising Risk: Delineation of fault zones and reduction of human activities in such areas enhancing structural integrity through measures like slope stabilization should be done.

- a) Construction of public buildings (particularly schools, hospital buildings/community centers/ Panchayat Bhawans) and publicly funded buildings (e.g. IAY Homes) in an earthquake resistant manner should be done.
- b) Identification of public shelters e.g. schools, community buildings, etc. and equipping them with basic first-aid facilities, training of government servants/volunteers in basic first-aid measures to be done.
- c) Arrangement of involvement of Voluntary Organizations.
- d) Promote awareness of earthquake risks.
- e) Training in earthquake resistant house construction.
- f) Public education in basic response measures –what to do before, during and after an Earthquake occurs.
- g) Promotion of Ham Radio sets particularly in remote settlements (link with seismic stations) to be done.
- h) Establishment of District Hazard Safety Cell to be headed by the SE, PWD with a view to assess the earthquake resistance of existing lifeline buildings and retrofitting

the same and also to ensure that the new construction (government buildings and construction in the MC areas) is as per BIS codes.

Pre-Disaster Activities

Safety of New Construction – Check list:

2.8 The following checklist should be referred to in order to ensure that the new construction adheres to safety norms and is EQR: -

- i. Whether provisions of appropriate earthquake regulations (NBC) for planning design and construction of all new engineered structures according to seismic intensity zones done?
- ii. Whether provisions of codes of Practice and Manuals for earthquake resistant construction in all non-engineered buildings done?
- iii. Whether incorporated the code provisions in an appropriate manner in building by-laws of Municipalities/local Panchayats?
- iv. Whether informed the public through the use of mass media and demonstrations regarding simple and economical earthquake resistance features for their otherwise traditional constructions done?

Safety of Existing Buildings and Structures:

2.9 For the existing buildings and infrastructure the following check-list should be followed:-

- a) Whether safety analysis carried out for dams and other appurtenant structures and strengthen them if found necessary?
- b) Whether carried out safety studies of existing bridges and incorporate appropriate retrofitting features to achieve desired earthquake resistance?
- c) Whether carried out seismic rating analysis of existing critical buildings such as hospitals, schools and other community and public buildings and to strengthen those found wanting by insertion of shear walls, bracings, cement grouting or adding buttresses or other techniques?

Post-Disaster Activities:

2.10 When the intensity of earthquake is severe and the loss caused thereby is grave, resulting in extensive damage to life and property, immediate rescue measures are required to be taken. These measures are broadly as follow:-

- a) Activation of DEOC immediately at District level, sub division level and sites level. Immediately make public the phone numbers and officers handling the control room. Ideally this should be known in advance to all and put in DDMA website.
- b) Quick assessment of damage and demarcation of damaged areas according to grade or damage to be done.
- c) Search and rescue operations, activation of public shelters.
- d) Arrangements for maintenance of law and order to be made.
- e) Arrangements for evacuation of people to be made.
- f) Recovery of dead bodies and their disposal arrangements to be done as per the guidelines issued by the NDMA (www.ndma.gov.in).
- g) Arrangements to be made for the medical care for the injured.
- h) Supply of food and water and restoration of water supply lines to be done.

- i) Temporary shelters like tents, metal sheds to be made available.
- j) Financial Assistance to the families of the victims.
- k) Financial Assistance to those whose houses have been destroyed or severely damaged.
- l) Restoring lines of communication and information flow to be made.
- m) Transport communications to be restored.
- n) Cordoning off severely damaged structures liable to collapse during aftershocks to be done.
- o) Temporary shoring of certain precariously standing buildings to avoid collapse and damage to other adjoining buildings to be done.
- p) Immediate actions to prevent certain chain-reactions from developing such as release of water from the reservoir behind a damaged dam to avoid flooding of areas if the dam fail, emptying of, containers of toxic or inflammable liquids and gases, treatment of environment for preventing spread of diseases etc. to be done.
- q) Gathering of information regarding the Earthquake's spread and damage done.
- r) Periodic press releases.
- s) Liaison with particularly army/paramilitary forces (to minimize possibility of looting).
- t) Opening of relief centers and supply of food and other basic requirements.
- u) Regulation of entry into affected area by public (issue pass).
- v) Restoration of minimum communication network.
- w) Quick relief operations to be started.(one week to one month)
- x) Shelters-established public shelters and new emergency shelters (mainly by selected agencies).
- y) Distribution of relief supplies, food, blankets, clothes, medicines as needed.

Besides, the following actions are also required to be taken:-

- i) Health surveys-preferably by VOs.
- ii) Provision of medical services particularly for the injured. Mobile units if needed to be arranged.
- iii) Establishment of hygienic and sanitary conditions in the relief villages (use bleaching powder etc.)
- iv) Restoration of basic transport facilities: (movement of two wheeler possible) at least to begin with.
- v) Distribution of basic/minimal compensation: (through proforma) using local people's representatives. (Kind-Ration/clothing/Utensils).
- vi) Establishment of a District level Relief and Rehabilitation Cell with government and non-government representatives.
- vii) Rapid damage assessment (up to 3 or 4 months): Basically to determine compensation due.
- viii) Announcement of relief-rehabilitation policy/package (state level).
- ix) Reconstruction (owner-driven) up to 2 years.
- x) Informing people of rehabilitation policy/package through media.
- xi) Sandesh Yatras, exhibitions, posters displays orientation meetings at village level by VOs on Rehabilitation package and EQR housing construction and repairs.
- xii) Training programmes for house-owners administrative staff (engineers) and masons if necessary-by government and non-government agencies to be arranged.
- xiii) Full restoration of transport and communication networks.
- xiv) Work on restoring structural integrity of built environment, particularly roads, embankments, slopes.

- xv) Collection of scientific data from field observations as well as from instrumentation specially deployed in the affected areas to monitor the aftershocks to be done.
- xvi) Preparation of proposals about reconstruction requirements and strategy to be adopted and whether reconstruction opportunity could also be utilized for affecting socio-economic development of the damaged area to done.
- xvii) To be ensured that we don't re-build the existing vulnerability during the reconstruction process. "Build-back better" should be the moto to be followed.

Chapter - 3

Drought

3.1 Drought is a "creeping disaster" thus emphasizing that a situation of drought develops gradually giving sufficient warning of its converge and extent of intensity unlike flash floods, earthquake, avalanche which offer little or no time for response. To mitigate the impact of drought the following measure should be taken.

Early Warning and timely Action

3.2 Draught is a slow onset natural disaster and it offers time and opportunity to mitigate its impact. Drought connotes a situation of scarcity and distress usually caused by prolonged failure of rain affecting seriously the agricultural activities leading to loss of production and employment, drinking water shortages, deficiency in fodder supply. The following measures are suggested:-

- a) Keep a close watch on the behaviour of the monsoon
- b) The Relief Advisory Committee constituted vide Government order dated 18th May, 1990 will meet in the month of March and assess the probable rainfall on the basis of data received from the IMD.
- c) On the basis of the data so received, the Agriculture Department should suggest a contingency plan for agriculture which may include the following:-
 - i) Suggesting crop life-saving techniques like water harvesting and moisture stress alleviation practices, to the farmers by holding camps and distributing literature.
 - ii) Depending upon dynamics of weather conditions a plan operation for alternate crop may be kept ready and farmers should be educated in time so that they can sow a crop which needs less water.

3.3 Drought though not a regular phenomenon in the State it keeps affecting parts of the state with varying intensity intermittently. Hence it is imperative to give suggestive guidelines to the district officers to deal with drought.

Causes:

- (i) Failure of Monsoons.
- (ii) Lack of irrigation facility
- (iii) Non-harvesting rain water/snow

Indicators of Drought:

3.4 Key indicators of drought are as under:-

- i. Low storage in Reservoirs.
- ii. Poor recharge of ground aquifers.
- iii. Wells drying up.

- iv. Considerable reduced discharge in natural sources
- v. Wilting of crops.
- vi. Season: March to June/ October till monsoon.
- vii. Meteorological drought – inadequate rainfall. Uncertainty, a long dry spells, unequal distribution.
- viii. Hydrological drought-water scarcity, lowering of the ground water, table, depletion of water resources, drying up of tanks, wells and reservoirs.
- ix. Soil Moisture drought- run off, seepage, evaporation and transpiration.
- x. Agriculture Drought- lack of crop/fodder growth, decrease in soil moisture.
- xi. Ecological drought – damage to the environment due to the factors mentioned above.

Objective of Drought Management

3.5 Main objectives of drought management are:-

- a) Focus on employment generations.
- b) Water conservation and power supply.
- c) Standing crop saving.
- d) Public Distribution supplies of essential commodities.
- e) Implements nutrition programme for the vulnerable group.
- f) Speed the pace of development creating employment and productive assets, which would trigger overall development.
- g) Provide Income generation activities to the affected population.
- h) Create productive assets in affected areas.
- i) Early warning system should reach the village level - use the media and appropriate method.

Planning for Drought Management

3.6 Planning for drought management would mainly consist of the following activities:-

- i. Fodder: Location, inventory, requirement, movement-plan in advance.
- ii. Cattle: Location of cattle camps, identification of sick cattle and treatment, cattle population and movement cycles- identifying good markets.
- iii. Food Grains: Prioritization of food grain availability and good supply network through PDS (maintenance of adequate stock).
- iv. Water: Preparation of drinking water contingency plan, tanker availability/construct/install temporary water storage structures on the village sides. If already constructed, if need be repair it - encourage local traditional structures under any scheme. The district administration should prepare an action plan with the following detail:-
 - a) Have all those villages which are affected or likely to be affected by acute drinking water scarcity problems during the next few months, been correctly and realistically identified? The villages could be listed into two categories viz, most severely affected and severely affected.
 - b) Have contingency plans at the district, block and village levels been prepared to cover the identified villages? How many villages have been covered by such plans? Indicate the names of the departments responsible for implementation of the plans.

- c) Identifications of villages where transportation of water shall have to be resorted to in order to meet the drinking water requirement provision for safe storage of water in the households or Panchayats.
 - d) Have sufficient stocks of bleaching powder, water sterilization tablets been arranged at the district and block level?
 - e) Has there been any incidence of water borne diseases? Any epidemiological survey carried out for water borne diseases.
- v. Afforestation Programme - plan ahead with species, which could tide over- the drought, plant drought resistant varieties.
 - vi. Health related facilities: - preventive steps- store medicine/prevent water contamination and control diseases. Nutritional requirements fulfillment.
 - vii. Relief Works: with special emphasis on soil conservation and water conservation (ground and surface).
 - viii. Coordination meeting for Drought: Periodically convene the coordination meeting with members of district level, block level and Panchayat level.

Meeting the Onslaught-Action Points :

3.7 The following points may be taken into account to meet drought situation:-

- a) Formal declaration of drought specifying areas clearly district/tehsil/block/ Panchayat or whole District.
- b) Internalization of powers under drought to various authorities-Financial powers, Executive powers to be given to the officers.
- c) All government officers' services to be pooled.

(Action by Revenue Department)

Opening of Relief works:

- i. Announcement of work
- ii. Preparation of musters
- iii. Provision of food grains through local ration shops.
- iv. Type of work depending on areas requirements.
 - Road works
 - Digging and deepening of wells/digging of ponds at suitable locations
 - De-siltation of tanks and ponds.
 - Afforestation if not completely at least land work.
 - Construction activities-public buildings.
 - Water supply schemes and check dams across nallas and riverbeds.

(Action by Revenue, Rural Development, PWD, IPH and Forest Departments)

Food grain related issues:

- a) Ensure availability.
- b) Price monitoring through committees upto the Panchayat level.

(Action by DFSC and HPSCSC)

Agricultural Intervention:

- i. Agriculture is crucial for the local people.
- ii. Introduce-water budgeting in all irrigation schemes to regulate water supply
- iii. Distribution of timely agricultural inputs.
- iv. Relaxation of agricultural credit norms to farmers.
- v. Provide extension support to create awareness about the water/crop saving techniques to minimize crop loss.
- vi. Once known from the early warning of the meteorological departments farmers to be convinced to go for-adoption of alternative varieties/crops----(millets)
- vii. Drought resistant varieties-obtain it from state seed corporation/National seed Corporations/Agricultural Universities etc.
- viii. Recommend short duration pulses.
- ix. Alternative fodder crops
- x. Alternative sowing system (instead of raising nurseries –Direct sowing etc.)
- xi. Motivate farmers to collectively share available water.
- xii. At Panchayat level relief committee to be constituted to oversee the drought.
- xiii. Safeguard the interest of the tail-enders.
- xiv. Ensure optimum use of surface and ground water.

(Action by Dy. Director Agriculture)

Cattle related issues:

- i. Availability of fodder.
- ii. Timely movement of fodder.
- iii. Opening of cattle camps (if necessary).
- iv. Opening of special camps for sick cattle (veterinary care).
- v. Regular supervision of cattle camp.
- vi. Alert the veterinary officer to be responsible and control of diseases.
- vii. Networking with cattle market and if drought is severe-encourage to dispose off.
- viii. Payment of subsidy, if any.
- ix. Accounting system well laid down with detailed information.

(Action by Dy. Director Animal Husbandry and Revenue Department)

Drinking Water Related Issues:

- i. During drought there is likelihood of water borne diseases like gastro-enteritis. To prevent such diseases the district administration should hold meetings in the month of April to review the preparedness to counter such an eventuality. The Irrigation and Public Health Department, Revenue, Block and Health departments should chalk out a joint strategy for cleaning and chlorination of water sources. The local population and panchayats should be involved in such an activity. The Health Department should keep a record of outbreak of gastroenteritis cases for record and future reference too.
- ii. Disinfection of traditional water sources through PRIs. To be checked up and Irrigation and Public health department to be given responsibility.
- iii. Diversion of water for drinking on priority.
- iv. Provision of Drinking water through tankers etc.

(Action by Revenue, Block, and I&PH department)

Health, Sanitation and Nutrition Issues:

- i. Provision of adequate health care facilities-storing of adequate medicines.
- ii. Inoculation against diseases/disinfect against biological contamination.
- iii. Provision of supplementary nutrition/through ICDS/Anganwadi to the vulnerable groups.
- iv. Draw up Plans - at PHC level to cope with any epidemics.
- v. Constant surveillance of Public Health Measure.
- vi. Refer- last drought related diseases and to take preventive action.

(Action by Health, ICDS and Revenue Department)

Other Relief Measures

3.8 Besides, the above actions the following relief measures may also be required to be taken by the district administration:-

- a) Suspension and remission of land revenue
- b) Postponement of recovery of bank loans
- c) Input subsidy to the farming community
- d) Survey of crop losses and recording of Kharaba.

Post Disaster:

3.9 Main activities which need to be done after drought is over are:-

- i. Declaration of end of scarcity –allowing the completion of work.
- ii. Closing of Relief Works: Closure of accounts, sock taking of works, Safe staging of work, Completion of payments and closure of muster rolls etc.
- iii. Stock taking of assets created: list out the assets crated, mark it year wise. Entrust the assets to the community/local Panchayats.
- iv. Take all steps to prevent migration of people to other places.
- v. Final evaluation meeting: Review and evaluation of work done by the committee or by an independent agency. Involve all the stakeholders.

Long Term Plan:

3.10 The Following long term measures are planned to eradicate drought problem form the State:

- i. Water harvesting structures to be made compulsory in new constructions.
- ii. Snow harvesting to be popularized
- iii. Fodder development in waste lands, dry resistant varieties to be started
- iv. Linkage of Watershed Project, Kandi, Agriculture to manage draughts

Note: - At the national level Ministry of Agriculture is responsible to handle drought. The Ministry prepares “**Crisis Management Plan**” and “**Drought Manual**” to deal with drought. These documents can be accessed from the Ministry’s Website at:

<http://agricoop.nic.in/DroughtMgmt/drought.htm>

Chapter – 4

Floods/Flash Floods/Cloud Burst

4.1 The State of Himachal Pradesh is basically not prone to floods but is mainly prone to riverine and flash floods. Ravi, Beas, Sutlej are the three main rivers which cut across the State. Besides, many rivulets/streams flow in different parts of the State. These rivers and streams carry huge load of water mainly during rainy season and many a times loss of life and property results. Cloud burst, glacial lake outburst (2005 Parechoo) and flash floods have been causing huge loss of life and property in the state. The issue of floods is intimately connected to monsoon season in the State and heavy rains cause wide spread damage to the infrastructure in the State. There are many cases of loss of life and cattle. Damage to agriculture land and crops – agriculture and horticulture is also wide spread. Hence the guidelines given here are also applicable to deal with heavy rains and reducing associated loss.

Action Plan to deal with the Disaster

Pre-Disaster Activities

4.2 Following pre-disaster activities are suggested:-

- i. Every district should catalogue the incidents of cloud burst, flash floods and the loss caused by them over the years.
- ii. Vulnerable areas of the districts should be identified and all preventive and precautionary steps should be taken.
- iii. People located along the river beds, nullahs should be alerted and warned.
- iv. Contingency plans along with SOPs to deal with emergency should be drawn and made part of the DDMP.
- v. A meeting sometimes in the month of May/June should be held at the District and Sub-Division HQs to review the preparedness measures.
- vi. Special attention needs to be paid to clean and keep drainage system free from any obstruction so that the rain waters flows smoothly.
- vii. DDMP should be activated on the on-set of the monsoon.

Flood Warning System

4.3 The Shimla office of Indian Meteorological Department issues weather forecasts and warning for heavy rainfall. The daily bulletin is e-mailed to all the Deputy Commissioners, Superintendents of Police, Divisional Commissioners, Department of Revenue and electronic and print media. Similarly the Shimla office of Central Water Commission also sends regular bulletin about the flow of rivers and water level in the reservoirs/dams in the State during monsoon season.

4.4 The District Control Rooms should process the information so received and issue alerts whenever the situation warrants to all the Government functionaries and vulnerable communities through electronic means etc. All pre-emptive steps should be taken to minimize loss and search and rescue parties should be put on high alert.

During the Flash Flood/Cloud burst – Some Guidelines

4.5 The following actions may be taken in case of flash flood/cloudburst: -

- a) As soon the calamity occurs it is the duty of local Patwari and other field officers of the departments to report the incident to the concerned Tehsildar/SubDivisional Officer (Civil)/Deputy Commissioner.
- b) The Sub-Divisional Officer (Civil) or the Deputy Commissioner on hearing the occurrence would immediately activate the disaster management plan and organize the coordinated search and rescue and relief operations.
- c) Wherever needed shelter for the victims should be arranged. Public building such as Panchayat Ghars, Schools, etc. can be used for the purpose. At times, the victims don't want to move away from their place and in such circumstances tarpaulin, bamboo poles, CGI sheets etc. could be provided to make temporary accommodation or to improve the damaged ones. In rare cases tented or temporary accommodation can also be considered.
- d) The loss to dwelling house due to rain/cloud burst includes loss to the buildings and loss to the belongings inside buildings. If the building/house due to rain/could burst involves loss to serious damage and is likely to collapse, the first attempt should be to move the occupants and if possible, the belongings to safe places.
- e) There may be cases when the building may be belonging to one person and there may be another person residing in the building or part thereof and the loss of belongings may belong to another person. The Revenue Officer who is required to assess the loss should carefully distinguish between the two and when he is preparing the statement of loss, he should clearly mention the loss of the building and name of person(s) to whom such loss has been caused. He should also mention and name of the Person(s) who suffered the loss of belongings.
- f) While making assessment, it is very difficult to observe many technicalities and normally the loss of the building as well as the loss of the belongings is estimated by the Patwari or Kanungo on the spot. In relation to the belongings, the best course is to obtain a statement of loss from the victim himself immediately after the occurrence and no time should be lost in doing this because with the passage of time, the victims tend to inflate their losses and it becomes very difficult to assess the actual loss, especially, in case of fire and such other calamity. On the basis of the statement of victim and seeing his status and after inspecting the remnants, the estimate of the loss should be worked out.
- g) Similarly, the estimate of the loss to the building should also be worked out. Approximately plinth area should be worked out while estimating the loss. There may be partial loss to the house due to landside, heavy rains and earthquake etc. which may include collapse of a wall, cracks etc. In such cases, approximately loss should be worked out by the Revenue Officer. But while doing so he must give the details of actual loss which has taken place so that the sanctioning authority is in a position to check that the loss has been properly assessed.
- h) Immediate assistance may be given in the form of clothes. The provision of warm clothing should also be made. Keeping in view the extent of calamity, other articles like quilts etc. can also be provided. Since these articles are needed at a short notice, it is advisable to keep some stock of such articles like tarpaulins, clothes, blankets, etc., so that they could be rushed to the spot at a short notice. The Deputy Commissioners should be able to make these arrangements within their existing resources and whenever the stock is utilized, it should be replenished.
- i) In the event of a calamity, it is at times necessary to provide food articles. The normal practice is that wheat is distributed to the affected people. In fact, distribution of whet cannot possibly meet their immediate requirement. Thus, in such eventualities, the Officer-in-Charge should ensure that affected people are given Atta, rice, vegetables, pulses, edible oil and salt etc. In exceptional cases, household

articles should also be provided if situation so warrants. This may include minimum cooking utensils, kerosene, lanterns etc.

- j) In the event of calamity, many people either get injured or fall ill, especially the children, who are more prone to diseases. Arrangements for the supply of medicines or removing affected persons to the hospitals should be made for which ambulances should be pressed into service.
- k) There may be cases where women and children become orphans due to the loss of their husbands/parents. They may require special attention. The Revenue Officer should immediately help them either by getting the children admitted in special homes and in cases of widows, necessary help and assistance should be provided through the on-going programmes of the Government.
- l) In difficult areas of the State, evacuation of the injured may be necessary and it may not be possible to transport them by road. In such eventualities, assistance should be sought from the Army authorities to evacuate the patient by helicopter. The District Magistrate can place such requisition with the Army authorities. But it is always better to do it in consultation with the Government.
- m) It may be necessary to resort to air dropping of the essential supplies in the affected areas. Such proposals should be taken up with the State Government on top priority basis and no time should be lost in this behalf. It should be noted that loss of time can be detrimental to the life and health of the people.
- n) Immediate medical attention to be provided to the injured persons as well as transporting them to the nearest hospital.
- o) Checking of contamination of sources of water and providing safe drinking water.
- p) Suspension of collection of land revenue.
- q) Postponement/deferring of recovery of Government /bank loans.
- r) Provision of house sites and grant of land in exchange as per the instructions from the Government from time to time.
- s) Supply of timber or re-construction of houses.
- t) Setting up of Relief Centres ensuring adequate supply of essential commodities in the affected areas.

4.6 The above relief measures are in the nature of guidelines and Deputy Commissioner and the Sub-Divisional Officer (Civil) can start any other relief measure as the situation warrants.

Rescue and Evacuation Operations:

4.7 This gets top most priority. On receiving the flood warning, the people should be evacuated by road if floods have not yet hit the area. Once the floods have hit, boats/rafts at village/evacuation center should be pressed into action. Also ensure that in each team there are some divers who can save life. Depending upon the gravity of the situation, following personnel should be pressed for evacuation/rescue operations:

- i. Home guards
- ii. Pre trained local men/Ex-service men.
- iii. Police/fire service
- iv. Army
- v. Divers

4.8 Ensure that arrangements are made for security of belongings left behind by people in evacuated areas. Involve local residents in patrolling such areas at night. Unless the residents are convinced about the security, they may not be ready to evacuate.

4.9 Ensure that members of a family are evacuated together to the same safe site Any human deaths must be promptly reported.

Post flash flood phase: General Observations

4.10 This phase will start when flood waters have either dried up or have been drained out. During this period, the first and foremost requirement is to repair damaged roads/bridges to make them suitable for vehicular movement.

- (i) The Public Works Department should prepare a check-list of probable locations which are land-slide prone and remedial measures/actions should be taken so that landslides can be prevented in future.
- (ii) Rural Development Department and Soil conservation Wing of Agricultural Department should take up Soil conservation under Employment Generation Scheme.
- (iii) It is seen that during flash floods, many a times, good agricultural land is washed away resulting in heavy loss to farmers. In such cases, immediate steps should be taken to formulate land development schemes for all affected farmers.
- (iv) As a long term measure, the Public Works Department should provide cross drainage to all katcha roads so that during rains, these roads remain good for vehicular movement.
- (v) All the departments of Govt. at the district level should assess the losses caused to their property due to flash flood and report to the Deputy Commissioner.
- (vi) Expeditious distribution of gratuitous relief by the Revenue Department.
- (vii) Forest department should ensure good plantation in catchment areas and in rivers or khuds.
- (viii) It is also advisable that wherever flash floods are common, check dams/live hedges should be planted by the forest department.

Long Term Measures

4.11 Structural Measures

- i. Watershed management.
- ii. Reservoirs
- iii. Natural Water Detention Basins.
- iv. Safe Disposal of Surplus Runoff.

4.12 Non-Structural Measures

- i. Flood plan Zoning.
- ii. Flood Forecasting and Warning; along major river systems (including its major tributaries) basin.
- iii. Flood Proofing.
- iv. Establishment of rain gauges in all the Sub Divisional and Tehsil HQs. For this follow up IMD department would be required as the same would be installed and maintained by it.

4.13 Structural measures are in the nature of physical measures and help in “modifying the floods” while Non-structural measures are in the nature of planning and help in “modifying the losses due to floods”. In structural measures we keep the water away from the people and in Non-structural, we keep the people away from water. All of these works can be individually divided into long term

measures and short-term measures. Long-term measures even though time-taking and costly must be undertaken, as they are very effective and permanent in nature. Short term measures serve the purpose in a limited way.

- a. Embankments
- b. Channel improvements.
- c. Emergency Floodways and River Diversions.
- d. Inter Basin Transfers.
- e. Bank protection, River Training, anti-erosion works.
- f. Village rising and/or construction of community-cum-shelter buildings above H.F.L.

Contingency Plan for Floods

4.14 Check-list for Pre flooded arrangements:

- i. Whether a meeting of the district level committee on Natural calamities/DDMA was convened?
- ii. Have the control rooms started functioning before monsoon?
- iii. Whether high flood level marking done in vulnerable locations?
- iv. Whether drainage lines cleaned and obstruction/congestion removed?
- v. Whether the past breaches in river embankments has been closed?
- vi. Whether rain-recording and submission of rain gauge-readings and preparation of maps and charts arranged?
- vii. Whether the charge of flood areas has been arranged.
- viii. Whether arrangements were made for the dissemination of weather reports and flood bulletins issued by the Meteorological Centres, Central Water Commission, Flood Forecasting Organization, Power Projects, etc.? Who is made responsible?
- ix. Whether deployment of rescue material at strategic points done?
- x. Whether installation of temporary Police Wireless Stations and temporary telephones in flood-prone areas done?
- xi. Is the arrangement for keeping telephones and telegraphs lines in order ensured?
- xii. Whether arrangements for storage of food in interior, vulnerable, strategic and key areas has been done?
- xiii. Whether arrangement for dry food stuff and other necessities of life have been made?
- xiv. Whether arrangements for keeping the drainage system desilted and properly maintained - a month before monsoon?
- xv. Whether agricultural requirements of crop insurance/seed availability assured?
- xvi. Whether health measures action plan kept ready?
- xvii. Whether Veterinary action plan kept ready?
- xviii. Has the selection of flood relief shelters been done and kept ready?
- xix. Whether advance arrangements for Army assistance have been made?
- xx. Have the officials been trained in flood relief work?
- xxi. Was the organization and bringing of relief parties done?
- xxii. Whether other precautionary measures taken to prevent food?
- xxiii. Whether alternative drinking water supply arrangements have been made?

4.15 Arrangements during and after floods – A Checklist:

- i. What arrangements made for rescue operations?

- ii. Whether shelter arrangements for the people in distress are made? If the efforts of the civil authorities are most likely to be inadequate, should army assistance be sought immediately?
- iii. Relief measures by non-official and voluntary organization may be enlisted as far as possible- Has it been done?
- iv. Whether provision of basic amenities like drinking water, sanitation and public health care and arrangements of cooked food in the relief camps have been done?
- v. Whether necessary arrangements for air dropping of food packets in the marooned village through helicopters have been made?
- vi. Are there sufficient numbers of relief parties for the rescue of the marooned people? If so can they move in time?
- vii. Have alternative communication links to have effective communication with marooned areas done?
- viii. Whether controlled kitchens to supply food initially at least for 3 days done?
- ix. Is there need for organizing cattle camp/veterinary care to the affected animals? If so what action has been taken?
- x. Whether emergency relief to all the affected people has been disbursed?
- xi. What action has been taken for daily reports and arrangements to disseminate correct information through mass media have been made?
- xii. What action plan for rehabilitation of homeless people done?
- xiii. Whether the commencement of agricultural activities-desiltation, resowing has taken place?
- xiv. Whether action has been taken to repair and reconstruct infrastructural facilities such as roads, embankments and resettlement of food prone areas done?
- xv. What health measures intervention have been planned and done?
- xvi. What arrangements for economic reconstruction are planned in the district?

Chapter – 5

Road Accidents

5.1 Road Accidents are a major killer and take place without any warning. Accidents may involve passenger vehicles, goods vehicles, vehicles carrying hazardous and toxic materials. The damage therefore may involve injuries and death, chemical spills, fires or release of toxic gases. Road in India have an annual fatal accident rate of about 2.65 deaths per 1000 registered vehicles. Data on road accidents reportedly indicate that 70% of road accidents arise from driver failure. Apart from this factor, the generic reasons are:

- i. Poor road conditions
- ii. Mixed traffic
- iii. Poor vehicle maintenance
- iv. Poor driving
- v. Lack of safety belts and helmets
- vi. Poor emergency services
- vii. Absence of pedestrian amenities

5.2 Road accidents occur in HP with alarming frequency (see table below).

Sr. No.	Year	Road Accidents	Persons Killed	Injured persons
1.	2001-02	2226	804	3798
2.	2002-03	2830	695	3917
3.	2003-04	2607	867	4188
4.	2004-05	2758	920	4674
5.	2005-06	2807	863	4833

6.	2006-07	2756	886	4688
7.	2007-08	2906	945	4867
8.	2008-09	2846	838	4637
9.	2009-10	3409	1196	5560

Source: Police Department, HP/Deptt. Road Tpt. And Highways , GOI, etc.

5.3 The terrain of Himachal Pradesh is very tough, roads are narrow and road accidents occur quite frequently taking lives of large number of innocent people.

Possible Impact

5.4 A. Effects on Individuals

- i. Loss of life
- ii. Trauma
- iii. Burns
- iv. Injuries demanding surgical treatment
- v. Poisoning or exposure to toxic material

On accident event (involving passenger vehicle)

5.5 Those on the accident site should follow the following priorities:

- i. Look for and rescue the injured or those trapped in the vehicles.
- ii. Arrange for transport of the injured to the nearest medical care centre. The victims should be provided immediate first aid and the medical facilities free of cost. If a victim is required to be referred to a hospital, then ambulance/private vehicle should be arranged by the district administration.
- iii. The relations of the victim should be informed about the accident.
- iv. In cases of death, the body should be handed over to the relations of the victim after post-mortem etc. and in case of un-identified bodies, arrangement for cremation should be made with the help of local authorities. Proper record of such case needs to be maintained meticulously.
- v. In case of death or injury, relief assistance should be provided to the next of the kin of the victim or deceased.
- vi. Place the dead bodies on one side to avoid obstructions.
- vii. Organize local traffic control using the available manpower to avoid traffic jams.
- viii. Discourage people from crowding near the accident spot.
- ix. Stop people from looting the goods from the accidents vehicle.
- x. Arrange to inform the nearest traffic police post through passing vehicles on either side.

5.6 B. Disruption of services:

- i. Road network
- ii. Traffic
- iii. The spills from vehicles carrying hazardous materials may require stoppage of traffic and cleaning of road surface. Various materials are recommended depending on the nature of spill. Also, specialized agencies may have to be called for undertaking spill cleaning operations.

- iv. Diversion of traffic resulting from such accidents may require traffic control to give information at various entry points also located far away (which need quick identification) from the site of accident, so as to avoid inconvenience to the travelers.
- v. Special cranes may be required for clearing the accident site.

5.7 Economic and Social Consequences of road accidents

- i. Law and order problem
- ii. Security and protection of goods and materials in the vehicles involved in the accident. The details of goods need to be officially recorded.
- iii. Fires.
- iv. Gas leak affecting settlements near the accidents etc.
- v. It may be necessary to inform the settlements around to take necessary precautionary measures, if the accident involves leakage of toxic gases.

Mitigation Measures:

5.8 If the provision of Motor Vehicle Act and other related legislation and regulations including regulations on transport of hazardous and toxic materials are strictly enforced the incidence of road accidents will reduce drastically.

5.8.1 Strengthening Institutional Capacity:

- i. Strengthening the enforcement mechanism at the local level.
- ii. Modern technology including speed monitoring equipment and computerization of movement of vehicles with adequate checkpoints on the national highways should be introduced.
- iii. Equipment for removal of accident vehicles from the highways should be easily accessible to the SDM's and the police.
- iv. Considerable confusion exists because of multiple authorities and agencies involved in the regulation and monitoring of movement of vehicles on all roads. It is necessary to coordinate the roles of all such agencies through a single agency (Magistracy and Police).

5.8.2 Strengthening Road Infrastructure:

- i. Parking of vehicles on national highways and even of state highways should be strictly prohibited and monitored.
- ii. Excavations on roads must be protected well, particularly in the night, with barricades, fluorescent signs and red lights.
- iii. Special bays for parking of vehicles on truck routes should be provided at strategic points with provision for food and other facilities.
- iv. Public works department should concentrate on removal of bottlenecks on national and state highways in particular. Bridges should be widened before roads are widened.
- v. Efforts should be made to provide road dividers on all national and state highways on a priority basis with advance warning.
- vi. The speed breakers must have standard designs.
- vii. Information sign-boards should be provided giving the location of the nearest village, police station, hospital, petrol pump etc. at every traffic aid post.
- viii. Parapets should be constructed at all the risk and accident prone areas.

5.8.3 Improving Regulations

- i. All two wheeler drivers, including pillion must always wear the right kind of protective head-gear.
- ii. All vehicles carrying school children must be registered and provided with flashlights signs and designated halts. Regulations for overtaking such vehicles when they are stationery should be introduced.
- iii. Vehicles with break-down on the highway must display a plate on a stand with a danger sign pointed thereon in the front and rear. Every goods vehicle must have such plates with the stands.
- iv. Simulation aided training should be adopted for drivers carrying hazardous and toxic materials.
- v. Every vehicle must be provided with hazard lights (blinking lights) which would warn drivers of other vehicles of the stationery vehicles.
- vi. Reflectors and tail lamps should be made compulsory for handcarts, cattle driver carts, domesticated elephant on road, tractors, tractor and jeep trolleys, cymes, cycles-rickshaws and such other non-motorized vehicles not falling under Motor Vehicles Act.
- vii. Frequently occurring accident spots to be identified/marked cause-probed and rectification-mitigation measures taken.
- viii. Adequate cautions in these areas to be given.
- ix. Lanes if possible to be marked for pedestrians.
- x. Bridges and road separators should have adequate signs boards and reflectors.
- xi. Goods carriages should not be allowed to carry passengers.

Chapter – 6 Landslides

6.1 The hills and mountains of Himachal Pradesh are liable to suffer landslides during monsoons and also in high intensity earthquakes. The vulnerability of the geologically young and unstable steep slopes in various Himalayan ranges, has been swiftly increasing in recent decades due to inappropriate activity, such as deforestation, road cutting, terracing and changes in agriculture pattern requiring more intense watering.

The important landslides in Himachal Pradesh which caused huge damage are:

- Maling (1968): This slide damaged 1 Km NH-22 and is still active.
- Kinnaur (Dec.1982): This occurred at Sholding Nala, collapsing 3 bridges and 1.5 Km. of road was vanished.
- Jhakri (March 1989): At Nathpa about 500 m of road was damaged due to this slide and is still active.
- At Luggarbhati on 12 Sept.1995, 65 people (39 as per official record) were buried alive during the slide.
- Prominent slides in Beas valley are at Marhi, Bhang, Chhyal, and Mandu in upper catchment of the Beas river.

Landslide Prone Areas of Himachal Pradesh

District	Severe to very High	High	Moderate to Low	Unlikely	Total Area in Square Kms.
Bilaspur	216	842	83	1	1142
Chamba	2120	3829	351	70	6370

Hamirpur	0	851	204	45	1100
Kangra	123	3698	1233	557	5611
Kinnaur	868	4956	498	0	6322
Kullu	1820	3512	65	3	5401
Lahaul & Spiti	127	11637	1825	2	13591
Mandi	968	1978	826	98	3870
Shimla	893	3345	767	14	5019
Sirmour	95	1805	614	228	2742
Solan	556	1118	157	79	1910
Una	2	678	517	311	1508

(Source: BMTPC, Landslide Hazard Zonation Atlas of India)

Causes of Landslides

6.2 Landslides can be caused by poor ground conditions, geomorphic phenomena, and natural physical forces and quite often due to heavy spells of rainfall coupled with impeded drainage. A checklist of causes of landslides is as under:-

6.2.1 Ground Causes

- i) Weak, sensitivity, or weathered materials
- ii) Adverse ground structure (joints, fissures etc.)
- iii) Physical property variation (permeability, plasticity, etc.)

6.2.2 Morphological Causes

- i) Ground uplift (volcanic, tectonic, etc.,
- ii) Erosion (wind, water)
- iii) Scour
- iv) Deposition loading in the slope crest;
- v) Vegetation removal (by forest fire, drought, etc.

6.2.3 Physical Causes

- i) Prolonged precipitation
- ii) Rapid draw- down
- iii) Earthquake
- iv) Volcanic eruption
- v) Thawing
- vi) Shrink and swell
- vii) Artesian pressure

6.3 Mitigation Measures: In general the chief mitigation measures to be adopted for such areas are:-

- i) Drainage correction,
- ii) Proper land use measures,
- iii) Reforestation for the areas occupied by degraded vegetation and
- iv) Creation of awareness among local population.

6.3.1 Non Structural Measures

- a) Areas which are prone to recurring landslides and which are near to habitation or along the communication routes such as roads require continuous monitoring. Maps of such sites should be prepared on a scale of 1:500-1:200 for mitigation planning. GSI or any other specialized agency can be requested to undertake this job.
- b) Rapid response to suggest immediate measures in the event of landslides. Control rooms need to be 24 x 7 operations during the season when incidences of landslides are reported.
- c) There is need to evolve early warning system for landslides. Some work has been done in this regard by CISO, Chandigarh. GSI is the nodal agency to issue early warning for landslides.
- d) Total ban on grazing, cutting of trees in the affected area.
- e) Awareness generation programme in hazard prone areas should be launched at various levels through media campaign, development and distribution of leaflet posters, meetings, workshops on priority basis.

6.3.2 Structural Measures

- a) Construction of check dams, gully plugs, vegetative barriers etc.
- b) Large scale plantation in the areas of specific varieties.

Chapter – 7 Building Collapse

7.1 Building collapse and killing of human beings and damages have become very common in the urban areas. Poor quality construction has aggravated the cause of Building Collapse. Natural calamities like earthquake, landslides and Flood could also be contributing factors for building collapses. Cases of building collapse are not very common in Himachal but with the aging building stock and poor maintenance such incidents can be expected.

Building Structural Collapse Rescues

Purpose

7.2 To provide guidance during “Technical Rescue Operation” that require search and rescue operations to occur in any form or type collapsed structure or damage structure.

Response

7.3 No responder should enter a collapsed or damaged building to render patient care or extrication until a general survey and size up of damage is done.

7.4 The following Departments to be informed and instructed for response:

- i. The fire Department.
- ii. Home Guards/Civil Defence
- iii. The Police Department
- iv. Public works department
- v. Electricity Department
- vi. PRIs/ULBs
- vii. The Technical Rescue Team and District/Sub Division Control Room

Search and Rescue Stages

7.5 Find out the following information:

- i. Buildings use
- ii. Number of occupants
- iii. Number of victims trapped and their probable location.
- iv. Are rescue operations currently underway.
- v. Presence of hazards.
- vi. Gas and utilities.
- vii. Flammables
- viii. Electricals
- ix. Flooding possibility
- x. Plumbing and sewer disruption.
- xi. Structural stability of adjoining buildings

7.6 Rescue efforts are generally already underway by untrained personnel and/or citizens. Take their help but technical guidance is essential in such rescue operation of qualified engineers. The district should constitute teams of Volunteers at Sub Divisional headquarters to carry out search and rescue operations.

Immediate Rescue of Surface Casualties

7.7 Victims found on top of the debris or lightly buried should be removed first. All rescue efforts should be directed to the victims who can be seen or heard. Rescue efforts should be also directed to reach those victims whose location is known even if you cannot see or hear them.

Site Organisation and Management

7.8 The following checklist to be followed:

- i. Shut down electric connection/water supply/any other pipelines etc.
- ii. Evaluate structural integrity with the help of Civil Engineer - Request an engineer or architect.
- iii. Direct rescue operations from a safety stand point.
- iv. Assign team leaders for each designated rescue team.
- v. Divide the collapsed area into manageable areas
- vi. Draw up a contingency plan and place on standby

7.9 Keep ready the Medical team and emergency Wards. Crushing injuries, victims are in a state of shock. Ortho and Surgeons should be kept ready. At site first aid should be given and then victims should be rushed to hospital in ambulance.

Rescue from likely Survival Places

7.10 Seek out casualties by looking in places that could have afforded a reasonable chance for survival. Typical areas that should be searched are:

- i. Spaces under stairways
- ii. Basement and cellar locations
- iii. Locations near chimneys or fireplaces
- iv. Voids under floors that are not entirely collapsed

- v. Undemolished rooms whose egress is barred.
- vi. Voids created by furniture or heavy machinery

7.11 Locate casualties using the “hailing system”.

- i. Place rescuers in “call” and listen positions
- ii. Have the operations officer call for silence
- iii. Going “around the clock” each rescuer calls out or taps on something. A period of silence should follow each call for any response.
- iv. All members should attempt to determine a “fix” on any sound return
- v. After a sound has been picked up at least one additional “fix” should be attempted from another angle.
- vi. Once communication with the victim has been established, it should be constantly maintained.

Breaching and Shoring

7.12 In some instances, victims may be reached by breaching and shoring

- a) Initially try to avoid the breaching of walls. This may undermine the structural integrity of the rest of the building.
- b) It is safer to cut holes in floors and use the shaft approach.
- c) If you must breach a wall or cut a floor, cut a small hole first to assure that you are not entering a hazardous area.

7.13 Shoring may be used to support weakening walls or floors.

- a) Shores should not be used to restore the structural elements to their original positions
- b) An attempt to force beams or walls into place may cause collapse
- c) If you decide to shore, keep the following in mind:

The maximum length of a shore should be no more than 50 times its width. The strength of a shore is dependent on where it is anchored. If anchored to a floor, it will be dependent on the strength of the floor. Shoring should be attempted only by qualified personnel or under the supervision of technical rescue personnel. Air shores may be used in place of timbers and will provide a stronger shoring system. Shoring should NEVER be removed once in place.

7.14 Selected Debris Removal

- a) The stage of the rescue process will consist of reducing the size of the rubble.
- b) This must be accomplished based on a pre-determined plan.
- c) Cranes and heavy equipment may be needed to accomplish this portion of the rescue. Consult the fire department’s resource log to obtain these.
- d) Remove debris from the top down.
- e) Remove debris from selected areas where information suggests that victims might be.

General Debris Removal

7.15 This should be employed after all other methods have been used. This should be used only after the decision has been made by the site Manager that no other victims may be found alive. This basically amount to the demolition phase.

7.16 General

- i. It is safer to reach entrapped victims from above.
- ii. Diagram the building on the command board.
- iii. Ensure control of all accesses to the site.
- iv. Beware of “at will” response by volunteers or citizens.
- v. The cause of the building collapse to be investigated and lessons learnt to be used for preventive action.
- vi. Sufficiently old and multi-storied structures to be tested for structural strength and remedial action to be done.

Note: If the response capacity of the district administration is inadequate to deal with any building collapse services of NDRF and Army should be requisitioned forthwith to minimize loss of life.

Chapter – 8 Snowfall and Avalanches

8.1 Snow cover on a slope tends to slide down the slope because of gravity. Conditions affecting stability include the gravitational force component of the snow and resisting forces, such as the frictional resistance of the slope or the anchoring effect of shrubs. In general, avalanches are caused when this balance is lost and when the forces exceed the resistance. Avalanches are rarely observed closely since they normally occur during a short time period of one or two minutes.

8.2 Major Causes - Major causes of avalanches can be classified into fixed (prime factors) and variable factors (exciting factors), such as weather conditions and the weight of the snow cover. Avalanches occur when these factors are combined. The types and scale of avalanches can differ depending on the combination of these various factors and their scale. Major prime factors and exciting factors are shown in the following table.

Major Causes of Snow Avalanches

Item	Description	Factor
Prime factors	Topographic factors	<ul style="list-style-type: none"> • Inclination of slope • Shape of slope • Location (ridge line or toe of slope) • Orientation of slope
	Vegetation factors	<ul style="list-style-type: none"> • Vegetation cover and height of trees • Vegetation cover and its thickness
Exciting factor	Weather factors	<ul style="list-style-type: none"> • Depth of snow cover • Depth of snowfall • Wind velocity • Atmospheric and snow temperatures
	Other factors	<ul style="list-style-type: none"> • Increase in weight of snow cover because of snow dropping from cornices or snow covers • Vibrations such as earthquake or the sound of gunfire

8.3 Avalanches constitute major hazards in the higher reaches of Himalayas. Parts of Himalayas which receives snow fall round the year and avalanche spots are in abundant. Avalanches occur in winter soon after the snow mainly in Lahaul & Spiti, Kinnaur and Pangi areas of the State.

Factors Used for classification of Avalanches

Classification Factor	Classification Factor	Definition
Type of occurrence	Loose snow avalanche	Avalanches that flow rapidly, spreading widely from a point normally small in scale
	Slab avalanche	Avalanches that start to move suddenly over wide areas, normally large in scale.
Type of snow	Dry snow avalanche	Avalanches that contain no water.
	Wet snow avalanche	Avalanches that contain water.
Surface layer avalanche	Surface layer avalanche	Slip surface exists within the snow cover
	Full- depth avalanche	Slip surface occurs on the ground surface

The prominent avalanches in Himachal Pradesh

Location	Date / Year	Damage Occurred
Lahaul & Spiti	January 1975	Earthquake shocks triggered the avalanche of great dimensions damaging road network
Lahaul & Spiti	March 1978	About 30 people killed, road and property damaged
	March 1979	About 237 people killed, Communication disrupted
Tinku	March 1991	Tinku avalanche occurs every year 4-5 times from Jan to March. Road was blocked for 40 days in 1991
	September 1995	Due to avalanche, huge chunk of debris came down which later changed into flood
Khajua, Tissa	19 th January, 2012	Five persons buried alive. Dead bodies located after more than 11 days.

Types of Damage

8.4 The following lists typical examples of damage to roads caused by avalanches. The scale of damage can differ depending on the scale and type of avalanche.

- i. Traffic blocked by snow deposited on road surface.
- ii. Roads damaged by avalanches.
- iii. Road structures, such as retaining walls, overturned.
- iv. Structures damaged by an avalanche during construction of roads occur most frequently.

Mitigation of Avalanches

8.5 Mitigation measures for avalanche are suggested as under:-

- a) Modification of the path of avalanche movement.
- b) To have control structures like snow bridges, snow rakes, snow net, snow fences, avalanche gallery, diversionary dam, earthen mounts and above all planting with trees in those areas.
- c) Accurate forecasting will help people down below to rush to safe places. SASE is responsible to issue EWS for this hazard.
- d) A forest with thick growth of trees inhibits the formation of avalanches for the following reasons:

- i. Tree trunk support snow cover and provide an anchor to potential to save avalanches.
 - ii. Snow drifting is almost eliminated.
 - iii. Tree canopy retains snow and released it gradually to form a stable cover on the ground.
 - iv. Forest canopy stables the snow.
- e) Avoid traveling in vulnerable areas during day time from 08:00 AM to 04:00 PM. Usually avalanche is triggered at this time.

8.6 Mitigation of Snowfall related problems

- a) Provision of snow cutters in the affected areas
- b) Establishment of snow gauges at appropriate locations

Snow Manual

8.7 Snowfall disrupts normal life. If the roads are not cleared of snow quickly it can lead to various problems such as shortage of essential commodities, treatment of sick people etc. The Government of H.P. vide letter No. Per(AR)A(4)12/83, dated 14.12.1985 has approved a Snow Manual (Annexure A) which is primarily implemented in Shimla but can also be used in other parts of the State. This manual relates to the action to be taken during Snow Season in Shimla. The provisions of the Snow Manual should also be implemented in case of Snow and Snow Storm whenever and wherever possible.

Chapter – 9 Forest Fires

9.1 The most common hazard in forests is forests fire. Forests fires are as old as the forests themselves. They pose a threat not only to the forest wealth but also to the entire regime of fauna and flora seriously disturbing the bio-diversity and the ecology and environment of a region. During summer, when there is no rain for months, the forests become littered with dry senescent leaves and twinges, which could burst into flames ignited by the slightest spark. The Himalayan forests have been burning regularly during the last few summers, with colossal loss of vegetation cover of that region.

Information About the Circle-Wise Fire Sensitive Area

Name of Circle	Forest Area (in hac)	Fire Sensitive Forests, Plantations (in hac.)			%age of Total Forest Area
		Chil	Plantn	Total	
B/Pur	69895	8933	9799	18733	26.8
Chamba	488548	22132	1986	24118	4.9
D/Shala	253233	24049	35502	59552	23.5
H/Pur	101524	25189	19899	45089	44.4
Kullu	873080	6468	13434	19903	2.3
Mandi	174209	42390	34333	76723	44.0
Nahan	188790	13826	65979	79805	42.3
Rampur	570460	15833	9947	25780	4.5
Shimla	281721	2305	8204	10509	3.7
Wild Life	701837	9744	63577	73302	10.4
Total	3703300	170873	262644	433517	11.8

(Source: Forest Department)

9.2 The forests of Himachal Pradesh known for their grandeur and majesty are like a green pearl in the Himalayan crown. This life supporting systems are presently under great stress due to impact of modern civilization, economic development and growth in human and cattle population. The forests of Himachal Pradesh are rich in vascular flora, which forms the conspicuous vegetation cover. Out of total 45,000 species of plants found in the country as many as 3,295 species (7.32%) are reported in the State. More than 95% of species are endemic to Himachal and characteristic of Western Himalayan flora, while about 5% (150 species) are exotic introduced over the last 150 years. Over the years the forest wealth of the State is being destroyed by the incidences of fire attributed to both anthropogenic and other reasons. The destruction of rich flora and fauna of the State due to forest fires will have serious repercussions on the ecological balance of the State.

9.3 The rich forest wealth of the State has been subjected to the numerous fire incidences. A list of the same has been tabulated below:

Year	No. of Fire Incidences	Area affected (in Hectares)
1995	1669	57143
2000	1900	36887
2001-02	301	5719
2002-03	282	4204
2003-04	550	9896
2007-08	550	8393
2008-09	572	6586
2009-10	1906	24849
2010-11	870	7837

(Source: Forest Department)

Causes of Forest Fire

9.4 Forest fires are caused by natural causes as well as man-made causes.

Natural causes- Many forest fires start from natural causes such as lightning which set trees on fire. However, rain extinguishes such fires without causing much damage. High atmospheric temperatures and dryness (low humidity) offer favorable circumstance for a fire to start.

Man made causes- Fire is caused when a source of fire like naked flame, cigarette or bidi, electric spark or any source of ignition comes into contact with inflammable material.

Classification of Forest Fire

9.5 Forest fire can broadly be classified into three categories:

- (i) Natural or controlled forest fire;
- (ii) Forest fires caused by heat generated in the litter and other biomes in summer through carelessness of people (human neglect); and
- (iii) Forest fires purposely caused by local inhabitants.

Preventive Action

9.6 The following preventive measures are suggested for forest fires:-

- i. Local Community to be fully involved in for detection and prevention.
- ii. Under the employment creation scheme or scheme to be created specially and fire watchers from the local people can be employed during the season.
- iii. Incentives to the villagers who are coming forward to safeguard and who have controlled fire to be provided.
- iv. If there is no fire in a recurring area, in the development scheme incentives can be provided for the villagers.
- v. Under the forest management working plan prescribed forest lines to be maintained properly during the season.
- vi. In case of fire at various areas the fire-fighting teams to be kept ready and a responsibility to the local forest guard and to the Panchayat and the village chief to be given.
- vii. Fire watch towers may be erected in recurring places (for detection).
- viii. The local people and other who enter into the forest to collect fuel wood, non-timber forest produce and smokers to be specially requested to be vigilant and only those who are authorized or permitted alone need to be sent.
- ix. If there is a fire, the cause of the fire to be immediately assessed and steps taken so that it does not recur again.
- x. The local villagers including women through Mahila Mandals may be associated.

Chapter – 10

Fires

10.1 Fires are a major man made hazard which threaten the life of urban population in particular and rural in general. Both rural and urban areas of the State are prone to fires mainly because construction has taken place in a haphazard manner and ignition of fire at one point can threaten the whole locality if it is not controlled in time. We have seen the ravages caused by fires in almost in all the cities and numerous villages in the past. The construction of houses in rural areas involve use of a lot of timber. Fuel wood is the main source of energy for cooking and warming. Rural habitations are generally clustered together and are susceptible to fires. Every year there are numerous incidents of fires in the rural area causing both human, animal and material loss.

Plan of Action

10.2 Structural Measures

- i. At present fire services in the State are restricted up to district HQ only and at few locations up to Sub-Division HQs also. In the event of any fire tragedy in the remote area, the fire tenders are rushed from the district HQ to the site of accident. Fire services can save life and property in the affected area only if it reaches the site in no time. Keeping in view of the vulnerability of the State to fire hazard there is need to put in place fire services up to Sub division HQ in a phased manner and wherever possible local level where vulnerability is very high. The recommendation of NDMA in this regards can be looked into which are available at: www.ndma.gov.in.
- ii. Provision of fire hydrants should be made in all the Sub divisional, Block, Sub Tehsil and MC HQ.
- iii. There should be fire alarms and fire-fighting equipment in all the public building and Government offices housing large number of people.

- iv. The new construction should adhere to National Building Codes so that fire hazard is minimized.
- v. Steps should be taken to reduce the existing vulnerability.

10.3 Non Structural Measures

- a) People should be made aware of fire safety measures and there should be regular drills.
- b) Hands on training of government functionaries and other stakeholders in use of fire equipment.

Chapter – 11 Locusts Control

11.1 Locusts generally appear in the month of June or July though there have been cases of their appearance even in October. They specially disappear after doing the damage which may be small in proportion to the total production, but may be very serious for the cultivators whose crops have been damaged. In some seasons, however, vast swarms invade the State and cause widespread devastation. Wherever locusts are observed in any district measures should be taken to ensure:-

- (a) That laying/hatching of egg shall be promptly reported and that;
- (b) Measures shall at once be taken for the destruction of eggs and of young nymphs when hatched.

Reporting of the Incident

11.2 Whenever locusts visits a district, the Deputy Commissioners of adjoining districts of the State and other States should be intimated so that they should keep watch over the laying of eggs by locusts and technical advice about locusts swarm may be taken immediately from Plant Protection Officers. The Revenue Officers should take immediate necessary action. Tehsildar whom the people know and trust, can take a great deal of work cheerfully. The appearance of locusts in a district and the measures taken for their destruction should be reported by the Deputy Commissioner to the Divisional Commissioner and the Financial Commissioner (Revenue) on the following proforma:-

Report Regarding Locusts

District	Date of Appearance	Direction of Flight	Damage Done	Measures Taken	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

11.3 It should be borne in mind that a special report should not be made in every case when a flight is seen, but only when damage to crops to a considerable extent is caused by the swarms. In all other cases, it will be sufficient to mention that locusts have been observed.

11.4 Individual efforts in a district are inadequate to deal with a menace of the magnitude of the desert locusts. It may, therefore, be necessary in case of severe infestations to set up a special agency for co-ordination. In the absence of such an agency, the Commissioner should co-ordinate efforts in the different districts. The Director of Agriculture and his staff or any special officers who may be appointed, will supply technical advice, broadcast information and wherever possible supply apparatus and equipment.

Coordination

11.5 Where in a case of severe infestation, it is considered desirable to set up a special coordinating agency, an officer of the headquarters of the district should be appointed to deal with the receipt and distribution of supplies and equipment and with the allotment of personnel. This officer should not normally go on tour or interfere in control methods, but he should work in close co-operation with officials of the Agriculture Department concerned with supplies and should have full authority under the Deputy Commissioner to allot staff made available within the district or from outside. Local officers should be responsible for areas not larger than two tehsils each and should be responsible for the organization of circles within their charges and for the adoption of control methods. They should requisition supplies and staff from the offices at the headquarters. A manageable circle has been found to consist of about 25 villages. Preferably an officer of Gazetted rank should be in charge of such circle. It has been found that no village is likely to do well unless visited by a responsible official for a considerable period daily but in these matters local conditions vary and much must be left to the discretion of the local officers.

Laying of Eggs

11.6 The laying seasons normally extends from six to eight weeks in March or April, and again, if the conditions are favorable about August, when about to lay her egg, the female locust makes a hole in the grounds by means of the two pairs of horny valves which open and shut at the top of her abdomen. With the valves close she pushes the trip into the ground and makes a hole for herself and her egg, which later are voided in a pale glistening, glutton fluid which holds them together and binds them into a long cylindrical pad, covered with particles of earth which adhere to it. When fresh, the whole mass is soft and moist, but it soon acquires a firmer consistency. It is rarely placed much more than an inch below the surface of the ground but sometimes it lies much deeper, the eggs are laid by side at right angles to the axis of the pod to the number of from 30 to 100. They are slightly curved of a pale yellow, colour and rather larger in the middle than at the ends, about a fifth of an inch long and one fifteenth of an inch at the thickest part. The female is believed to lay three hatches of eggs, and the average interval between the periods of laying by the same female is laid to be two weeks. Eggs may be laid in almost any kind of soil but by preference in bare sandy soil, grounds and sandy soil, especially in high and dry grounds tolerably compact areas much resorted to. Restoures, grounds and study fields are much resorted to for eviposting. Field of grass stubble will show no signs of holes but yet abound in eggs. Locusts have been known to deposit their eggs in the sandy bands of rivers and after the subsidence of the rains and the river floods, and when usual hatching time arrives the young have issues from the sandy beds in many raids.

Measures to Combat the Menace

11.7 The period between the laying of the eggs and the appearance of the young locusts is liable to variation. Under the influence of more than ordinary heat and moisture eggs have been observed to hatch out in about a fortnight. Therefore, whenever, locusts appear, careful observation should be taken at once to ascertain as soon as possible whether eggs have been laid and the young are hatched out, and necessary measures for their destruction should be carried out soon after the eggs are discovered.

- a) One of the most rapid ways of collecting eggs especially where there are numerous and light soils is to slice of about an inch of the soil with a spade or a similar instrument and carry the eggs to one spot and after separating them from the sand and bury them in deep pits of the ground being packed hard on the surface.

- b) Harrowing is an effective mode of destroying eggs, and of preventing future injury. The objective should be to strive deeply but to scarify and pulverize as much as possible the solid to the depth of about an inch. Breaking up to the mass and exposure of the individual eggs to the desiccating effects of the atmosphere effectually destroys them and when to this is added the well-known fact that thus exposed they are more liable to destruction by their numerous enemies, we see at once the importance of this mode coping with the evil.
- c) Ploughing is another effective way of destroying eggs. The ground may be ploughed up repeatedly, ploughing five or six inches deep, if possible.
- d) When eggs are deposited in standing crops measures should at once be taken to destroy, eggs without regard to consequent damage to the crop.

Young Unfledged Locusts

11.8 The time from hatching till the wings appears varies from three to eight weeks. The young locusts display gregarious instincts and congregate in immense numbers. Sometimes vast numbers will be found collected in a small spade of brush wood and short grass. After their first transformation, their voracious appetites seem to come to them. They march into the field of crops just beginning to grow clearing the ground as they move. As one band meets another, they join together until they form immense closely packed armies. They migrate only when their original breeding places cannot hold them.

11.9 It has been found that more especially during the harvesting season in Rabi when crops are no longer green, kuhls/canal banks with abundant grass and vegetation sooner or after become the objective of hoppers. When this issues work on the affected areas it requires close supervision. Employees of the irrigation Channel must not be allowed to content themselves with the driving operations.

11.10 The organs of generation form gradually and get more complete with each change of skin. After the first change the insect arrives at its complete state. It is impossible to prevent fecundations. The larva is produced largely and rapidly from eggs, and the first swarms are not early replaced but multiplied a hundred fold by each successive generation.

11.11 Dealing with the Menace

- a) Various methods have been employed for the destruction of the young locusts, such as burning, crushing and trampling but the last method obtained most favour.
- b) When they are not above a week old a trench of 6 or 8 inches wide and deep such as two men may form in a few minutes suffice for securing the insects, which jump into it with alacrity and appear wholly unable to extricate themselves from it.
- c) When however, they grow a little older and are making their way from road and paths ditches two feet wide and two feet deep with perpendicular sides should be dug wider at the top for effective barriers. The young locusts tumble into such ditch and accumulate and die at the bottom in huge numbers.
- d) In order to keep them in ditch open, it may be necessary to dig pitch more deeper and side ditches at short intervals in which the locusts will accumulate and may be buried each being well pressed down.
- e) Where the solid is tenacious and water can be let into the ditches so as to cover the bottom they may be made. The efficacy of the ditch depends so much on the ability of the young locusts to jump or scale it as on the tendency of the young insects not to do

- so. In the bottom of the ditch they soon become demoralized crippled and unfledged by constant effort and the trampling and growing up on one another.
- f) The destruction of the young can only be carried out successfully during the period when the locusts are unable to fly and this is very short, being at the most only six weeks or two months.
 - g) In the cold weather the swarms are unable to move in the morning from numbness and under such circumstances the destruction of even full grown swarms is easy.
 - h) Complete destruction of the full grown or winged insect when they invade a country in larger swarms is impossible. Attempts have been made to frighten them away by firing guns, crackers beating drums and by rattling tackling noises, but if disturbed in this way they simply pass on to the next field.
 - i) Effective means of coping with the evil is by the destruction of:-
 - a) The eggs.
 - b) The young of unfledged insects.
 - j) Eggs are laid in masses just beneath the surface of the ground, seldom to a depth of more than one inch where immense swarms have settled scarcely an inch of the soil. Steps employed for employed in destroying the eggs are:-
 - a) Collecting.
 - b) Harrowing.
 - c) Ploughing or digging
 - d) Flooding and
 - e) Tramping

11.12 Other Measures

- a) When damage has been caused by locust in a certain area relief measure may be undertaken in the same manner as relief is provided to farmers whose crops are destroyed by hail storm.
- b) The local Panchayats, Panchayat Samities and Zila Parishads are also expected to render necessary assistance to the administration in tackling the menace.
- c) In case of severe infection or as and when the circumstances warrant special Committees may be constituted at State, District and Tehsil level.

Chapter – 12 Industrial and Chemical Accidents

12.1 In view of the fast development of industrial areas in Solan, Sirmour, Una and Kangra districts of the State the possibilities of accidents in the industrial and chemical sector cannot be ruled out if adequate prevention and preparedness measures are not taken. The standard of installation of quality machinery, training of the manpower, high safety measures are very high. The industrial accidents are one of the highest in the world. The industries should have both on sites and off site plans. Frequent mock drills are also to be conducted.

12.2 Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 prescribes for the constitution of the State Crisis Group as apex body at the State Level to deal with major chemical accidents and to provide expert guidance for handling major chemical accidents. Schedule 7 and Schedule 8 of the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 (<http://www.moef.nic.in/legis/hsm/gsr347.htm>) prescribes for the

constitution of District and Local Crisis Groups. The composition of the District Crisis Group has been prescribed under the chairpersonship of District Collector and Local Crisis Group under the Chairpersonship of Sub-Divisional Magistrate. The District Crisis Group shall meet every forty five days and send a report to the State Crisis Group. The Local Crisis Group shall meet every month and forward a copy of the proceedings to the District Crisis Group. More details on this is available on the Ministry of Environment and Forest, GOI (<http://moef.nic.in>).

12.3 Impacts of Industrial Accidents

1. Loss of life
2. Burns
3. Injuries needing surgical treatment and exposure to toxic materials.
4. They may also cause disruption of services like road network, electricity, and water supply etc.

12.4 The District Administration plunges into action when the impact is in a larger area. The linking of the disaster management committee with the mutual aid response group (MARG) is very essential. The lessons learnt from Bhopal accidents and lapses are listed below for the district authorities of the complex situations:-

1. Design defects
2. Wrong material selection
3. Malfunctioning of equipment
4. Disconnection of facilities
5. Poor instrumentation
6. Plant modification
7. Insufficient safety margin
8. Difference in balance of plants
9. Manufacturing defects
10. Fatigue and mental failure
11. Corrosion
12. Contamination
13. Low level of safety provision
14. Absence of hot lines for quickly informing the civil authorities
15. Tension and operator stress
16. Poor training and skills
17. No training for handling emergencies
18. Inability to perceive the risk
19. Neglecting safety instructions
20. Error in judgment
21. Non-communication of uncommon events
22. Faulty operations
23. Faulty safety procedures
24. Absence of experienced personnel at site
25. Delay in taking decisions because of lack of experience
26. Carelessness
27. Deviating from specified operating procedures
28. No Manual for operators on handling emergencies
29. Absence of documentation of Toxicity and sharing of information
30. Delay in getting toxicological information
31. Non-disclosure of lone of treatment
32. Non-communication of precautions for handling toxics

33. Proprietary nature of hazardous inputs and process involving secrecy.
34. Absence of emergency warning procedures
35. Different quality assurance standard and material specifications and involvement of different contracting parties causing incompatibility of systems.
36. Absence of rehearsing for handling emergencies
37. Poor emergency planning (on site)
38. Neglecting early warning systems
39. Poor industrial siting criteria
40. Neglecting safety even after a number of accidents
41. No hazard assessment procedures
42. Unplanned manpower allocation and transferring
43. Non-review of safety procedures
44. Treating hazardous and non-hazardous facilities alike
45. Non-institutionalization of systems safety
46. Over emphasis on profits
47. Poor Corporate information exchange
48. Large scale storage of toxic
49. Large manpower turnover.
50. Poor disclosure of critical information
51. Poor commitment for Safety at the top levels
52. No specification of emergency procedures
53. Absence of a system for analyzing and assessing accidents objectively.
54. Weak factory safety inspection
55. Factory safety Inspectorate ill-equipped to handle complex facilities
56. Absence of hazard management systems in Government
57. Poor emergency planning (off site)
58. Poor coordination of emergencies (Off site)
59. Poor industry siting procedures and policy
60. Absence of strong hazardous substances information centre.
61. Poor communication facilities.
62. Illiteracy poverty and underdevelopment
63. Absence of emergency transportation and evacuation systems
64. Insufficient levels of medical facilities for handling large-scale disasters.
65. No permanent structure or institutional arrangement for handling emergencies.
66. Absence of emergency communication systems
67. Permitting human settlement close to hazardous facilities or poor zoning policy,
68. Local public not informed of what to do in case of accidents.

Emergency Preparedness at Local/District level.

12.5 It is a local activity requiring technical and scientific expertise of varied nature at district level. Qualified and trained personnel in the following specialized areas are essentially required besides the following:-

- (i) Contingency planning
- (ii) Environmental monitoring and surveillance
- (iii) Information retrieval from computer database
- (iv) Pathology and Biochemistry
- (v) Industrial Hygiene
- (vi) Pathology and biochemistry
- (vii) Toxicology
- (viii) Telecommunications

- (ix) Preventive Medicine
- (x) Information and Publicity
- (xi) Meteorology

Post-emergency Management

12.6 Specialist expertise is required in the following functional areas:-

1. Anti-dotal treatment
2. Occupational health and hygiene
3. Psychology
4. Exposure/assessment through the media of air, water, food, occupational and societal
5. Medical rehabilitation
6. Epidemiological studies
7. Neuropathy
8. Genetic disorders
9. Industrial and environmental Toxicology
10. Clinical Toxicology
11. Risk Assessment
12. Manpower and financial requirement for creation of new agencies and strengthening of existing agencies.

Checklist for Assessing the Capabilities for Managing Industrial and Chemical Disasters

12.7 The points contained in this questionnaire are only indicative and the authorities should closely examine the local area requirements in formulating the checklist for the district/area.

12.7.1 Industry unit

1. Does the industry/unit have a proper on-site emergency management plan? Does such a plan consider aspects of off-site emergencies arising from on-site incidents?
2. Has a complete inventory of toxic and hazardous materials, their physicochemical properties and potential health and environmental hazards properly been laid down? Are appropriate persons in the industry aware of the above?
3. Has the industry conducted hazard analysis exercise and have probable off-site scenarios been developed? Has the facility evolved plans to reduce risk from such incidents and have these informations been provided to the emergency planning team?
4. Does the industry have a proper safety organization along with system and procedures for effective safety management?
5. Does the industry have a proper system for effective prevention of spills and releases? What equipment and procedures are available for containment and mitigation of releases/spills?
6. What safeguards are available at site to prevent accidental spills/releases?
7. Has the industry examined safer substitute, for actual toxic and hazardous materials and dangerous processes?
8. Are the storages of toxic and hazardous materials properly located, constructed, maintained and operated from the point of view of minimizing risk?
9. Does the industry have adequate equipment for on-site emergency management such as for fire-fighting, communication, personal protection etc.? Are there sufficient stocks of these items to be available on loan for an off- site emergency situation?
10. Availability of trained emergency management personnel in the facility, their names, numbers and areas of specialization.

11. Number of managers, supervisors, workmen formally trained in the various aspects of emergency management. Numbers who may be available for offsite emergency assistance.
12. Whether 24 hours emergency medical cover available at site? Names of medical personnel in the facility to be provided. In case of hospital/medical centre being available, are antidotes/medicines required for treatment readily available?
13. Has the on-site emergency plan been tested through mock exercise? Please provide report of such trials.
14. What types of warning systems are available for informing the facility personnel, outside communities of an on-site emergency and off site emergency situations?
15. Is there a mutual aid system operational in the area? What disciplines does it cover and as it formalized in writing? How is the outside aid agencies familiarized with the hazards of the facility?
16. Does the industry have a comprehensive safety manual etc.?
17. Whether a meteorological station is available in the unit/vicinity? Are the data analyses to derive information of trends? Is there capability of vapor cloud dispersion, fire and explosion modeling available? Are there monitoring equipment available for toxic gases e.g. Dragger tubes, explosimeters, continuous monitors etc.?
18. Whether emergency power available for critical areas during emergencies?
19. Does the facility have training arrangements for its employees in emergency management, use of response equipment, personal protective equipment and hazard containment and mitigation procedures?
20. Does the facility have regular testing of on-site alarms and warning signals and emergency response equipment and is systematic record of such testing maintained?

12.7.2 Mobile Risks

1. Whether the transport container designed for dedicated use for a specific material or is it used interchangeably for various products?
2. Do transport documents contain information about identification of hazardous material, physical and chemical characteristics, emergency procedures and specific information on reactivity and other parameters which would be relevant in the event of a transport accident?
3. Do the transport vehicles carry relevant records and are the vehicles externally denoted by suitable hazard rating and classification signs?
4. Are standard emergency procedures for taking care of spill and releases contained with the transport crew and are they duly trained to put such procedures into operation?
5. Is there an emergency contact for the transport crew in the event of an emergency?
6. What is the transport crew chain of command in response to a hazardous material incident? Transport Emergency Relief Materials.
7. What emergency response equipment are carried by the transport vehicles (protective clothing, breathing equipment, extinguishers, spill clean-up devices etc.)?
8. What first-aid equipment do the transport vehicles carry and are the crews trained in first-aid measures?
9. Do the transport vehicles have communication equipment on board and who are the authorities with whom they can establish contacts during emergency?
10. How does the owner/shipper of hazardous chemical ensure that transport emergencies are properly taken care of before pre-shipment?
11. How are the vehicles and the cargo certified before the journey?
12. Are there safe driving practices required for transport operations? Are the transport/vehicles equipped with monitoring device like tachygraph etc. to regulate vehicle operation?

13. Whether the transport emergency plan checks out through mock exercise and random checks done by suitable inspection authorities during transit?
14. Are inspection tests done and if so to what schedule? Who is responsible for ensuring overall safety in transport operation?

12.7.3 Government Agencies

1. Is there nominated nodal body for dealing with emergency planning and response? Who are the members of such nodal body?
2. Several local bodies are required to be involved during the emergency planning and response processes such as the fire department, Police, home guards, civil defence authorities, medical/paramedical personnel associated with hospitals and other agencies, public health authorities, environment protection authorities, factory and explosive inspectorate, public works utilities, and transport department, other agencies and Non-Government organizations (NGOs) who may have a role in emergency management. What is the capacity, level of expertise, availability of facilities, equipment and personnel in these bodies to emergency planning and management?
3. Is a written down off-site emergency management plan available? If so, does it clearly stipulate the roles and responsibilities of the various bodies mentioned above?
4. Do the planners and responders have sufficient training which is updated periodically, to deal with the various aspects of emergency with which they would be concerned with?
5. Are these nominated experts/consultants available to support the district authorities in the event of a clarification being required on a technical matter?
6. Are maps of the area showing various details required for an emergency management plan available to all concerned?
7. Is the communication facility adequate to meet the requirements of the emergency planning and management and is it checked regularly to ensure fidelity and reliability?
8. Is the off-site emergency management plan tested out at periodical intervals partially or totally to assess the state of awareness and preparedness of the various response and support bodies?
9. Are clear cut procedures available for evacuation, hazard mitigation, decontamination and other processes involved in emergency management?
10. Is a firm strategy and action plan available to make use of community resources during emergency?
11. How is the community informed of the hazards and what are their roles and responsibilities during a hazardous material accident?
12. How are the off-site emergency management plan and the various concerns there in taken from the plan stage to the response stage?
13. Is formal training exercise conducted regularly?

These checkpoints are equally applicable to nuclear emergencies.

Note:-

- a) The NDRF battalion which has been equipped to deal with CBRN emergency having jurisdiction over HP is located at Gaziabad, UP and its updated contacts must be available with the district administration all the time.
- b) MOEF also prints "Central Crisis Management Alert System" booklet containing list of experts and agencies available to deal with CBRN emergencies in the country with their contact details.

- c) The Department of Revenue has issued guidelines for preparation of onsite and off-site emergency plans and the same are available in the HP SDMA website (www.hpsdma.nic.in).

Part II – Disaster Relief

Chapter – 13 Disaster Relief

Introduction

13.1 Whenever hazards turn into calamities or disasters people have to undergo a lot of miseries. To mitigate such miseries to a certain extent, relief is required to be provided to the sufferers by the Government, because, at such critical time people do look forward to the Government for some sort of help. It is true that whenever the calamity/disaster/disaster occurs, the losses suffered are on very large scale and it is not possible for any Government to compensate the sufferer for the entire loss. At the same time it becomes imperative on the part of the Government which is committed to the welfare of the people to provide some relief assistance to the victims of such calamities. On such occasions the victims are obviously depleted of strength of courage. Being enfeebled, they look to others for help and guidance. It is, therefore, important that while on one hand the Government may provide some relief assistance to such sufferers on the other, it is necessary to maintain personal contact with the victims so that they feel morally re-assured. It should be understood clearly that the assistance which Government provides is only a measure of immediate relief. It is in fact no compensation for the loss.

13.2 There may be occasions when a person who is otherwise well off, may be rendered penniless at a particular point of time and may need some assistance. Therefore, in the matter of providing immediate relief, the status and financial position of a person is not very relevant. What is more, important is that at the particular hour of distress, he receives immediate assistance to sustain himself for a few days. Thus, it is important that whatever relief to be provided it should be provided within minimum loss of time and with maximum speed.

13.3 The relief measure will differ and depend upon the nature of calamity/disaster. At certain occasions in a certain places, money may have no value, but certain articles like food, clothes, etc., may be more important and at such occasions these articles may have to be rushed such place by making immediate arrangements. There may be areas which may become inaccessible due to the calamity/disaster or various other reasons and in all such contingencies the facilities available in the State or outside the State should be immediately harnessed. The assistance of the various department of the State Government as also Central Government or other organizations like I.T.B.P., S.S.B., Red Cross or the Army may be obtained to cope with such situations.

13.4 As soon as a calamity/disaster/disaster occurs, this is the duty of local officer, whether he is a Patwari or any other Revenue Officer above this rank to get in touch with the S.D.O. (Civil) of the area, who should be able to make arrangements to provide assistance by mobilizing local resources. He should also immediately inform the Deputy Commissioner or other officers at the District Headquarters apprising them of the calamity/disaster/disaster and the action which he has already taken. He should also ask for more assistance from the district headquarters and should not hesitate to bring to the notice of district officers his difficulties and assistance required by him to cope up with situation. If there is disruption in telecommunication facilities, he should send special messenger to communicate with district headquarters. If the calamity/disaster is of grave nature and the Deputy Commissioner feels that the Government should be brought in the picture, the Deputy Commissioner should get in touch with the Divisional Commissioner and the Financial

Commissioner (revenue) as also other Senior Officers of the Government intimating in brief the nature of the natural calamity/disaster and the action which he has already intimated and further assistance required by him from the Government. This should be done without any loss of time.

13.5 Once he has apprised the Government, of the natural calamity/disaster he should immediately take steps to assess the loss caused by the natural calamity/disaster which should include loss of human life, loss of cattle, loss caused to human dwelling and damage caused to the crops. In certain cases it may be necessary to work out the loss caused to the Government buildings, roads, bridges, electrical installations, Water Supply Schemes, Telephone and other Government and non-government property including forest wealth etc. A report of the first/preliminary information in the form given in Annexure – B may be compiled and sent to Relief Commissioner. This should be followed up with detailed report containing description of the event, damage/loss details, causes, pictures etc. A standard reporting format for damage reporting during monsoon or any other occasion specifically desired by the Relief Commissioner is given at Annexure – C. Generally in case of large scale and monsoon damages the State submits memorandum to the GOI for allocation of funds out of NDRF. For this purpose the consolidated report of damages for the district should be sent in form given in Annexure – D. In case of disaster like earthquake a damage assessment reporting format is given at Annexure – E should be more relevant.

13.6 The first concern of the district officer is to provide immediate relief to the effected people/victims so that they are able to sustain their life and livelihood. In cases where damages to the human dwelling have taken place, alternative arrangements may have to be made to provide shelter accommodation. In fact even arrangements for food, clothing etc. may also become imperative. In the event of such natural calamities some time, the belonging of the people are thrown out or are removed away from the site of the calamity/disaster for safety purpose. Anti-social, elements take advantage of the situation and they try to remove such articles. The officers on the spot i.e. both the Police and the Magistrate should take special care and make special arrangements for the watch and ward of the belongings of the people to avoid loss to the sufferers.

Disasters/Natural Calamities Requiring Disaster Relief

13.7 The calamities/disasters which will qualify for disaster relief are fire, flood, lightning, earthquake, landslides and sinking of land, snow avalanches, glaciers, drought, locusts, epidemics, land storms, excessive rains, cloud bursts, hailstorm, etc. In addition to what has been described above, there are certain contingencies which are accidents like motor vehicles accident, boat mishap, food poisoning, fall from free or steep rock, non-explosive burst, snake-bite would also be considered for relief.

Relief Measures

13.8 The following measures are required to be provided in the event of a calamity/disaster:-

- (1) Arrangement of shelter accommodation for the people who have lost their houses;
- (2) Free ration for a certain period of time;
- (3) Provision of beddings like blankets and clothing to the victims;
- (4) Informing the relations of the family whose members have died or have been affected;
- (5) Provision of some sort of relief assistance for the death of member(s) of the family;
- (6) Disposal of dead bodies and medical aid to the injured persons;
- (7) Relief assistance for the loss of cattle;
- (8) Evacuation of the effected people to a safer place;
- (9) Checking the contamination of sources of water;

- (10) Special arrangements for care of children and expectant mothers;
- (11) Suspension/remission of land revenue;
- (12) Postponement of recovery of Government/bank loans loans;
- (13) Provision of house sites;
- (14) Grant of land in exchange;
- (15) Supply of timber for the reconstruction of houses;
- (16) Grant of loans for reconstruction and repair of houses as well as improvement of land etc.;
- (17) Starting employment generation programmes where purchasing power of the people have been depleted due to failure of crops on account of drought/flood/excessive rains/earthquake etc.;
- (18) Provision of input subsidy to the farming community;
- (19) Taking up long term measures so that the menace of the calamity/disaster is minimized for future like drinking water supply schemes, irrigation schemes soil, conservation measures, etc.

13.9 If the measure mentioned are taken soon after the occurrence of a calamity/disaster, it leaves very deep impact on the minds of the affected people and this is a gesture of good will to the suffering people on the part of the Government Help of Red Cross Society, Home Guards, Fire services, para-military troops, police and Army can be taken at the time of need.

Provision of Shelter, Clothes, Food and Medicines

13.10 Whenever there is a natural calamity/disaster it is necessary to provide shelter accommodation to the victims. Arrangement for the same should be immediately made. This can be done in consultation with the local people, PRIs and ULBs. Public buildings like Panchayat Ghars, Schools, Recreation centers can be used for the purpose. At times the victims do not want to move from the place of the occurrence of natural calamity/disaster and they insist that they would like to stay at their old places. In such cases assistance like giving of Tarpaulins etc. could be provided for making temporary accommodation or for improving the damaged one. Since tents are very costly and it becomes difficult to retrieve the tents after use in good condition from the victims they should be provided only in rare cases. However, in cases the situation so warrants, the Officers should not hesitate either to construct temporary sheds or to provide tented accommodation.

Estimation of Loss

13.11 The loss to a dwelling house include two major losses i.e. loss to the building and loss to the belongings inside buildings. There may be cases when the building may belong to one person and there may be another person residing in the building or part thereof and the loss of belongings may be caused to another person. The Revenue Officer who is required to assess the loss should carefully distinguish between two and when he is preparing the statement of loss, he should clearly mention the loss of the buildings and name of person(s) to whom such loss has been caused. He should also mention the name of the person(s) who suffered in the loss of belongings. While making assessment, it is very difficult to observe many technicalities and normally the loss of the building as well the loss of the belonging is estimated by the Patwari or Kanungo on the spot. In relation to the belongings the best course is to obtain a statement of loss from the victim himself immediately after the occurrence and no time should be lost to do this, because by the passage of time the victim tend to inflate his losses and it becomes very difficult to assess the actual loss especially in case of fire and such other calamity/disaster. On the basis of the statement of victim and seeing his status and after inspecting the remnants the estimate of the loss should be worked out.

13.12 Similarly, the estimate of the loss of the building should also be worked out. Approximate plinth area should be worked out while estimating the loss. There may be partial loss to the house, due to landslide, heavy rains and earthquake, etc. which may include collapse of a wall, cracks, etc. In such cases approximate loss should be worked out by the Revenue Officer, but while doing so he must give the details of actual loss which has taken place so that the sanctioning authority is in a position to check that the loss has been properly assessed.

13.13 Immediate assistance to provide clothes should be given in kind. The provision of warm clothing should also be made. Keeping in view the extent of natural calamity/disaster other articles like quilts etc. can so be given. Since these articles are needed at a short notice, it is advisable to keep some stocks of such articles like Tarpaulins, clothes blankets etc. in stock so that they could be rushed to the spot at a short notice. The Deputy Commissioner should be able to make this arrangement within their existing resources and whenever the stock is utilized it should be replenished.

13.14 In the event of a natural calamity/disaster it is at times necessary to provide food articles. Normal practice is that wheat is distributed to the affected people. In fact, distribution of wheat cannot possibly meet their immediate requirement. Thus in such eventualities the Officer in charge should ensure that affected people are given Atta, rice, vegetables, pulses, edible oil and salt, etc. In exceptional cases household articles should also be provided if situation so warrants. This may include minimum cooking utensils, kerosene, lanterns, etc.

13.15 In the event of a natural calamity/disaster many people either get injured or fall ill especially the children who are more prone to diseases. Arrangements for the supply of medicines or removing affected persons to the hospitals should be made for which the Ambulances should be pressed into service. In case of accident, earthquake or the like when there may be injuries to number of persons the hospitals should be informed in advance so that they make arrangement to receive the patients in the emergency ward for their treatment.

13.16 There may be cases where the children become orphans due to the loss of their parents or some ladies are felt widow who may be requiring special attention. The Revenue Officer should immediately help them either by getting the children admitted in special homes and in case of widows necessary help and assistance should be provided through the on-going programmes of the Government.

13.17 In difficult areas of the State evacuation of the injured may be necessary where it may not be possible to transport them by road. In such eventualities assistance should be sought from the Army Authorities for getting aid to the Civil Authorities to evacuate the patient by Helicopter. The District Magistrate can place such requisition with the Army Authorities. But it is always better to do it in consultation with the Government.

13.18 It may also be necessary to resort to air dropping of the essential supplies in the affected areas. Such proposals should be taken up with the State Government on top priority basis and no time should be lost in this behalf. It may be noted that loss of time can be detrimental to the life and health of the people. Such arrangement for the human beings has to be made on top priority.

13.19 The cattle should also not be ignored in areas where there is loss of fodder due to drought or any other reason. The arrangement of providing fodder and shelter should be made for cattle too. In case where areas are effected by drought and there is a shortage of fodder locally it may be arranged from outside. Usually the State Government makes announcement from time to time in such cases to provide transport subsidy to bring fodder from outside. The orders of the Government if any should be followed strictly and with speed. However, in case of emergency where the Officer feels

that immediate arrangement should be made for the affected cattle, he should take immediate steps to arrange the same.

13.20 Relief is required to be provided to the sufferers of natural calamities to tide over the difficult period immediately following the occurrence of calamity/disaster, although it is just relief assistance for the loss sustained by the victims. Whenever the calamity/disaster takes place, it becomes very difficult for the authorities to distinguish as to who has been rendered indigent and in whose case the grant of relief is justified. If the authorities start going into the minute details to ascertain financial position etc. of the each affected person it may take a very long time for deciding the grant of relief and thus the very purpose of granting immediate relief will be defeated. Secondly, the affected persons may have many other resources but at a particular point of time i.e. immediately after the occurrence of the calamity/disaster may become a deserving person entitled to help from the Government. Therefore, all affected person should be given relief irrespective of their status unless the victim himself does not require it or has sufficient arrangements to cope up with the calamity/disaster.

Employment Generation Programmes

13.21 The Deputy Commissioner will also draw out a programme for the creation of employment in the villages. It may be difficult to take up small projects in the villages of all of sudden. But it should be possible if the Deputy Commissioners have a shelf of projects/ schemes for each Panchayat area so that whenever such an eventuality arises he is able to sanction some of the schemes from such relief without wasting any time or without conducting any fresh survey. The information in this behalf should be sent to the State Government immediately for further action. The employment generation programmes would also include, programmes being carried out by various departments, like P.W.D. Irrigation Public Health, Forest, Agriculture, etc. There may be funds available with the various Departments under the on-going programmes/schemes. The work on such schemes should be accelerated and the efforts should be made so that more and more works are carried out in the area which is affected by the natural calamity/disaster. The responsibility to co-ordinate the work of employment generation at the district level would rest with the Deputy Commissioner and at the State level with Financial Commissioner (Revenue).

13.22 There may be some people who are infirm, old or ailing and unable to work including women who may be expectant mothers. It may not be possible for them to work and earn their wages under such employment generation programmes. In such cases some outright relief assistance can also be given either in kind or in cash but since the relief is paid to old and infirm people, it would be very difficult to meet the requirements of various categories of people in respect of their eating habits and to provide them assistance in kind. In such cases, case relief assistance should be given. As a matter of fact, the Deputy Commissioners have sufficient funds to grant such relief assistance under their normal allocation but for this purpose they can draw from the Treasury under the relevant rules and intimate the requirement to the Government so that the amount is allocated.

Loss of Crops and Individual Beneficiary Schemes

13.23 In Himachal Pradesh apart from the Agriculture crops, fruits and vegetable are also grown in many areas. Similarly vegetable including potatoes are grown all over the State. In case of a Natural Calamity/disaster these crops are either completely destroyed or partially destroyed and the farmers are put to loss. In fact due to the loss to the cash crops and people find it difficult to meet their both ends needs. There may be calamity/disaster where the damage is so vast like snow storm/avalanche etc. and the fruit trees are uprooted and the farmers have to re-establish their orchards. In such contingencies the farmers need assistance from the Government. In case of loss of crop as mentioned above the following measures should be taken:-

- (a) Special Girdawari may be ordered by the District Collector immediately so that the loss is assessed. The entire revenue field agency should be pressed into service to assess actual loss.
- (b) The District Collector should order immediate suspension of the land revenue including cases, local rates and surcharge and subsequently move for remission of the same as provided in para. 16(c) of the Land Administration Manual and Financial Commissioner's Standing Order No. 30. Normally the remission land revenue is admissible when the loss is above 25%.
- (c) No remission due to heavy rain, flood, drought etc. is admissible where the damage to crops is less than 50%.
- (d) Total remission where the damage to crops is 50% and above.
- (e) In the case of hail-storm, total remission if the damage is more than 25%

13.24 If the recovery of loans is suspended the interest for the period for which the recovery of loans is suspended should not be charged. The Banks normally convert their short term loans into medium and long term loans. The District Collector or the State Government should persuade the Bankers to immediately enforce the scheme of conversion of such loans. Similarly the State Co-operative Bank should also come forward to help the farmers.

In a natural calamity/disaster where the crops have been damaged or fruit plants have been up-rooted and destroyed normally the seed for the next crop should be given at 50% subsidy. Subsidy should be provided by the Agriculture Department and the District Collector in consultation with the District Officer of the Agriculture/Horticulture Department should take up the matter with the Financial Commissioner and with the Head of Department concerned. The Department should take immediate action and provide funds for supplying seed on subsidy. Similarly fertilizer should be provided on subsidized rates. Insecticides and pesticides should also be given on subsidy. However, in each case the Deputy Commissioner should hold a meeting with the concerned District Officer and make correct recommendation to the Government in this behalf.

13.25 In the affected areas the District Collector should immediately chalk-out the programme for providing assistance to the affected people. Individual farmer may require assistance for the improvement of his land through individual schemes.

Norms of Assistance

13.26 The CRF and NCCF after the enactment of Disaster Management Act, 2005 has been replaced with State Disaster Relief Fund (SDRF) and National Disaster Relief Fund (NDRF) respectively. The SDRF for the State has been notified and guidelines for the application of the SDRF have been prescribed by the Government of India. The revised norms of assistance for disaster relief would be as per Annexure F with immediate effect. The form to be used for making reference to the sanctioning authority is given at Annexure – G.

13.27 Guidelines for Preparing and Sanctioning relief

13.27.1 Death Cases

- i) Since relief is admissible in cases of accidents specified in relief manual only it is advisable to ascertain the cause of death. Medical prescription, post-mortem report, copy of FIR etc. should invariably be taken on record to establish the cause of death.
- ii) Death certificate of the deceased and list of legal heir/next of kin/dependents should also be attached with the case.

- iii) In exceptional cases where no documents are available the SDO (Civil) would satisfy himself about the contingencies while sanctioning relief cases.

13.27.2 Loss of Cattle/Animal/Sheep/Goat etc.

- i) Since relief is admissible in cases of accidents specified in Relief Manual only it is advisable to ascertain the cause of death. A report to this effect should be taken from Veterinary Officer, Veterinary Pharmacist.
- ii) Photograph of dead animal/cattle/goat/sheep, etc. and grazing permit of sheep/goat (in case of migratory shepherds) should also be taken on record to avoid fake/false claims.

13.27.3 Loss of Dwelling Unit

- i) A house would be considered as fully damaged where the damage is above 50% or where it is certified that it is beyond economic repair.
- ii) A house would be considered as severely damaged where it is certified that the damage is above 30% .
- iii) The photograph of damaged house should invariably be taken on record to avoid fake/false claims.
- iv) In case the loss of dwelling unit is full, physical verification by Revenue Officers shall ordinarily be a pre-requisite for sanctioning relief. In exceptional cases the SDO (Civil) can wave off this condition.
- v) Sanctioning Authority can seek report of technical authority such as Engineers of various departments, loss assessors, etc. to evaluate the extent of damage/loss.

13.28 Constitution of Advisory Committees for Disaster Relief and Response

Suggested list of advisory committee at various levels is given below. The Chairmen of respective committee are free to co-opt any other person, expert or officers of any department or drop any person from the suggested list as per the requirement of the situation.

13.28.1 State Level

- | | | |
|-------|--|-----------------|
| i) | Chief Secretary | Chairperson |
| ii) | Principal Secretary (Revenue) & Relief Commissioner | Convener/Member |
| iii) | All the Additional Chief Secretaries/Principal Secretaries/
Secretaries | Members |
| iv) | Director General of Police | Members |
| v) | Commandant General of Home, Fire Services and CD | Member |
| vi) | Members of CPMF and Armed Forces (in case of need) | Member |
| vii) | Director I & PR | Member |
| viii) | CGM BSNL | Member |
| ix) | State Secretary Red Cross | Member |
| x) | Coordinator IAG HP | Member |

13.28.2 District Level

- | | | |
|------|-----------------------------------|----------|
| i) | District Collector | Chairman |
| ii) | Members of Legislative Assembly | Members |
| iii) | All the members of DDMA | Members |
| iv) | Additional District Magistrate/AC | Convener |
| v) | Conservator of Forest | Member |

vi)	Deputy Directors – Agriculture and Horticulture	Members
vii)	Deputy Director Animal Husbandry	Member
viii)	Commandant Home Guards	Member
ix)	District Project Officer ICDS	Member
x)	District Foods and Supplies Controller	Member
xi)	District Public Relations Officer	Member
xii)	District Telecom Officer	Member
xiii)	Engineer, Pollution Control Board	Member
xiv)	District level authorities of Army, CPMF etc.	Members
xv)	District Welfare Officer	Member
xvi)	District Fire Officer	Member
xvii)	Secretary Red Cross	Member
xviii)	District Coordinator IAG	Member

13.28.3 Sub-Divisional Level

i)	Sub-Divisional Officer (Civil)	Chairperson
ii)	Sub Divisional Police Officer	Member
iii)	Divisional Forest Officer	Member
iv)	XENs of PWD, IPH, and Electricity	Member
v)	Block Medical Officer	Member
vi)	Block Development Officer	Member
vii)	Tehsildar	Member Convener
viii)	CDPO	Member
ix)	TWO	Member
x)	Presidents of all ULBs	Members
xi)	Representatives of Food and CS Deptt.	Member
xii)	HDO and ADO	Members

General

13.29 Some general guidelines of disaster relief and response are as under:-

- i) In case of emergency it may be necessary to start distribution of food-grain, relief material like tarpaulin, blankets, clothes, milk powder etc.
- ii) Tents/temporary sheds should normally not be provided keeping in view their high cost but the same may require to be provided in case of major disaster like earthquake and major fires involving the whole village where the victims cannot be rehabilitated in public buildings.
- iii) People affected by disasters should have access to the minimum requirement – potable water, sanitation, food, nutrition, shelter and health care - during their temporary stay at Relief Camps/temporary sheds/tents. Special care needs to be taken care of women, older people, disabled etc.
- iv) Relief material distributed in kind should take care of lactating and pregnant ladies, women and adolescents.
- v) Constitution of Relief Committee in a situation of large scale disasters is important. The Deputy Commissioner concerned should constitute such committee at the Panchayat level too consisting of the Government functionaries, public representatives, CBOs, NGOs etc. with pre-defined roles and responsibilities. Due representation to the PRIs and ULBs be given in these committees.
- vi) Standards in disaster relief would be as notified by the NDMA.

Techno-Financial Regime

13.30. Considering that the assistance provided by the Government for relief, rehabilitation and reconstruction needs cannot compensate for massive losses on account of disasters, new financial tools such as catastrophe risk financing, risk insurance, catastrophe bonds, micro-finance and insurance etc., will be promoted with innovative fiscal incentives to cover such losses of individuals, communities and the corporate sector. In this regard, the Environmental Relief Fund under the Public Liability Insurance Act, 1991, enacted for providing relief to chemical accident victims is worth mentioning. Some financial practices such as disaster risk insurance, micro-finance and micro-insurance, warranty on newly constructed houses and structures and linking safe construction with home loans will be considered for adoption.

Note:- This Manual contains only the guidelines. The situation may differ from disaster to disaster and from place to place and the Deputy Commissioner may have to act according to the situation keeping in view the broad provisions contained in this Manual.

Chapter – 14 Medical and Public Health Services

14.1 In the event of natural calamity/disaster especially in drought and in cases when the normal services are disrupted by heavy snow storm or rain, there is either shortage of water or pollution of water and there is likelihood of spreading of various epidemic both in human beings and in cattle, much of the damage resulting from such calamity/disaster can be reduced and human suffering lessened if there is organized and planned efforts to meet this problem.

14.2 In a situation of drought or in a situation when water supply schemes are disrupted or the sources get dried, the arrangement for the supply of water is to be made. The Deputy Commissioners are required to immediately plan and make arrangements in consultation with the Irrigation and Public Health department for the arrangement of supply water in each effected village. This can be done either by making temporary arrangements by way of laying pipes or tapping new sources of water to augment the existing water the affected villages by trucks and other means. There may be situations when water may have to be transported by mules or through porters or tankers. It should be ensured that no human being or cattle suffer due to inadequate supply or water and no casualty takes place on that account. The demand for funds in this connection can be placed immediately by the Deputy Commissioner with the Revenue Department and in the meantime he can go ahead with the arrangements. In emergent situation, he can seek approval on telephone or through wireless message/fax/e-mail.

14.3 Effective measures and preventive action are required to check the spread of epidemics in the affected areas. The Chief Medical Officer should take charge of this programme and should remain in constant touch with the Deputy Commissioner so that the whole programme is organized in a coordinated manner.

14.4 An assessment should be made of (i) requirements (ii) availability (iii) deficiencies, if any, in respect of personnel, stores and equipment and accommodation to provide such facilities as may be required by the people of the affected areas. Voluntary organizations should also be involved in making arrangements and providing emergency medical aids to the affected persons/ people. Arrangements for hospitalization of the ailing persons should be made and necessary medicines should be provided to them.

14.5 Sanitation and public health measures should be taken in all affected areas. Spraying of medicines, disinfectants should be undertaken. Sources of water supply should be inspected and they should be properly chlorinated. In fact diseases like Diarrhea, dysentery are frequent complaints and arrangements should be made in advance and if necessary a team of the doctors should be constituted to move in the mobile vans to provide medical aid to the affected persons of the area itself. The authorities concerned with public health and sanitation should be responsible for:-

- a) Maintenance and restoration of safe water supply and also temporary measures required for rendering water safer for drinking purposes and for other essential uses;
- b) Adequate food inspection during emergency especially inspection of emergency kitchens, canteens and cafeterias;
- c) Tightening up of existing sanitary regulations regarding milk supply and prevention diseases among milk cattle;
- d) Maintenance of high standards of sanitation in the disposal of sewerage and solid waste;
- e) Maintenance of sanitation of high degree in emergency camps;
- f) Prevention of epidemics by massive inoculating with TAB and Cholera vaccines;
- g) Anti-flu and anti-mosquito measures to be intensified and specially after floods when the normal sanitation arrangements will be disrupted;
- h) Stocking of essential hygienic chemicals and bleaching power and other disinfectants.; and
- i) Proper disposal of the dead.

Veterinary Services

14.6 Measures for the care of cattle are as important as for human beings. The services of District Animal Husbandry Officer in each district should be utilized in consultation with the Deputy Commissioner and he should ensure that necessary medical assistance and veterinary services are provided to the cattle. The treatment of the cattle should not suffer for want of medicines for which adequate arrangements should be made. While disposing off the carcass the guidelines issued by the NDMA (Dealing with the Dead in the Aftermath of a Disaster) should be followed.

Chapter – 15 Documentation

15.1 Since the State Government is to approach the Central Government for obtaining central assistance in case of each natural calamity/disaster, comprehensive information is needed by the State Government for the preparation of memorandum to be submitted to the Central Government. Though the Deputy Commissioners will inform the State Government about the loss caused by natural calamity/disaster in various areas as and when it occurs, yet it is necessary for the Deputy Commissioner to prepare consolidated information and forward the same to the government in the Revenue Department for the preparation of memorandum, for this detailed information showing the loss of human beings, loss of cattle, loss of private property, loss of crops, loss of community assets, loss of government assets and loss to the roads and bridges and other installation like electric installation, water supply schemes etc. etc. is required to be given.

15.2 A form for this purpose has been prescribed as Annexure - C and D. This information should also be maintained by the Deputy Commissioners and more comprehensive details should be prepared by them so that whenever the Central Team visit they could apprise them accordingly. The Central Team takes considerable time to visit the site. By the time the team arrives nothing can be shown in the field because the damage caused, has either been repaired or it has vanished. It is therefore, advisable to have photographs and keep cuttings of newspaper clippings wherever possible and the services of Public Relations Department should be used for the purpose. The

District Public Relation Officers should visit the affected areas and prepare an album so that the visiting team could be shown the extent of loss/damages caused because of the natural calamity/disaster.

Knowledge Management

15.3 Every disaster leads to some learning. The lessons learnt would be documented and uploaded in the respective DDMA website for reference. The reports of damage and loss too should be compiled and uploaded in the website as per the Form – C.

Annexures

Annexure - A

THE HIMACHAL PRADESH SNOW MANUAL

CHAPTER-1

GENERAL

Snow is a natural phenomenon which occurs in some parts of the State during winter. This manual envisages steps to be taken before during and after a snowfall to prevent dislocation and damage to life and property.

OBJECTIVES

The objective of this Manual is to keep the concerned departments in readiness for the snow season, to take such steps as are necessary to prevent damage and loss to human life and property and to ensure that normal life is restored without any loss of time.

AREA OF OPERATION

The manual has been mainly prepared for Shimla town and its suburban areas. However it can be used by the District Authorities of the State in other places also.

APPLICATION OF PROVISIONS OF MANUAL

The provisions of the manual will come into force at once and no sanction of any authority is needed to operate various provisions of the manual. The finances involved for the operation of the manual will be debitable to the normal budgets of the Deptt concerned and will be borne by

1. The Public Works Department by Superintending Engineer 4th Circle Shimla.
2. Police Department by Superintendent of Police, Shimla.
3. Irrigation and Public Health Deptt. by Superintending Engineer IPH Shimla.
4. Himachal Pradesh State Electricity Board by Superintending Engineer, Hydel Circle, Shimla.
5. Home Guards by District Commandant 3rd Battalion, Shimla.
6. Municipal Corporation by the Commissioner, Municipal Corporation.
7. Himachal Pradesh Transport Corporation by Divisional Manager Shimla.

In case of excess expenditure the matter will be referred to the Head of the Department and any excess will be reported to the Govt. in case of expenditure incurred by the Deputy Commissioner, Shimla to provide relief in connection with snow manual or in connection with the relief manual, the expenditure is debitable to the head " 289 Natural Calamities" which is operated by the District Collector.

Broadly, the departments involved in restoring normalcy and taking preventive action are PWD (B&R), Irrigation and Public Health, HPSEB, Municipal Corporation, Shimla, Telephones, Civil Defence and Home Guards, Transport, Police and Magistracy. All the departments are expected to assist and cooperate with the district administration in tiding over this difficult period.

CHAPTER-2

PREVENTIVE ACTION

All departments concerned will take preventive steps to avoid any loss of human life or property during the course of snow and these steps should be taken in hand well in time.

PUBLIC WORKS DEPARTMENT (B&R)

The public Works Department (buildings and Roads) is primarily responsible for keeping the roads open and to achieve this objective they should inspect the roads under their control at a fairly senior level to see if any wall or any road at any place, requires repair and is likely to give way in the event to snow. All such repairs should be carried out well before snow season occurs. The Officer should also inspect all the trees which are standing by the side of the road and if any tree is likely to fall, steps should be taken well in advance to remove the same so that no damage is caused by its sudden fall to any human life or property. They should also check up their machinery like bulldozers and snow cutters well in advance and carry out necessary repairs before the snow season sets in the department will also ensure that sufficient quantity of salt is procured for Shimla Town so that it could be spread on the road soon after the snow fall for smooth running of traffic. The public Works Department will prepare and operation plan detailing the steps to be taken. The Superintending Engineer concerned will send a report to the Engineer-in-Chief, PWD that all steps envisaged in the Snow Manual for preventive maintenance of roads buildings tools and plants have been taken with a copy to Commissioner-cum-Secretary GAD to the Govt. of Himachal Pradesh and the Deputy Commissioner, Shimla.

IRRIGATION AND PUBLIC HEALTH DEPTT.

Water supply is one of the most important necessities of life and irrigation and Public Health Department should ensure that all water pipes within the jurisdiction of I&PH Department should ensure that all water pipes are properly covered under the ground and wherever they are exposed, they should be properly wrapped with hessian cloth or coir ropes so that the pipes do not burst during the winter season and uninterrupted water supply is available in the Town area. For the purpose preventive maintenance of pipes and other tools and plants should be carried out well before the snow season. Adequate steps should be taken to keep the pumps of Gumma, Jugroti, Chohor and Chor well maintained and proper arrangement of electricity supply should be made. The Superintending Engineer concerned will send a report to the Engineer-in-Chief that all steps envisaged in the Snow Manual for preventive maintenance of water supply have taken with a copy to Commissioner-cum-Secretary GAD and the Deputy Commissioner, Shimla.

H.P. STATE ELECTRICITY BOARD

To ensure undisrupted supply of electricity, the HPSEB authorities should see that all lines are checked and preventive maintenance of electric installations is carried out. The lines and machines should be in proper order and preventive maintenance should be carried out in relation to all tools and plans under their control. The lines should be inspected jointly by the SDOs concerned of HPSEB and Municipal Corporation, Shimla from 15 to 20 November every year, and if any tree is likely to fall or if any branch of trees is likely to fall or touch the lines disrupting the electricity supply, they should send a report to the Government to obtain permission for removal/lopping of such trees to avoid any failure of electricity. The Department should doubly ensure that supply of electricity to Gumma pumping Station remains uninterrupted during the snow season. The Superintending Engineer, HPSEB will send a report that he has ensured the compliance of the provisions of the Manual and furnish the same to the Chief Engineer, HPSEB with a copy to Commissioner-cum-Secretary, GAD to H.P. Government and Deputy Commissioner, Shimla.

MUNICIPAL CORPORATION, SHIMLA

The Municipal Corporation, Shimla is primarily responsible to provide various basic amenities to the citizens and their responsibility becomes all the more important during the snow season. They have to make all preparations well in advance to keep various facilities intact during the snow. All water lines under the control of Municipal Corporation should be checked up and it should be ensured that they are properly covered so that the water does not freeze during the winter season. All fire hydrants should be properly checked to ensure smooth flow of water to light against any eventualities of fire during the snow. Fire hydrant indicators should be installed so that in the event of fire there is no difficulty in locating the same. They should be well above the ground so that they do not get buried under the snow. All the municipal roads should be inspected and more attention should be given to sloppy paths/roads. Dangerous trees should be located and proper steps should be taken so that they do not fall during the snow season causing loss or endangering human life and property. The street lights particularly between Sanjauli, St. Bedes and Chotta Shimla should be checked with special reference to the installations like bulbs and tubes etc. and they should be got repaired through the agency concerned well before the snow season. Disruption of street light is a very great hazard. The Municipal Corporation should store sufficient stock of salt so that it could be spread on the roads in snow season. This salt can easily be procured from Gumma. The drains should be checked and cleaned before the snow season as it may be difficult to clean them when the snow has covered them. The areas which are prone to land-slide should be checked and remedial steps should be taken well in advance. The steps connecting various roads should be got repaired because once they are under snow, it is difficult for pedestrians to identify pot-holes in the drains and the roads, which cause accidents. All buildings in the town should be inspected and any building which is likely to give way with heavy snow fall should be set right by taking recourse to legal provisions of Municipal Corporation Act. The buildings which are risky should be declared as such and steps should be taken to get them evacuated to avoid any loss of human life or property. The Commissioner, Municipal Corporation will send a report to the Commissioner, Shimla Division, that all preventive steps as envisaged in the Manual have been taken with a copy to the Commissioner cum-Secretary, GAD to H.P. Government and the Deputy Commissioner, Shimla.

The Telephone Department should check their poles and wires and if there is any sag in the lines or any pole is likely to give way during the snow they should be set right well before snow season.

TELEPHONES

The Telephone Department should check their poles and wires and if there is any sag in the lines or any pole is likely to give way during the snow they should be set right well before snow season.

CIVIL DEFENCE & HOME GUARDS

The Civil Defence & Home Guards Department should get their vehicles viz. ambulances and fire brigades properly checked and repaired before snow seasons. Arrangements of snow chains should be made for all vehicles so that they could be plied during the snow season. The drivers should be given adequate training to ply the vehicles in the snow season. The firefighting organization should prepare a map of fire hydrants and keep them identified so that if they are under snow they could be located in any emergency of fire. An adequate number of Home Guards should be called out to meet any eventuality before snow season. The number of Home Guards required should be worked out in consultation with the Deputy Commissioner, Shimla. The District Commandant, Home Guards will send a report that he has taken proper steps as envisaged in the Manual and forward the same to the Commandant General, Home Guards with a copy to the Commissioner-cum-Secretary (GAD) to H.P. Government and Deputy Commissioner, Shimla.

TRANSPORT

The HRTC authorities should check all their buses for preventive maintenance and also ensure that diesel does not freeze during the winter season. They should also make arrangements for using snow chains in the local buses which are proposed to be plied during the snow. In case of very heavy snow fall, only limited number of buses can be plied which should be ear-marked well in advance so that there is no confusion or breakdown during the snow fall.

SUPERINTENDENT OF POLICE

The Superintendent of Police should keep adequate force for the snow season. The force should be properly equipped with clothing, shoes, rain-coats, torches etc. He should also arrange in advance adequate number of wireless sets which could be deployed in the event of heavy snow fall and failure of telephone communication. The requirement of Home Guards should also be worked out well in advance. The Superintendent of Police will determine the requirement of force etc. In consultation with the District Magistrate for various purposes like patrolling, helping the stranded and infirm and rescue operations in case of collapse of any building and traffic jams.

DEPUTY COMMISSIONER, SHIMLA

The Deputy Commissioner, Shimla should ensure that adequate supply of essential commodities is stored in the town in Govt. Fair Price Shops so that there is no shortage of supply during the snow season. Sufficient quantity of coal, Kerosene Oil, Cooking gas and other essential commodities should be stored in consultation with the Director, Food & Supplies. The Deputy Commissioner, Shimla should also ensure that all his vehicles are in order and they are equipped with snow chains so that he is able to provide assistance to the stranded staff/officers and other needy persons. The Magistrates in the town should be in readiness so as to swing into action whenever needed. They should be equipped with proper clothing, sticks, shoes etc. The Deputy Commissioner, Shimla will also keep reasonable stocks of shoes, sticks, torches, Blankets, Jerseys/sweaters and tarpaulins so that these could be used by the stranded persons.

MEETING OF THE OFFICERS

The Deputy Commissioner, Shimla will convene meeting of all representatives of the departments before the end of December every year and apprise them of the various provisions of the Manual requesting them to take action as envisaged in the Manual and issue necessary orders to the effect that necessary preventive steps have been taken and send a report to the Commissioner-cum-Secretary (GAD) to the H.P. Government

CHAPTER-III INSPECTION DURING THE SNOW

The Deputy Commissioner, Shimla will be the over all in charge of the arrangements during the snow. A room will be set up for which at least two rooms will be made available by the Municipal Corporation, Shimla to the Deputy Commissioner, Shimla. One room will be used for the Magistrate on duty and the other for the staff working in the control room. Each department concerned will nominate one person and send his name, designation and telephone number to the Deputy Commissioner, Shimla latest by the 15th November, who would be responsible as a Liaison Officer of the Department for over all co-ordination of the operation during the snow. The following will be liaison officers from their Departments.

1. Superintending Engineer, HPPWD, 4th Circle Shimla.

2. Superintending of Police, Shimla.
3. Superintending Engineer, I & PH, Shimla.
4. Superintending Engineer, Shimla Hydel Circle, HPSEB
5. District Commandant, Home Guards, 3rd Battalion.
6. Commissioner, Shimla Municipal Corporation.
7. Divisional Manager, HRTC Shimla

The Duty Magistrate will be assisted at the Control room by representatives of all the departments and such number of other persons like Home Guards, Police and other ministerial staff as may be required from time to time. A telephone with hunting facility will be provided at the control room by the Deputy Commissioner, Shimla. Arrangement to keep the control room warm by angithis or heaters will also be made by the Deputy Commissioner, Shimla. A register will be maintained at the duty room in which the attendance of those who are present in the duty room will be marked and, if any of the representatives leaves the control room with the permission of Duty Magistrate, a note to that effect will be indicated with his probable time of return. Another register in the control room will be maintained in which all emergency calls requiring assistance will be noted with the full particulars of the caller and the assistance needed by him. All types of complaints like failure of telephone, electricity, water supply, bad condition of roads etc. will be recorded and action taken will also be noted down in the register. The form to be used for the above mentioned two registers are at Annexure "F" and "G". If on any day the official does not report for duty or leaves the control room without permission of the Duty Magistrate, the Duty Magistrate shall forthwith report the matter to the liaison Officer and, in case, no favorable response is received from the Liaison Officer, the matter will be immediately brought to the notice of the Deputy Commissioner and Commissioner-cum-Secretary (GAD) to the Government of H.P.

PUBLIC WORKS DEPARTMENT (B&R)

The Public Works Department (B&R) is responsible to ensure that the roads under their charge are cleared of snow within 24 hours' time. To achieve this objective, they should prepare terms and earmark the areas for each team for manual clearance of the roads. A senior officer of the Public Works Department (B&R) will inspect the road frequently and ensures that no slackness is shown by the teams keeping the road clear. Snow cutters and bulldozers should be earmarked for various roads and they should come into action immediately without waiting for any formal orders from their superiors when the snow fall takes place. All places where the vehicles get stuck due to slippery road, should be given special attention by clearing those areas on priority and salt should be spread in adequate quantity at such inclines. In addition to the PWD roads, Municipal road from Chotta Shimla to Kennedy House and from Ridge to Sanjauli shall also be cleared by the PWD because of the limited man power resources of the Municipal Corporation. The Municipal Corporation Shimla will, however, pay to the PWD the expenditure incurred by the latter for keeping these roads clear. Use of snowcutters, spreading of salt and manual clearance of roads should be resorted to in such areas. The complaints of non-clearance of roads from any area should be promptly attended to and if the traffic is stranded at any particular point, assistance should be rushed to that place and in such cases, the Senior Officer should personally visit the place. The overall responsibility to ensure clearance of the roads will be that of the Public Works Department who should keep liaison and co-ordination in all spheres to ensure smooth flow of traffic all over the town.

IRRIGATION AND PUBLIC HEALTH DEPARTMENT

Irrigation and Public Health Department is responsible to maintain the water supply of the Town area by keeping the pumps running and lines in order up to the point where the Municipal Corporation takes over the works. They should ensure that the pumps work according to the

schedule and there is no shortage of water supply in the town. They should maintain liaison with the H.P. State Electricity Board for regular supply of Electricity for running of pumps on priority. Proper arrangement to get information of the faults should be made and ear-marking the areas to the various teams should be made to ensure that the pipes have not burst at any place. These patrolling teams will send information for immediate attendance of the faults. The Superintending Engineer, (I&PH) will be responsible for maintenance of the water-supply to the Town area and he shall inspect the areas during the course of snow so that he satisfied that the supplies are being maintained.

H.P. STATE ELECTRICITY BOARD

The HPSEB is responsible to maintain electric supply to the drinking water pumps and for that purpose they should make all possible arrangements for providing power even from alternative routes. Similarly electricity supply in the town area for home consumption and for hospitals should be maintained on priority. The street lights have also to be kept in working order throughout the snow season. The HPSEB should make special arrangements to ensure that the power supply to the consumers is not disrupted. If any complaint of failure of electricity is received, the party should immediately rush to the affected area. For this purpose, a few parties should be kept in readiness round the clock to attend to such complaints. For the purpose of attending to all such emergencies, one vehicle of HPSEB will be parked near the Corporation office at Shimla and if it becomes essential to ply any vehicle on the restricted/sealed portion of the road in Shimla, they may do so. The vehicles should only be plied in real emergency when an officer is travelling along with staff. In case of any fault in the high tension lines the patrolling parties should be available to detect the same and for this purpose, adequate number of patrolling parties should be detailed in advance and the area should be ear-marked to them. Arrangements should be made to receive information from the patrolling parties quickly so that the repair parties could be rushed. Wireless sets should be installed at Guma and Jutog and should be used for such eventualities. Arrangements should be tied up in advance with the Superintendent of Police, Shimla, so that the wireless sets are available at the time of necessity.

MUNICIPAL CORPORATION, SHIMLA

Apart from the road from Chhota Shimla to White House and Sanjauli to Ridge which will be cleared by the PWD on payment, there are other link-roads in the town area including Lower Bazar, Middle Bazar, Jakhu etc. where the roads have to be kept clear/open for emergent plying of ambulances and fire brigade vehicles. A list of important roads should be prepared for clearance of snow on priority basis. This work is to be done by the Municipal Corporation through their own staff of workers who should be ear-marked to the various areas well in advance. They will swing into action to clear the areas immediately, a list of such teams prepared for each area should be sent in advance to the control room so that Duty Magistrate knows the particulars of the teams and the persons heading the team and any complain from that area should be immediately attended to. In clearing small roads, the first attempt should be to prepare a path for the pedestrians and the roads should be cleared immediately for small vehicular traffic. Sufficient labour for this purpose should be arranged by the Municipal Corporation and no delay should take place in clearance of such roads. The Municipal Corporation should also attend to the complaints of bursting of pipes and freezing of water, in the pipes in various localities so that the water supply is not disrupted. This could be avoided to a great extent if preventive action has been taken by covering the pipes and not allowing them to be exposed. In the event of snow fall, a large number of "Safai" staff becomes surplus who should be deployed for keeping the drains clear and clean and also to keep up the sanitation in the various parts of the town area. This would include arrangements for removing garbage and also cleaning of public latrines in various places in the town. The stairs connecting various parts of the town should be given special attention because most of the accidents take place

by falling in the stairs and on roads which are slippery. Sufficient quantity of salt should be spread in places where the roads/stairs are slippery and railings may also be provided on these paths/roads to avoid accidents. The Municipal Corporation should make advance announcements if there is disruption of water supply so that public remains aware of the same. Street lights are most important during the snow season. Patrolling parties of the Municipal Corporation should see during the day time if all the street lights are in working order and, in case, of any disruption, it should be rectified before dusk. In case, any tree or branch of the trees fall on the road, they should be expeditiously cleared and for that a few teams should be kept in readiness with proper equipment. The responsibility of maintaining services in the town area in relation of the Municipal Corporation will be that of the Commissioner, Municipal Corporation who will maintain liaison with the Duty Magistrate in the control room. There may be tourists who are held up in the town when their vehicles get stuck at various places. Normally the coolies charge exorbitant rates for pushing vehicles to and from various points. A few such teams of coolies should be prepared and their charges should be fixed at reasonable rates by the Municipal Corporation for clearing the vehicles. The rates so fixed should be displayed on the notice boards at sensitive points so that the outside tourists who are helpless, and not fleeced. The address of such parties should be kept in the control room and should be published in various places.

TELEPHONES

The Divisional Engineer, Telephones, whose representative will also be available in the control room, should ensure that all complaints of failure of telephones are expeditiously attended to. Telephone lines in the remote areas of the District should remain in order so that the reports from the remote areas are received by the district administration for immediate remedial action. The public complaints which are received from the public directly or through control room should be attended to on priority and no slackness should be shown in this behalf. All the important telephone numbers should be daily checked.

CIVIL DEFENCE AND HOME GUARDS

Sufficient number of home guards should be called out during the snow season and they should be used for rescuing stranded persons. They should be made into small parties and wherever necessity arises, they should rush. They would also be used for carrying ailing persons to the hospitals, in case, ambulance is not above to ply. Any vehicle which gets stranded in any area of the town should also be cleared with the help of such parties. Adequate number of home guards should be kept in readiness in or near the control room to assist the Duty Magistrate in performing his duties. Home guard personnel should also be acquainted with the residence of VIPs and Senior Officers in the town so that if any message is to be sent from the control room they should act as messenger in the event of failure of telephonic communication.

MILK SUPPLY

Arrival of milk in the town should be ensured and, in case of disruption due to road blockade or failure of vehicular traffic, manpower should be utilized to bring the milk to the centre of distribution. In Emergency, milk should also be carried through men to the milk booths. Adequate supply of milk should be ensured. Manager, Milk Supply, Shimla will be over all responsible to ensure milk supply in the town area.

TRANSPORT

Efforts should be made that all transport should run as normal even during the snow. The transport authorities should keep liaison with the control room and with the Public Works Department. The

vehicles which ply in the snow should have snow chains. A recovery van should also be arranged well in advance to recover the stranded vehicles from the snowy roads. If any transport vehicle gets stuck at any point, immediate steps should be taken to clear the same because the road also gets blocked if such vehicles are not cleared. The Divisional Manager, HRTC will be responsible for overall arrangements of the transport in the town area. He should ensure that all buses ply as usual even during the snow season.

SUPERINTENDENT OF POLICE

The Police should remain vigilant during the snow season both against crime and providing assistance to the people. Patrolling parties of police should patrol various areas of the town and if they find anything wrong they should immediately get in touch with the control room for remedial measure. A large number of vehicles come from plains during the snow season and it is not possible for Flat or Ambassador Cars to ply on the road without chains. They should be stopped at the Police Barrier or at some other convenient places where the traffic is not jammed. The HRTC will make necessary arrangements of coolies to carry the baggage of the passengers and the occupants should be accordingly advised. If one vehicle gets stuck on the road the entire traffic is jammed and, therefore, vehicles which are not fit for plying in the snow, should not be allowed to ply on such roads. They could be parked at convenient places wherever they are detected. The Superintendent of Police will also ensure that wireless sets are used by the Patrolling parties so that they are able to send information to the Police Reporting Room and the Control Room. The Superintendent of Police will also coordinate with the Superintending Engineer of the H.P. State Electricity Board in the matter of getting information from the patrolling parties of High Tension lines. If necessary, a Temporary Wireless Station can be established at Gumma to monitor the pumping of water for Shimla Town.

DEPUTY COMMISSIONER, SHIMLA

The Deputy Commissioner, Shimla will be over all in charge of the various operations under this Manual. The Duty Magistrate in the Control Room should function round the clock and co-ordinate the activities and operations of various departments during the snow season. He should ensure that all the complaints made to him are entered in the register and necessary action is taken. He should himself contact the calling parties to know whether complaint made by them has been rectified. In the event of receipt of information of any VIP or Officer getting stranded to and from Shimla, the Duty Magistrate should immediately depute a vehicle along with a few Home Guards and necessary equipment like shoes sticks, rain coats, torches etc. so that such stranded persons are rescued. Similarly if there is any call from ailing persons and Ambulance is not able to ply, the Duty Magistrate should make arrangements. The Duty Magistrate will keep the Deputy Commissioner and Commissioner-cum-Secretary, GAD to the H.P. Government informed of various events which come to his notice. In case, he is not able to get any cooperation from any department, he should bring the matter to the notice of Deputy Commissioner, Shimla forthwith. The Deputy Commissioner will keep at least two vehicles with chains available along with drivers round the clock under the charge of Duty Magistrate. One of these vehicles could be parked in the Ambulance Station for emergency duty. As regards supply of essential commodities, the control room should maintain complete liaison and complaints should be attended to by the District Food and Supplies Controller, Shimla under the overall charge of the Deputy Commissioner, Shimla. The District Food & Supplies Controller should maintain daily stock position and in case of any shortage, he should bring the matter to the notice of the Deputy Commissioner. In such difficult situation, the traders tend to charge high rates for essential commodities. This should be properly checked. The cooking gas dealers should be advised in advance to make adequate arrangements for distribution of cooking gas during the snow season. There may be some poor and infirm people who suffer because of heavy snowfall. Such persons have also to be helped and all deserving persons should be provided

assistance by way of clothing and blankets so that due to heavy snowfall they do not die. In deserving cases where it may be necessary, some food grains could also be given. Due to heavy snow or snow storm sometimes some buildings may collapse or may be damaged. In such eventualities the administration will move swiftly for making arrangements of evacuation and providing shelter accommodation. It may be necessary to provide other assistance to such families like food grains, clothing, beddings etc. Adequate stock of these articles should be made in advance so that no difficulty is experienced at the time of necessity.

Annexure - B

Format for First Information Report on occurrence of natural calamity

(To be sent to SEOC and NEOC, Government of India within maximum of 24 hours of occurrence of calamity)

From: District/State -----

Date of Report -----

To

- i) The Relief Commissioner cum Principal Secretary Revenue (Fax: _____ email: ____)
- ii) I/c State EOC (fax: _____; email:_____)

- a. Nature of Calamity
- b. Date and time of occurrence
- c. Affected area (number and names of affected districts)
- d. Population affected (approx.)
- e. Number of Persons
 - i) Dead
 - ii) Missing
 - iii) Injured
- f. Animals
- g. Affected
- h. Lost
- i. Crops affected and area (approx.)
- j. Number of houses damaged
- k. Damage to public property
- l. Relief measures undertaken in brief
- m. Immediate response and relief assistance required and the best logistical means of delivering that relief from State/National
- n. Forecast of possible future developments including new risks.
- o. Any other relevant information

Situation Report

DATE OF REPORT:

Sr. No.	Category	Report of happenings during the last 24 Hours	Cumulative damage/loss
I - Rainfall and Damage/Loss Position			
1.	Indicate Place and rainfall (in CMs)		
2.	Details of rainfall		
3.	Brief details & cause (s) of flash/riverine floods, landslides, road blocked etc.		
4.	Population affected if any		
5.	Number of human lives lost district-wise (specify the cause of death)		
6.	Number of Cattle/livestock lost/perished.		
7.	Area affected (in hectares)		
8.	Estimated value of damaged crop (Rs. In lakh)		
9.	Number of houses damaged i) Fully ii) Partially		
10.	Estimated value of damaged to houses (Rs. In lakh) i) Fully ii) Partially		
11.	Impact of flood on infrastructure (sectorwise i.e. power supply, water supply, road transport, health sector and telecommunication etc. – in physical term)		
12.	Estimated value of damage to public properties-sector-wise in monitoring terms (Rs. In lakh)		
13.	Estimated value of total damage (8+10+12)		
II - Fire Incidents			
1.	No. of domestic fire incidents, causes, with brief details		
2.	Loss of life		
3.	Loss of cattle		
4.	Total loss of property (in lakh)		
5.	No. of wild fire incidents		
6.	Area involved (in hectares)		
7.	Estimated loss of forest wealth (in lakh)		
8.	Estimated value of loss/damage		
III – Accidents			
1.	No. of accidents – roads and others (Please specify the category)		
2.	Loss of life		
3.	No. of injured		
4.	Cause of accident		
IV- Snow Fall			
1.	Indicate Place and snowfall (in CMs)		

2.	Details of loss/damage if any		
3.	Estimated value of loss (in lakh)		
V – Hailstorm			
1.	Indicate Place and area of hailstorm (in hectares)		
2.	Estimated Value of loss (in lakh)		
VI – Other incidents of loss of life & Property			
1.	Detail of loss/damage with estimated value		
VII - Any other relevant information			
1.	Number of persons evacuated (district wise)		
2.	Number of relief camps opened (district wise)		
3.	Number of persons accommodated in the relief camps (district wise)		
4.	Details of distribution of essential commodities		
5.	GR paid, if any specify the items and amount		
6.	Steps taken to prevent outbreak of epidemic including the deployment of medical teams (district-wise). Whether outbreak of any epidemic occurred?		
7.	Whether assistance of from Army, Air Force and Navy sought (Specify details of no. of column/helicopters/ naval divers provided and their place of deployment as well as number of days etc.)		
8.	Whether assistance of NDRF Battalions sought, if so details of deployment.		
9.	Number of cattle camps opened & details of cattle accommodated therein		
10.	Any other relief measures undertaken (give details)		

Note: Kindly attached annexure for details wherever required.

Signature of officer with Name & Date
Telephone No/Fax No.
Mobile No.

Annexure - D

Reporting Formats for Assessing Damage and Loss

Name of the Department _____

Name of the District _____

Component	Unit/ No.	Damage (In Rs.)			Sector		Cost (In case of Public Sector Only) In Rs.		Remarks
		Total	Direct Damage	Indirect Loss	Private	Public	Repair	Reconstruction	
Infrastructure (Please give item wise detail)									
Equipment/ Machinery									
Crops									
Land									
Production/ Output									
Services									
Any Other Item									

Signature

Designation

<ul style="list-style-type: none"> - Gravity of the damages (e) Number of hospitals and Health Centers affected - Gravity of the damages (f) Number of Government buildings affected - Gravity of the damages (g) Any other building affected - Gravity of the damages 	<p>Scale 1 to 5 where 1 is no damages and 5 is completely destroyed</p>
<p>12. Infrastructure</p> <ul style="list-style-type: none"> (a) Road Damaged/destroyed <ul style="list-style-type: none"> - Scale of the damage - Location - Km (b) Railways damaged <ul style="list-style-type: none"> - Location - Km - Is the railway still working (c) Bridges damaged/collapsed <ul style="list-style-type: none"> - Locality - Villages isolated (d) Damages to the Communication Network (e) Damages to the Electricity Network (f) Damages to the Telecommunication Network 	<p>Scale 1 to 5 where 1 is normal and 5 is completely destroyed/washed away</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No and scale of the damages</p> <p>Scale 1 to 5 where 1 is no damages and 5 is completely destroyed</p>
<p>13. Health Facilities</p> <ul style="list-style-type: none"> (a) Infrastructure damaged <ul style="list-style-type: none"> - Hospitals - Health Centers - Vaccination Centers (b) Availability of Doctors <ul style="list-style-type: none"> - In the area - In the district (c) Availability of Paramedical staff <ul style="list-style-type: none"> - In the area - In the district (d) Local Staff affected <ul style="list-style-type: none"> - Doctors - Paramedical Staff (e) Conditions of equipment Specify which equipment (f) Availability of medicines/drugs <ul style="list-style-type: none"> - Typology (g) Availability of Vaccinations <ul style="list-style-type: none"> - Typology (h) Any immunization campaign was undertaken before the disaster (i) Possibility of diseases outbreak (j) Other health problems 	<p>Number</p> <p>Scale 1 to 5 where 1 is no damages and 5 is completely destroyed</p> <p>Numbers</p> <p>Numbers</p> <p>Numbers</p> <p>Scale 1 to 5 where 1 is no damages and 5 is completely destroyed</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>List</p>
<p>14. Water Sanitation</p>	

<p>(a) Availability of safe drinking water (b) Availability of sanitation facilities (c) Availability of Disinfectant - Typology (d) Damages to the Water/Sewage systems (e) Damages to the water supply system (f) Availability of portable water system (g) Agencies participating in WATSAN</p>	<p>Yes/No Yes/No Yes/No Scale 1 to 5 where 1 is no damages and 5 is completely destroyed Yes/No List</p>
<p>15. Crops/Agriculture Damage</p> <p>(a) Crop Damaged - Typology - % Of Hectare damaged - In Upland/medium/low - Paddy or Non paddy - Irrigated or non-irrigated (b) Normal and actual rainfall assessment (c) Livestock loss (d) Availability of Health services for livestock (e) Cattle feed/folder availability (f) Damage to agriculture infrastructure</p>	<p>Mm Number Yes/No Number Tonnes Scale 1 to 5 where 1 is no damages and 5 is completely destroyed</p>
<p>16. Food/Nutrition</p> <p>(a) Availability of food/stocks (1) Family (2) Relief (3) PDS (4) Community Kitchen (b) Expected duration of the food stock (c) Most affected groups - Infant - Children - Pregnant and lactating mothers - Elderly (d) Where are the different groups located? (e) Levels of malnutrition? (f) Type of food required (g) Total quantity/ration levels required (h) How is the food supply and nutrition situation likely to evolve in coming weeks/months?</p>	<p>Yes/No Kg Tons Tonne Kg Days To be ticked Days To be ticked</p>
<p>1. 15.Secondary Threats</p> <p>(a) Potentially hazardous sites (b) Existence of epidemics (c) Scarcity of Food (d) Scarcity of Water (e) Scarcity of Shelter (f) Scarcity of Clothes (g) Any other problem</p>	<p>List</p>

<p>16. Response</p> <p>(a) <u>Local</u>: Govt./NGOs/CSOs/Individuals Type of assistance</p> <p>(b) <u>National</u>: Govt./NGOs/CSOs Type of assistance</p> <p>(c) <u>International</u>: Govt./NGOs/CSOs Type of assistance</p>	<p>To be ticked Description</p> <p>To be ticked Description</p> <p>To be ticked Description</p>
<p>17. Logistic and Distribution system</p> <p>(a) Availability of Storage facilities (b) Means of transport available (c) Availability of Fuel (d) Are there any distribution criteria already in place Availability of Manpower</p>	<p>Yes/No List Yes/No Yes/No Yes/No</p>
<p>18. Priority of Needs Search and Rescue:</p> <p>(a) Need of Search and Rescue - Locally available - Needed for neighbouring districts - Needed for neighbouring states (indicate from where)</p> <p>(b) Need of transportation and equipment: - Boats - Any other transportation(specify) - Special equipment(specify) - Heavy equipment(specify)</p> <p>(c) Need of shelter - Temporary - Permanents</p> <p>Clothing: (a) Children Clothing (b) Adult Clothing (c) Winter Clothing (d) Blankets (e) Bed Sheets</p> <p>1.1 Food item:</p> <p>(a) Pulses (b) Grain (c) Baby Food (d) Specialised food</p>	<p>Yes/No</p> <p>Estimated Quantity</p>

<p>(e) Cattle feeds/fodder</p> <p>Water /sanitation:</p> <p>(a) Portable water (b) Chlorine powder and disinfectant (c) Latrine (d) Soap (e) Detergent (f) Insecticides (g) Disinfestations of water body (h) Manpower for carcass disposal</p> <p>1.2 Health:</p> <p>(a) Medical staff (b) Medicines(specify) (c) IV fluid (d) ORS (e) Vitamin A (f) Vaccines (g) Mobile units (quantity to be specified) (h) Cold chain system</p> <p>1.3 Education:</p> <p>(a) Infrastructure temporary / permanent (b) Teachers (c) Teachers kits (d) Reading materials (e) Availability of mid-day meal</p> <p>Crop/Agriculture</p> <p>(a) Need of seeds (b) Fertilizer , Pesticide (c) Type of Seed required (d) Availability of local variety (e) Availability of resources</p> <p>Infrastructure:</p> <p>(a) Repair of roads (b) Repair of railways and bridges (c) Power Supply (d) Telecommunication (e) Equipment required for restoration (f) Manpower required</p>	<p>List</p> <p>Yes/No and specify location Yes/No and specify location</p> <p>List</p> <p>Number of Man days</p>
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- Observation:
- Source of information:
- Site Visit:
- Interaction with affected population:
- Assessment Carried By:

Annexure - F

**Revised List of Items and Norms of Assistance from State Disaster Response Fund (SDRF)
and National Disaster Response Fund (NDRF)**

SR. NO.	ITEM	NORMS OF ASSISTANCE
(1)	(2)	(3)
1.		RELIEF ASSISTANCE
	a) Ex-Gratia payment to families of deceased persons.	<p>Rs. 1.50 lakh per deceased person including those involved in relief operations or associated in preparedness activities, subject to certification regarding cause of death from appropriate authority.</p> <p>Note:-</p> <ol style="list-style-type: none"> An amount spent on transportation of the dead body, if any, would also be charged to this amount. This relief would also be admissible to residents of Himachal Pradesh if they meet with an accident outside the state and where no relief is provided to them. In such case an application has to be made to the local SubDivisional Officer (Civil) in whose jurisdiction the dependents reside along with relevant documents. The application would be duly supported by an affidavit stating that no relief has been received from the family from the authorities where the accident/calamity took place. This relief won't be admissible to nonHimachalis. However, cost towards search and rescue, immediate treatment, and transportation would be borne out of the relief funds in case of non-Himachalis. In the case of a Foreign citizen who loses his life due to a notified natural calamity within the territory of India, his family would also not be paid this relief.
	b) Ex-Gratia payment for loss of a limb or eye(s).	<p>Rs. 43,500/- per person, when the disability is between 40% and 80%.</p> <p>Rs. 62,000/- per person, when the disability is more than 80%.</p> <p>This relief would be in addition to any other relief paid to the victim as provided under clause (c) below. Subject to certification by a competent authority regarding extent and cause of disability.</p>
	c) Grievous injury requiring hospitalization	<p>Maximum Rs. 15,000/- per person requiring hospitalization for more than a week.</p> <p>Maximum Rs. 5,000/- per person requiring hospitalization/treatment.</p>
<p>Note: In addition to (b) and (c) above all the victims would be provided free treatment in Government hospitals/medical facilities up to 48 hours of their admission immediately after the accident. Any bills raised can be charged to the SDRF. Payment should be directly made</p>		

to the hospital on receipt of bills by the concerned SDO (C).		
	d) Clothing and utensils/ house-hold goods for families whose houses have been washed away/ fully damaged/severely inundated for more than a week due to a natural calamity.	Maximum Rs. 15,000/- per family including the cost of material such a clothes, blankets, food grains, etc. given to the family, if any.
2.	SEARCH & RESCUE OPERATIONS	
	(a) Cost of search and rescue measures/ evacuation of people affected/ likely to be affected	As per actual cost incurred, assessed at the local level and recommended by the Central Team (in case of NDRF). - By the time the Central Team visits the affected area, these activities are already over. Therefore, the State Level Committee and the Central Team can recommend actual/near-actual costs.]
	(b) Hiring of vehicles, boats, earth movers, helicopters, etc. for carrying immediate relief and saving lives.	As per actual cost incurred, assessed by SEC and recommended by the Central Team (in case of NDRF). The quantum of assistance will be limited to the actual expenditure incurred on hiring boats, hiring of vehicles, earth movers, helicopters, etc. and essential equipment required for rescuing stranded people and thereby saving human lives during a notified natural calamity.
Note: -		
(i) The cost of hiring specialized persons such as divers, mountain search and rescue personnel can be charged to this head.		
(ii) A proper record of expenditure incurred in this regard would be kept by the concerned authorities.		
3.	RELIEF MEASURES	
	a) Provision for temporary accommodation, food, clothing, medical care, etc. for people affected/ evacuated and sheltered in relief camps.	As per assessment of need by SEC/local requirement and recommendation of the Central Team (in case of NDRF), for a period up to 30 days. The SEC would need to specify the number of camps, their duration and the number of persons in camps. In case of continuation of a calamity like drought, or widespread devastation caused by earthquake or flood etc., this period may be extended to 60 days, and up to 90 days in cases of severe drought. Medical care may be provided from National Rural Health Mission (NRHM).
	b) Air dropping of essential supplies	As per actual, based on assessment of need by SEC/local authorities and recommendation of the Central Team (in case of NDRF). - The quantum of assistance will be limited to actual amount raised in the bills by the Ministry of Defence for airdropping of essential supplies and rescue operations only.

	c) Provision of emergency supply of drinking water in rural areas and urban areas.	As per actual cost, based on assessment of need by SEC/local authorities and recommended by the Central Team (in case of NDRF), up to 30 days and may be extended up to 90 days in case of drought.
4.	CLEARANCE OF AFFECTED AREAS	
	a) Clearance of debris in public areas.	As per actual cost within 30 days from the date of start of the work based on assessment of need by SEC/local authorities for the assistance to be provided under SDRF and as per assessment of the Central team for assistance to be provided under NDRF.
	b) Draining off flood water in affected areas.	As per actual cost within 30 days from the date of start of the work based on assessment of need by SEC for the assistance to be provided under SDRF and as per assessment of the Central team(in case of NDRF).
	c) Disposal of dead bodies/ Carcasses.	As per actual, based on assessment of need by SEC and recommendation of the Central Team (in case of NDRF).
5.	AGRICULTURE	
	(i) Assistance to small and marginal farmers.	
A	A Assistance for land and other loss	To be given to individual beneficiaries.
	Loss to agriculture/horticulture crops	(i) Loss between 50% - 75% = Rs. 300/- per bigha (ii) Loss above 75% = Rs. 500/- per bigha Subject to maximum loss per family = Rs. 7,000/- only.
B	Input subsidy (where crop loss is 50% and above)	For allotment to Agriculture and Horticulture only.
	a) For agriculture crops, horticulture crops and annual plantation crops.	Rs. 3,000/- per ha. in rain-fed areas Rs. 6,000/- per ha. in assured irrigated areas, subject to minimum assistance not less than Rs.500 and restricted to sown areas.
	b) Perennial crops	Rs. 8,000/- ha. for all types of perennial crops subject to areas being sown and subject to minimum assistance not less than Rs.1000/-.
	c) Sericulture	Rs. 3,200/- per ha. for Eri, Mulberry, Tussar Rs. 4,000/- per ha. for Muga.
(ii)	Input subsidy to farmers other than small and marginal farmers. (For allotment to Agriculture and Horticulture only).	Rs. 3000 /- per hectare in rainfed areas Rs. 6000/- per hectare for areas under assured irrigation. Rs. 8000/- per hectare for all types of perennial crops. - Assistance may be provided where crop loss is 50% and above, subject to a ceiling of 1 ha. per farmer and up to 2 ha per farmer in case of successive calamities irrespective of the size of holding being large.
6.	ANIMAL HUSBANDRY - ASSISTANCE TO SMALL AND MARGINAL FARMERS	
	i) Replacement of milch animals, draught animals or animals used for haulage.	Buffalo, ox, yak, horse, mule, Camel. = Rs. 16,400/- per cattle

		<p>Cow (Cross-breed) and Churu/churi = Rs. 11,000/- per cattle</p> <p>Cow (local breed), Donkey, Pashmina Goat = Rs. 6,000/- per cattle</p> <p>Sheep/goat = Rs. 1,650/- per goat</p> <p>Maximum relief on livestock to each family to be Rs. 50,000/-</p> <p>Poultry:-</p> <p>Poultry @ 37/- per bird subject to a ceiling of assistance of Rs. 400/ - per beneficiary household. The death of the poultry birds should be on account of a natural calamity.</p>
	ii) Cost of fodder and transportation.	Rs. 500/- per family having livestock.
	iii) Additional cost of medicines and vaccine.	Allocation to Animal Husbandry Department as per actual cost incurred by the Department of Animal Husbandry and assessed at local level and recommendation of the Central Team, (in case of NDRF) consistent with estimates of cattle as per Livestock Census and subject to the certificate by the competent authority about the requirement of medicine and vaccine being calamity related.
7.	FISHERY	
	i) Assistance to Fisherman for repair / replacement of damaged or lost boats.	<p>Rs. 3,000/- for repair of partially damaged boats only</p> <p>Rs. 7,000/- for replacement of fully damaged boats</p>
	ii) Input subsidy for fish seed farm (For allotment to Department of Fisheries only)	<p>Rs. 6,000 per hectare.</p> <p>(This assistance will not be provided if the beneficiary is eligible or has availed of any subsidy/ assistance, for the instant calamity, under any other Government Scheme, except the one time subsidy provided under the Scheme of Department of Animal; Husbandry, Dairying and Fisheries, Ministry of Agriculture.)</p>
8.	HANDICRAFTS/HANDLOOM – ASSISTANCE TO ARTISANS	
	i) For replacement of damaged tools/ equipment	Rs. 3000 per artisan for equipment.
	ii) For loss of raw material/ goods in process/finished goods.	Rs. 3,000 per artisan for raw material.
9.	HOUSING	
	a) Fully damaged/ destroyed houses (Where is the damage is above 50%)	

	i) Pucca house	Rs. 50,000/- per house
	ii) Kutcha House	Rs. 40,000 /- per house
	b) Severely damaged houses (Where the damage is above 30%)	
	i) Pucca House	Rs. 25,000/- per house
	ii) Kutcha House	Rs. 20,000/- per house
	c) Partially Damaged House (Other than huts) where the damage is at least 15 %	Rs. 12,500/- per house for pucca house Rs. 10,000/- per house for kutcha house
	d) Loss/damage to business premises, gharats.	Maximum Rs. 10,000/-
Note: No relief would be admissible for encroached house/structure on Government land.		
	d) Damaged / destroyed huts:	Rs. 2,500/- per hut, (Hut means temporary, make shift unit, inferior to Kutcha house, made of thatch, mud, plastic sheets, dogri, etc. traditionally recognized as hut by the State/ District authorities.)
	e) Cattle shed attached with house	Maximum of Rs. 10,000/- per shed
10.	INFRASTRUCTURE	
	Repair/restoration (of immediate nature) of damaged infrastructure: (1) Roads & bridges (2) Drinking Water Supply Works, (3) Irrigation, (4) Power (only limited to immediate restoration of electricity supply in the affected areas), (5) Schools, (6) Primary Health Centres, (7) Community assets owned by Panchayat. Sectors such as Telecommunication and Power (except immediate restoration of power supply), which generate their own revenues, and also undertake immediate repair/restoration works from their own funds/ resources, are excluded.	<p>Activities of immediate nature :</p> <p>Illustrative lists of activities which may be considered as works of an immediate nature are given in the enclosed Appendix.</p> <p>Assessment of requirements :</p> <p>Based on assessment of need, as per States' costs/ rates/ schedules for repair, by SEC and recommendation of the Central Team (in case of NDRF).</p> <p>-As regards repair of roads, due consideration shall be given to Norms for Maintenance of Roads in India, 2001, as amended from time to time, for repairs of roads affected by heavy rains/floods, cyclone, landslide, sand dunes, etc. to restore traffic. For reference these norms are</p> <ul style="list-style-type: none"> • Normal and Urban areas : up to 15% of the total of Ordinary Repair (OR) and Periodical Repair (PR). • Hills: up to 20% of total of OR and PR. <p><i>Note:</i> States shall first use its provision under the budget for regular maintenance and repair.</p>
11.	PROCUREMENT	
	Procurement of essential search, rescue and	- Expenditure is to be incurred from SDRF only (and not from NDRF), as assessed by the State Executive

	evacuation equipment including communication equipment, etc. for response to disaster.	Committee (SEC). - The total expenditure on this item should not exceed 5% of the annual allocation of the SDRF.
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Note: For natural calamities of unprecedented scale the State Govt. may notify separate norms depending upon the situation.

संख्या: रैव-डी.एम.सी.-(एफ)-(2)-1 / 2015
हिमाचल प्रदेश सरकार
राजस्व विभाग (आपदा प्रबंधन)

प्रेषक

अतिरिक्त मुख्यसचिव (राजस्व)
हिमाचल प्रदेश सरकार

प्रेषित

1. समस्त मंडलायुक्त,
हिमाचल प्रदेश।
2. समस्त जिलाधीश
हिमाचल प्रदेश।

दिनांक: शिमला

16 मई, 2016

विषय: माननीय मुख्यमंत्री महोदय द्वारा 2016.17 के बजट भाषण के दौरान दिये गए आश्वासन को कार्यान्वित करने तथा हिमाचल प्रदेश आपदा राहत नियमावली में अतिरिक्त मद शामिल करने बारे।

महोदय,

उपरोक्त विषय पर मुझे यह कहने का निर्देश हुआ है कि माननीय मुख्यमंत्री महोदय द्वारा 2016.17 के बजट भाषण के दौरान दिये गए आश्वासन को मध्य नजर रखते हुए हिमाचल प्रदेश आपदा प्रबंधन एवं राहत नियमावली 2012 में निम्नलिखित अतिरिक्त मद शामिल किए गए हैं:-

1. बिजली का करंट लगने से मौत।
2. कुत्ते के काटने से घायल/मौत।
3. आवारा/पालतू जानवर के मारने से घायल/मौत।

इसके अतिरिक्त, जिन राहत प्रकरणों में आवश्यक दस्तावेज जैसे, पोस्टमार्टम की रिपोर्ट व एफ.आई.आर. (F.I.R) आदि संलग्न नहीं हैं, उनमें अन्य साक्ष्यों जैसे चिकित्सा प्रमाण पत्र, मृत्यु प्रमाण पत्र, पंचायत प्रधान व स्थानीय निवासियों के ब्यान के अनुसार मृत्यु के कारण स्पष्ट होते हों तथा राहत नियमावली में शामिल हैं, के आश्रितों को भी हिमाचल प्रदेश राहत नियमावली, 2012 के अनुसार सहायता राशि प्रदान की जाएगी। यह सभी मद 16-5-2016 से लागू होंगे तथा राहत राशि हिमाचल प्रदेश राहत नियमावली, 2012 के अनुसार ही प्रदान की जाएगी।

भवदीय

हस्त0

संयुक्त सचिव (राजस्व आपदा प्रबंधन)
हिमाचल प्रदेश सरकार

हिमाचल प्रदेश सरकार
राजस्व विभाग-आपदा प्रबन्धन

संख्या:रैव0(डी0एम0सी0)(एफ)-2-1/2018(Norms)

दिनांक, 28-03-2022 शिमला-2

अधिसूचना

राज्यपाल, हिमाचल प्रदेश, दिनांक 20 मार्च 2022 को मन्त्रीमण्डल की बैठक में हुए निर्णय के अनुसार हिमाचल प्रदेश आपदा एवं राहत नियमावली, 2012 में निम्नलिखित मद शामिल किए जाने की सहर्ष स्वीकृति प्रदान करते हैं:-

1. " मधु मक्खियों (Honey Bees), रंगड़ (Hornet), और ततैया (Wasps) के काटने से मौत" ।
2. "दुर्घटनावश पानी में डूबने से मौत" ।
3. वाहन दुर्घटना के कारण घायल/मृत्यु में (जल, थल व वायु) तीनों तरह के यातायात वाहन सम्मिलित करना ।

उपरोक्त वर्णित आपदाओं के कारण मृत/घायलों को भी हिमाचल प्रदेश आपदा एवं राहत नियमावली, 2012 के अनुसार राहत राशि प्रदान की जाएगी। यह मद दिनांक 28-03-2022 से मान्य होंगे व प्रदेश विशिष्ट आपदा मद में सम्मिलित किए जाएंगे।

उपरोक्त मदें शामिल करने के पश्चात निम्नलिखित आपदाएं हिमाचल प्रदेश आपदा एवं राहत नियमावली, 2012 के अधीन मृत या घायल होने पर गृह मंत्रालय भारत सरकार द्वारा निर्धारित मापदंडों के अनुसार राहत राशि हेतु मान्य होंगे। जिनका विश्लेषण निम्नलिखित है:-

(क) गृह मंत्रालय, भारत सरकार द्वारा SDRF/NDRF मानकों में निर्धारित आपदाएं:-

पत्र संख्या:- (33-03/2021-NDM-I दिनांक 12 जनवरी, 2022 के पैरा 3 (1) अनुसार

1. सूखा (Drought)
2. भूकम्प (Earthquake)
3. आग के कारण क्षति (Fire)
4. बाढ़ (Flood)
5. ओलावृष्टि (Cyclone)
6. भू-स्खलन (Landslide)
7. हिमस्खलन/हिमखंड (Snow avalanches/Glaciars)
8. बादल फटना (Cloud bursts)
9. कीट (Pest Attack)
10. ठण्ड एवं शीत लहर (Frost & cold wave)
11. सुनामी (Tsunami)
12. चक्रवात (Cyclone)

(क) प्रदेश सरकार द्वारा निर्धारित राज्य विशिष्ट आपदाओं के अधीन सम्मिलित मद:-

(हिमाचल प्रदेश आपदा एवं राहत नियमावली, 2012 व हिमाचल प्रदेश सरकार द्वारा दिनांक 11 मई, 2016 व 20 मार्च, 2022 को मन्त्रीमण्डल की बैठक में हुए निर्णय के अनुसार आपदा राहत हेतु सम्मिलित किया गया है।)

1. वाहन दुर्घटना (जल, थल व वायु तीनों तरह के यातायात वाहन)
2. नाव दुर्घटना (Boat Mishap)
3. विषैला भोजन (Food Poisoning)
4. आसमानी बिजली का गिरना (Lightening)
5. पेड़ या चटान से गिरना (Fall from tree or steep-rock)
6. गैर-विस्फोटक (Non-explosive burst)
7. सर्पदंश (Snake-Bite)
8. भूमि तुफान (Land Storm)
9. आवारा/पालतु पशु का प्रहार (Hit by stray/pet animal)
10. कुत्ते का काटना (Dog-bite)
11. बिजली का करंट (Electrocution)
12. अत्यधिक बारिश (Excessive Rain)
13. महामारी फैलाना (Epidemics)
14. जमीन धंसना (Sinking of Land)
15. हिमखंड (Glacier)
16. मधु मक्खियों (Honey Bees), रंगड़ (Hornet), और ततैया (Wasps) का काटना
17. दुर्घटनावश पानी में डूबना (Accidental Drowning)

उपरोक्त वर्णित प्राकृतिक आपदाओं के कारण मृत्यु/घायल होने पर हिमाचल प्रदेश आपदा एवं राहत नियमावली, 2012 (Annexure F), में निर्धारित वर्तमान मापदण्डों के अनुसार राहत राशि निम्न प्रकार से है:—

1.	मृत्यु होने पर अनुग्रह राशि	मु0 4.00 लाख
2.	40% से 60% अपंग होने पर	मु0 59,100 रूपये
3.	60% से अधिक अपंग होने पर	मु0 2.00 लाख
4.	गम्भीर रूप से घायल होने व एक सप्ताह से अधिक दिनों तक अस्पताल में भर्ती होने पर	अधिकतम मु0 15,000/- प्रति व्यक्ति
5.	घायल होने व एक सप्ताह से कम दिनों तक अस्पताल में भर्ती होने पर	अधिकतम मु0 5,000/- प्रति व्यक्ति

आदेशानुसार,

(ओंकार चन्द शर्मा)
 प्रधान सचिव (राजस्व आपदा प्रबन्धन)
 हिमाचल प्रदेश सरकार।

File No. Rev.(DMC)-(F)-2-1/2018(Norms)
Government of Himachal Pradesh
Department of Revenue- (DMC).

From

Principal Secretary (Revenue) to the
Government of Himachal Pradesh.

To

1. All the Divisional Commissioner
in Himachal Pradesh
2. The Deputy Commissioner-cum-Chairman, DDMA
all District in Himachal Pradesh

Dated: Shimla-2 the 17th November 2022.

Subject: - Revised list of items and norms of assistance for State Disaster Response Fund (SDRF) and National Disaster Response Fund (NDRF) for the period 2022-23 to 2025-26-reg.

Sir,

I am directed to enclose a copy of a Letter F.No. 3303/2020-NDM-I (Vol-II) dated 10th October 2022 2 (copy enclosed for ready reference) received from the Ministry of Home Affairs on the subject cited above and to say that the revised items & norms for the assistance of SDRF and NDRF hereby circulated as Annexure-A after approval of the competent authority. The norms shall be effective from the date of issue of this letter till the financial year 2025-26.

It is therefore requested to follow the revised items & norms from now onwards for SDRF & NDRF assistance as applicable.

Yours faithfully,

-Sd-

(Sudesh Kumar Mokhta)

Director-cum Spl. Secy. (Rev-DM)

Government of Himachal Pradesh

Dated, Shimla-2 the 17th November 2022.

Enst. No: As above

Copy forwarded for information:

1. The Director (DM-I) Disaster Management Division, Ministry of Home Affairs, Gol for information w.r.t. aforementioned letter.

Copy forwarded for information & necessary action:

2. The Engineer-in-Chief, PWD, Nirman Bhawan, Shimla-2 for
3. The Engineer-in-Chief, IPH, Tutikandi, Shimla-2.
4. The Director, Health, SDA Complex, Kusampti, Shimla-09
5. The Director of Agriculture, HP, Shimla-5.
6. The Director of Horticulture, HP, Shimla-2.
7. The Director, Urban Dev., Tolland, Shimla-1
8. The Director, Rural Dev., SDA Complex, Shimla-9
9. The Director, Industries, Udyog Bhawan, Shimla-1
10. The Director, Elementary Education, Lalpani, Shimla-1
11. The Director, Animal husbandry, Pashudhan Bhawan, Shimla-5
12. The Director- cum-Warden of Fisheries, Bilaspur, 174001
13. The Managing Director, HPSEBL, Kumar House, Shimia-4

-Sd-

Director-cum spl. secy. (Rev-DM)

Government of Himachal Pradesh

Annexure-F

**REVISED LIST OF ITEMS AND NORMS OF ASSISTANCE FROM THE STATE
DISASTER RESPONSE FUND (SDRF) AND NATIONAL DISASTER RESPONSE FUND
(NDRF)**

**MHA letter No. 33-03/2020-NDM-1 0701-11) dated 10th October 2022 &
(Period 2022-23 to 2025-26)**

SR. No.	ITEM	NORMS OF ASSISTANCE
(1)	(2)	(3)
1.	RELIEF ASSISTANCE	
	a) Ex-Gratia payment to families of deceased persons.	<p>Rs. 4.00 lakh (Four Lakh) per deceased person including those involved in relief operations or associated with preparedness activities, subject to certification regarding the cause of death from the appropriate authority.</p> <p>Note:-</p> <p>I. This Relief will be provided to all irrespective of their place of residence or nationality.</p> <p>II. This relief would also be admissible to residents of Himachal Pradesh if they meet with an accident outside the State and where no relief is provided to them. In such case, an application has to be made to the local Sub Divisional Officer (Civil) in whole jurisdiction the dependents reside alongwith relevant documents. The application would be duly supported by an affidavit stating that no relief has been received from the family from the authority where the accident/ calamity took place.</p>
	b) Ex-Gratia payment for loss of a limb or eye(s).	<p>Rs. 74,000/- per person, when the disability is between 40% and 60%.</p> <p>Rs. 2.50 lakh per person, when the disability is more than 60%.</p> <p>Note: Subject to certification by a doctor from a hospital or dispensary of the Government, regarding the extent and cause of disability.</p>

	c) Grievous injury requiring hospitalization	<p>Rs. 16,000/- per person requiring hospitalization for more than a week. Rs. 5400/- per person requiring hospitalization for less than a week.</p> <p>Note: Injured persons getting treatment under the 'Ayushman Bharat' Yojana, will not be eligible for relief under this item.</p>
<p>Note: In addition to (b) and (c) above all the victims would be provided free treatment in Government hospitals/medical facilities up to 48 hours of their admission immediately after the accident. Any bills raised can be charged to the SDRF. Payment should be directly made to the hospital on receipt of bills by the concerned SDO (C).</p>		
	d) Clothing and utensils/ household goods for families, whose houses have been washed away/ fully damaged/severely inundated for more than two days due to a natural calamity.	<p>Maximum Rs. 15,000/- per family including the cost of material such a clothes, blankets, food grains, etc. given to the family, if any.</p>
	e) Gratuitous relief for families whose livelihood is seriously affected	<p>Gratuitous Relief (GR) for families, whose livelihood is seriously affected will be provided to two adult members of the affected family as per the actual rate of MNREGA per day or the average rate of all States/UTs per day, whichever is lower. For this purpose, notification issued by the Ministry of Rural Development from time to time, is to be referred to for calculating the average rate. The relief amount should be disbursed I through DBT/cash(In case of the exigency of the situation only) or the State Government may provide this relief in kind.</p> <p>State Govt, will certify that identified beneficiaries are not housed in relief camps, during the period GR is provided. Further, the State Government will provide the basis and process for arriving at such beneficiaries, district-wise.</p> <p>The period for providing gratuitous relief will be as per the assessment of the State Executive Committee (SEC) and the Central Team (in the case of NDRF). The default period of assistance will be upto 30 days, which may be extended upto 60 days in the first instance, if required, and subsequently upto 90 days in case of drought/ pest attack. Depending on the ground situation, the SEC can extend the time period beyond the prescribed limit. Provided that expenditure on this account, in no case, should exceed 25% of SDRF allocation under this window (Response & Relief) for the year.</p>

		Further, to ensure transparency, the list of persons to whom Gratuitous Relief is provided, should be uploaded on the website of the State Government. The State Government shall notify the basis and proof for the identification of beneficiaries in a transparent manner.
2.	SEARCH & RESCUE OPERATIONS	
	a) Cost of search and rescue measures/ evacuation of people affected/ likely to be effected	As per actual cost incurred, assessed by SEC and recommended by the Central Team (in case of NDRF). By the time the Central Team visits the affected area, these activities are already over. Therefore, the State Level Committee and the Central Team can recommend actual/near-actual costs.
	b) The hiring of boats and other essential equipments for carrying immediate relief and saving lives.	As per actual cost incurred, assessed by SEC and recommended by the Central Team (in case of NDRF). The quantum of assistance will be limited to the actual expenditure incurred on hiring boats and other essential equipment required for rescuing stranded people and thereby saving human lives during a notified natural calamity.
Note:-		
i. The cost of hiring specialized persons such as divers, mountain search and rescue personnel can be charged to this head.		
ii. A proper record of expenditure incurred in this regard would be kept by the concerned authorities.		
3	RELIEF MEASURES	
	a) Provision for temporary accommodation, food, clothing, medical care, Gen-set etc. for people affected/ evacuated and sheltered in relief camps.	As per actual cost incurred and assessed by SEC and recommended by the Central Team (in case of NDRF), for a period upto 30 days. The SEC would need to specify the number of camps, their duration and the number of persons in camps. In case of continuation of a calamity like drought, or widespread devastation caused by earthquake or flood etc., this period may be extended to 60 days. Depending on the ground situation, the SEC can extend the time period beyond the prescribed limit. Provided that expenditure on this account, in no case, should exceed 25% of SDRF allocation under this window (Response & Relief) for the year. Medical care may be provided from National Health Mission (NHM)
	b) Air dropping of essential supplies and rescue by Air Force	As per actual cost incurred, assessed by SEC and recommended by the Central Team (in case of NDRF). The quantum of assistance will be limited to actual amount the raised in the bills by the Ministry of Defence for airdropping of essential supplies and rescue operations only.

	c) Provision of emergency supply of drinking water.	As per actual cost, based on the assessment of need by SEC and recommended by the Central Team (in case of NDRF), up to 30 days, which may be extended upto 90 days in case of drought. Depending on the ground situation, the SEC can extend the time period beyond the prescribed limit. Provided that expenditure on this account, in no case, should exceed 25% of SDRF allocation under this window (Response & Relief) for the year .
4	CLEARANCE OF AFFECTED AREAS	
	a) Clearance of debris in public areas.	As per actual cost, for a period upto 30 days from the date of start of the work, based on assessment of need by SEC for the assistance to be provided under SDRF and as per the assessment of the Central team for assistance to be provided under NDRF.
	b) Draining off flood water in affected areas'	As per the actual cost within 30 days from the date of start of the work based on assessment of need by SEC for the assistance to be provided under SDRF and as per assessment of the Central team(in case of NDRF).
	c) Disposal of dead bodies/ Carcasses.	As per the actual cost, based on assessment of need by SEC and recommendation of the Central Team (in case of NDRF).
5	AGRICULTURE	
(i)	Assistance farmers having landholding upto 2 hac.	
A	Assistance for land and other loss	
	a) De-silting of agricultural land (where thickness of sand/ silt deposit is more than 3", to be certified by the competent authority of the State Government.)	<p>Rs 18,000/- per hectare for each item.</p> <p>The above is subject to minimum assistance of not less than Rs. 2,200/- per farmer.</p> <p>(Subject to the condition that no other assistance/ subsidy has been availed of by/ is eligible to the beneficiary under any other Government Scheme)</p>
	b) Removal of debris on agriculture land in hilly areas.	
	c) De-silting / Restoration / Repair of Fish Farms	
	d) Loss of substantial portion of land caused by landslides, avalanche, change of	Rs 47,000/- per hectare to only those small and marginal farmers whose ownership of the land is legitimate as per the revenue records. Above is subject to minimum assistance of not less than Rs. 5,000/- per farmer

	course of rivers.	
	e) Loss to agriculture/horticulture crops	i) Loss between 50% - 75% = Rs. 300/- per bigha ii) Loss above 75% = Rs. 500/- per bigha Subject to a maximum loss per family = Rs. 7,000/ only.
B.	Input subsidy (where crop loss is 33% and above)	
	a) For agriculture crops, horticulture crops and annual plantation crops.	Rs. 8,500/- per ha. in rainfed areas. Above is subject to minimum assistance of not less than Rs. 1,000/- per farmer and restricted to sown areas. Rs. 17,000/- per ha. in assured irrigated areas. Above is subject to minimum assistance of not less than Rs. 2,000/- per farmer and restricted to sown areas.
	b) Perennial crops/ Agroforestry (Plantation in own farmland)	Rs. 22,500/- ha. for all types of perennial crops/ Agroforestry (Plantation in own farmland), subject to minimum assistance of not less than Rs. 2,500/- per farmer and restricted to sown areas
	c) Sericulture	Rs. 6,000/- per ha. for Eri, Mulberry, Tussar Rs. 7,500/- per ha. for Muga. The above is subject to minimum assistance of not less than Rs.1000/- per farmer and restricted to sown areas.
(ii)	Input subsidy to farmers having more than 2 hac. of landholding.	Rs. 8,500/- per hectare in rainfed areas and restricted to sown areas. Rs. 17,000/- per hectare for areas under assured irrigation and restricted to sown areas. Rs. 22,500/- per hectare for all types of perennial crops/ trees including agroforestry (Plantation in own farmland) and restricted to sown areas. Assistance may be provided where crop loss is 33% and above, subject to a ceiling of 2 ha. per farmer.
	Note: Assistance for input subsidy under items No. 5(i)(B) and 5(ii) will be adjusted to the extent of the insurance claim received under Prime Minister Fasal Bima Yojna (PMFBY), for the instant calamity.	

6.	ANIMAL HUSBANDRY- ASSISTANCE TO SMALL AND MARGINAL FARMERS	
	<p>i. Replacement of milch animals, draught animals or animals used for haulage.</p>	<p>Milch Animals</p> <p>Rs. 37,500/- Buffalo/ cow/camel/ yak/ Mithun etc.</p> <p>Rs. 4,000/- Sheep/ Goat/ Pig Draught animals — Rs. 32,000/- Camel/ horse/ bullock etc. Rs. 20,000/- Calf/Donkey/ Pony/ Mule/ Heifers</p> <p>The assistance may be restricted for the actual loss of economically productive animals due to notified natural calamity and will be subject to a ceiling of 3 large milch animals and /or 30 small milch animals or 3 large draught animals and/or 6 small draught animals per household irrespective of whether a household has lost a larger number of animals.</p> <p>(Claim for loss of animals will be considered only if the number and type of animals owned by Small and Marginal Farmers/Landless Livestock Owners are registered with local/designated authorities.)</p> <p>Poultry:-</p> <p>Poultry @ 100/- per bird subject to a ceiling of assistance of Rs 10,000/- per beneficiary household. The death of the poultry birds should be on account of a natural calamity.</p> <p>Note : - Relief under these norms is not eligible if the assistance is available from any other Government Scheme, e.g. loss of birds due to Avian Influenza or any other diseases for which the Department of Animal Husbandry has a separate scheme for compensating the poultry owners.</p>
	<p>ii) Provision of fodder/ feed concentrates including water supply and medicines in cattle camps.</p> <p>Explanation: It will also include existing Gaushalas, if authorized by the State Government by Notification or Government Order, to act as a cattle camp subject to the following conditions:-</p> <p>(i) During the period of calamity, District</p>	<p>Large animals- Rs. 80/- per day.</p> <p>Small animals- Rs. 45/- per day.</p> <p>The period for providing relief will be as per the assessment of the SEC and the Central Team (in the case of NDRF). The default period for assistance will be for the period of calamity upto 30 days, which may be extended upto 60 days in the first instance and in case of severe drought up to 90 days. Depending on the ground situation, the SEC can extend the time period beyond the prescribed limit. Provided that expenditure on this</p>

<p>Administration will assess the requirement of cattle shelter and the number of Gaushalas required to be notified as cattle shelters in the District/Tehsil. After obtaining the baseline information on the cattle already sheltered and the number of more cattle it can accommodate, Gaushala may be notified as cattle shelter.</p> <p>(ii) The notified gaushala shall maintain a separate account of the additional cattle belonging to SMF and landless laborers for the notified drought period. The consolidated list of SMF and landless beneficiaries with the number and types of animals will be displayed on the notice board of Gram Panchayat, Block, Tehsil and in the office of Sub-Divisional Magistrate and District Magistrate as well as the State/ District website for the purpose of verification and social audit.</p> <p>iii) SDRF funds will only be released to such notified gaushala on a reimbursement basis and will be limited to a list of individual beneficiaries notified as in Sr.No. (ii) above.</p>	<p>account, in no case, should exceed 25% of SDRF allocation under this window (Response & Relief) for the year.</p> <p>Based on the assessment of need by SEC and recommendation of the Central Team, (in case of NDRF) consistent with estimates of cattle as per Livestock Census and subject to the certificate by the competent authority about the requirement of medicine and vaccine being calamity related.</p>
<p>(iii) Transport of fodder to cattle outside cattle camps.</p>	<p>As per the actual cost of transport during the notified calamity, based on assessment of need by SEC and the recommendation of the Central Team (in case of NDRF), consistent with estimates of cattle as per Livestock Census.</p>

7.	FISHERY	
	<p>i) Assistance to Fisherman for repair/replacement of nonmechanized boats and damaged/ lost nets.</p> <p>(This assistance will not be provided if the beneficiary is eligible or has availed of any subsidy/ assistance, for the instant calamity, under any other Government Scheme.)</p>	<p>Rs. 6,000/- for the repair of partially damaged boats only</p> <p>Rs. 3,000/- for repair of partially damaged net</p> <p>Rs. 15,000/- for replacement of fully damaged boats</p> <p>Rs. 4,000/- for replacement of fully damaged net</p> <p>(Assistance under this item will be adjusted to the extent of the insurance claim, if any, received by the fisherman, under any insurance scheme, for the instant calamity).</p>
	<p>ii) Input subsidy for fish seed farm to Small and Marginal Farmers</p>	<p>Rs. 10,000/- per hectare.</p> <p>This assistance will not be provided if the beneficiary is eligible or has availed of any subsidy/ assistance, for the instant calamity, under any other Government Scheme, except the one-time subsidy provided under the Scheme of the Ministry of Fisheries, Animal Husbandry & Dairying.</p>
8.	HANDICRAFTS/HANDLOOM - ASSISTANCE TO ARTISANS	
	<p>i) For replacement of damaged main functional tools/ equipments</p>	<p>Rs. 5,000/- per artisan for equipments.</p> <p>Subject to certification by the competent authority designated by the Government about damage and its replacement.</p>
	<p>ii) For loss of raw material/ goods in process/finished goods.</p>	<p>Rs. 5,000/- per artisan for raw material.</p> <p>Subject to certification by a Competent Authority designated by the State Government about loss and its replacement.</p>
9.	LOCUST CONTROL	
	<p>The hiring of vehicles, tractors, with spray equipments for spraying of plant protection chemicals for pest control, hiring of water tankers and purchase of plant protection chemicals for locust control.</p>	<p>As per the actual cost, based on the assessment of need by the SEC and recommended by the Central Team (in the case of NDRF).</p> <p>The quantum of assistance will be limited to the actual expenditure incurred on hiring vehicles, tractors with spray equipments for spraying of plant protection chemicals for locust control during locust attack.</p> <p>However, expenditure on this account, in no case, should exceed 25% of SDRF allocation under this window</p>

		(Response & Relief) for the year.
B.	Recovery & Reconstruction: (30% O f SDRMF i.e. equal to 37.50% of SDRF allocation for the year)	
10.	HOUSING	
	a) Fully damaged/ destroyed houses and severely damaged houses	
	i) Pucca House	Rs. 1,20,000/- per house, in plain areas.
	ii) Kutcha House	Rs. 1,30,000/- per house, in hilly areas
	b) Partially Damaged Houses (Other than huts) where the damage is at least 15 % i) Pucca House ii) Kutcha House	Rs. 12,500/- per house for pucca house Rs. 10,000/- per house for kutcha house
	c) Loss/damage to business premises, Gharats.	Maximum Rs. 10,000/-
	d) Belonging of Shops	Maximum Rs. 25,000/- (In the case of rental shops, relief would be paid to the shopkeeper).
Note: No relief would be admissible for encroached house/Shops/structure on Government land.		
	e) Damaged/destroyed huts:	Rs. 8,000/- per hut, (Hut means temporary, makeshift unit, inferior to Kutcha house, made of thatch, mud, plastic sheets, etc. traditionally recognized as hut by the State/ District authorities.) Note: The damaged house/hut should be an authorized construction, duly certified by the Competent Authority of the State Government.
	f) Cattle shed attached with house	Maximum of Rs. 10,000/- per shed
11.	INFRASTRUCTURE [Repair/restoration(of immediate nature) of damaged infrastructure]	

<p>(1) Roads & bridges, which may include the following activities:</p> <p>i) Filling up of breaches and potholes, use of pipe for creating waterways, repair and stone pitching of embankments.</p> <p>ii) Repair of breached culverts.</p> <p>iii) Providing diversions to damaged/washed-out portions of bridges to restore immediate connectivity.</p> <p>iv) Temporary repair of approaches to bridges/embankments of bridges, repair of damaged railing bridges, repair of causeways to restore immediate connectivity, granular sub base, over damaged stretch of roads to restore traffic.</p>	<p>Assessment of requirements:</p> <p>Based on the assessment of need, as per States' notified schedule of rates for repairs, by SEC and recommendation of the Central Team (in case of NDRF).</p> <p>In case of the repair of roads, assistance will be given based on the notified Ordinary Repair (OR) and Periodical Renewal (PR) of the State. In case OR & PR is not available, then assistance will be provided as per rate prescribed in this item. However, in any case, assistance will be provided at the rate whichever is lower.</p> <p>The prescribed rate are as under:-</p> <ul style="list-style-type: none"> ➤ Repairs of State Highways /Major District Roads(MDR): <ul style="list-style-type: none"> - in normal areas @ Rs. 1.0 lakh /km ; - in hilly areas - @ Rs. 1.25 lakh [km ; ➤ Repairs of Rural/village Roads with culverts <ul style="list-style-type: none"> - in normal areas - @ Rs. 60,000/- km ; - in hilly areas - @ Rs. 75,000 / km ; ➤ Repairs of RCC Culvert/Bridge <ul style="list-style-type: none"> - in normal areas - @ Rs 60,000 per culvert; - - in hilly areas -- @ Rs 75,000/- per culvert. of
<p>(2) Drinking Water Supply Schemes, which may include the following activities:-</p> <ul style="list-style-type: none"> • Repair of damaged platforms of hand pumps/ring wells/spring-tapped chamber /public stand posts, cisterns. i. Restoration of damaged stand posts including replacement of damaged pipe lengths with new pipe lengths, cleaning of clear water reservoir (to make it leak proof). ii. Repair of damaged pumping machines, leaking overhead 	<ul style="list-style-type: none"> - Damaged drinking water supply schemes will be eligible for assistance as per actual, subject to a ceiling of Rs 2.00 lakh per damaged scheme. - - Cleaning of Community drinking water wells as per actual, subject to a ceiling of Rs 10,000/ per well

	reservoirs and water pumps including damaged intake outtake structure, and approach gantries/jetties.	
	<p>(3) Minor Irrigation Schemes, which may include the following activities:</p> <p>i. Immediate repair of damaged canal structures and earthen/masonry works of tanks and small reservoirs with the use of cement, sandbags and stones.</p> <p>ii. Repair of weak areas such as piping or rat holes in dam walls/embankments.</p> <p>iii. Removal of vegetative material/building material/debris from canal and drainage system.</p> <p>iv. Repair of embankments of minor irrigation projects.</p>	<p>In case of repairs of minor Irrigation works, assistance will be given as per the schedule of rates (SOR) for repairs notified by the concerned State.</p> <p>In case SOR is not available, assistance for irrigation scheme/ canal will be provided as per actuals, subject to the ceiling of Rs 2.00 lakh per damaged minor scheme.</p> <p>Note: - However, in any case, assistance will be provided at the rate whichever is lower. Assistance for the restoration of damaged embankments of minor irrigation projects will be at par with the case of similar rural roads, subject to the stipulation that no duplication would be done with any ongoing schemes.</p>
	<p>(4)Power (only limited to immediate restoration of electricity supply in the affected areas): Damaged Poles /conductors and transformers upto 11 kv.</p>	<p>Regarding repair of damaged power sector, assistance will be given for the damaged conductors, poles and transformers upto the level of 11 KV and LT lines with bare conductor, as per details hereunder:</p> <ul style="list-style-type: none"> ➤ The rate of assistance will be:- - Rs.5000/@ per pole; - Rs. 0.50 lakh per km for repairing of damaged LT lines; - - Rs.1.00 lakh for replacement of one damaged distribution transformer. - <p>(Note:-The above assistance will not be applicable for</p>

		those items which can be reused).
	(5) Schools Repair of damaged schools building	As per actual, subject to a ceiling of Rs 2.00 lakh per school.
	(6) Primary/Community Health Centres Repair of Primary/ Community Health Centres	As per actual, subject to a ceiling of Rs 2.00 lakh per unit.
	(7) Community Assets Owned by Panchayat Temporary repair of Mahila Mandal, Yuva Kendra, Panchayat Ghar, Community Anganwadi, etc.	As per actual subject to a ceiling of Rs 2.50 lakh per unit.
C	Preparedness & Capacity Building (10% of SDRMF i.e equal to 12.50% of SDRF allocation for the year)	
12.	Procurement of essential search, rescue and evacuation equipment including communication equipment, etc. for response to response	Expenditure from the preparedness and capacity building window will be governed by the Guidelines issued separately by the Ministry of Home Affairs for the Preparedness & Capacity Building window of SDRF/ NDRF.
13.	Capacity Building	
D	State Specific Disasters	
	State specific disasters within the local context in the State, which are not included in the notified list of disasters eligible for assistance from SDRF/ NDRF, can be met from SDRF within the limit of 10% of the annual funds allocation of the SDRF.	<p>Expenditure is to be incurred from SDRF only (and not from NDRF), as assessed by the SEC.</p> <p>The norm for various items will be the same as applicable to other notified natural disasters, as listed above;</p> <p>Or</p> <p>In these cases, the scale of relief assistance against each item for 'local disaster' shall not exceed the norms of SDRF.</p> <p>The flexibility is to be applicable only after the State has formally listed the disasters for inclusion and has notified transparent norms and guidelines, with a clear procedure for identification of the beneficiaries for disaster relief for such local disasters', with the approval Of SEC</p>

E	Items Not Covered under SDRF/NDRF
	<ul style="list-style-type: none"> a) Colleges and other educational institutions buildings b) Major/medium Irrigation Schemes c) Flood control and anti-Erosion Protection work d) Hydro Power Project/HT Distribution systems/Transformers and substations e) High Tension Lines (above 11 kv) f) State Govt Buildings viz. departmental/office building, departmental/residential quarters, religions structures, patwarkhana, Court premises, playground, forest bungalow property and animal/bird sanctuary etc, g) Long term/permanent restoration work h) Procurement of equipments/ machineries under NDRF i) National Highways j) Sectors such as Telecommunication and Power (except the immediate restoration of the power supply), which generate their own revenues, and also undertake immediate repair/restoration works form their own funds/resources, are excluded.

Note:-

- (i) For assistance under NDRF for items at S.Nos. 2 (a), (b), 3 (a), (b), (c), 4 (a), (b), (c), 6 (ii), (iii) and 9, while actual expenditure is allowed, the State Government will provide the item-wise details of expenditure to the Inter-Ministerial Central Team (IMCT)/ Central Government.
- (ii) Ex-Gratia payment of Rs. 50,000/- per deceased person, to next of kin of the deceased person, including those involved in the relief operations or associated in the preparedness activities, subject to the cause of death being certified as COVID-19, as per the guidelines jointly issued by the Ministry of Health and Family Welfare and the Indian Council of Medical Research on 3rd September, 2021, will be given as aper guidelines on minimum relief issued by the National Disaster Management Authority (NDMA) dated 11.09.2021.

This ex-gratia assistance will be applicable from the date of first COVID-19 cases reported in the country and will continue till de-notification of COVID-19 as a disaster or till further orders, whichever is earlier, to next of kin of the deceased due to COVID-19.
- (iii) There will be a mid-term review of the norms after 2 years, based on price level index.
- (iv) The State Governments are to take utmost care and ensure that all individual beneficiary-oriented assistance is necessarily/mandatorily disbursed through Direct Benefit Transfer in the bank account of the beneficiary.
- (v) The scale of relief assistance against each item for all notified disasters including 'local disaster' should not exceed the norms of SDRF/NDRF. Any amount spent by the State for such disasters over and above the ceiling, would be borne out of the resources of the State Government and not from SDRF.

THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977

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APPENDIX

THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977

(ACT NO. 12 OF 1977)¹

(Received the assent of the President on the 3rd September, 1977 and was published in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated the 30th September, 1977, pp. 931-965).

An Act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to constitute the Town and Country and Development Authority for proper implementation of town and country development plan; to provide for the development and administration of special areas through the Special Area Development Authority ²[,] to make provision for the compulsory acquisition of land required for the purpose of the development plans ³[XXXXXXXXXXXXXXXXXXXXXXXXXX] and for purposes connected with the matters aforesaid.

Amended, repealed or otherwise affected by:-

- (i) H.P. Act No. 14 of 1981⁴, assented to by the President on the 21st June, 1981, published in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated the 2nd July, 1981, pp. 501-504.
- (ii) H.P. Act No. 1 of 1984⁵, assented to by the Governor on the 23rd January, 1984, published in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated the 28th January, 1984, pp. 117-120, effective from 20th October, 1983.
- (iii) H.P. Act No. 14 of 1989⁶, assented to by the Governor on the 7th June, 1989, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated the 9th June, 1989, pp. 1373-1376.
- (iv) H.P. Act No. 10 of 1992⁷, assented to by the Governor on the 2nd May, 1992, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 5th May, 1992, pp. 1919-1922.
- (v) H.P. Act No. 16 of 1994⁸, assented to by the Governor on the 12th November, 1994, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 15th November, 1994, pp. 3999-4006.

¹ For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 13th April, 1977, p. 360.

² Inserted vide H.P. Act No. 14 of 2015.

³ The words and signs —and to regulate the construction, sale, transfer and management of apartments, to regulate colonies and provide for registration of promoters and estate agents and for enforcement of obligations on them inserted vide H.P. Act No. 41 of 2013 and deleted vide H.P. Act No. 7 of 2018.

⁴ For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 21st March, 1981, p. 151.

⁵ For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 24th December, 1983, p. 1273.

⁶ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 20th April, 1989, pp. 906 and 908.

⁷ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 29th February, 1992, pp. 1484 and 1486.

⁸ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary) dated 21st September, 1994, pp. 3114 and 3118.

- (vi) H.P. Act No. 7 of 1995¹, assented to by the Governor on the 25th May, 1995, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 27th May, 1995, pp. 2235-2240.
- (vii) H.P. Act No. 11 of 1997², assented to by the Governor on the 2nd May, 1997, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 3rd May, 1997, pp. 1583-1588.
- (viii) H.P. Act No. 17 of 2000³, assented to by the Governor on the 3rd June, 2000, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 13th June, 2000, pp. 1689-1692.
- (ix) H.P. Act No. 15 of 2001⁴, assented to by the Governor on the 18th June, 2001, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 27th June, 2001, pp. 1097-1103.
- (x) H.P. Act No. 22 of 2006⁵, assented to by the Governor on the 11th October, 2006, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 13th October, 2006, pp. 5265-5270, effective from 4th July, 2006.
- (xi) H.P. Act No. 2 of 2007⁶, assented to by the Governor on the 7th February, 2007, published both in the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 13th February, 2007, pp. 11265-11268.
- (xii) H.P. Act No. 8 of 2009⁷ assented to by the Governor on the 24th March, 2009, published both in Hindi and English in the Rajpatra, Himachal Pradesh, dated 27th March, 2009, pp. 8668-8671.
- (xiii) H.P. Act No. 41 of 2013⁸, assented to by the Governor on the 18th September, 2013, published both in Hindi and English in the Rajpatra, Himachal Pradesh, dated 21st September, 2013, pp. 3709-3753.
- (xiv) H.P. Act No. 14 of 2015⁹ assented to by the Governor on the 10th May, 2001, published both in Hindi and English in the Rajpatra, Himachal Pradesh, dated 18th May, 2015, pp. 799- 808.
- (xv) H.P. Act No. 1 of 2017¹⁰ assented to by the Governor on the 24th January, 2017, published both in Hindi and English in the Rajpatra, Himachal Pradesh dated 30th January, 2017, pp. 6811-6822, effective from 15th June, 2016 and shall remain in force for one year from the date of its publication 30th January, 2017.

¹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 29th March, 1995, pp. 1373 and 1376.

² Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 9th April, 1997, pp. 1219 and 1222.

³ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 17th April, 2000, pp. 904 and 906.

⁴ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 18th April, 2001, pp. 200 and 204.

⁵ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 23rd August, 2006, pp. 3903-33907.

⁶ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-Ordinary), dated 27th December, 2006, pp. 9206 and 9209.

⁷ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh, dated 28th February, 2009, pp. 7958 and 7962.

⁸ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh, dated 20th August, 2013, pp. 3057-3058 and 3080.

⁹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh, dated 10th April, 2015, pp. 254 and 260.

¹⁰ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh, dated 28th August, 2016, pp. 3707 and 3714.

- (xvi) H.P. Act No. 7 of 2018¹ assented to by the Governor on the 22nd May, 2018, published both in Hindi and English in Rajpatra (e-Gazette), Himachal Pradesh on 1st June, 2018, pp. 2252-2258, Act came into force from 4th June, 2018 vide notification No. TCP-A(3)-2/2017, dated 4th June, 2018, published in the Rajpatra, Himachal Pradesh dated 6th June, 2018, p. 2363.

BE it enacted by the Himachal Pradesh Legislative Assembly in the Twenty-eighth Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

1. Short title, extent, commencement and application.- (1) This Act may be called the Himachal Pradesh Town and Country Planning Act, 1977.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas and for different provisions of this Act.

²[(3A) It shall apply to a real estate project proposed to be developed on an area of more than 2500 M2 for plotting or plotting and construction of apartment or any building or buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas constituted under this Act and such areas shall be deemed to be planning areas.]

(4) Nothing in this Act shall apply to-

- (a) lands comprised within a cantonment under the Cantonments Act, 1924 (2 of 1924);
- (b) lands owned, hired or requisitioned by the Central Government for the purpose of naval, military and air force works;
- (c) lands under the control of railway administration for the purpose of construction and maintenance of works under Chapter III of the Indian Railways Act, 1890 (9 of 1890); and
- (d) lands owned by any department of the Central Government where operational constructions are going on.

2. Definitions.- In this Act, unless the context otherwise requires,-

- a) "agriculture" includes horticulture, farming, raising of annual or periodical crops, fruits, vegetables, flowers, grass, fodder, trees or any kind of cultivation of soil, the reserving of land for fodder, grazing or thatching areas, breeding and keeping of livestock including cattle, horses, donkeys, mules, pigs, breeding of fish and keeping of bees and the use of land ancillary to the farming of land, but does not include-
 - (i) keeping of cattle purely for the purpose of milking and selling the milk and milk products;
 - (ii) a garden which is an appendage of buildings, and the expression "agricultural" shall be construed accordingly;

¹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra (e-Gazette) Himachal Pradesh, dated 9th April, 2018, pp. 178 and 181-182.

² Sub-section (3a) inserted vide H.P. Act No. 41 of 2013, amended H.P. Act No. 14 of 2015 and again substituted vide H.P. Act No. 7 of 2018.

- b) “amenity” includes roads and streets, water and electric supply, open spaces, parks, recreational area, natural feature, playgrounds, street lighting, drainage, sewerage and other utilities, services and conveniences;
- ¹[(c) “building” includes any structure or erection, or part of a structure or erection, which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not ²[XXXXXXXXXXXXXXXXX];
- d) “building operation” includes-
- (i) erection or re-erection of a building or any part thereof,
 - (ii) roofing or re-roofing of any part of building or an open space,
 - (iii) any material alteration or enlargement of a building,
 - (iv) any such alteration of a building as is likely to alter its drainage or sanitary arrangements, or materially affect its security,
 - (v) the construction of a door opening on any street or land not belonging to the owner;
- e) “commercial use” means the use of any land or building or part thereof for the purpose of carrying on any trade, business or profession, or sale or exchange of goods of any type whatsoever and includes running off with a view to make profit, hospitals, nursing homes, infirmaries, educational institutions, hostels, restaurants and boarding houses (not being attached to any educational institution), sarais and also includes the use of any land or buildings for storage of goods or as building for storage of goods or as an office whether attached to an industry or otherwise;
- f) “court” means the principal civil court of original jurisdiction in the district;
- g) “development” with its grammatical variations means the carrying out of a building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land or in the use of either, and includes subdivision of any land;
- h) “development plan” means interim development plan or development plan prepared under this Act;
- i) “Director” means the Director of Town and Country Planning appointed under this Act;
- j) “existing land use map” means a map indicating the use to which lands in any specified area are put at the time of preparing the map, and includes the register prepared, with the map giving details of land-use;
- k) “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
- ³[(ka) “local authority” means a Municipal Corporation constituted under section 3 of the Himachal Pradesh Municipal Corporation Act, 1994 (12 of 1994) or a Municipal Council or a Nagar Panchayat constituted under section 3 of the Himachal Pradesh Municipal Act, 1994 (13 of 1994) or the Panchayati Raj Institutions constituted under the Himachal Pradesh Panchayati Raj Act, 1994 (4 of 1994) or the Cantonment

¹ Clause (c) substituted vide H.P. Act No. 41 of 2013.

² The words and signs “However, for the purpose of apartment, building shall mean a building constructed on any land, containing more than eight apartments, or two or more buildings with a total of more than eight apartments or any existing building converted into more than eight apartments” omitted vide H.P. Act No. 7 of 2018.

³ Clause (ka) inserted vide H.P. Act No. 7 of 2018.

Board or any other authority notified by the State Government for the purposes of this Act;]

l) “member” means a member of a Town and Country Development Authority or a Special Area Development Authority, as the case may be, and includes a Chairman thereof;

m) “occupier” includes-

- (i) a tenant,
- (ii) an owner in occupation of or otherwise using his land,
- (iii) a rent free tenant,
- (iv) a licensee, and
- (v) any person liable to pay to the owner, damages for the use and occupation of the land;

¹[(ma) “natural hazards” means probability of occurrence, within a specified period of time in a given area, of a potentially damaging natural phenomenon;

(maa) “natural hazard prone areas” means areas likely to have,-

- (i) moderate to very high damage risk zone of earthquakes; or
- (ii) significant flow or inundation; or
- (iii) landslide potential or proneness; or
- (iv) one or more of these hazards;]

n) “owner” includes a mortgagee in possession, a person who for the time being is receiving or is entitled to receive, or has received, the rent or premium for any land whether on his own account or on behalf of or for the further benefit of any other person or, as agent trustee, guardian or receiver for any other person or for religious or charitable institutions or who would receive the rent or be entitled to receive the rent or premium if the land were to be let and includes a head of a Government department, General Manager of a Railway and ²[the Chief Administrator], by whatever name designated, or a local authority, statutory authority, company, corporation or undertaking in respect of properties under their control;

³[(na) “person” includes company, firm, co-operative society, joint family and incorporated body of persons;]

o) “planning area” means any area declared to be planning area under this Act;

⁴[(oa) “prescribed” means prescribed by the rules made under this Act;]

p) “region” means any area established to be a region under this Act;

q) “regional plan” means a plan for the region prepared under this Act and approved by the State Government;

⁵ [(qa) “registered private professional” means the professional registered with the competent authority in the manner, as may be prescribed;]

r) “sector” means any sector of a planning area for which, under the development plan, a detailed sectoral plan is prepared;

¹ New clauses (ma) and (maa) inserted vide H.P. Act No. 7 of 2018.

² Substituted for the words “the Chief Executive Officer” vide H.P. Act No. 7 of 1995.

³ New clause (na) inserted vide H.P. Act No. 7 of 2018.

⁴ New clause (oa) inserted vide H.P. Act No. 7 of 2018.

⁵ New clause (qa) inserted vide H.P. Act No. 7 of 2018.

- s) “slum area” means any predominantly residential area, where the dwellings which by reason of dilapidation, over-crowding, faulty arrangement of design, lack of ventilation, light or sanitary facilities or any combination of these factors are detrimental to safety, health or moral and which is defined by a development plan as a slum area;
- t) “special area” means a special area designated as such under section 66;
- u) “Special Area Development Authority” means an authority constituted under section 67;
- v) “Town Development Scheme” means a scheme prepared for the implementation of the provisions of a development plan by the Town and Country Development Authority; and
- w) “Town and Country Development Authority” means an authority established under section 40.

¹[XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]

CHAPTER II

DIRECTOR OF TOWN AND COUNTRY PLANNING

3. Director and other Officers.- (1) After the commencement of this Act the State Government shall, by notification in the Official Gazette, appoint an officer for the purpose of carrying out functions assigned to him under this Act, as the Director of Town and Country Planning for the State and may appoint such other categories of officers as it may deem fit.

(2) The Director shall exercise such powers and perform such duties as are conferred or imposed upon him by or under this Act and the officers appointed to assist the Director shall, within such areas as the State Government may specify, exercise such powers and perform such duties conferred and imposed on the Director by or under this Act as the State Government may, by special or general order, direct.

(3) The officers appointed to assist the Director shall be subordinate to him and shall work under the guidance, supervision and control.

CHAPTER III

REGIONAL PLANNING

- 4. Establishment of region.-** (1) The State Government may, by notification,-
- (a) declare any area in the State to be a region for the purpose of this Act;
 - (b) define the limits of such area; and
 - (c) specify the name by which such region shall be known.

(2) The State Government may, by notification, alter the name of any such region and on such alteration, any reference in any law or instrument or other document to the region shall be deemed to be a reference to the region as re-named unless expressly otherwise provided or the context so requires.

- (3) The State Government may, by notification,-
- (a) alter the limits of region so as to include therein or exclude therefrom such areas as may be specified in the notification;

¹Clauses (x) to (zy) inserted vide H.P. Act No. 41 of 2013 and omitted vide H.P. Act No. 7 of 2018.

- (b) amalgamate two or more regions so as to form one region;
- (c) divide any region into two or more region; or
- (d) declare that the whole or part of the area comprising a region shall cease to be a region or part thereof.

5. Director to prepare regional plan.- Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Director-

- (i) to carry out a survey of the regions;
- ¹[(ii) to prepare an existing land use map indicating the natural hazard proneness of the areas; and
- (iii) to prepare a regional plan keeping in view the regulation for land use zoning for natural hazard prone area.]

6. Survey.- (1) The Director shall, with a view to prepare the existing land use map, and other maps as are necessary for the purpose of regional plan,-

- (a) carry out such surveys as may be necessary;
- (b) obtain from any department of Government and any local authority such maps, survey reports and land records as may be necessary for the purpose.

(2) It shall be the duty of every Government department and local authority to furnish, as soon as may be possible, maps, reports and record, as may be required by the Director.

7. Contents of regional plan.- The regional plan shall indicate the manner in which land in the region should be used, the phasing of development, the net work of communications and transport, the proposals for conservations and development of natural resources, and in particular-

- (a) allocation of land to which such purposes as residential, industrial, agricultural or as forests or for mineral exploitation;
- (b) reservation of open spaces for recreational purposes, gardens, tree belts, and animal sanctuaries;
- (c) access or development of transport and communication facilities such as roads, railways, water ways, and the allocation and development of air ports;
- (d) requirements and suggestions for development of public utilities such as water supply, drainage and electricity;
- (e) allocation of areas to be developed as "Special areas" wherein new towns, townships, large industrial estates or any other type of large development projects may be established;
- (f) landscaping and the preservation of areas in their natural state;
- (g) measures relating to the prevention of erosion, including rejuvenation of forest areas;
- (h) proposals relating to irrigation, water supply or flood control works.

8. Preparation of regional plan.- (1) After preparation of the existing land use map, the Director shall cause to be prepared a draft regional plan and published it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice, such date not being earlier than sixty days from the publication of the notice. Such notice shall specify in regard to the draft plan the following particulars, namely:-

- (a) the existing land use map and the narrative report thereon;

¹ Clauses(ii) and (iii) substituted vide H.P. Act No. 41 of 2013.

- (b) a narrative report supported by necessary map and charts explaining the provisions of the draft plan;
- (c) a notice indicating the priorities assigned to works included in the draft plan and the phasing of the programme of development as such;
- (d) a notice on the role being assigned to different departments of Government, the Town and Country Development Authorities, the Special Area Development Authorities, and the Local Authorities in the enforcement and implementation of draft plan.

(2) The Director shall consider all the objects and suggestions received by him within the period specified in the notice under sub-section (1) and shall, after giving a reasonable opportunity to all persons affected thereby of being heard, prepare the regional plan containing such modifications, if any, as he considers necessary and submit it to the State Government for approval together with all connected documents, plans, maps and charts.

9. Finalization of regional plan.- (1) The State Government may approve the draft regional plan submitted under section 8 with or without modifications or reject or return the same to the Director for reconsideration.

(2) Immediately after the draft regional plan is approved under subsection (1) the State Government shall publish in such manner, as may be prescribed, a notice stating that the regional plan has been approved and mentioning a place where a copy of the plan may be inspected at all reasonable hours and shall specify therein a date on which the regional plan shall come into operation:

Provided that where the State Government approves the draft regional plan with modifications, it shall not be published, unless the State Government having published such modifications in the Official Gazette alongwith a notice inviting objections and suggestions thereon, within a period of not less than thirty days from the date of publication of such notice have considered the objections and suggestions after giving a reasonable opportunity of being heard to person affected thereby.

10. Restriction on use of land or development thereof.- (1) Notwithstanding anything contained in any other law for the time being in force, on or after the date of publication of the draft regional plan, no person, authority, department of Government or any other person shall change the use of land for any purpose other than agriculture, or carry out any development in respect of any land contrary to the provisions of the draft plan, without the prior approval of the Director or any officer next to him authorized by the Director, in this behalf.

(2) Notwithstanding anything contained in any law for the time being in force, the permission referred to in sub-section (1) shall not be granted otherwise than in conformity with the provision of the draft or final plan and no permission, if granted, shall be construed to confer any legal right whatsoever on the person seeking the permission.

(3) If any work is carried out in contravention of the provisions of this section, the Municipal Corporation or ¹[Municipal council or Nagar Panchayat] within its such local area, and the Collector in area outside such local areas, may cause such work to be removed or demolished at the cost of the defaulter, which shall be recovered from him in the same manner as an arrear of land revenue: Provided that no action shall be taken under this sub-section unless the person concerned

¹ Substituted for the words "Municipal Committee" vide H.P. Act No. 15 of 2001.

is given a reasonable opportunity of being heard and a notice calling upon him to remove or demolish the work within a time specified therein.

(4) Any person aggrieved by the order of the Municipal Corporation, ¹[Municipal council or Nagar Panchayat] or Collector, as the case may be, calling up to remove or demolish the work may prefer an appeal to the Director within fifteen days of the receipt of the notice under sub-section (3) and the order of the Director in such appeal shall be final.

11. Exclusion from claims of amount in certain cases.- Whereas the regional plan assigns a particular land use to a certain areas and any land situated therein is already put to such use, subject to substantially similar restrictions in force under any other law which was in force on the date on which restrictions were imposed by or under this Act and if amount in respect of such restrictions have already been paid under any such other law which was in force for the time being in respect of the property or any right or interest therein to the claimant, or any predecessor in interest of the claimant, the owner shall not be entitled to any further amount on account of injury or damage caused to his rights by reasons of the restrictions placed on the use of the land under the provisions of this Act.

12. Review of regional plan.- (1) The Director may, on his own motion or if is required by the State Government, at any time after a regional plan has come into operation, undertake the review and evaluation of the regional plan and make such modification in it as may be justified by the circumstances.

(2) The foregoing provisions of this Chapter shall, so far as they can be made applicable, apply to the modifications under sub-section (1) as these provisions apply in relation to the preparation, publication and approval of a regional plan.

CHAPTER IV PLANNING AREA AND DEVELOPMENT PLANS

13. Planning Area.- (1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof.

- (2) The State Government may, by notification,-
- (a) alter the limits of a planning area so as to include therein or exclude therefrom such areas as may be specified in the notification;
 - (b) amalgamate two or more planning areas so as to constitute one planning area;
 - (c) divide any planning area into two or more planning areas;
 - (d) declare that the whole or part of the area constituting the planning area shall cease to be planning area or part thereof.

14. Director to prepare development plans.- Subject to the provisions of this Act and the rules made thereunder, the director shall

- ²(a) prepare an existing land use map indicating the natural hazard proneness of the area;
- (b) prepare an interim development plan keeping in view the regulation for land use zoning for natural hazard prone area;
- (c) prepare a development plan keeping in view the regulation for land use zoning for natural hazard prone area;]
- (d) prepare a sectoral plan;

¹ Substituted for the words "Municipal Committee" vide H.P. Act No. 15 of 2001.

² Clauses (a) to (c) substituted vide H.P. Act No. 41 of 2013.

(e) carry such surveys and inspections and obtain such pertinent reports from Government departments, local authorities and public institutions as may be necessary for the preparation of the plans;

(f) perform such duties and functions as are supplemental, incidental, and consequential to any of the foregoing functions or as may be assigned by the State Government for the purpose of carrying out the provisions of this Act.

15. Existing land use maps.- (1) The Director shall carry out the survey and prepare an existing land use map and forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map and of the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice.

(2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, make such modifications therein as may be considered desirable.

(3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places where the copies of the same may be inspected.

(4) A copy of the notice shall also be published in the Official Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted.

¹[15-A. Freezing of land use pending preparation of existing land use map under section 15.- (1) Wherever the State Government, after the constitution of the planning area under section 13 ²[or the special planning area under section 66] but before the publication of the existing land use map under section 15, is satisfied that in any planning area or part thereof ³ [or the special planning area or part thereof, as the case may be,] the change of the land use on any building operation therein-

(a) is likely to cause injurious disturbances of the surface or any land or soil, or is considered detrimental to the preservation of the soil, prevention of land slips or protection against erosion; or

(b) is likely to make it difficult to plan and develop the area in question in accordance with the provisions of the Act; the State Government may, by notification published in the Official Gazette, freeze the existing land use, for a period not exceeding ³[five years].

(2) On the issuance of a notification under sub-section (1)-

(a) no person shall change the use of any land or carry out any development of land (other than the change for the purpose of agriculture)without the written permission of the Director; and

(b) no local authority or officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land without the written permission of the Director.

(3) Any permission that the Director may grant under sub-section (2) shall be subject to such conditions and restrictions as may be imposed in this behalf by the State Government.]

¹ Section 15-A inserted vide H.P. Act No. 10 of 1992.

² Inserted vide H.P. Act No. 16 of 1994.

³ Substituted for the words "three years" vide Act No. 14 of 2015.

15- **16. Freezing of land use.** - On the publication of the existing land use map under section

- (a) no person shall institute or change the use of any land or carry out any development of land for any purpose other than that indicated in the existing land use map without the permission in writing of the Director:

Provided that the Director shall not refuse permission if the change is for the purpose of agriculture;

- (b) no local authority or any officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land otherwise than as indicated in the existing land use map without the permission in writing of the Director¹[;]

- ²[(c) no Registrar or the Sub-Registrar, appointed under the Indian Registration Act, 1908, shall, in any planning area constituted under section 13, ³[in any special area or any deemed planning area as specified in sub-section (3a) of section 1] register any deed or document of transfer of any sub-division of land by way of sale, gift, exchange, lease or mortgage with possession, unless the sub-division of land is duly approved by the Director, subject to such rules as may be framed in this behalf by the State Government:

Provided that the Registrar or the Sub-Registrar may register any transfer,-

- (i) where the land is owned by a person and the transfer is made without involving any further divisions;
- (ii) where the partition/sub-division of land is made in a joint Hindu family;
- (iii) where the lease is made in relation to a part or whole of a building;
- (iv) where the mortgage is made for procuring the loans for construction of improvements over the land either from the Government or from any other financial institution constituted or established under any law for the time being in force or recognized by the State Government.]

17. Interim development plan.- As soon as may be, after the declaration of a planning area, the Director shall, within such time as may be necessary, prepare, after consultation with local authorities concerned, if any, and submit to the State Government an interim development plan for the planning area or any of its parts and such other area or areas contiguous or adjacent to the planning areas as the State Government may direct to be included in the interim development plan.

(2) The interim development plan shall-

- (a) indicate broadly the land use proposed in the planning area;
- (b) allocate broadly areas or sector of land for-
 - (i) residential, industrial, commercial or agricultural purposes;
 - (ii) open spaces, parks and gardens, green belts, zoological gardens and play grounds;
 - (iii) public institutions and offices;
 - (iv) such special purposes as the Director may deem fit;

¹ Substituted for the sign “.” vide H.P. Act No. 14 of 1981.

² Clause (c) added vide H.P. Act No. 14 of 1981.

³ Inserted vide H.P. Act No. 14 of 2015.

- (c) lay down the pattern of National and State Highways connecting the planning area with the rest of the region, ring roads, arterial roads and the major roads within the planning areas;
- (d) provide for the location of airports, railway stations, bus terminal and indicate the proposed extension and development of railways and canals;
- (e) make proposals for general landscaping and preservation of natural areas;
- (f) project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfillment;
- (g) propose broad based regulations for sectoral development, by way of guide-lines, within each sector of the location, height, size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put ¹[including regulations for façade control and sloping roof conforming to the hill architecture and environs];
- (h) lay down the broad-based traffic circulation patterns in a city;
- (i) suggest architectural control features, elevation and frontage of buildings and structures;
- (j) indicate measures for flood control ²[and protection against land slide], prevention of air and water pollution, disposal of garbage and general environmental control.

(3) Subject to provisions of the rules made under this Act for regulating the form and contents of the interim development plan any such plan shall include such maps and such descriptive matter as may be necessary to explain and illustrate the proposals in the interim development plan.

(4) As soon as may be, after the submission of the interim development plan under sub-section (1), the State Government may either approve the interim development plan or may approve it with such modification as it may consider necessary.

(5) The State Government shall publish the interim development plan as approved under sub-section (4) in the Official Gazette. The interim development plan shall come into operation from the date of its publication in the Official Gazette and shall be binding on all local authorities functioning within the planning area.

18. Development plan.- A development plan shall-

- (a) indicate broadly the land use proposed in the planning areas;
- (b) allocate broadly areas or sector of land for,-
 - (i) residential, industrial, commercial or agricultural purposes;
 - (ii) open spaces, parks and gardens, green belts, zoological gardens and play-grounds;
 - (iii) public institutions and offices;
 - (iv) such special purposes as the Director may deem fit;
- (c) lay down the pattern of National and State Highways connecting the planning area with the rest of the region, ring roads, arterial roads and the major roads within the planning area;
- (d) provide for the location of air-ports, railway stations, bus termini and indicate the proposed extension and development of railways;
- (e) make proposals for general landscaping and preservation of natural areas;
- (f) project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment;
- (g) propose broad-based regulations for sectoral development, by way of guide-lines, within each sector of the location, height, size of buildings and structures, open spaces, court-

¹ Inserted vide H.P. Act No. 41 of 2013.

² Inserted vide H.P. Act No. 41 of 2013

yards and the use to which such buildings and structures and land may be put ¹[including regulations for façade control and sloping roof conforming to the hill architecture and environs];

- (h) lay down the broad-based traffic circulation patterns in a city;
- (i) suggest architectural control features, elevation and frontage of buildings and structures;
- (j) indicate measures for flood control ²[and protection against land slide], prevention of air and water pollution, disposal of garbage and general environmental control.

19. Publication of draft development plan.- (1) The Director shall forth-with publish the draft development plan prepared under section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice. Such notice shall specify in regard to the draft development plan the following particulars, namely:-

- (i) the existing land use maps;
- (ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;
- (iii) the phasing of implementation of the draft development plan as suggested by the Director;
- (iv) the provisions for enforcing the draft development plan and stating the manner in which permission to development may be obtained;
- (v) an approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The Director shall, not later than ninety days after the date of expiry of the notice period under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, make such modifications in the draft development plan as he may consider necessary, and submit, not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

20. Sanction of development plans.- (1) As soon as may be after the submission of the development plan under section 19, the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice, published in the Official Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard the State Government may confirm the modification in the development plan.

(4) The State Government shall publish the development plan as approved, under the foregoing provisions in the Official Gazette and shall along with the plan publish a public notice, in

¹ Inserted vide H.P. Act No. 41 of 2013.

² Inserted vide H.P. Act No. 41 of 2013.

such manner as may be prescribed, of the approval of the development plan and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all Local Authorities functioning within the planning area.

(6) After the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan.

CHAPTER V SECTORAL PLAN

21. Director to prepare sectoral plan.- The Director may, on his own motion, at any time after the publication of the development plan, or thereafter, if so required by the State Government shall, within six months of such requisition, prepare a sectoral plan.

22. Contents of sectoral plan.- (1) The sectoral plan shall enlarge the details of land use as indicated in the development plan and shall-

- (a) indicate the land liable to acquisition for public purpose or the purposes of the, Union Government, the State Government, the Town and Country Development Authority, the Special Area Development Authority, the Local Authority or any other authority established by or under any enactment for the time being in force:

Provided that no land shall be so designated unless the acquisition proceedings are likely to be completed within ten years of the preparation of the plan;

- (b) define in detail and provide for areas reserved for agriculture, public and semi-public open spaces, parks, play-grounds, gardens, recreational areas, green belts and nature reserves ;
- (c) allocate in detail areas or sectors for residential, commercial, industrial, agricultural and other purposes;
- (d) define and provide for the complete road and street pattern for the present and in the future and indicate the traffic circulation;
- (e) lay down in detail the projected road and street improvement;
- (f) indicate and provide for areas reserved for public buildings, institutions and civic developments;
- (g) assess, make projections for and provide for the future requirements of amenities, services, and utilities such as municipal, transport, electricity, water and drainage;
- (h) prescribe in detail the sectoral regulations for each sector, with a view to facilitating an individual layout and regulating the location, height, number of storeys and the size of buildings, and other structures, the size of the court-yards, courts and other open spaces and the use of the buildings, structures and land ¹[including regulations for facade control and sloping roof conforming to hill architecture and environs];
- (i) define areas which have been badly laid out or areas which have developed so as to form slums, and provide for their proper development and/or relocation;
- (j) designate areas for future development and expansion;
- (k) indicate the phasing of the programme of development.

¹ Inserted vide H.P. Act No. 41 of 2013.

- (2) The sectoral plan may and if possible shall, indicate-
- (a) control over architectural features; elevation and frontage of buildings and structures; and
 - (b) the details of development of specific areas for housing, shopping centres, industrial areas, educational and cultural institutions and civic centres.

23. Provisions of sections 19 and 20 to apply to sectoral plan.- The provisions of sections 19 and 20 shall apply for the preparation, publication, approval and operation of sectoral plan as they apply in respect of the development plan.

24. Review of development plan and sectoral plan.- The Director may on his own motion or if so required by the State Government shall, at any time after the sectoral plan has come into operation, undertake a review and evaluation of the development plan and sectoral plan.

(2) The foregoing provisions of sections 19, 20 and 23 shall, so far as may be, apply to the modification under sub-section (1) as those provisions apply in relation to the preparation, publication and approval of a development plan or a sectoral plan.

CHAPTER VI CONTROL OF DEVELOPMENT AND USE OF LAND

25. Director to control land use.- The overall control of development and the use of land in the planning area shall, as from the date of publication in the Official Gazette of a notification by the State Government, vest in the director.

26. Conformity with development plan.- (1) After coming into force of the development plan, the use and development of land shall conform to the provisions of the development plan: Provided that the Director may, at his discretion, permit the continued use of land for the purpose for which it was being used at the time of the coming into operation of the development plan: Provided further that such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the development plan.

27. Prohibition of development without permission.- After coming into operation of the development plan, no person shall change the use of any land or carry out any development of land without the permission in writing of the Director :

Provided that no such permission shall be necessary-

- (a) for carrying out 'works for the maintenance, repair or alteration of any building which does not materially alter the external appearance of the buildings ;
- (b) for carrying out work for the improvement or maintenance of a high-way, road or public street by the Union or State Government or an authority established under this Act or by a local authority having jurisdiction, provided that such maintenance or improvement does not change the road alignment contrary to the provisions of the development plan;
- (c) for the purpose of inspecting, repairing or renewing any drain, sewers, mains, pipes, cables, telephone or other apparatus including the breaking open of any street or other land for that purpose;
- (d) for the excavation or soil shaping in the interest of agriculture;
- (e) for restoration of land to its normal use where land has been used temporarily for any other purposes;
- (f) for use for any purpose incidental to the use of building for human habitation, or any other building or land attached to such buildings;

- (g) for the construction of a road intended to give access to land solely for agricultural purposes.

28. Development undertaken on behalf of Union or State Government.- (1) When the Union Government or the State Government intends to carry out development of any land for the purpose of its departments or offices or authorities, the officer-in-charge thereof shall inform in writing to the Director the intention of the Government to do so, giving full particulars thereof, accompanied by such documents and plans as may be prescribed at least thirty days before undertaking such development.

(2) Where the Director raises any objection to the proposed development on the ground that the development is not in conformity with the provisions of the development plan, the officer shall,

- (i) make necessary modifications in the proposals for development to meet the objections raised by the Director; or
- (ii) submit the proposal for development together with the objections raised by the Director to the State Government for decision:

Provided that where no modification is proposed by the Director within thirty days of the receipt of the proposed plan by the Government, the plan will be presumed to have been approved.

(3) The State Government, on receipt of the proposals for development together with the objections of the Director shall, approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as it considers necessary in the circumstances.

(4) The decision of the State Government under sub-section (3) shall be final and binding.

29. Development by local authority or by any authority constituted under this Act.- Where a local authority or any authority specially constituted under this Act intends to carry out development on any land for the purpose of that authority, the procedure applicable to the Union or State Government under section 28 shall, mutatis mutandis, apply in respect of such authority.

30. Application for permission for development by others.- (1) Any person, not being the Union Government, State Government, a local authority or a special authority constituted under this Act intending to carry out any development on any land, shall make an application in writing to the Director for permission, in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) Such application shall also be accompanied by such fee as may be prescribed.

¹[(3) Every promoter as defined under clause (zk) of the Real Estate (Regulation and Development) Act, 2016, (16 of 2016) shall make an application to the competent authority as notified by the Government for the sanction of the real estate projects and plans thereof in such form and in such manner and accompanied by such fee, as may be prescribed.]

²**[30-A. Exemption from development permission in rural areas falling within Planning or Special Areas.-** (1) Any person who owns land in rural areas, falling within Planning or Special Areas wherein neither Interim Development Plan nor Development Plan has been notified, shall be

¹ Sub-section (3) inserted vide H.P. Act No. 7 of 2018.

² Section 30-A inserted vide H.P. Act No. 11 of 1997 amended vide H.P. Act No. 15 of 2001 and substituted vide H.P. Act No. 8 of 2009.

exempted from permission under this Act for the following development activities upto the limits as may be prescribed:-

- (i) Residential activities such as farm-houses and residential houses upto three storeys, cattle shed, toilet, septic tank, kitchen, store, parking shed or garage and rain shelter;
- (ii) Commercial activities such as basic commercial activities like shops of general merchandise, cobbler, barber, tailoring, fruit, vegetable, tea or sweet, eating places and dhabas, chemist and farm produce sale depot;
- (iii) Service Industries such as cottage or house-hold, service industries like carpentry, knitting, weaving, blacksmith, goldsmith, atta-chakki with capacity upto five horse-power, water mill, agriculture equipments or machinery repair, electrical, electronic and house-hold appliances;
- (iv) Public amenities such as public amenities like panchayat offices, schools, mahila mandals, yuvak mandals, community halls, post offices, dispensaries and clinics (including health, veterinary and Indian System of Medicines) information technology kiosks, patwar khana, guard huts, anganwaris, electricity and telephone installations and connections, roads and paths, ropeways, water tanks, rain harvesting tanks, overhead or underground water tanks, pump houses, check dams, temples, churches, mosques, graveyards, cemeteries, cremation grounds and other religious buildings, bathing ghats, cremation shelters, rest sheds, baths, drainage, toilets, latrines, urinals, sewerage installations, wells, tube wells, baulies, garbage disposal bins, depots and other installations;
- (v) Agriculture and horticulture related activities including rain harvesting structures, milk chilling plant, farm level godowns, seeds and fertilizer stores, farm clinics, pre-cooling units, primary processing units, green houses and poly houses; and
- (vi) Heritage related activities such as lakes, reservoirs, dams, baulies, wild life sanctuaries, cemeteries, graveyards, railway lines.

(2) Any person who owns land in areas falling outside urbanisable areas, as shown in the Interim Development Plans or Development Plans of Planning or Special Areas, shall be exempted from permission under this Act for the development activities specified under sub-section (1) upto the limits as may be prescribed.]

¹[**30-B. Exemption in respect of development of certain lands or buildings.-** (1) Notwithstanding anything contained in the Himachal Pradesh Town and Country Planning Act, 1977 or any other law for the time being in force, the Government or any Officer or Authority, vested with the powers of Director, may, on application, by order, exempt development on any land or building or class of lands or buildings developed on or before the date of commencement of this Act from all or any of the provisions of the Himachal Pradesh Town and Country Planning Act, 1977 or any rules or regulations made thereunder upto such extent and on payment of such regularization fee as specified under sub-section (8).

(2) The application under sub-section (1) shall be made within sixty days from the date of publication of this Act in the Official Gazette in Appendix-I, which can also be downloaded from the official website “www.tcphp.in” of the Department and may be submitted alongwith fee of one thousand rupees which shall be disposed of within a period of one year from the date of publication of this Act.

¹ Inserted vide H.P. Act No. 1 of 2017, effective from 15th June, 2016 and shall remain in force for one year from the date publication i.e. 30th January, 2017.

(3) After passing of order under sub-section (1), permission shall be deemed to have been granted for such development of land or building.

(4) Nothing contained in sub-section (1) shall apply to any application made by any person who does not have any right over the land or building referred to in sub-section (1).

(5) Any person aggrieved by any order passed under sub-section (1) by any Officer or Authority may, prefer an appeal to the Appellate Authority within thirty days from the date of receipt of order. The condition of one year stipulated under sub-section (2) shall not apply in appeals and such appeals shall be decided by the Appellate Authority within a period of six months from the date of filing thereof.

(6) The fee under this section shall be charged and deposited by the Competent Authority through Treasury Challan or e-Challan in the relevant Head of Account, and in case of Urban Local Bodies or Special Area Development Authorities, the fee shall be charged by way of Demand Draft or online payment by such Bodies.

(7) Before grant of exemption under sub-section (1), the following guidelines and principles shall be kept in view to ensure compliance thereof, namely:-

(a) the buildings shall be regularized on the basis of “as is where is”:

Provided that a structural stability certificate shall be submitted by the applicant for the building to be regularized from the qualified Structural Engineer;

- (b) there shall be no exemption for regularization in respect of deviations and unauthorized constructions in the Green Area and Heritage Area as defined under Interim Development Plans or Development Plans as notified by the State Government from time to time;
- (c) deviations and un-authorized constructions falling in Green Area and Heritage Area as delineated in the Interim Development Plans (IDPs) or Development Plans (DPs) shall be regularized which have taken place prior to the notification (s) of delineation of such areas;
- (d) the exemptions shall also be granted for such buildings which have been constructed above the road level;
- (e) developments carried out in lands or buildings owned by individuals in Himachal Pradesh Housing and Urban Development Authority (HIMUDA) Colonies, where such Colonies are maintained and administered by the Urban Local Bodies (ULBs), shall be considered for exemption;
- (f) developments or constructions carried out without permission or in deviation to approved plan, if not exempted under this section, shall face disconnection of services and demolition;
- (g) the competent authority shall ensure that the roof of buildings to be exempted and regularized under this section is rendered totally ineffective for further vertical construction in future;
- (h) un-authorized constructions carried out on the area and pockets kept for parks, sewerage or any other facility in any approved map of sub-division of land by the competent authorities shall not be regularized;
- (i) parking floor(s) as per approved plan, if converted to any other use like residence or shop etc. shall not be regularized but in case, alternative equivalent or more parking space is available then, parking floor(s) so converted into other use(s) shall be considered for regularization:

Provided that such cases where existing road level is not abutting from approved parking floor and further there is no feasibility of construction of road leading to approved parking floor may be considered for regularization;

- (j) no exemption shall be allowed in case the owner has encroached upon any land owned by the Government or Local Authority or Board or Corporation or Institution or any Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 or other person's land;
- (k) no exemption shall be allowed on the land lying below Highest Flood Level (HFL) as delineated in the Development Plans;
- (l) in case of apartments, flats or slabs, the individual owner may apply for regularization; and
- (m) the people residing in the areas where provisions of the Himachal Pradesh Town and Country Planning Act, 1977 or the Himachal Pradesh Municipal Act, 1994 or the Himachal Pradesh Municipal Corporation Act, 1994 were not in force at the time when the buildings were constructed need not to apply:

Provided that if there is any ambiguity as to whether any person is exempted or not under this section, he may make an application alongwith documents, if any, to the Competent Authority online or otherwise, who shall pass appropriate order on his application.

(8) The regularization fee for regularization of deviations and unauthorized constructions shall be charged as per TABLE given below:—

TABLE

(A) For Residential buildings:-

Sr. No.	Description	Rates		Remarks
		Municipal Area	Outside Municipal Area	
1.	Where permission has been taken for development but deviations on setbacks or storeys or in both have been made.	@ Rs. 800/- per M2	@ Rs. 400/- per M2	(i) Regularization Fee shall be charged on the deviated area i.e. on setbacks and unauthorized storeys which is beyond sanctioned plan; and (ii) For the purpose of calculation of deviations, the Regulations i.e. setbacks, number of storeys/Floor Area Ratio (FAR) as were applicable at the time of approval of original or revised or retained map shall be taken into consideration.
2.	Where permission	@ Rs. 1000/-	@ Rs. 500/-	For the purpose of

has not been taken for development i.e. total unauthorized construction.	per M2	per M2	calculation of deviations, the total built up area of the building shall be taken into consideration.
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(B) The regularization fee as specified under clause (A) of this subsection shall be increased by 100% for Commercial, Hotel, Tourism, Industrial or other Uses :

Provided that the regularization fee as specified under clause (A) of this sub-section shall be decreased by 75% for the persons falling under the categories of Below Poverty Line (BPL) and Economically Weaker Sections (EWS) of the society :

Provided further that no other fee shall be charged like Development of land, Building Operation, Change of Existing Building Use and Change of Land Use etc.]

31. Grant or refusal of permission.- (1) On receipt of an application under section 30 ¹[or 30-A] the Director may, subject to the provisions of this Act by order in writing-

- (a) Grant the permission unconditionally;
- (b) Grant the permission, subject to such conditions as may be deemed necessary under the circumstances; and .
- (c) refuse the permission.

(2) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(3) Any permission granted under sub-section (2) with or without conditions shall be in such manner as may be prescribed.

(4) Every order under sub-section (2) shall be communicated to the applicant in such manner as may be prescribed.

(5) If the Director does not communicate his decision whether to grant or refuse permission to the applicant within ²[two months] from the date of receipts of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of ³[two months]:

Provided that in computing the period of ⁴[two months] the period in between the date of requisitioning any further information or documents from the applicant and date of receipt of such information or documents from the applicant shall be excluded.

⁵**{31-A. Structural Stability Certificate.-** The applicant shall submit a Structural Stability Certificate of the building before putting the same into use, in the manner prescribed ⁶[including soil investigation report and structural design basis report as per provisions for safety against natural hazard]. }

¹ Inserted vide Act. No. 11 of 1997.

² Substituted for the words "six months" vide Act. No. 11 of 1997

³ Substituted for the words "six months" vide Act. No. 11 of 1997.

⁴ Substituted for the words "six months" vide Act. No. 11 of 1997.

⁵ Section 31-A inserted vide H.P. Act No. 15 of 2001.

⁶ Inserted vide H.P. Act No. 41 of 2013.

32. Appeal.- (1) Any applicant aggrieved by an order ¹[passed under any of the provisions of this Act] may, within thirty days of the date of communication of order to him prefer an appeal to an officer not below the rank of a ²[Secretary], appointed by the State Government in this behalf, and such an appeal shall be made in such manner and accompanied by such fees as may be prescribed.

³[(2) The officer appointed under sub-section (1) shall, after giving a reasonable opportunity of being heard, decide the appeal preferred under this section within a period of six months from the date of filing of the same.]

(3) Subject to the provisions of section 33 the order of the appellate authority shall be final.

33. Revision.- The State Government may, at any time, but not later than twelve months of the passing of the order, on its own motion or on an application filed by the person aggrieved by any order by the appellate authority under section 32 within thirty days of the date of communication of such order to him, call for and examine the record of any case disposed of by Director under section 31 or appellate authority under section 32 for the purpose of satisfying itself as to the correctness of the order and as to the regularity of any proceeding of the Director or the appellate authority and may, when calling such record direct that the execution of the order be suspended. The State Government may, after examining the record, pass such order as it thinks fit and its order shall be final and no further application for revision or review thereof shall lie:

Provided that no order shall be passed unless the person affected thereby and the Director have been given a reasonable opportunity of being heard.

34. Lapse of permission.- Every permission granted under section 31 or section 32 or section 33 shall remain in force for a period of ⁴[three years] from the date of such grant and thereafter it shall lapse:

Provided that the Director may, on an application, extend such period from year to year but the total period shall, in no case exceed ⁵[five years] from the date on which the permission was initially granted:

Provided further that such lapse shall not bar any subsequent application for fresh permission under this Act.

35. Obligation to acquire land.- (1) Where any land is designated by a development plan as subject to compulsory acquisition,-

- (a) for development for the purpose of town expansion or town improvement, or
- (b) for development for the purpose of the Union or State Government or a local authority or a Special Area Development Authority constituted under this Act, or
- (c) for development as a highway or a public utility services and the owner of the land claims-
 - (i) the land has become incapable of reasonably beneficial use in its existing state, or

¹ Substituted for the words "granting permission on conditions or refusing permission under section 31" vide H.P. Act No. 14 of 2015.

² Substituted for the word "Commissioner" vide H.P. Act No. 14 of 1981.

³ Sub-section (2) substituted vide H.P. Act No. 14 of 2015

⁴ Substituted for the words "one year" vide H.P. Act No. 16 of 1994.

⁵ Substituted for the words "three years" vide H.P. Act No. 16 of 1994.

- (ii) the permission to develop land is given subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by carrying out the permitted development in accordance with the conditions, or
- (iii) the sale value of the land has diminished because of the designation of the land for acquisition or development, such owner may serve on the State Government within such time in such manner and together with such documents as may be prescribed, a notice requiring the appropriate authority to purchase his interest in the land in accordance with the provisions of this Act.

(2) On receipt of the notice under sub-section (1) the State Government shall forthwith call from the Director and the appropriate authority such report or records, or both as may be necessary, which these authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(3) On receiving such records or reports the State Government may-

- (a) if it is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order of decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or the rules made thereunder, confirm the notice or direct that the permission be granted without conditions or subject to such conditions as will make the land capable of reasonably beneficial use;
- (b) in any other case, refuse to confirm the notice but in that case, the applicant shall be given a reasonable opportunity of being heard.

(4) If within a period of one year from the date on which the notice is served, the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(5) Upon confirmation of the notice the State Government shall, within a period of one year of such confirmation, proceed to acquire the land or that part of any land regarding which the notice has been confirmed in accordance with the provisions of this Act.

36. Deletion of reservation of designated land from draft or final development plan.-

(1) The appropriate authority, if it is satisfied that the land is not or is no longer required for the public purpose for which it is designated or reserved or allocated in the draft development plan or sectoral plan, or the final development plan or sectoral plan may request,-

- (a) the Director to sanction the deletion of such designation or reservation or allocation from the draft development plan or sectoral plan; or
- (b) the State Government to sanction the deletion of such designation or reservation or allocation from the final development plan or sectoral plan.

(2) On receipt of such request from the appropriate authority, the Director or, as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plans:

Provided that the Director or, as the case may be, the State Government may, before making any order, make such enquiry as he/it may consider necessary and satisfying himself/itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made the land shall be deemed to be released from such designation, reservation or allocation, as the case may be, and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

37. Power of revocation and modification or permission to development.- (1) If it appears to the Town and Country Development Authority or Special Area Development Authority that it is expedient, having regard to the development plan prepared or under preparation and to any other material considerations, that any permission to develop land granted under this Act or any other law, should be revoked or modified, the Town and Country Development Authority or the Special Area Development Authority may, by an order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that-

- (a) where the permission related to the carrying out or other operations, no such orders-
 - (i) shall affect such of the operations as have been previously carried out;
 - (ii) shall be passed after those operations have been completed;
- (b) where permission related to a change of use of land, no such order shall be passed at any time after the change has taken place.

(2) Where permission is revoked or modified by an order under the last foregoing section, and the owner claims from the Town and Country Development Authority or the Special Area Development Authority, within the time and in the manner prescribed, amount in lieu of the expenditure incurred in carrying out the works after the grant of permission and in accordance with such permission, which has been rendered abortive by the revocation or modification, the Town and Country Development Authority or the Special Area Development Authority shall, after giving the owners reasonable opportunity of being heard by the Town Planning Officer and after considering his report, assess and offer subject to provisions of section 11 such amount to the owner as it thinks fit.

(3) If the owner does not accept the amount and gives notice within such time as may be prescribed, of his refusal to accept, the Town and Country Development Authority or the Special Area Development Authority shall refer the matter for the adjudication of the court and the decision of the court shall be final and be binding on the owner and the Town and Country Development Authority or the Special Area Development Authority.

38. Penalty for unauthorised development or for use otherwise than in conformity with development plan.- Any person who, whether at his own instance or at the instance of any other person, commences, undertakes or carries out any development or changes use of any land-

- (a) without permission required under this Act;
- (b) in contravention of the permission granted or any condition subject to which such permission has been granted;
- (c) after the permission for development has been duly revoked; or
- (d) in contravention of any permission which has been duly modified;
- ¹[(e) in contravention of any other provision of this Act;]

shall, without prejudice to any action that may be taken under section 39, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two

¹ Clause (e) inserted vide H.P. Act No. 41 of 2013.

thousand rupees, or with both, and in the case of a continuing offence with further fine which may extend to two hundred rupees for every day during which the offence continues after conviction for the first commission of the offence:

¹[Provided that imposition of fine shall not be deemed to regularize the unauthorized constructions, colonies or buildings, and the Director after giving a notice of thirty days and after affording a reasonable opportunity of being heard, may demolish or remove such unauthorized constructions. The amount incurred on account of demolition or removal of un-authorized construction shall be recovered from the owner of such building as arrears of land revenue.]

39. Power to require removal of unauthorised development.- (1) Where any development has been carried out as indicated in section 38 the Director may, within ²[ten years] of such development, serve on the owner a notice requiring him, within ³[fifteen days] from the date of service of the notice-

- (a) in cases specified in clause (a) or (c) of section 38 to restore the land to its condition existing before the said development took place;
- (b) in cases specified in clause (b) or (d) of section 38 to secure compliance with the conditions or with the permission as modified;
- ⁴[(c) in cases specified in clause (e) of section 38 to secure compliance in the manner as may be prescribed:]

Provided that where the notice requires the discontinuance of any use of land, it shall be served on the occupier also;

⁵[(2) in case any person after issuance of notice under sub-section (1) does not comply with the directions, he shall be served with a notice to stop or to seal, as the case may be, unauthorized development in the manner as may be prescribed.]

⁶[(3) Any person aggrieved by such notice may within fifteen days of the receipt of the notice, apply for composition of offences under section 39-C and till the time the application is disposed of, the notice shall stand withdrawn.]

(4) The foregoing provisions of this chapter, shall so far as may be applicable, apply to an application under sub-section (3).

⁷[(5) If the offence is compounded, the notice shall stand withdrawn, but if the offence is not compounded, the notice shall stand, or if such offence is partly compounded, the notice shall stand withdrawn to the extent the offence is compounded, but shall stand in respect of the offence which is not compounded, and thereupon the owner shall be required to take steps specified in the notice under sub-section (1) in respect of the offence not compounded.]

(6) If within the period specified in the notice or within the same period after the disposal of the application, the notice or so much of it as stands is not complied with, the Director may,-

¹ Proviso inserted vide H.P. Act No. 41 of 2013

² Substituted for the words "five years" vide H.P. Act No. 16 of 1994.

³ Substituted for the words "such period being not less than one month and not exceeding three months as may be specified therein" vide H.P. Act No. 15 of 2001.

⁴ Clause (c) inserted vide H.P. Act No. 41 of 2013.

⁵ Sub-section (2) substituted vide H.P. Act No. 41 of 2013.

⁶ Sub-section (3) substituted vide H.P. Act No. 15 of 2001.

⁷ Sub-section (5) substituted vide H.P. Act No. 15 of 2001

- (a) prosecute the owner for not complying with the notice and whether the notice requires the discontinuance of any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice, and
- (b) where the notice required the demolition or any alteration of any building or works or carrying out of any building or other operations itself, cause the restorations of the land to its condition before the development took place and secure compliance with the condition of the permission or with the permission as modified by taking such steps as the Director may consider necessary, including demolition or alteration of any building or works or carrying out of any building or other operations, and recover the amount of any expenses incurred by him in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing offence with further fine which may extend to two hundred and fifty rupees for every day during which the offence continues after conviction for the first commission of the offence.

¹[39-A. Power to stop development.- (1) Where any development in any area being commenced in contravention of the development plan or sectoral plan or without the permission, approval or sanction referred to in section 15-A (2), 16 or 31 or in contravention of any condition subject to which such permission, approval or sanction has been granted-

- (i) in relation to a planning area or a special area, the State Government or an Officer of the State Government empowered by it in this behalf.
- (ii) in relation to any other area within the local limits of a local authority, the competent authority thereof, may, in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

(2) Where such development is not discontinued in pursuance of the order under sub-section (1) the State Government or the officer of the State Government or the competent authority, as the case may be, may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development or to seize any construction material, tools, machinery, scaffolding or other things used in such development within such time, as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) Any of the things caused to be seized by the State Government or the officer of the State Government or the competent authority, as the case may be, under sub-section (2) shall, unless the owner thereof turns up to take back such things and pays to the State Government or the officer of the State Government or the competent authority, as the case may be the charges for the removal or storage of such things, be disposed of by it or him by public auction or in such other manner and within such time as the State Government or the officer of the State Government or the competent authority thinks fit.

(4) The charges for the removal and storage of the things sold under sub-section (3) shall be paid out of the proceeds of the sale thereof and the balance, if any, shall be paid to the owner of the things sold on a claim being made therefore within a period of one year from the date of sale, and if

¹ Sections 39-A and 39-B inserted vide H.P. Act No. 16 of 1994.

no such claim is made within the said period, shall be credited to the fund of the State Government or the competent authority, as the case may be.

(5) If any development the area other than a planning area or the special area, has been commenced in contravention of the development plan or sectoral plan or without the permission, approval or sanction referred to in section 15-A (2), 16 or 31 or in contravention of any conditions subject to which such permission, approval or sanction has been granted and the competent authority has failed to make an order under sub-section (1) or, as the case may be, a requisition, under sub-section (2), within the time that may be specified in this behalf by the State Government, the State Government may, after observing such procedure as may be prescribed by rule made in this behalf, direct any officer to make the order or requisition, as the case may be, and that officer shall be bound to carry out such direction and the order or requisition made by him in pursuance of the direction shall be complied with accordingly.

(6) After the requisition under sub-section (2) or sub-section (5) has been complied with, the competent authority or the officer to whom the direction was issued by the State Government under sub-section (5), as the case may be, may depute by a written order a police officer or an officer or an employee of the State Government or local authority concerned to ensure that the development is not continued.

(7) Any person failing to comply with an order under sub-section (1), or as the case may be, under sub-section (5), shall be punishable with fine which may extend to two hundred rupees for every day during which the noncompliance continues after the service of the order.

(8) No compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development under section 39 or the discontinuance of the development under this section.

(9) The provisions of this section shall be in addition to, and not in derogation of, any other provision relating to stoppage of building operations contained in any other law for time being in force.

39-B. Power to seal unauthorized development.- (1) It shall be lawful for the State Government or the competent authority, as the case may be, at any time, before or after making an order for the removal or discontinuance of any development under section 39 or section 39-A to make an order directing the sealing of such development in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such development.

(2) Where any development has been sealed, the State Government or the competent authority, as the case may be, may, for the purpose of removing or discontinuing such development, order the seal to be removed.

(3) No person shall remove such seal except-

- (a) under an order made by the State Government or the competent authority under sub-section (2); or
- (b) under an order of the appellate authority or the State Government made in an appeal under this Act.]

¹**[39-C. Power to compound offences.-** (1) The Director may, on an application made to him, accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money as may be fixed by the State Government by rules.

(2) On payment of such sum of money to the Director, no further proceedings shall be taken against such person in respect of such offence.]

CHAPTER VII TOWN AND COUNTRY DEVELOPMENT AUTHORITY

40. Establishment of Town and Country Development Authority.- (1) The State Government may, by notification, establish a Town and Country Development Authority by such name and for such area as may be specified in the notification. If the State Government considers the local authority or authorities or any other authorities like State Housing Board, the State Government may, by notification, designate such authority or authorities as the Town and Country Development Authority or Authorities for a particular area or areas to perform the functions of the Town and Country Development Authority or Authorities under this Act in addition to their own duties and functions and in such cases sections 42, 43, 44, 45, 46 and 48 of this Act will not operate.

(2) The duty of implementing the proposal in the development plan, preparing one or more town development schemes, and acquisition and development of land for the purposes of expansion or improvement of the area specified in the notification under sub-section (1) shall, subject to the provisions of this Act, vest in the Town and Country Development Authority established for the said area.

41. Incorporation of Town and Country Development Authority.- Every Town and Country Development Authority shall be a body corporate by the name specified in the notification under section 40, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and subject to the provisions of this Act or any rules made thereunder, to transfer any property held by it, to contract and to do all other things necessary for the purposes of this Act and may sue and be sued in its corporate name.

²**[42. Constitution of Town and Country Development Authority.-** Save as provided in section 42-A, every Town and Country Development Authority shall consist of the Chairman and other members not exceeding twelve to be appointed by the State Government:

Provided that, whenever it is expedient to ensure the efficient performance of the functions assigned to the Town and Country Development Authority, the State Government may appoint one or more persons as its Vice Chairman and where more than one person is appointed as Vice-Chairman one of them shall be designated as Senior Vice-Chairman:

Provided further that the State Government may, if it considers it necessary so to do, constitute a single member Town and Country Development Authority.

(2) The Chairman, and in the absence of the Chairman the Senior Vice-Chairman, and in the absence of both the Chairman and Senior Vice Chairman, the Vice-Chairman, shall preside over the meetings of the Town and Country Development Authority constituted under sub-section (1), The Senior Vice-Chairman and Vice-Chairman shall, in relation thereto, exercise such powers and perform such functions as the Chairman may assign to them.]

¹ Section 39-C inserted vide H.P. Act No. 17 of 2000.

² Section 42 amended vide H.P. Act No. 1 of 1984 and substituted vide H.P. Act No. 7 of 1995.

¹[42-A. Constitution of Town and Country Development Authority for the capital town of Himachal Pradesh.- (1) Notwithstanding anything to the contrary contained in section 42, the Town and Country Development Authority for the capital town of Himachal Pradesh shall consist of the Chairman, Vice-Chairman and eight other members to be appointed by the State Government.

(2) The Chief Minister and the Minister-in-charge of Town and Country Planning, shall be the ex-officio Chairman and Vice-Chairman of the Town and Country Development Authority constituted under sub-section (1) and for the discharge of their duties as such they shall not be entitled to any emoluments and in relation to them the provisions contained in section 43, sub-section (3) of section 44, section 45 and section 46 will not operate:

Provided that during the period of any proclamation issued under Article 356 of the Constitution of India, the Governor may, by notification, appoint any person to act as the Chairman and the Vice-Chairman of the Development Authority constituted under this section and the persons so appointed shall exercise the powers vested in them and perform the functions assigned to them under the Act during the period the said proclamation issued under Article 356 continues to be in force and the provisions contained in sections 43, 44 (3), 45 and 46 shall apply to them.

(3) In the absence of the Chairman, the Vice-Chairman shall preside over the meeting of the Town and Country Development Authority constituted under this section and shall, in relation thereto, exercise such powers and perform such functions as the Chairman may assign to him.]

43. Term of office of Chairman and other members.- (1) The names of the Chairman ²[Vice-Chairman] and the members shall be notified in the Official Gazette.

(2) The term of office of the Chairman ²[Vice-Chairman] and the members shall be such as may be prescribed.

(3) The person ceasing to be a Chairman ³[Vice-Chairman] or member by reason of the expiry of his term of office, shall if otherwise qualified be eligible for reappointment.

44. Resignation of members and filling of casual vacancy.- (1) Every person becoming ⁴[a Vice-Chairman or a member under section 42] may at any time resign his office by writing under his hand addressed to the Chairman, and upon receipt of resignation by the Chairman, the office of the ⁵[Vice-Chairman or the member, as the case may be] shall become vacant.

(2) If the State Government considers that the continuance in office of ⁶[any Vice-Chairman or any member] is not in the public interest, the State Government may make an order terminating his appointment and thereupon he shall cease to be ⁷[a Vice-Chairman or a member, as the case may be,] of the Town and Country Development Authority, notwithstanding that the term for which he was appointed has not expired.

¹ Section 42-A inserted vide H.P. Act No. 1 of 1984 effective w.e.f. 20-10-1983.

² Inserted vide H.P. Act No. 7 of 1995.

³ Inserted vide H.P. Act No. 7 of 1995

⁴ Substituted for the words "a member under clause (b) of section 42" vide H.P. Act No. 7 of 1995.

⁵ Substituted for the words "member" vide H.P. Act No. 7 of 1995.

⁶ Substituted for the words "any member" vide H.P. Act No. 7 of 1995.

⁷ Substituted for the words "a member" vide H.P. Act No. 7 of 1995.

(3) In the event of a vacancy occurring in the office of the Chairman ¹[, the Vice-Chairman] or any member, the vacancy shall be filled by the State Government in accordance with the provisions of section 42 and the person so appointed shall hold office for remainder of the term of his predecessor.

²[45. Salary and allowances.- (1) The Chairman shall receive such salary and allowances and shall be subject to such terms and conditions of service as may be prescribed. (2) The Senior Vice-Chairman, Vice-Chairman and members may be paid such allowances as may be prescribed.]

46. Leave of absence and appointment, etc. of acting Chairman.- (1) The State Government may grant leave to the Chairman subject to such terms and conditions as may be prescribed.

³[(2) Whenever the office of the Chairman falls vacant, on account of leave under sub-section (1), the Senior Vice-Chairman or whenever the offices of the Chairman and the Senior Vice-Chairman fall vacant, on account of leave, the Vice-Chairman shall act as the Chairman.]

47. Meeting of Town and Country Development Authority.- (1) The meetings of the Town and Country Development Authority shall be held at such time and such place as may be laid down by regulations:

Provided that until regulations are made in this behalf such meeting shall be convened by the Chairman.

(2) The quorum of meeting shall, unless otherwise provided by regulations, be one-third of the total number of members of the Town and Country Development Authority.

(3) The Town and Country Development Authority shall make regulations to provide for the conduct of its business.

48. ⁴[The Chief Administrator].- (1) There shall be a ⁵[Chief Administrator] of every Town and Country Development Authority who shall also act as the ³ [Member-Secretary] of the Authority.

(2) ⁶[The Chief Administrator] shall be appointed by the State Government.

49. Other officers and servants.- (1) Every Town and Country Development Authority may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties:

Provided that no post shall be created save with prior sanction of the State Government:

Provided further that the power of appointment shall be subject to such restrictions as the State Government may, from time to time, impose.

¹ Added vide H.P. Act No. 7 of 1995

² Section 45 substituted vide H.P. Act No. 7 of 1995.

³ Sub-section (2) of section 46 substituted vide H.P. Act No. 7 of 1995.

⁴ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995.

⁵ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995.

⁶ Substituted for the word "Secretary" vide H.P. Act No. 1 of 1984 effective w.e.f. 20-10-1983.

50. Conditions of service of ¹[the Chief Administrator] and other officers and servants.- (1) ²[The Chief Administrator] under section 48 and other officers and servants appointed under section 49 shall work under the superintendence and control of the Chairman.

(2) The State Government may make rules in respect of recruitment, qualifications, appointment, scale of pay, leave, leave allowance, loans, pension and other service conditions of ³[the Chief Administrator] and other officers and servants. 7. Substituted for the words “the Chief Executive Officer” vide H.P. Act No. 7 of 1995.

51. Town development schemes.- A town development scheme may make provision for any of the following matters:-

- (i) acquisition, development and sale or leasing of land for the purpose of town expansion;
- (ii) acquisition, relaying out of, rebuilding or relocating areas which have been badly laid out or which have developed or degenerated into a slum;
- (iii) acquisition and development of land for public purposes such as housing development, development of shopping centres, cultural centres, administrative centres;
- (iv) acquisition and development of areas for commercial and industrial purposes;
- (v) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial or other facilities ;
- (vi) acquisition of land and its development for the purpose of laying out or remodelling of road and street pattern;
- (vii) acquisition and development of land for play-grounds, parks, recreation centres and stadium;
- (viii) reconstruction of plots for the purpose of buildings, roads, drains, sewerage lines and other similar amenities;
- (ix) any other work of a nature such as would be about environmental improvements which may be taken up by the authority with the prior approval of the State Government.

52. Preparation of town development scheme.- (1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme.

(2) Not later than thirty days from the date of such declaration or intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the Official Gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under sub-section (2), the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

(4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (3) and

¹ Substituted for the words “the Chief Executive Officer” vide H.P. Act No. 7 of 1995.

² Substituted for the words “the Chief Executive Officer” vide H.P. Act No. 7 of 1995.

³ Substituted for the words “the Chief Executive Officer” vide H.P. Act No. 7 of 1995.

shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under sub-section (5), approve the draft scheme as published or make such modifications therein as it may deem fit.

(5) Where the town development scheme relates to reconstitution of plots, the Town and Country Development Authority shall, notwithstanding anything contained in sub-section (4), constitute a committee consisting of ¹[the Chief Administrator] of the said authority and two other members of whom one shall be representative of the Himachal Pradesh Housing Board and the other shall be an officer of the Public Works Department not below the rank of an Executive Engineer nominated by the Chief Engineer, Public Works Department for the purpose of hearing objections and suggestions received under sub-section (3).

(6) The Committee constituted under sub-section (5) shall consider the objections and suggestions and give hearing to such persons as are desirous of being heard and shall submit its report to the Town and Country Development Authority within such time as it may fix along with proposals to-

- (i) define and demarcate the areas allotted to or reserved for public purposes;
- (ii) demarcate the reconstituted plots;
- (iii) evaluate the value of the original and the constituted plots;
- (iv) determine whether the areas reserved for public purpose are wholly or partially beneficial to the residents within the area of the scheme;
- (v) estimate and apportion the compensation to or contribution from the beneficiaries of the scheme on account of the reconstitution of the plot and reservation of portions for public purpose;
- (vi) evaluate the increment in value of each reconstituted plot and assess the development contribution leviable on the plot holder:

Provided that the contribution shall not exceed half the accrued increment in value;

- (vii) evaluate the reduction in value of any reconstituted plot and assess the amount payable therefore.

(7) Immediately after the town development scheme is approved under sub-section (4) with or without modifications, the Town and Country Development Authority shall publish in the Official Gazette and in such other manner, as may be prescribed, a final town development scheme and specify the date on which it shall come into operation.

53. Power to revise the development schemes.- The Director may, at any time, but not later than two years from the date of publication of the final town development scheme under section 52, on his own motion or on an application filed within thirty days of such publication of the final scheme by any person aggrieved by the final scheme, call for and examine the record of any scheme for the purpose of satisfying himself as to the correctness of the order passed by the Town and Country Development Authority, or as to the regularity of any proceedings of such authority and when calling such record direct that the execution of the scheme be suspended. The Director may, after examining the record, pass such order as he thinks fit and his order shall be final:

Provided that no order shall be passed unless the person affected thereby and the Town and Country Development Authority have been given a reasonable opportunity of being heard.

¹ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995.

54. Power of State Government to give directions.- (1) The State Government may, if it considers necessary in public interest so to do, give directions to the Town and Country Development Authority-

- (a) to frame a town development scheme;
- (b) to modify a town development scheme during execution;
- (c) to revoke a town development scheme, for reasons to be specified in such direction:

Provided that no direction to modify or revoke a town development scheme shall be given unless the Town and Country Development Authority is given an opportunity to present its case.

(2) The direction given by the State Government under this section shall be binding on the Town and Country Development Authority.

55. Restriction on land use and development.- As from the date of publication of declaration to prepare a town development scheme no person shall, within the area including in the scheme, institute or change the use of any land or building or carry out any development save in accordance with the development authorised by the Director in accordance with the provisions of this Act prior to the publication of such declaration.

56. Lapse of scheme.- If the Town and Country Development Authority fails to implement the town development scheme within a period of three years from the date of publication of the final scheme under section 52, it shall, on the expiration of the said period of three years, lapse.

57. Town development scheme a public purpose.- Land needed for the purpose of town development scheme shall be deemed to be a land needed for public purpose within the meaning of the Land Acquisition Act, 1894 (1 of 1894).

58. Acquisition of land for Town and Country Development Authority.- The Town and Country Development Authority may at any time after the date of publication of the final town development scheme under section 52 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894) and on the payment of amount awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed.

59. Developments.- (1) The Town and Country Development Authority shall take necessary steps to develop the land vested in it under section 58 in accordance with the provisions on the town development scheme:

Provided that if the State Government or the Director has, after such enquiry as may be necessary, reason to believe that the Town and Country Development Authority is not taking adequate steps to develop the land has deviated from the final scheme, it/he may give such directions to that authority as may be considered necessary in the circumstances.

(2) The directions given under this section shall be binding on the Town and Country Development Authority and that authority shall give effect to them forthwith.

60. Disposal of land, building and other development works.- Subject to such rules as may be made by the State Government in this behalf, the Town and Country Development

Authority shall, by regulation, determine the procedure for the disposal of development lands houses, building and other structures.

61. Development charges.- (1) Where, as a result of the implementation of town development schemes, there is in the opinion of the Town and Country Development Authority, an appreciation in the market value of lands adjacent to and affected by a scheme the Town and Country Development Authority may, in lieu of providing for the acquisition of such land, levy development charges on Owners of such land.

(2) The development charges shall be an amount equal to not less than one-fourth and more than one-third of the difference between the value of the land on the date of publication of the intention to prepare the town development scheme and the date of completion of the scheme.

62. Mode of levy.- (1) On completion of the town development scheme, the Town and Country Development Authority, shall, by a notice in such form and published in such manner as may be prescribed, declare the fact of such completion and of its intention to levy development charges in the area covered by the scheme, calling upon owners of land liable to pay development charges to submit objection, if any, within such period which shall not be less than thirty days from the date of publication of the notice.

(2) The authority specified in the notice shall, after giving the objectors an opportunity to be heard, forward the report to the Town and Country Development Authority.

(3) On receipt of the report under sub-section (2), the Town and Country Development Authority shall pass such orders thereon as it may consider fit.

(4) The Town and Country Development Authority shall, not later than three months after the publication of a notice declaring its intention to levy development charges, issue a notice in the prescribed form, assessing the charge due from every person affected by the levy of charges.

(5) Where the assessment is accepted, it shall be final. If, however, the assessment is not accepted, the person aggrieved may, within thirty days of the publication of notice, file an application in writing before the Revenue Officer not below the rank of Sub-Divisional Officer as may be authorised by the State Government in this behalf.

(6) The Revenue Officer may, after giving the applicant and the Town and Country Development Authority an opportunity to be heard, pass such orders on the application as he may deem fit under the circumstances and orders so passed shall be final.

(7) After the final determination of the assessment the Town and Country Development Authority shall cause a notice to be served on each assessee, asking him to pay the development charges within a period of sixty days from the date of receipt of the notice by him.

(8) Any payment made after the expiration of the period specified in the notice under sub-section (7) shall carry simple interest at 10 per cent per annum as from the date of the receipt of the notice by the assessee.

(9) The Town and Country Development Authority may, on an application made to it in that behalf, permit assessee to make payment of development charges in annual installments not exceeding five and fix a date by which each installment shall be payable.

(10) Where permission is granted to make payment in installments the amount of development charges shall carry a simple interest at fifteen percent per annum as from the date of the receipt of, notice under sub-section (7) and the interest due shall be payable along with each installment.

63. Fund of Town and Country Development Authority.- The Town and Country Development Authority shall have its own fund and all receipts of that authority shall be credited thereto and all payments by that authority shall be made therefrom.

64. Annual budget.- (1) ¹[The Chief Administrator] or any other officer designated to act as ²[the Chief Administrator] shall cause to be prepared not later than the 10th of March every year a statement of annual income and expenditure, giving the estimates and actuals of the past year and the estimates of the next financial year.

(2) The annual statement (hereinafter called the budget) to be prepared shall be placed by ³[the Chief Administrator] or any other officer designated to act as ⁴[the Chief Administrator], with the prior approval of the Chairman, before the Town and Country Development Authority.

(3) The Town and Country Development Authority shall consider the budget so submitted to it and sanction the same either unaltered, or subject to such alterations as it may think fit.

(4) A copy of the budget as sanctioned under sub-section (3) shall be submitted to the State Government and the Director.

(5) The State Government may direct the Town and Country Development Authority to make such modification in the budget as may be deemed necessary.

(6) The Town and Country Development Authority shall within thirty days of the date of receipt of such directions either accept the modification or make further submission to the State Government.

(7) The State Government, after considering the submissions of the Town and Country Development Authority, shall pass such orders thereon as may be deemed fit and from the date of such orders, the budget shall be deemed to be in force, with modifications ordered by the Government.

65. Power to borrow money.- Subject to such terms and conditions as may be prescribed in the Town and Country Development Authority may, with the prior sanction of the State Government, issue debentures or borrow money from Government ⁵[or other financial institutions] or the open market for all or any of the purposes of this Act.

¹ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995

² Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995.

³ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995

⁴ Substituted for the words "the Chief Executive Officer" vide H.P. Act No. 7 of 1995

⁵ Inserted vide H.P. Act No. 1 of 1984 effective w.e.f. 20-10-1983.

CHAPTER VIII SPECIAL AREAS

66. (1) If any area, town or township is designated as a special area in the regional plan or if the State Government is otherwise satisfied that it is expedient in the public interest that any area, town or township should be developed as a special area, it may, by notification, designate the area as a special area, which shall be known by such name as may be specified therein.

(2) Such notification shall define the limits of special area.

(3) The State Government may, by notification,-

- (a) alter the limits of the special area so as to include therein or exclude therefrom such area as may be specified in the notification;
- (b) declare that the special area shall cease to be so.

(4) Notwithstanding anything contained in the ¹ [the Himachal Pradesh Municipal Corporation Act, 1994, the Himachal Pradesh Municipal Act, 1994 and the Himachal Pradesh Panchayati Raj Act, 1994], the Municipal Corporation, ² [Municipal Council, Nagar Panchayat or a Gram Panchayat], as the case may be, shall, in relation to the special area and as from the date the Special Area Development Authority undertakes the functions under clause (v) or clause (vi) of section 70 cease to exercise the powers and perform the functions and duties which the Special Area Development Authority is competent to exercise and perform under this Act.

³[67. Special Area Development Authority.- (1) Every special area shall have a Special Area Development Authority which shall consist of-

- (a) the Chairman; and
- (b) such other members as the State Government may determine from time to time, who shall be appointed by the State Government.

(2) The State Government may, if consider expedient, appoint Vice Chairman or Chief Executive Officer or both, for any Special Area Development Authority.

(3) The Chief Executive Officer shall be a whole time officer of the Special Area Development Authority who shall receive such salary and allowances and shall be subject to such terms and conditions as may be determined by the State Government.

(4) The Chairman, Vice-Chairman and members shall not be entitled to any salary but shall receive such allowances as may be prescribed.

(5) The Chief Executive Officer shall exercise such powers and perform such duties as may be specified by regulations made by the said Authority.].

⁴[68. Incorporation of Special Area Development Authority.- (1) Every Special Area Development Authority shall be a body corporate with perpetual succession and a common seal, unless abolished, with power to acquire, hold and dispose of property, both movable and

¹ Substituted for the words "Himachal Pradesh Municipal Act, 1968 and the Himachal Pradesh Panchayati Raj Act, 1968" vide H.P. Act No. 15 of 2001.

² Substituted for the words "Municipal Committee, Notified Area Committee or a Panchayat" vide H.P. Act No. 15 of 2001.

³ Section 67 amended vide H.P. Act No. 14 of 1984 and substituted vide H.P. Act No. 22 of 2006, effective from 4th July, 2006.

⁴ Section 68 substituted vide H.P. Act No. 22 of 2006, effective from 4th July, 2006.

immovable, and to contract and shall sue and be sued by the name specified in the notification under sub-section (1) of section 66.

(2) The State Government may, by notification in the Official Gazette, abolish the Special Area Development Authority constituted under section 67 of the Act from such date as may be specified therein and the said Authority shall stand abolished accordingly.

(3) On and with effect from the date of abolition of the Special Area Development Authority all properties, assets, liabilities, funds, dues and staff which are realizable and vested in the said Authority shall be realizable and shall vest in such authority or corporation or agency, as the case may be, as the State Government may decide.]

69. Staff.- (1) Every Special Area Development Authority may appoint officers and servants as may be necessary and proper for the efficient discharge of its duties:

Provided that no post shall be created save with the prior sanction of the State Government.

(2) The State Government may make rules in respect of recruitment, qualification, appointment, scale of pay; leave allowance and their conditions of service of the officers and servants, appointed under sub-section (1)

70. Functions.- The functions of the Special Area Development Authority shall be,-

- (i) to prepare, if required to do so, the development plan for the special area;
- (ii) to implement the development plan after its approval by the State Government;
- (iii) for the purpose of implementation of the plan, to acquire, hold, develop, manage and dispose of land and other property;
- (iv) to carry out construction activity and to provide such utilities and amenities as water, electricity, drainage and the like;
- (v) to provide the municipal services as specified in the Himachal Pradesh Municipal Act, ¹[1994];
- (vi) to provide for the municipal management of the special area in the same manner as is provided in the Himachal Pradesh Municipal Act, ²[1994];
- (vii) to otherwise perform all such functions with regard to the special area as the State Government may, from time to time, direct:

Provided that functions specified in clauses (v) and (vi) shall not be, performed unless so required by the State Government.

71. Powers.- The Special Area Development Authority shall

- ³[(a) for the purpose of acquisition of land make a request to the State Govt. to acquire land for public purpose under the provision of ⁴[Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013] };
- (b) for the purpose of planning, exercise the powers which the Director has under this Act ⁵[except CHAPTERS IX-A and IX-B]; and

¹ Substituted for the figure "1968" vide H.P. Act No. 15 of 2001.

² Substituted for the figure "1968" vide H.P. Act No. 15 of 2001.

³ Section 71(a) substituted vide H.P. Act No. 2 of 2007.

⁴ Substituted for the words, figures and signs "Land Acquisition Act, 1894" vide H.P. Act No. 14 of 2015.

⁵ . Inserted vide H.P. Act No. 14 of 2015.

(c) for this purpose the municipal administration, have the powers which a Municipal Council has under the Himachal Pradesh Municipal Act, 1994].

72. Fund of Special Area Development Authority.- (1) Every Special Area Development Authority shall have its own fund and all receipts of that authority shall be credited thereto and all payments of that authority shall be made therefrom.

(2) The Special Area Development Authority shall levy the development charge in the manner as prescribed under sections 61 and 62 of this Act.

²[(2a) The Special Area Development Authority may levy infrastructure and maintenance charges at such rates as may be prescribed on the commercial establishments including industries, hotels, brick kiln, apartments, shopping mall etc. which may be utilized on development and maintenance of infrastructure like roads, parks, parking etc. with the prior approval of the Government.]

(3) The Special Area Development Authority may for all or any of the purposes of this Act-
 (a) accept grants from the State Government or a local authority;
 (b) raise loans, subject to such terms and conditions as may be prescribed.

73. Annual estimates.- (1) The Chairman shall lay, not later than 10th of March every year, before the Special Area Development Authority an estimate of the income and of the expenditure of that authority for the year commencing on the first day of April next ensuing in such detail and form as that authority may from time to time direct. \

(2) Such estimates shall make provision for the due fulfilment of all liabilities of the Special Area Development Authority and for the efficient implementation of this Act and shall be complete and a copy thereof shall be sent to each member of that authority at least ten clear days prior to the meeting before which the estimate is to be laid.

(3) The Special Area Development Authority shall consider the estimate so submitted and shall sanction the same either unaltered or subject to such alterations as it may think fit.

(4) The estimates so sanctioned shall be submitted to the State Government who may approve the same with or without modifications.

(5) If the State Government approves the estimates with modifications, the Special Area Development Authority shall proceed to amend the same and the estimates so modified and amended shall be in force during the year.

CHAPTER IX CONTROL

74. Power of State Government of supervision and control.- The State Government shall have power of superintendence and control over the acts and proceedings of the officers appointed under section 3 and the authority constituted under this Act.

¹ Substituted for the words "Committee has under the Himachal Pradesh Municipal Act, 1968" vide H.P. Act No. 15 of 2001.

² Sub-Section (2a) inserted vide H.P. Act No. 14 of 2015.

75. Power of State Government to give directions.- (1) In the discharge of their duties the officers appointed under section 3 and the authority constituted under this Act shall be bound by such directions on matters of policy as may be given to them by the State Government.

(2) If any dispute arises between the State Government and any authority as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

76. Power of Government to review plans etc. for ensuring conformity.- Notwithstanding anything contained in any other enactment for the time being in force, the State Government may, with a view to ascertaining that no repugnancy exists or arises with the provisions of this Act or the rules made thereunder, review the town improvement schemes, building plans or any permission for construction sanctioned or given by any authority under development plans, sanctioned under any enactment for the time being in force and may revoke, vary, or modify any scheme, plan, permission or sanction in conformity with the provisions of this Act:

Provided that no order under this section shall be made without giving a reasonable opportunity of being heard to the persons affected thereby.

77. Delegation of powers.-¹{(1) The State Government may, by order notified in the Official Gazette, direct that any power either exercisable by it or by the Director, under this Act (not being the power to make rules) may also be exercised, in such cases and subject to such conditions, if any, as may be specified in such order, by its such officer²[, registered private professional] or authority or the officer of the authority as may be specified therein:}

³[Provided that in case the powers are delegated to Municipal Corporation, Municipal Council or Nagar Panchayat⁴[or the Panchayati Raj Institutions], the Government may, by notification, permit such authorities to utilise the fee collected under the provisions of Himachal Pradesh Town and Country Planning Rules, 1978, toward their local fund.]

(2) Subject to such restrictions as may be imposed by the State Government by a general or special order, the Director, may, by an order in writing, delegate to any officer subordinate to him all or any powers exercisable by him under this Act or the rules made thereunder, other than the power to hear appeal and revision.

78. Dissolution of authorities.- (1) Whenever in the opinion of the State Government the continued existence of any authority constituted under this Act is un-necessary or undesirable, the State Government may, by notification, declare that such authority shall be dissolved from such date as may be specified therein and the authority shall stand dissolved accordingly.

(2) As from the said date—

- (a) all the properties, funds and dues which are vested in or realizable by the authority, shall vest in, or be realisable by, the State Government;
- (b) all liabilities which are enforceable against the authority shall be enforceable against the State Government;
- (c) for the purpose of realising properties, funds, and dues referred to in clause (a), the function of the authority shall be discharged by the State Government;

¹ Sub-section (1) substituted vide H.P. Act No. 11 of 1997.

² Inserted vide H.P. Act No. 7 of 2018.

³ Proviso added vide H.P. Act No. 15 of 2001.

⁴ Inserted vide H.P. Act No. 41 of 2013.

- (d) all powers and functions to be exercised or discharged by the authority under this Act shall be exercised and discharged by the Director and for that purpose any reference in this Act to the said authority shall be construed as a reference to the Director.

¹[XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]

CHAPTER X MISCELLANEOUS

79. Right of entry.- (1) Without prejudice to any other provisions of this Act the Director or any authority established under this Act may enter into or upon, or cause to be entered into or upon, any land or building for the purpose of the preparation of plan or scheme under this Act for-

- (a) making any measurement or surveyor taking levels of such land or building;
- (b) setting out or marking boundaries and intended lines of development;
- (c) making such levels boundaries and lines by placing marks and cutting trenches;
- (d) examining works under construction and ascertaining the course of sewers and drains;
- (e) ascertaining whether any land is being or has been developed in contravention of any provision of this Act or the rules or the regulations made thereunder:

Provided that-

- (i) in the case of any building used as a dwelling house, or upon any enclosed part of garden attached to such a building, no such entry shall be made except between the hours of sunrise and sunset or without giving its occupier at least 24 hours notice in writing of the intention to enter;
- (ii) sufficient opportunity shall in every instance be given to enable women (if any) to withdraw from such land or building;
- (iii) due regard shall always be had so far may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.

(2) Any person who obstructs the entry of an officer empowered or duly authorised under this section to enter into or upon any land or building or molests such officer after such entry shall, on conviction, be punished with simple imprisonment for a term which may extend to three months, or with a fine which may extend to five hundred rupees, or with both.

80. Jurisdiction of Court.- No court inferior to that of Magistrate of the first class shall try an offence punishable under this Act.

81. Cognizance of offences.- No court shall take cognizance of any offence under this Act except on a complaint in writing made over the signature of an officer duly authorised by the Director or a Town and Country Development Authority or a Special Area Development Authority, as the case may be.

82. Member and officers to be public servants.- Every member and every officer of any authority established under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

83. Suit and other proceedings.- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rules made thereunder.

¹ CHAPTER IX-A and CHAPTER IX-B inserted vide H.P. Act No. 41 of 2013 and omitted vide H.P. Act No. 7 of 2018.

¹[**83-A. Restriction on grant of Electricity, Water or Sewerage connection.**- No electricity, water or sewerage connection shall be given to any person within the Planning or Special area constituted under the Act, unless a No Objection Certificate has been obtained by such person from the Director or the Special Area Development Authority, as the case may be:]

²[Provided that the service providing authorities shall disconnect the service connections forthwith of a building or land, in case any deviations from the approved plan or un-authorized constructions is brought to the notice of such authorities by the Director or the officer vested with the powers of the Director.]

84. Vacancy not to invalidate proceedings.- No act of a Town and Country Development Authority or a Special Area Development Authority or any of its committee shall be invalid merely by reasons of-

- (a) any vacancy in, or defect in the constitution thereof; or
- (b) any defect in the appointment of a person acting as a Chairman or member thereof; or
- (c) any irregularity in the procedure thereof not affecting the merits of the case.

85. Member to continue till successor enters upon office.- A Chairman or a member of a Town and Country Development Authority or a Special Area Development Authority shall, notwithstanding the expiration of his term, continue to hold office till his successor enters upon office.

86. Interpretation or regional plan etc.- (1) If any question arises regarding the interpretation of any regional plan, the matter shall be referred to the Director who shall pass such order thereon as he may deem fit.

(2) Any person aggrieved by the decision of the Director may prefer an appeal to the State Government within such time and in such manner as may be prescribed.

(3) The decision of the State Government and subject to the decision of the State Government, the decision of the Director shall be final.

CHAPTER XI RULES AND REGULATIONS

87. Powers to make rules.- (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

- (i) other categories of officers which may be appointed under section 3(1);
- (ii) the form and manner of publication of notice inviting objections and suggestions under section 8(1);
- (iii) the manner of publication of the regional plan under section 9(2);
- (iv) the manner of publication of an existing land use map under section 15 for inviting objections and suggestions;
- (v) the regulation of the forms and contents of interim development plan under section 17;
- (vi) the manner of publication of the draft development plan under section 19(1);

¹ Section 83-A inserted vide H.P. Act No. 15 of 2001.

² Proviso inserted vide H.P. Act No. 14 of 2015.

- (vii) the manner of publication of public notice under section 20(4);
- (viii) the documents and plans which shall accompany the information under section 28(1);
- (ix) (a) the form of application under section 30 (1), the particular which such application shall contain and the documents which shall accompany such application;
(b) the fee which shall be accompanied with the application under section 30(2);
- (x) the form in which permission shall be granted under section 31(3);
- (xi) the manner of communication of order under section 31 (4);
- ¹[(xi-a) the Form in which Structural Stability Certificate is to be furnished under section 31-A of the Act;]
- (xii) the manner in which the appeal shall be made and the fees which shall accompany such appeal under section 32 (1);
- (xiii) the time within which, the manner in which and the documents together with which a notice shall be served under section 35(1);
- (xiv) the manner in which amount in lieu of expenditure incurred after the grant of permission may be assessed under section 37 (1);
- ²[(xiv-a) the manner in which an application shall be made under section 39-C of the Act and the amount to be charged for composition of offence;]
- (xv) the manner in which an application shall be made under section 39(3) ;
- ³[(xv-a) the rates at which, and conditions subject to which, the salary and allowances to be paid to the Chairman, Vice Chairman and members under section 45;]
- (xvi) the manner of publication of declaration under section 52 (2); (
- (xvii) the form in which and the manner in which the town development schemes in draft form shall be published under section 52 (3);
- (xviii) the manner in which the final town development scheme shall be published under section 52 (7);
- (xix) the terms and conditions subject to which the land shall vest in the Town and Country Development Authority under section 58;
- (xx) (a) the form in which and the manner in which a notice shall be published under section 61 (1); .
(b) the form in which a notice shall be issued under section 62 (4);
- (xxi) the terms and conditions subject to which the Town and Country Development Authority may issue debentures or borrow money under section 65;
- (xxii) the terms and conditions subject to which loans may be raised under section 72(2); and
- ⁴[(xxiii) any other matter for which Building Regulations or Bye Laws may be made including the matters relating to the development control and natural hazard prone area; and
- (xxiv) any other matter for which rules may be made.]

88. Regulations.- (1) A Town and Country Development Authority or a Special Area Development Authority, as the case may be, may, subject to the provisions of this Act and the rules made thereunder, make regulations generally to carry out the purposes of this Act.

¹ Clause (xi-a) inserted vide H.P. Act No. 15 of 2001.

² Clause (xiv-a) inserted vide H.P. Act No. 15 of 2001.

³ Clause (xv-a) added vide Act No. 7 of 1995.

⁴ Clause (xxiii) to (xxxviii) substituted for clause (xxiii) vide H.P. Act No. 41 of 2013 and again clauses (xxviii) and (xxiv) substituted for clauses (xxviii) to (xxxviii) vide H.P. Act No. 7 of 2018.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

- (a) the summoning and holding of meetings, the time and place where such meetings shall be held; and the conduct of business thereat;
- (b) procedure for disposal of developed lands, houses, buildings and other structures under section 60;
- (c) the management of property and the maintenance and audit of accounts ;
- (d) the mode of appointment of committees, summoning and holding of meetings, and the conduct of business of each such committee;
- (e) such other materials as may be necessary for the exercise of the powers and performance of duties and functions by the Town and Country Development Authority or the Special Area Development Authority, as the case may be, under this Act.

89. Power to lay the rules and regulations.- Every rule made under section 87 or the regulations made under section 88 shall be laid, as soon as may be after it is made, before the Legislative Assembly of Himachal Pradesh while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions; and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or regulation, as the case may be, or decides that the rule or regulation should not be made, the rule or regulation, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

90. Repeal and savings.- ¹[(1)] The Punjab Town Improvement Act, 1922 (4 of 1922), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Reorganization Act, 1966 (31 of 1966), and the Himachal Pradesh Town and Country Planning Ordinance, 1977 (2 of 1977), are hereby repealed.

Notwithstanding such repeal, anything done or any action taken or purporting to have been done or taken (including any rules, notifications or orders made or issued), in exercise of any power conferred by or under the said Act or the Ordinance shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under this Act.

²{(2) The Himachal Pradesh Apartment and Property Regulation Act, 2005 (Act No. 21 of 2005) is hereby repealed.

³[(3) The repeal of the Act under sub-section (2) or omission of Chapters IX-A and IXB (hereinafter referred to as “the said Chapters”) shall not affect,-

- (i) the previous operation of, or anything duly done or suffered;
- (ii) any right, privilege, obligation, delegation or liability acquired, accrued or incurred;
- (iii) any penalty, forfeiture or punishment incurred in respect of any offence;
- (iv) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment; and
- (v) any such investigation, legal proceedings or remedy may be instituted, continued or enforced, or any such penalty, forfeiture and punishment may be imposed, as if, the aforesaid Act or the said Chapters had not been repealed or omitted. }

¹ Existing section 90 renumbered as sub-section (1) vide H.P. Act No. 41 of 2013.

² Sub-sections (2) to (4) inserted vide Act No. 41 of 2013.

³ Sub-section (3) substituted vide H.P. Act No. 7 of 2018.

(4) Notwithstanding such repeal anything done or any action taken under the Act so repealed under sub-section(2) including any notification, order, notice issued, application made, or permission granted, which is not inconsistent with the provisions of this Act shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act was in force at the time such thing was done or action was taken and shall continue to be in force, unless and until superseded by anything done or any action taken under this Act.]

**APPLICATION FORM FOR COMPOSITION OF DEVIATIONS AND
UN-AUTHORISED CONSTRUCTIONS/DEVELOPMENTS**

No.....

Dated.....

To

The.....
.....

Sir/Madam,

I/We hereby apply for composition of deviations/unauthorized constructions/ developments having carried out on land bearing Khasra No Khata/ Khatauni No measuring M2 situated at Mauza Pargana Tehsil District Himachal Pradesh. My/our original/ revised/retained map was approved vide No dated (Strike out if no map was approved).

(a) Details of deviations/unauthorized constructions/developments carried out are as under :—

- (I) Schedule of Area :
- (i) Built up Area = M2
 - (ii) Open area = M2
 - (iii) Total Plot Area = M2
- (II) Schedule of Open Spaces :
- (i) Front Set Back = M
 - (ii) Left Side Set Back = M
 - (iii) Right Side Set Back = M
 - (iv) Rear Set Back = M
- (III) Deviations in the Set Backs (Storey wise) :
- (i) Ground Storey = M2
 - (ii) First Storey = M2
 - (iii) Second Storey = M2
 - (iv) Third Storey = M2
 - (v) Fourth Storey = M2
 - (vi) Fifth Storey = M2
 - (vii) Storey = M2

(b) The following documents are enclosed herewith :—

- (i) two sets of Location Plan in the scale of 1:1000;
- (ii) two sets of Site Plan in the scale of 1:200, clearly showing the building within Tatima dimensions and also showing all drainage lines, sewerage connection or location of septic tank, soak pit, rain water harvesting tank, solar passive arrangement and house drainage;
- (iii) two sets of detailed architectural drawings of the existing building/proposed construction showing each storey with two cross-sections and two elevations of the building in the scale of 1:100. These drawings are in the form of working

¹Inserted vide H.P. Act No. 1 of 2017, effective from 15th June, 2016 and shall remain in force for one year from the date publication i.e. 30th January, 2017.

drawing showing all the dimensions of rooms, openings, thickness of wall, floor and slab etc.;

- (iv) two sets of photographs taken from all sides of the building, clearly showing the number of storeys;
- (v) one copy of latest original Jamabandi;
- (vi) one copy of original Tatima showing dimensions of plot;
- (vii) one copy of Structural Stability Certificate from a qualified Structural Engineer;
- (viii) affidavit to the effect that building has been constructed,-
 - (a) on own land and has not encroached upon any Government or other person's land;
 - (b) that applicant has not raised construction over the controlled width of roads or that the road was notified as the National Highway/ State Highway/District Road after the construction of the building;
 - (c) that there is no pending litigation in respect of land or building in question with any person or authority; and
 - (d) that the applicant will not object for laying of any civic amenities.

Certified that the Plans have been prepared by Sh./Smt./Ms (Name and address of the Registered Architect/ Planner/ Engineer/Draughtsman), having Registration No dated and the Structural Stability Certificate has been issued by Sh./Smt./Ms (Name and address of the qualified Structural Engineer).

Enclosures : As above.

Yours faithfully,

Name.....

Address.....

Phone No.....

e-mail.....”.

(Authoritative English text of this Department Notification No. TCP-A (3)-1/2014 as required under clause (3) of Article 348 of the Constitution of India)

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

No.TCP-A(3)-1/2014

Dated Shimla-2, 1st December, 2014.

NOTIFICATION

Whereas the draft Himachal Pradesh Town and Country Planning Rules, 2014 were published in the Official Gazette, Himachal Pradesh (Extra Ordinary) vide this department notification of even number dated 30.7.2014 for inviting objection(s) and suggestion(s) from the person likely to be affected thereby, as required under sub-section (1) of section 87 of the Himachal Pradesh Town and Country Planning Act, 1977(Act No.12 of 1977);

And whereas, objection(s) and suggestion (s) have been received within the stipulated period by the State Government in this behalf and the same have been considered;

Now, therefore, in exercise of powers conferred by section 87 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Governor, Himachal Pradesh is pleased to make the Himachal Pradesh Town and Country Planning Rules, 2014 and to repeal the Himachal Pradesh Town and Country Planning Rules, 1978 published in the Official Gazette, Himachal Pradesh (Extra Ordinary) dated 6.4.1979, vide Notification No. 9-12/72 –PW (B) dated 19.12.1978, namely:-

**CHAPTER-I
PRELIMINARY**

1. Short Title and commencement.- (1) These rules may be called the Himachal Pradesh Town and Country Planning Rules, 2014

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) “Act” means the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) ;
- (b) “amenity” includes roads, water supply, street lighting, drainage, sewerage, public parks, schools, hospitals, community centers and other community building, landscaping and any other public utility service;
- (c) “approved development plan” means a plan prepared under the Act and duly approved by the State Government;
- (d) “Authority” means the Town and Country Development Authority or Special Area Development Authority, as the case may be, constituted under the Act;
- (e) “Chief Executive Officer” means the Chief Executive Officer of the Authority;
- (f) “Director” means the Director of Town and Country Planning Department, Himachal Pradesh;

- (g) ¹“field office” means the Divisional, Sub-Divisional or Town Planning Office of the Town and Country Planning Department;”
- (h) “form” means a form appended to these rules;
- (i) “Government” means the Government of Himachal Pradesh;
- (j) “layout plan” means a plan of the colony depicting the division or proposed division of land into plots, roads, open spaces, amenities, etc. and other details as may be necessary;
- (k) “local authority” means a Municipal Corporation constituted under section 3 of the Himachal Pradesh Municipal Corporation Act, 1994 or a Municipal Council or a Nagar Panchayat constituted under section 3 of the Himachal Pradesh Municipal Act, 1994 or Panchayati Raj Institutions constituted under the Himachal Pradesh Panchayati Raj Act, 1994 or Cantonment Board or any other authority notified by the State Government for the purposes of the Act;
- (l) “section” means a section of the Act; and
- (m) “Secretary” means the Secretary (Town and Country Planning) to the Government of Himachal Pradesh

(2) All the words and expressions used in these rules but not defined shall have the same meanings as have been assigned to them respectively in the Act.

CHAPTER-II REGIONAL PLANNING

3. Form of notice. The notice with respect to the draft Regional Plan to be published under sub-section (1) of section 8 of the Act shall be in **form-1**.

4. Manner of publication of notice. The notice specified in rule 3 shall be published in the Official Gazette and shall further be published by means of advertisement in one or more newspapers having wide circulation within the area of the Region. A copy of the notice shall also be pasted at the office of the Director and the concerned field office(s)

5. Manner of publication of Regional Plan. The Notification under sub-section (2) of section 9 of the Act shall be in **form-2** and shall be published in the Official Gazette and in one or more newspapers having wide circulation within the area of the Region. A copy of the notice shall also be pasted at the office of the Director and field office(s) concerned.

6. Notice of modifications in Regional Plan. In case, the draft Regional Plan is approved by the Government with modifications, a notice to this effect shall be published in the Official Gazette and in one or more newspapers having wide circulation within the area of Region under the proviso to sub-section (2) of section 9 of the Act in **form- 3**.

7. Consideration of modifications in Regional Plan. The objection(s) and suggestion(s), if any, received after publication of notice under rule 6 shall be considered by the Government and after giving reasonable opportunity of being heard to the persons affected thereby, a notification to the effect that the Regional Plan has been approved, shall be published in **form-4** in the Official Gazette and in one or more newspapers having wide circulation within

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016.

the area of Region. A copy of the said notification shall also be pasted at the office of Director and field office(s) concerned.

CHAPTER-III PLANNING AREAS, DEVELOPMENT PLANS AND SECTORAL PLANS

8. Manner of publication of Existing Land Use Map. A public notice of preparation of the Existing Land Use Map inviting objection(s) and suggestion(s) under sub-section (1) of section 15 of the Act shall be given in **form-5** by publishing the said notice in the Official Gazette and in one or more news papers having wide circulation within the Planning Area/ Special Area.

9. Adoption of Existing Land Use. A public notice shall be published under sub-section (3) of section 15 of the Act, in **form-6** in the Official Gazette and in one or more newspapers having wide circulation within Planning Area/ Special Area intimating that the Existing Land Use Map has been duly prepared and adopted and shall be available for inspection during office hours in the office of Director, its field offices, office of the Authority (if any) and the office of the local authority.

10. Manner of publication of approved Interim. The Interim Development Plan, as approved under sub-section (4) of section 17 of the Act, shall be published in the Official Gazette under sub-section (5) of section 17 of the Act and the notice of such publication shall be in **form-7**

11. Manner of publication of draft Development Plan or Sectoral Plan. A copy for the draft Development plan as prepared under section 18 or Sectoral Plan as prepared under section 21 of the Act, shall be made available for public inspection during office hours at the office(s) of the Director, the Authority (if any), the local authority and the field office(s) concerned for inviting the public objection(s) and suggestion(s) under sub section (1) of the section 19 or section 23 read with section 19 of the Act, as the case may be. The notice of the preparation of the draft Development Plan or the Sectoral Plan, as the case may be, and of making them available for public inspection shall be in **form-8** and shall be published in the Official Gazette and in one or more newspapers having wide circulation in the Planning Area/ Special Area.

12. Manner of publication of approved Development Plan or Sectoral Plan.- (1) Where the State Government approves Development Plan under sub-section (2) of section 20 of the Act or Sectoral Plan under section 23 of the Act with modifications, approved Development Plan the notice inviting objection(s) and suggestion(s) to be published in the Official or Sectoral Plan. Gazette and in one or more newspapers having wide circulation within the Planning Area /Special Area shall be in **form-9**.

(2) A public notice shall be published under sub-section (4) of section 20 or section 23 of the Act, in **form- 10** in the Official Gazette and in one or more newspapers having wide circulation in the Planning Area/ Special Area to give it due publicity intimating that the Development Plan or the Sectoral Plan has been approved without any modifications under sub-section (1) of section 20 or section 23 of the Act or with modifications under sub-section (3) of section 20 or section-24 of the Act, as the case may be, by the Government and shall be available for inspection during office

hours at the office of the Director, its field office(s), the offices of the Authority (if any) and local authority concerned.

13. Permission for development before the preparation of Interim Development Plan or Development Plan. In the Planning Area constituted under section 13 of the Act and the Special Areas designated under section 66 of the Act, where no Interim Development Plan (I.D.P.) or Development Plan (D.P.) has been prepared either under section 17 or under section 18 of the Act, the Director shall permit the sub-division of land or change of land use or the development of land or construction of buildings, Real Estate Projects** as the case may be, in conformity with the Regulations as given in **Appendix-1 to 9** of these rules.

14. Permission for the development after preparation of *Interim Development Plan or Development Plan. In the Planning Areas constituted under section 13 of the Act and the Special Areas designated under section 66 of the Act, where Interim Development Plan or Development Plan has been prepared either under section 17 or section 18 of the Act, the Director shall permit sub-division of land or change of land use or development of land or construction of buildings, Real Estate Projects** as the case may be, in conformity with the Regulations contained in the Interim Development Plan or Development Plan. In case Regulations as given in Appendix-1 to 9 are not contained in the said Interim Development Plan or Development Plan, the same shall be considered in addition to the Regulations as contained in the Interim Development Plan or Development Plan while granting permission by the Director.

CHAPTER-IV

CONTROL OF DEVELOPMENT AND USE OF LAND

15. Intention of development undertaken on behalf of Union Government or State Government or local authority or any authority constituted under the Act. The intimation by Union Government, State Government, a local authority or any Authority constituted under the Act regarding the intention to carry out any development on any land as envisaged under sub-section (1) of section 28 or section 29 of the Act, shall be on simple paper accompanied by following documents and particulars:-

- i. a copy of title/ownership documents i.e. latest jamabandi in original;
- ii. a copy of latest original tatima showing Khasra number(s), description and area of land in question, abutting path with its width as well as adjoining Khasra number(s) falling on all the outer limits/ boundaries of the land in question. The land applied for shall be shown in red, in the tatima;
- iii. three sets of Location Plan in the scale of 1:1000 showing North direction, indicating the land in question, showing main approach road(s), name of road(s) on which the property and boundaries abuts, important public buildings like hospital, school, cinema, petrol pump, existing land uses / building uses surrounding the land;
- iv. three sets of Site Plan in the scale of 1:200 showing North direction and all the boundaries of land in question, abutting path with its width, natural features like nullahs, ponds, trees, slopes, contours at an interval of 5.00 Metres if the land is undulated, high tension lines passing through or adjoining the land, existing roads,

** As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

* As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

- highways showing the right of way, railway lines, airports with their specification(s) and boundaries, showing details of utilities and services like water supply, drainage, sullage, sewage, sewerage alongwith disposal of drainage, sullage, sewage, position of septic tank, soak pit, rain harvesting tank, electric and telephone poles, showing manner and site for muck disposal, and all such other matters which need to be co-ordinated with the adjoining area;
- v. for sub-division of land into plots, three sets of Drawings in the scale of 1:100 showing North direction, dimensions and area of plots, internal roads, set backs, parks and open spaces, community buildings such as schools, dispensary, post office, bank etc. and all development proposals including a general report and mode so as to make scheme self explanatory;
 - vi. for construction of building, Real Estate Projects**etc., three sets of Drawings in the scale of 1:100 showing North direction, dimensions and area of building, Real Estate Projects** etc. and other architectural details and Specifications of proposed building, Real Estate Projects**etc. alongwith Schedule of Area including built up and open area, set backs, structural stability certificate and soil investigation report as specified in rule 21 of these rules and any other information or document or plan or design, as may be required by the Director;
 - vii. a note indicating the type of development proposed i.e. land use or building use, namely residential or commercial or industrial or public and semi-public etc; and
 - viii. the name and address of the registered Town Planner/ Architect/ Engineer/ Draughtsman/ Surveyor.

Note:-The Location Plan, Site Plan and Drawings can be drawn on single sheet or in multiple sheets depending upon the size and area of the land or building or apartment or colony, as the case may be.

16. *Form of application for permission of development. ** (1) Any person, intending to carry out development of any land under sub-section (2) application for of section 15-A or clause (a) of section 16 or sub-section (1) of section 30 or section permission of 30-A (beyond the limits as specified under section 30-A) of the Act may apply for development. such development in Form-11 for sub-division of land and Form-12 for construction of building alongwith the Specification and Schedule of area attached with the application form or for development of Real Estate Project may apply for such development in Form- 34 either personally or by post i.e. off line or online.

(2) Every application submitted under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 30 or section 30-A (beyond the limits as specified under section 30-A) of the Act or the Real Estate Project** shall be accompanied by fee as specified below:-

* As amended vide Himachal Pradesh Town and Country Planning (Third Amendment), Rules 2018

** As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

Sr. No.	Component	Unit per Square meter of built up area	Municipal Limits		Outside Municipal Limits i.e. Rural Area	
			Residential Use ₹	Other than Residential Use ₹	Residential Use ₹	Other than Residential Use ₹
1	Fee for building permission/sanction/re vision of building plan	M ²	8.00	10.00	5.00	8.00
2	Fee for addition/alteration/revalidation	M ²	8.00	10.00	5.00	8.00
3	Fee for approval of Sub-division of land	M ²	2.50		1.00	
4	Fee for Change of Land Use from the use as prescribed in the Interim development Plan/Development Plan to propose land use	M ²	16.00	20.00	10.00	16.00

Note:- (i) The Urban Local Bodies and Special Area Development Authorities shall have liberty to levy amended unitary fee under above components.

(ii) No fee shall be charged from the Below Poverty Line (BPL) families, Economically Weaker Sections (EWS) of the society and from the applicants of Social Housing Schemes notified by the Government from time to time upto 100 M² plot area. This benefit may be availed by a family only once. However, if the plot area is above 100M², the fee shall be charged on the additional area.

17. Registration Qualification and Duties of Private Professionals. All the plans attached with the applications submitted under rule 15 and sub-rule (1) of rule 16 shall be prepared, designed, and signed by Registered Private Professionals in accordance with the provisions of **Appendix-10** of these rules.

18. Prescribed Limits. The prescribed limits for the development activities exempted from permission under section 30-A of the Act shall be as given in **Appendix-8** of these rules. For carrying out all the development activities by Union Government or State Government or Authority or a Local Authority or any person which are beyond the prescribed limits shall apply for permission to the Director under rule 15 and sub-rule (1) of rule 16 of these rules.

19. Form of permission and manner of communication. The permission for development of land applied under sub-section (2) of section 15A or clause (a) of section 16 or section 28 or section 29 or section 30 or section 30-A (beyond the limits as specified under section 30-A) of the Act shall be granted in accordance with the provisions of the Act and these rules and shall be communicated to the person(s) concerned under section 31 of the Act in **form-13** and copies thereof shall be sent to the Authority, Local Authorities and any other office concerned with the development works alongwith a copy of the approved plan. In case of observations, the same shall be handed over to the applicant(s) failing which, the same shall be sent through registered (AD) or

by speed post. The plan shall be approved and signed by the Director, modifications, if any, shall be shown in red lines and one copy of approved plan shall be sent to the applicant(s). In case of excessive modifications, fresh plan shall be demanded incorporating the revised plan showing all the modifications communicated by the Director. Such order shall be handed over to the applicant(s). If applicant (s) is present, his acknowledgment shall be obtained. In case applicant(s) is not present, such order shall be sent to him under registered (AD) or by speed post. In case of deemed permission, intimation on simple paper alongwith total period of application retained by the Director shall be given by the applicant to the Director and the deemed permission shall be communicated to the applicant by the Director, provided it is in conformity to the provisions of the Act, rules and regulations of the Interim Development Plan or Development Plan.

***19-A** The No Objection Certificate for releasing Service Connections or Completion Certificate in respect of the Building shall be granted by the Director after satisfying himself about completion of construction of building as per approved plan /revised sanction to be carried out by the owner

The No Objection Certificate for releasing Service Connections or Completion Certificate shall be issued in **Form-13-A**.

20. Form of refusal and manner of communication. The refusal for development of land applied under sub- section (2) of section 15-A or clause (a) of section 16 or section 28 or section 29 or section 30 (beyond the limits as specified under section 30-A) of the Act shall be communicated to the person(s) concerned under section 31 of the Act in form-14. Such order shall be handed over to the applicant(s). If applicant(s) is present his acknowledgment shall be obtained. In case applicant(s) is not present, such order shall be sent to him under registered (AD) or by speed post.

****21. Structure of Stability Certificate.-** (1) The Soil Investigation Report shall be submitted by the applicant before construction of building(s) for the areas falling in sliding and sinking zones as defined in the respective Interim Development Plans or Development Plans or for any reclaimed piece of land. The Soil Investigation Report shall be given by the Geologist in Form-15.

(2) The Structural Stability Certificate shall be furnished by the applicant at the time of applying for permission and before putting the building into use. The Structural Stability Certificate shall be given by the Structural Engineer in Form-15.

Explanation- The minimum qualification for a Structural Engineer shall be Graduation in Civil Engineering of recognized Indian or foreign university or Institution of Engineers (India) and with minimum six years experience in structural engineering practice with designing and field work.

Note: (i) In the case of post-graduate degree of recognized Indian or foreign university in the branch of structural engineering, experience of four years shall be required and in the case of doctorate in structural engineering, experience of one year shall be required.”

* As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

** As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

(ii) Structural Engineer would be registered with the Department. Separate Notification for registration of Structural Engineer would be notified by the Administrative Department.

22. (1) Any applicant aggrieved by any order granting permission on conditions or refusing permission under section 31 of the Act or any order passed under any of the provisions of the Act may, within 30 days from the date of communication of such order to him, prefer an appeal in writing to an Officer not below the rank of Secretary, appointed by the State Government in this behalf in the following manner on **form-16**

- (i) It shall specify the date of order against which the appeal is made. A copy of the order thereof shall be attached;
- (ii) It shall specify a clear statement of facts and the grounds on which the appeal is made;
- (iii) It shall specify precisely the relief prayed for; and
- (iv) It shall contain the following verification certificate duly signed by the applicant(s):-
 "Ido hereby declare that the fact and contents stated above are true to the best of my knowledge and belief".

(2) The appeal under sub-rule (1) shall be accompanied by a fee of Rs. 100/- through Treasury Challan or through e-payment.

Note: These charges will be increased by 10% after a block of 5 years from the date of commencement of these rules. It will be rounded off to the nearest rupee.

23. Supply of copies of order or proceedings of record.- (1) A copy of the order passed by the Appellate Authority shall be given to all the parties in the appeal, free of cost. However, additional copies may be supplied to an individual having interest in the proceedings before the Director, Appellate Authority or the Government, on an application submitted by the applicant.

(2) The application under sub-rule (1) shall be accompanied by a fee of Rs. 10/-. Further, the copies in A4 size shall be given @ 2/- per page of copy applied. The fee may be paid through Treasury Challan or through e-payment.

Note: These charges will be increased by 10% after a block of 5 years from the date of commencement of these rules. It will be rounded off to the nearest rupee.

24. Notice by owner to purchase interest in land. The notice shall be served on the Government under sub-section (1) of section 35 of the Act, in **form -17** so as to reach it within a period of 60 days from the date of publication of notice for compulsory acquisition for the purpose of the Development Plan together with documentary proof of ownership, location plan, and site plan.

25. Manner of communication of revocation and modification or permission to development. Every order of revocation and modification of permission to development passed under sub-section (1) of section 37 of the Act, shall be communicated in **form -18** and shall be handed over to the owner (s). If owner (s) is present his acknowledgment shall be obtained. In case owner (s) is not present, such order shall be sent to him under registered (AD) or by speed post.

26. Manner in which amount in lieu of expenditure incurred to be paid. The manner in which amount in lieu of expenditure incurred after the grant of permission may be assessed under section 37 of the Act, as under:-

(1) Every claim under sub-section (2) of section 37 of the Act shall be made to the Town and Country Development Authority or the Special Area Development Authority within 90 days from the date of service of the order of revocation or modification.

(2) The claim shall be made in writing supported by details of expenditure incurred in carrying out development according to the permission granted and a further detailed estimate of such of the expenditure as has been rendered abortive on account of an order of revocation or modification of permission originally granted both being prepared by a Registered Private Professional. A certified copy of the commencement certificate under which permission for development was originally granted shall accompany such claim. The Town and Country Development Authority or the Special Area Development Authority, as the case may be, shall forward such claim to the Town Planning Officer who after giving the owner(s) reasonable opportunity of being heard shall send his report to the Town and Country Development Authority or the Special Area Development Authority, as the case may be. The Town and Country Development Authority or the Special Area Development Authority, as the case may be, after considering the report of the Town Planning Officer shall assess and award, subject to provision of section 11 of the Act, such amount to the owner (s) as it thinks fit.

(3) Every order regarding claims preferred by the owners and passed under sub-section (2) of section 37 of the Act, shall be communicated in **form-19** and shall be handed over to the owner(s). If owner (s) is present his acknowledgment shall be obtained. In case owner (s) is not present, such order shall be sent to him under registered (AD) or by speed post.

(4) The notice of refusal to accept the amount offered by the Town and Country Development Authority or the Special Area Development Authority, as the case may be, shall be given by the owner(s) within 30 days from the date of receipt of the offer.

27. Form of notice for demolition. A show cause notice A show cause notice to afford opportunity of being heard shall be served upon the defaulter by the Director in **form- 20** before issuing notice in form 21.

28. Form of notice for demolition, alteration, discontinuation of unauthorized. The notice under sub- section (1) of section 39 of the Act shall be in **form-21**

29. Form of notice to stop or seal the un-authorized development. The notice under sub-section (2) of section 39 of the Act shall be in **form - 22**. However, the notice under this rule may be given only after the non-compliance of the notice given under rule 28.

30. Application for composition of offences. The application under sub-section (3) of section 39 of the Act, shall be on the form as specified under sub-rule (1) of rule 35 of these rules.

31. *Form of order to stop unauthorized development. The order to stop unauthorized development under sub-section (1) of section 39-A of Act, shall be in **form-23**.

32. Police Assistance. Where any development after the service of the order under sub-section (1) of section 39-A of the Act is not stopped in pursuance of the notice served under rule 31 of these rules, the Officer empowered by the Government or the Competent Authority, as the case may be, shall, by an order in form-24, request the Station House Officer of the nearest Police Station to deploy adequate Police force to remove the person(s) by whom development has been commenced and all his assistants and workman from the place of development and seize the construction materials, tools, machinery, scaffolding or the things used in such development and article so seized shall be dealt with or disposed of in accordance with the provisions of sub-sections (3) and (4) of section 39-A of the Act.

33. Where the Competent Authority has failed to make an order to stop the development under sub-section (1) of section 39-A of the Act, and in case such order of stoppage has been made, has failed to requisition Police assistance under sub-section (2) of section 39-A of the Act, for a period of sixty days, the Government may, after calling, for the report of the Competent Authority concerned, direct the Competent Authority or any other Officer as the Government may deem fit, to make the order to stop the development under sub-section (1) of section 39-A of the Act, or as the case may be, requisition the Police assistance under sub-section (2) of section 39-A of the Act and such Competent Authority or the Officer shall carryout such directions.

34. Sealing of unauthorized development.- (1) Wherever it is considered expedient to seal any unauthorized development under subsection (1) of section 39-B of the Act, the Officer of the Government empowered in this behalf, or as the case may be, the Competent Authority shall afford, in **form- 25**, the reasonable opportunity of being heard to the persons against whom the order is purported to be made.

*(2) Wherever any un-authorized part of a building is sealed under the provisions of subsection (1) of Section 39-B of the Himachal Pradesh Town & Country Planning Act, 1977, the Officer of the Government empowered in this behalf shall ensure that—

- (a) the sealing is done in such a manner that the sealed portion is rendered non-usable. This may be done by sealing all the doors and windows by way of brick-walls, breaking/sealing the stair-case leading to the un-authorized portion and taking such measures as may be considered essential;
- (b) if the un-authorized portion is sealed to the satisfaction of the Officer of the Government empowered in this behalf, the remaining portion of the building may be allowed to be used temporarily and services be re-connected if the violator/ owner agrees to remove the part of remaining un-authorized portion of the building within a period of one year after obtaining an Undertaking in **Form 25-A** appended to these rules:

Provided that no sealing may be done on the part of building which has been approved by the Competent Authority.

* As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

* As amended vide Himachal Pradesh Town and Country Planning (Second Amendment), Rules 2018

Explanation.—Notwithstanding anything contained in Interim Development Plan and Development Plans prepared for Planning Areas and Special Areas and in areas referred under Appendix-I appended to these Rules, the provisions contained in this sub-rule shall apply alongwith Form 25-A.”.

35. Composition of offences. (1) Any person, not being the Union Government or Government or a Local Authority or an Authority constituted under the Act, may apply, under sub-section (1) of section 39-C of the Act, in **form-26** to the Director for composition of offences. The permission for composition of offences shall be conveyed in **form-27**.

(2) Every application submitted under sub-section (1) of section 39-C of the Act, shall be accompanied by a fee of Rs.200/- deposited into the Government Treasury, under the appropriate Head of Account through Treasury Challan or through e-payment.

(3) Composition fee shall be charged from the applicant at the rates specified below:-

Sr. No.	Offence	Composition Fee
1.	<p>In case of building where plan was approved and deviations have been carried out from the approved plan beyond the permissible limits as specified under rules and Regulations to the extent of 10% over any or all the set backs on ground floor and all the subsequent floors.</p> <p>(If the deviations are within the permissible limits, applicant need to get revised plan approved by paying the fee as specified and applicable under sub-rule (2) of rule 16 of these rules.)</p>	<p>(i) In the case of building falling within jurisdiction of Municipal Area @ Rs. 800/-per M² for ground floor level and @ Rs. 400/-per M² for each subsequent floor level; and</p> <p>(ii) In the case of building falling outside the jurisdiction of Municipal Area @ Rs. 400/-per M² for ground floor level and @ Rs. 200/- per M² for each subsequent floor level.</p>
*2.	<p>In case of building where plan was not approved but construction carried out is as per the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Himachal Pradesh Town and Country Planning Rules, 2014 and Regulations of Interim Development Plan or Development Plan.</p>	<p>The structure so constructed shall be regularized on payment of composition fee equal to 4 times of fee as specified and applicable under sub-rule (2) of rule 16 of these rules.</p>

* As amended vide Himachal Pradesh Town and Country Planning (Fourth Amendment), Rules, 2019

*3.	In case of building where plan was not approved and deviations have also been carried out beyond the permissible limits as specified under rules and Regulations to the extent of 10% over any or all the set backs on ground floor and all the subsequent floors.	The structure so constructed shall be regularized on payment of composition fee equal to 6 times of fee as specified and applicable under sub-rule (2) of rule 16 of these rules.
4.	Building constructed on an under size plot to the extent of 10% less than the permissible plot size as specified under rules and Regulations.	(i) In the case of building falling within the jurisdiction of Municipal Area, @ Rs. 5000/- lump sum in addition to fee as specified and applicable under sub-rule (2) of rule 16 of these rules; and (ii) In the case of building falling outside the jurisdiction of Municipal Area, @ Rs. 2000/lump sum in addition to fee as specified and applicable under sub-rule (2) of rule 16 of these rules.

¹Note: -(i) The charges under rule 35 will be increased by 10% after a block of 5 years from the date of commencement of these rules. It will be rounded off to the nearest rupee;
(ii) The deviations in Floor Area Ratio shall not require to be calculated separately, once deviations in individual floors in case of approved plan have been calculated.

However, in case of totally un-authorized construction no extra storey more than permissible under the Development Plan, Interim Development Plan or rules under sections 15-A or 16 of the Himachal Pradesh Town & Country Planning Act, 1977 shall be allowed.”

Provided that the Government may exempt such areas from the application of this rule, if the Local Authorities of such areas have framed their own rules, for this purpose. The offender shall be levied composition fee under such rules, wherein the rates of composition fee are on higher side but shall not be levied composition fee under both such Rules. The Government may direct the Municipal Authorities to amend its building Bye-Laws as per the Himachal Pradesh Town and Country Planning Act, 1977 and these Rules:

Provided further that each offence shall be compounded separately.

CHAPTER-V TOWN AND COUNTRY DEVELOPMENT AUTHORITY

36. Preparation of Town Development Scheme. (1) The Town and Country Development Authority shall publish a notice under sub section (2) of section 52 of the Act, in **form -28** declaring intention of making a Town Development Scheme in the Official Gazette not later than thirty days

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

from the date of declaration of intention to make Scheme and by means of an advertisement in one or more news papers having wide circulation in the locality. Copies thereof shall also be made available for inspection in the office of the Town and Country Development Authority concerned.

(2) Notice under sub-section (3) and sub-section (7) of section 52 of the Act, shall be in **form -29** and **form- 30** respectively and shall be published in the Official Gazette and in one or more news papers having wide circulation in the locality.

37. Acquisition of land. The land acquired by the State Government under section 58 of the Act, shall vest in the Town and Country Development Authority, subject to the law for the time being in force.

38. Mode of Levy. (1) Notice of intention to levy development charges under sub-section (1) of section 62 of the Act, shall be in **form -31** and shall be published in the Official Gazette and in one or more news papers having wide circulation in the area. Copies of the said notice shall also be affixed in the concerned offices of the Town and Country Development Authority.

(2) Notice under sub-section (4) of section 62 of the Act, for the assessment of development charges shall be in **form-32**.

39. Power to borrow money. The Town and Country Development Authority may borrow money under section 65 of the Act, subject to the following terms and conditions, namely:-

- (i) the Town and Country Development Authority may with the prior approval of the Government borrow money by issuing debentures for the purpose of the Act;
- (ii) the amount of money to be borrowed by issue of debentures. The issue price of debenture and terms and maturity shall be determined by the Authority with the prior approval of the Government;
- (iii) the rate of interest which debentures would carry shall be such as may, be fixed by the State Government;
- (iv) no debentures shall be issued, except with the guarantee by the Government as to the repayment of principal and payment of interest;
- (v) a sinking fund shall be constituted for the redemption of debentures and in case of any failure on this account an immediate report with reasons for such failure shall be made to the Government. The Authority shall be bound by such directions as may be issued by the Government in this behalf;
- (vi) debentures shall be negotiable by endorsement and delivery;
- (vii) the Authority may with the sanction of the Government reserve the debenture *bond for issuing to any particular person or institution or have the debenture(s) under written;
- (viii) brokerage and underwriting commission at such rate as may be fixed by the Authority from time to time shall be paid to banks, brokers and others on their applications and also on applications received through them, bearing their seal;
- (ix) applications for the issue of debenture(s) shall be made to the Authority in **form- 33**;

* As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

- (x) subscriptions to the debentures may be made by cheques or demand drafts drawn in favour of the Town and Country Development Authority;
- (xi) if the subscriptions exceed the total amount of the debentures issued, partial allotment may be made and the balance of the sum paid at the time of applications, shall be refunded as soon as possible. No interest shall be paid on the amount so refunded. The Authority may reserve the right to retain the subscriptions, received upto ten percent in excess of the sum floated;
- (xii) the debentures shall be issued in the denomination of Rs. 100/-, Rs. 500/-, Rs. 1,000/-, Rs. 5,000/-, Rs. 25,000/-, Rs.50,000/-, Rs.1,00,000/- and Rs. 5,00,000/;
- (xiii) the interest on debentures shall be paid half yearly. The interest is subject to the payment of income tax;
- (xiv) the debentures shall be redeemable on dates noted therein and the holder(s) shall have no claim(s) upon the Authority for the interest accruing after the expiry of the term;
- (xv) debentures which by reasons of damage sustained have become unfit for circulation shall be replaced at the request to the holder(s) on surrendering the damaged or defaced debentures, provided that the essential marks for genuineness and identity such as the number, the amount, the rate of interest, the date and signature of the Chairman and the member of the Authority are still recognizable. Fresh debentures shall also be issued to replace the lost or destroyed debentures when in the opinion of the Authority the fact of destruction is proved beyond doubt. When such proof is not produced or when in case of damage the essential marks in the debentures are lost and are no longer recognizable or the ***debenture shave** been lost or has been mislead, a new debenture may be issued only after the debenture which is alleged to be missing or un-recognizable has been advertised by the claimant and in the manner specified by the Authority and is not claimed by any other person; and
- (xvi) the re-issue of the debenture shall be made for the same amounts under the same number with the addition of the word "Re-newed". A fee of Rs10/- shall be charged for every renewed debenture to be issued

CHAPTER-VI SPECIAL AREAS

40. Terms and conditions subject to which loan may be raised by the Special Area Development Authority. (1) The Special Area Development Authority may for the purpose of the Act, raise loans under sub-section (3) of section 72 of the Act, in pursuance of a resolution passed at a special meeting convened for the purpose:

Provided that:

- (i) no loan shall be raised without the prior sanction of the Government; and
- (ii) the terms upon, the period within, and the method by which the loan is to be raised and repaid shall be subject to these rules and the approval of the Government.

(2) The Special Area Development Authority shall maintain a sinking fund for the repayment of loans raised under sub-rule (1) and shall pay every year in the sinking fund, such ¹amount, as may be sufficient for repayment, within the period fixed for all loans so raised.

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

- (4) The sinking fund or any part thereof shall be applied in or towards the discharge of the loan for which such fund was operated and until such loan is wholly discharged, it shall not be applied for any other purpose.

¹**40-A Infrastructure and Maintenance Charges.** The Special Area Development Authority may levy the infrastructure and Maintenance charges on commercial establishments including industries, hotels, brick kiln, apartments, shopping malls etc. which may be utilized on development and maintenance of infrastructure like roads, parks, parking, etc. at such rates as may be notified by the Special Area Development Authority concerned with the prior approval of the Government”.

CHAPTER-VII

REGISTRATION OF PROMOTERS AND ESTATE AGENTS

¹**41. Regulation for Real Estate Project.** The Regulations for development of Real Estate Projects shall be as specified in **Appendix-7**

²**42. Completion Certificate.** The Promoter shall apply in respect of entire Real Estate Project(s) or part thereof for Part Completion/Completion Certificate in **FORM-35**. The Competent Authority after satisfying itself about completion of development works as carried out by the Promoter partly or fully, as the case may be, in respect of the Real Estate Project(s) shall issue Part Completion/Completion Certificate in **FORM-36**.

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

² As amended vide Himachal Pradesh Town and Country Planning (Eighth Amendment), Rules 2022

TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH

FORM-1

(See rules -3 and 4)

NOTICE OF PUBLICATION OF DRAFT REGIONAL PLAN

No.....

Dated.....

In exercise of the powers vested under sub-section (1) of section 8 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) the Notice is hereby given that the draft Regional Plan for (Region) has been prepared in accordance with the provisions contained in aforesaid sub-section and a copy thereof is available for inspection during office hours in the following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

The particulars of the said draft plan have been specified in the Schedule below.

If there be any objection or suggestion with respect to the draft plan, it should be sent in writing to the Director, Town and Country Planning Department, Himachal Pradesh, Shimla before the expiry of sixty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh.

SCHEDULE

1. The Existing Land Use Map and its narrative report thereon.
2. A narrative report explaining the provisions of the draft plan supported by necessary maps and charts.
3. A notice indicating the priorities assigned to works included in the draft plan and the phasing of the programme of development as such.
4. A notice on the role being assigned to different Departments of Government, the Town and Country Development Authority, the Special Area Development Authorities and the Local Authorities in the enforcement and implementation of draft plan.

Place.....

Date.....

Director
Town and Country Planning Department
Himachal Pradesh, Shimla

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Region.

2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. All the Town and Country Planners in Town and Country Planning Department, Himachal Pradesh.
4. All the Assistant Town Planners in Town and Country Planning Department, Himachal Pradesh.
5. Notice Board.

Director
Town and Country Planning Department
Himachal Pradesh, Shimla

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

FORM -2

(See rule 5)

**NOTIFICATION OF APPROVAL AND NOTICE OF PUBLICATION OF APPROVED
REGIONAL PLAN**

No.....

Dated.....

Whereas, the Regional Plan for.....(Region)was published by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla vide Notice No.....dated.....for inviting objection(s) or suggestion(s).The objection(s) or suggestion(s) received were duly considered and the modifications were made, wherever required / no objection or suggestion was received.

Now, in exercise of the powers vested under sub-section (1) of section 9 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Governor, of Himachal Pradesh is pleased to approve the Regional Plan for (Region) without modifications and the said Regional Plan is hereby published as required under sub-section (2) of section 9 of the Act ibid and a copy of the said plan is available for inspection during office hours in the following offices:-

- 1
- 2
- 3
- 4

The said Regional Plan shall come into operation with effect from the date of its publication in the Official Gazette of Himachal Pradesh.

Place_____

Date_____

Secretary (TCP), to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notification in one or more newspapers in circulation in the Region.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notification in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP), to the
Government of Himachal Pradesh

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

FORM-3

(See rule-6)

NOTICE OF MODIFICATIONS IN THE REGIONAL PLAN

No.....

Dated.....

Whereas, the draft Regional Plan for (Region) was published by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla under Rule 2 of the Himachal Pradesh Town and Country Planning Rules, 2014 vide Notice No.....dated.....for inviting objection(s) and suggestion(s), which were duly considered and the modifications were made, wherever required/ no objection or suggestion was received and the draft Regional Plan was submitted to the Government for approval.

Now, in exercise of the powers vested under sub-section (1) of section 9 of Himachal Pradesh Town and Country Planning Act, 1977(Act No. 12 of 1977), the Governor, Himachal Pradesh proposes to approve the aforesaid Regional Plan for(Region) with modifications as specified in the Schedule below and the same is hereby published for inviting objection(s) and suggestion(s) thereon, as required under the proviso to sub-section (2) of section 9 of the Act *ibid*.

Any objection or suggestion with respect to the said modifications may be submitted by any person to the Secretary (Town and Country Planning) to the Government of Himachal Pradesh, Shimla in writing within a period of thirty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and such objection or suggestion which may be received before the expiry of the period specified above, will be considered by the State Government.

SCHEDULE

- 1
- 2
- 3
- 4

Place.....

Date.....

Secretary (TCP), to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Region.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP), to the
Government of Himachal Pradesh

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

FORM-4

(See rule 7)

NOTIFICATION OF APPROVAL OF THE REGIONAL PLAN

No.....

Dated.....

Whereas, the Regional Plan for(Region) was published by the Secretary, (Town and Country Planning) to the Government of Himachal Pradesh, Shimla vide Notice No.....dated..... for inviting objection(s) and suggestion(s) on the modifications, which were duly considered and further modifications have been made, wherever required/no objection or suggestion was received on the modifications.

Now, in exercise of the powers vested under sub-section (1) of section 9 of Himachal Pradesh Town and Country Planning Act, 1977(Act No. 12 of 1977), the Governor, Himachal Pradesh is pleased to approve the Regional Plan for (Region) with modifications and the said Regional Plan is hereby published as required under sub-section (2) of section 9 of the Act *ibid*. A copy of the said plan is available for inspection during office hours in the following offices:-

- 1
- 2
- 3
- 4

The said Regional Plan shall come into operation with effect from the date of its publication in the Official Gazette of Himachal Pradesh.

Place.....

Date.....

Secretary (TCP), to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Region.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP), to the
Government of Himachal Pradesh

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

FORM -5

(See rule -8)

NOTICE OF PUBLICATION OF EXISTING LAND USE MAP

No.....

Dated.....

In exercise of the powers vested under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), Notice is hereby given that the Existing Land Use Map for (Planning/ Special Area) has been prepared under sub-section (1) of section 15 of the Act ibid and a copy thereof is available for inspection during office hours in the following offices:-

- 1
- 2
- 3
- 4

If there be any objection or suggestion with respect to the Existing Land Use Map so prepared, it should be sent in writing to the Director, Town and Country Planning Department, Himachal Pradesh, Shimla within a period of thirty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh.

Any objection or suggestion which may be received from any person with respect to the said Existing Land Use Map before the period specified above will be considered by the Director.

Place.....

Date.....

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. All the Town and Country Planners in Town and Country Planning Department, Himachal Pradesh.
4. All the Assistant Town Planners in Town and Country Planning Department, Himachal Pradesh.
5. Notice Board.

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

TOWN AND COUNTRY PLANNING DEPARTMENT HIMACHAL PRADESH
FORM -6
(See rule - 9)

NOTICE OF ADOPTION OF EXISTING LANDUSE MAP

No.....

Dated.....

Whereas, objections and suggestions were invited vide Notice No dated with respect to the Existing Land Use Map for (Planning/ Special Area) under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977); and whereas, no objection or suggestion has been received.

Or

Whereas, objections and suggestions were received which were considered and rejected.

Or

Whereas, objections and suggestions were received and the modifications have been made in the said Existing Land Use Map, wherever, required.

Now, therefore, in exercise of the powers vested under sub-section (3) of section 15 of the Act *ibid*, Notice is given that the Existing Land Use Map for (Planning/Special Area) is hereby adopted with modifications/ without modifications and a copy thereof is available for inspection during office hours in the following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

The said Existing Land Use Map shall come into operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and it shall be conclusive evidence of the fact that the Map has been duly prepared and adopted.

Place.....

Date.....

Director
Town and Country Planning Department
Himachal Pradesh, Shimla

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. All the Town and Country Planners in Town and Country Planning Department, Himachal Pradesh.
4. All the Assistant Town Planners in Town and Country Planning Department, Himachal Pradesh.
5. Notice Board.

Director
Town and Country Planning Department
Himachal Pradesh, Shimla

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

**FORM -7
(See rule -10)**

**NOTIFICATION OF APPROVAL AND NOTICE OF PUBLICATION OF APPROVED
INTERIM DEVELOPMENT PLAN**

No.....

Dated.....

In exercise of the powers vested under sub-section (4) of section 17 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), the Governor, Himachal Pradesh is pleased to approve the Interim Development Plan for(Planning/ Special Area).

Now, as required under sub-section (5) of section 17 of the Act ibid, the Governor, Himachal Pradesh is pleased to publish the said Interim Development Plan which shall come into operation from the date of publication of this Notification in the Official Gazette of Himachal Pradesh and shall be binding on all local authorities within the said Planning/ Special Area. Notice is hereby given that a copy of the said Interim Development Plan is available for inspection during office hours in following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

Place.....

Date.....

Secretary (TCP), to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notification in one or more newspapers in circulation in the Region.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notification in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP), to the
Government of Himachal Pradesh

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**FORM-8
(See rule-11)**

NOTICE OF PUBLICATION OF DRAFT DEVELOPMENT PLAN OR SECTORAL PLAN

No.....

Dated.....

In exercise of the powers vested under sub-section (1) of section 19 or section 23 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the draft Development Plan for(Planning / Special Area) or draft Sectoral Plan for Sector.....of Development Plan for.....(Planning / Special Area), is hereby published and the Notice is given that a copy of the said draft Development Plan or draft Sectoral Plan is available for inspection during the office hours in the following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

The particulars of the said draft Development Plan or draft Sectoral Plan have been specified in the Schedule below.

If there be any objection or suggestion with respect to the said draft Development Plan or draft Sectoral Plan, it should be sent in writing to the Director, Town and Country Planning Department, Himachal Pradesh, Shimla within thirty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh.

SCHEDULE

1. The Existing Land Use Maps.
2. A narrative report, supported by maps and charts explaining the provisions of the draft Development Plan or draft Sectoral Plan
3. The phasing of implementation of the draft Development Plan or draft Sectoral Plan as suggested by the Director.
4. The provisions for enforcing the draft Development Plan or draft Sectoral Plan and stating the manner in which permission for development may be obtained.
5. An approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the draft Development Plan or draft Sectoral Plan.

Place.....

Date.....

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. All the Town and Country Planners in Town and Country Planning Department, Himachal Pradesh.
4. All the Assistant Town Planners in Town and Country Planning Department, Himachal Pradesh.
5. Notice Board.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT
FORM-9
(See rule- 12(1))**

**NOTICE OF MODIFICATIONS IN THE DEVELOPMENT PLAN OR
SECTORAL PLAN**

No.....

Dated.....

Whereas, the draft Development Plan for (Planning/Special Area) or draft Sectoral Plan for Sector of Development Plan for (Planning/Special Area) was published by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla under Rule 11 of the Himachal Pradesh Town and Country Planning Rules, 2014 vide Notice No dated for inviting objection(s) and suggestion(s), which were duly considered and the modifications were made, wherever required and the draft Development Plan or draft Sectoral Plan was submitted to the Government for approval.

Now, in exercise of the powers vested under sub-section (1) of section 20 or section 23 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Governor, Himachal Pradesh proposes to approve the aforesaid Development Plan for.....(Planning/Special Area) or Sectoral Plan for Sector.....of Development Plan for(Planning/Special Area) with modifications as specified in the Schedule below and said modifications are hereby published in the Official Gazette of Himachal Pradesh.

As required under sub-section (2) of section 20 or section 23 of the Act, *ibid*, Notice is hereby given to invite objection (s) or suggestion(s) to the said modifications within a period of thirty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh.

Any objection or suggestion with respect to the said modifications may be submitted by any person to the Secretary, (Town and Country Planning) to the Government of Himachal Pradesh, Shimla in writing within a period of thirty days from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and such objection or suggestion which may be received before the expiry of the period specified above will be considered by the State Government.

SCHEDULE

1.
2.
3.
4.

Place

Date.....

Secretary (TCP) to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.

2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP) to the
Government of Himachal Pradesh

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

**FORM-10
(See rule -12(2))**

**NOTIFICATION FOR APPROVAL AND NOTICE OF PUBLICATION OF
DEVELOPMENT PLAN OR SECTORAL PLAN**

No.....

Dated.....

Whereas, the draft Development Plan for (Planning/Special Area) or draft Sectoral Plan for Sector of Development Plan for (Planning/Special Area) was published by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla under Rule 11 of the Himachal Pradesh Town and Country Planning Rules, 2014 vide Notice No dated for inviting objection(s) and suggestion(s), which were duly considered and the modifications were made, wherever required /no objection or suggestion was received on the modifications and the Development Plan or Sectoral Plan was submitted to the Government for approval.

Or

Whereas, objections and suggestions were invited on modifications by the undersigned under Rule 12(1) of the Himachal Pradesh Town and Country Planning Rules, 2014 vide Notice No dated with respect to the draft Development Plan for (Planning/Special Area) or draft Sectoral Plan for Sector of Development Plan for (Planning/Special Area); and whereas no objection or suggestions has been received.

Or

Whereas, objections and suggestions were received which were considered and rejected.

Or

Whereas, objections and suggestions were received and the modifications have been made in the said draft Development Plan or draft Sectoral Plan.

Now, in exercise of the powers vested under sub-section (1) of section 20 or section 23 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), the Governor, Himachal Pradesh is pleased to approve the Development Plan for.....(Planning/Special Area) or Sectoral Plan for Sector.....of Development Plan for(Planning/Special Area), with modifications/ without modifications and the same is hereby published in the Official Gazette of Himachal Pradesh as required under subsection (4) of section 20 or section 23 of the Act *ibid*. A Notice is hereby given that a copy of the said Development Plan or Sectoral Plan is available for inspection during office hours in the following offices:-

1.
2.
3.
4.

The said Development Plan or Sectoral Plan shall come into operation from the date of the publication of this Notification in the Official Gazette of Himachal Pradesh.

Place

Date.....

Secretary (TCP) to the
Government of Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notification in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notification in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Secretary (TCP) to the
Government of Himachal Pradesh

FORM-11

(See rule 16(1))

FORM OF APPLICATION FOR PERMISSION UNDER SUB-SECTION (2) OF SECTION 15-A OR CLAUSE (a) OF SECTION 16 OR SUB-SECTION (1) OF SECTION 30 OR SECTION 30-A (BEYOND THE LIMITS AS SPECIFIED UNDER SECTION 30-A) OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977 (ACT NO. 12 OF 1977) FOR SUB-DIVISION /DEVELOPMENT OF LAND

No.....

Dated.....

To

The Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

Sir,

*¹“I/we hereby apply for permission to undertake / carry out the sub-division/ development of land in Khata No Khatauni No Hadbast No Mauja/ Mohal No Khasra No measuring square Meter, over which I/We possess the necessary ownership rights, situated at Street/ Road/ Ward No. Block No Plot No of Scheme (Name of the Scheme, if any) Village Post Office Tehsil District Himachal Pradesh”.

I/We hereby submit the following documents:-

- (i) a copy of title/ownership documents i.e. latest jamabandi in original.
- (ii) a copy of latest original tatima showing Khasra number(s), description and area of land in question, abutting path with its width as well as adjoining Khasra number(s) falling on all the outer limits/ boundaries of the land in question. The land applied for is shown in red, in the tatima.
- (iii) three sets of Location Plan in the scale of 1:1000 showing North direction, indicating the land in question, showing main approach road(s), name of road(s) on which the property and boundaries abuts, important public buildings like hospital, school, cinema, petrol pump, existing land uses / building uses surrounding the land.
- (iv) three sets of Site Plan in the scale of 1:200 showing North direction and all the boundaries of land in question, abutting path with its width, natural features like nullahs, ponds, tress, slopes, contours at an interval of 5.00 Metres if the land is undulated, high tension lines passing through or adjoining the land, existing roads, highways showing the right of way, railway lines, airports with their specification(s) and boundaries, showing details of utilities and services like water supply, drainage, sullage, sewage, sewerage alongwith disposal of drainage, sullage, sewage, position of septic tank, soak pit, rain harvesting tank, electric and telephone poles, showing manner and site for muck disposal and all such other matters which need to be coordinated with the adjoining area.

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

- (v) for sub-division of land into plots, three sets of Drawings in the scale of 1:100 showing North direction, dimensions and area of plots, internal roads, set backs, parks and open spaces, community buildings such as schools, dispensary, post office, bank etc. and all development proposals including a general report and mode so as to make scheme self explanatory.
- (vi) a note indicating the type of development proposed i.e. land use or building use, namely residential or commercial or industrial or public and semi-public etc.

Certified that the plans have been prepared, designed and signed by Sh./Smt./M/s (Name and address of the registered Town Planner/Architect/ Engineer/ Draughtsman/ Surveyor) having Registration No Dated

I/We have deposited a fee of Rs.....only (Rupees.....only) in accordance with the scale as specified under sub-rule (2) of Rule 16 of the Himachal Pradesh Town and Country Planning Rules, 2014.

Enclosers: As above.

Yours faithfully,

(Signature of the Applicant(s))
 Address.....

 Phone No.....
¹e-mail address.....

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

FORM-12**(See rule 16(1))****FORM OF APPLICATION FOR PERMISSION UNDER SUB-SECTION (2) OF SECTION 15-A OR CLAUSE (a) OF SECTION 16 OR SUB-SECTION (1) OF SECTION 30 OR SECTION 30-A (BEYOND THE LIMITS AS SPECIFIED UNDER SECTION 30-A) OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977 (ACT NO. 12 OF 1977) FOR DEVELOPMENT OF LAND/ CONSTRUCTION OF BUILDING**

No.....

Dated.....

To

The Director,
Town and Country Planning Department, Himachal
Pradesh, Shimla.

Sir,

¹“I/we hereby apply for permission to erect/ re-erect, to make addition or alteration, to undertake repairs to a building on a piece of land in Khata No Khatauni No Hadbast No Mauja/ Mohal No. Khasra No measuring square Meter, over which I/We possess the necessary ownership rights, situated at Street/ Road/ Ward No. Block No Plot No of Scheme (Name of the Scheme, if any) Village Post Office Tehsil District Himachal Pradesh”.

I/We hereby submit the following documents:-

- (i) a copy of title/ownership documents i.e. latest jamabandi in original.
- (ii) a copy of latest original tatima showing Khasra number(s), description and area of land in question, abutting path with its width as well as adjoining Khasra number(s) falling on all the outer limits/ boundaries of the land in question. The land applied for is shown in red, in the tatima.
- (iii) three sets of Location Plan in the scale of 1:1000 showing North direction, indicating the land in question, showing main approach road(s), name of road(s) on which the property and boundaries abuts, important public buildings like hospital, school, cinema, petrol pump, existing land uses / building uses surrounding the land.
- (iv) three sets of Site Plan in the scale of 1:200 showing North direction and all the boundaries of land in question, abutting path with its width, natural features like nallahs, ponds, tress, slopes, contours at an interval of 5.00 Metres if the land is undulated, high tension lines passing through or adjoining the land, existing roads, highways showing the right of way, railway lines, airports with their specification(s) and boundaries, showing details of utilities and services like water supply, drainage, sullage, sewage, sewerage alongwith disposal of drainage, sullage, sewage, position of septic tank, soak pit, rain harvesting tank, electric and telephone poles, showing

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

manner and site for muck disposal and all such other matters which need to be co-ordinated with the adjoining area.

- (v) for construction of building, apartment, colony etc., three sets of Drawings in the scale of 1:100 showing North direction, dimensions and area of building, etc. and other architectural details and Specifications (enclosed herewith) of proposed building, apartment, colony etc alongwith Schedule of Area (enclosed herewith) including built up and open area, set backs.
- (vi) A copy of Structural Stability Certificate and a copy of Soil Investigation Report (for the areas falling in sliding and sinking zones as defined in respective Interim Development Plans or Development Plans or for any re-claimed piece of land). (Strike out which is not applicable).
- (vii) a note indicating the type of development proposed i.e. land use or building use, namely residential or commercial or industrial or public and semi-public etc.

Certified that the plans have been prepared, designed and signed by Sh./Smt./M/s.....(Name and address of the registered Town Planner/ Architect/ Engineer/ Draughtsman/ Surveyor) having Registration No.....dated.....and the Structural Stability Certificate has been issued by Sh./ Smt./ M/s(Name and address of the registered Civil Engineer) having Registration No.....dated.....and the Soil Investigation Report has been issued by Sh./Smt./M/s.....(Name and address of the registered Geologist) having Registration No.....dated.....(Strike out which is not applicable).

I/We have deposited a fee of Rs.....only (Rupees.....only) in accordance with the scale as specified under sub-rule (2)of Rule 16 of the Himachal Pradesh Town and Country Planning Rules, 2014.

Enclosers: As above.

Yours faithfully,

(Signature of the Applicant(s))

Address.....

.....

Phone No.....

¹e-mail address.....

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

SPECIFICATIONS

1. Total plot area = M²
2. Total built up area of each floor:-
 - (i) Ground floor = M²
 - (ii) First floor = M²
 - (i) Second floor = M²
 - (ii) Third floor = M²
 - (iii) Fourth floor = M²
 - (iv) = M²
3. The purpose for which it is intended to use the building.....
4. Specification to be used in the construction of:-
 - (i) Foundation.....
 - (ii) Walls.....
 - (iii) Floors.....
 - (iv) Roofs.....
5. Number of storeys of which the building will consist = Nos.
6. Approximate number of persons proposed to be accommodated= Nos.
7. The number of toilets proposed to be provided = Nos.
8. Whether the site has been built upon before or not, if so, when did the previous building cease to be fit for occupation
.....
9. Source of water to be used for purposed building
.....

.....
Signature of Applicant(s)

SCHEDULE OF AREA

1. Schedule of Area:-
 - (i) Built up area. = M²
 - (ii) Open area = M²
 - (iii) Total plot area = M²
2. Schedule of Open Spaces:-
 - (i) Front Set Back = M
 - (ii) Left Side Set Back = M
 - (iii) Right Side Set Back = M
 - (iv) Rear Set Back = M

.....
Signature of Applicant(s)

Registered (AD) /Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH
FORM- 13
(See rule-18 and 19)**

**FORM OF PERMISSION FOR DEVELOPMENT/ SUB-DIVISION OF LAND/
CONSTRUCTION OF BUILDING**

No.....

Dated

ORDER

To

Sh./Smt./M/s.....

.....

.....

Subject:- Permission for development/Sub-division of land/ construction of building.

Reference:- Your Application No.....Dated.....

You are hereby granted permission under section 31 as applied by you under section 28 or section 29 or section-30 or section 30-A (beyond the limits as specified under section 30-A) of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) to carry out the development/sub-division of land/ construction of building as mentioned in your Application under reference, subject to the following conditions, namely:-

1. Building permission shall be obtained from the local authorities concerned before the commencement of the development.
 2. The building operations shall be carried on strictly in accordance with the approved building plan.
 3. The permission is valid for a period of three years. After lapse of permission you shall have to apply for extension of permission.
 4. One copy of the approved plan is enclosed herewith.
- Please acknowledge the receipt of this order.

Enclosers: As above.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

Copy to:-

1. The Commissioner, Municipal Corporation/ Executive Officer, Municipal Council / Secretary, Nagar Panchayat.....alongwith a copy of the approved plan for information and further necessary action.
2. The Chairman, Town and Country Development Authority..... alongwith a copy of the approved plan for information and further necessary action.
3. The Registrar/ Sub-Registrar, Sub-Tehsil/ Tehsil.....District.....Himachal Pradesh alongwith a copy of the approved plan for information and making necessary entries in the Revenue record.

Enclosers: As above.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**¹FORM-13-A
(See rule 19-A)**

**NO OBJECTION CERTIFICATE FOR RELEASING SERVICE CONNECTIONS OR
COMPLETION CERTIFICATE**

No.....

Dated.....

To

Shri/Smt./M/s.....

.....

.....

Subject: No Objection Certificate for Releasing Service Connections or Completion Certificate.

Reference: Your Application No..... dated

This is in reply to your application under reference for issuance of No Objection Certificate for Releasing Service Connections or Completion Certificate. This No Objection Certificate for Releasing Service Connections or Completion Certificate is hereby granted in your favour for storey building for use on the land bearing Khasra No Hadbast No Mohal/ Mauza Tehsil District Himachal Pradesh, measuring as the development works have been completed by you in all respects, as per approved plan/revised sanction granted to you, vide letter No dated as per the provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977).

Further, this Department has no objection, if following service connection(s) with reference to section-83-A of the Himachal Pradesh Town and Country Planning Act, 1977 are released in your favour:-

Floor	Use	Number of service Connections (In Words)		
		Electricity	Water	Sewerage

This No Objection Certificate for Releasing Service Connections or Completion Certificate is issued subject to following condition(s):-

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

- (i) That the said building is constructed as per the provisions of the Himachal Pradesh Town and Country Planning Act, 1977, the Himachal Pradesh Town and Country Planning Rules, 2014 and the Regulations contained in the respective Interim Development Plan/ Development Plan of the concerned Planning Area/Special Area.
- (ii) This No Objection Certificate for Releasing Service Connections or Completion Certificate is subject to withdrawal, in case, if above named person carries out any un-authorized construction or any addition/alteration in old building or in case any documents produced by him/her are found fake.
- (iii) The service connection(s) is/ are issued for the above referred buildings constructed over the Khasra number as mentioned above. If the service connections are installed in other building (s) or other Khasra numbers, the same shall stand withdrawn.

*Note: - Strike out which is not applicable

Director,
Town and Country Planning
Department, Himachal Pradesh,
Shimla.

Copy to:-

1. The Executive Engineer, Division No. ..., Himachal Pradesh State Electricity Board Ltd..... for information and further necessary action.
2. The Executive Engineer, Division No....., Himachal Pradesh Irrigation and Public Health Department for information and further necessary action.

Director,
Town and Country Planning
Department, Himachal Pradesh, Shimla.

Registered (AD) /Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH
FORM- 14
(See rule -20)**

**FORM OF REFUSAL FOR DEVELOPMENT/ SUB-DIVISION OF LAND/
CONSTRUCTION OF BUILDING**

No.....

Dated

ORDER

To

Sh./Smt./M/s.....

.....

.....

Subject:- Refusal for development /Sub-division of land/ construction of building.

Reference:- Your Application No..... Dated.....

You are hereby informed that the permission to carry out the development works as mentioned in your Application under reference, is refused under clause (c) of subsection (1) of section 31 of the Himachal Pradesh, Town and Country Planning Act 1977, (Act No. 12 of 1977) on the following grounds:-

1.
2.
3.

One copy of refused plan is enclosed herewith.

Please acknowledge the receipt of this order.

Enclosers: As above.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

FORM 15
(See rule-21)
FORM OF STRUCTURAL STABILITY CERTIFICATE AND SOIL INVESTIGATION
REPORT

To

The Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

Subject:- Structural Stability Certificate.

I/We hereby certify that the building of Sh./ Smt./M/s proposed over Khasra No Mauja /Ward No Tehsil District Himachal Pradesh has been designed by me / us, as per the Indian Standards Codes for general structural safety against natural hazards including earthquake protections and after soil investigations. The building is structurally safe.

Name
(Civil Engineer)

Registration No
Dated
Address

I/We hereby certify that the soil and strata of the land over which building of Sh./ Smt./ M/s.....has been proposed to be constructed on Khasra No.. Mauja /Ward No..... Tehsil..... District Himachal Pradesh falling in sliding and sinking zones as defined in respective Interim Development Plan or Development Plan or in re-claimed piece of land has been geologically investigated by me / us, as per the Indian Standards Codes. The bearing capacity of soil and strata can sustain the load of the proposed building and it is safe.

Name
(Geologist)

Registration No
dated
Address
(Strike out which is not applicable)

FORM-16

(See rule-22)

FORM OF APPLICATION FOR APPEAL

No.

Dated.....

To

The Secretary (TCP) to the,
Government of Himachal Pradesh,
Shimla.

Subject: Appeal against the Orders of refusal of permission/ license.

Reference: Order No.....dated..... against which the appeal is filed.

Sir,

My /our application for grant of permission for development/ sub-division of land/ construction of building/ grant of license has been refused by the Director vide Order No.dated..... A certified copy of the Order is attached herewith. Against this Order, I am making this appeal. The clear statement of facts of the case and the grounds on which this appeal is made, is as under:-

- 1.....
- 2.....
- 3.....
- 4.....

In view of above stated grounds, precisely the relief prayed for is as under:-

- 1.
- 2.
- 3.
- 4.

I/ we have deposited a sum of Rs.....only (Rupees only) through Treasury Challan (original copy attached herewith) or through e-payment, as the prescribed fee for making this appeal.

I/ we.....do hereby declare that the facts and contents stated above are true to the best of my/our knowledge and belief.

Place.....

Date.....

Enclosures: As above.

Yours faithfully,
Signature of the Applicant(s))
Phone No.

FORM- 17**(See rule 24)****NOTICE TO THE GOVERNMENT TO PURCHASE INTEREST IN THE LAND**

No.....

Dated.....

To

The Secretary (TCP) to the,
Government of Himachal Pradesh,
Shimla.

Sir,

*“I/we hereby apply for permission to undertake / carry out the sub-division/ development of land in Khata No.....Khatauni No..... Hadbast No..... Mauja/ Mohal No. Khasra No..... measuring..... square Meter, over which I/We possess the necessary ownership rights, situated at Street/ Road/ Ward No. Block No..... Plot No..... of Scheme..... (Name of the Scheme, if any) Village.....Post Office..... Tehsil..... District..... Himachal Pradesh.”

It is further submitted that:-

1. The land has become incapable of reasonably beneficial use in its existing state; or
2. The land cannot be rendered capable of reasonably beneficial by carrying out the permitted development in accordance with the permission; or
3. The sale value has been diminished due to the reasons given below:-

.....
.....
.....

In view of the above mentioned reasons, I/we pray the Government to acquire the necessary interest in land, in accordance with the provisions of sub-section (5) of Section 35 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977).

I/ we/am/are enclosing herewith following documents for taking further action in the matter:-

1. Proof of ownership
2. Location Plan
3. Site Plan.....
4.
5.

Enclosers: As above.

Yours faithfully,
(Signature of the Applicant(s))

Address.....

Phone No.....

e-mail address.....

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

Registered (AD) /Speed Post

**TOWN AND COUNTRY DEVELOPMENT AUTHORITY/SPECIAL AREA
DEVELOPMENT AUTHORITY HIMACHAL PRADESH**

FORM -18

(See rule-25)

**ORDER OF REVOCATION/ MODIFICATION OF DEVELOPMENT
PERMISSION**

No.....

Dated

Whereas, permission under sub-section (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) to develop land was granted in favour of Shri/Smt./M/s.....vide Office Order No. dated.....;

And, whereas it appears to the undersigned that it is expedient, having regard to the Development Plan prepared or under preparation for..... Planning/ Special Area and to other material considerations, that the permission for development should be revoked or modified;

Now, therefore, the undersigned in exercise of the powers vested under subsection (1) of section 37 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), hereby revoke or modify the development permission granted vide Office Order referred to above, to the extent as given below:-

- 1.....
- 2.....
- 3.....

Chairman
Town and Country Development Authority/
Special Area Development Authority.....

Shri/ Smt./ M/s.....
.....
.....

Registered (AD) /Speed Post

**TOWN AND COUNTRY DEVELOPMENT AUTHORITY/SPECIAL AREA
DEVELOPMENT AUTHORITY HIMACHAL PRADESH**

**FORM-19
(See rule 26(3))**

ORDER

No.....

Dated.....

Whereas, a claim under sub-section (1) of section 37 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) for revocation or modification of permission for development was filed before the undersigned by Shri/ Smt./ M/s on dated.....;

And, whereas the said claim was sent to the Town Planning Officer for adjudication and giving his report after affording the owner(s) reasonable opportunity of being heard qua the claim;

And, whereas the report of the Town Planning Officer has been received and duly considered;

Now, therefore, the undersigned in exercise of the powers vested under subsection (2) of section 37 of the Act ibid, hereby assess and award an amount of Rs.....only(Rs.....only) in favour of Shri/Smt./M/s in respect of his/her/their aforesaid claim.

Chairman

Town and Country Development Authority
Special Area Development Authority.....

Shri Smt./M/s
.....
.....
.....

Registered (AD)/Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**FORM- 20
(See rule -27)**

**NOTICE UNDER SECTION 38 OF THE HIMACHAL PRADESH TOWN AND COUNTRY
PLANNING ACT, 1977
(ACT NO. 12 OF 1977)**

No.....

Dated,

To

Shri /Smt./M/s

.....

..... (Owner/Occupier)

Subject:- Show Cause Notice under the provisions of section 38 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act 12 of 1977).

Whereas you have commenced/ carried on/ completed development of land or erection of building consisting of storeys and situated on Khasra No.....Ward/ Mohal/ Village..... Tehsil District Himachal Pradesh:-

(a) without the permission as required under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-section (1) of section 30 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977).

OR

(b) in contravention of the permission granted under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or subsection (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) vide Order No Dated

OR

(c) in contravention of the permission duly modified under sub-section (2) of section 15A or clause (a) of section 16 or sub-section (1) of section 28 or Section 29 or subsections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or sub-section (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) vide Order No dated

OR

(d) after the permission for development has been duly revoked under sub-section (1) of section 37 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), vide Order No Dated

OR

(e) in contravention to the provisions specified under sections 39, 39-A, 39-B and 39-C of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977).

As such, you are hereby required to show cause either personally or through your duly authorized agent within thirty days from the receipt of this Notice, as to why action under section 38 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) be not initiated against you.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

(Strike out which is not applicable).

Registered (AD)/Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH
FORM- 21**

(See rule -28)

**NOTICE UNDER SUB-SECTION (1) OF SECTION 39 OF THE HIMACHAL
PRADESH TOWN AND COUNTRY PLANNING ACT, 1977
(ACT NO. 12 OF 1977)**

No.....

Dated,

To

Shri /Smt./M/s

.....

.....

(Owner/Occupier)

Subject:- Notice under sub-section (1) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977).

Whereas, it has been observed that you have commenced / carried out/carrying out the development on the land or you have changed or are changing the use of land i.e (Description of Land) situated on Khasra No Ward/Mohal/Village Tehsil District Himachal Pradesh:-

(a) without the permission as required under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-section (1) of section 30 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977).

OR

(b) in contravention of the permission granted under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or subsection (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) vide Order No Dated

OR

(c) in contravention of the permission duly granted under sub-section (2) of Section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or subsections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or sub-section (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) vide Order No dated

OR

(d) after the permission for development has been duly revoked under sub-section (1) of section 37 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), vide Order No dated.....

OR

(e) in contravention to the provisions specified under sections 39, 39-A, 39-B and 39-C of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977).

Now, therefore, you are directed:-

(a) to restore the land to the condition existing before the development took place.

OR

(b) to comply with the conditions of the permission granted or modified and conveyed to you vide Order No.....dated.....

OR

(c) to alter the development in conformity with the condition(s) subject to which permission has been granted to you as under:-

(i).....

(ii).....

(iii).....

OR

(d) to stop and discontinue the development operations as under:-

(i).....

(ii).....

(iii).....

Within a period of fifteen days from the date of service of this Notice. If within the period as specified in this Notice, you fail to comply with the above direction(s), subject to the provisions to sub-sections (3), (4) or (5) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), you shall be liable for action under subsection (6) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977).

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

(Strike out which is not applicable).

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla /District Public Relation Officer, District Himachal Pradesh for information and circulation of this news item so that public may not go for purchase of illegal plot / flat / apartment /building as referred to above.
2. The Executive Engineer, Division No. ..., Himachal Pradesh State Electricity Board Ltd..... with the request that service connection may not be released or to disconnect the service connection of the above said owner/ occupier immediately.
3. The Executive Engineer, Division No..... , Himachal Pradesh Irrigation and Public Health Department, with the request that service connection may not be released or to disconnect the service connection of the above said owner/ occupier immediately.
4. Notice Board.

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

Registered (AD)/Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**FORM - 22
(See rule -29)**

**NOTICE UNDER SUB-SECTION (2) OF SECTION 39 OF THE HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING ACT, 1977 (ACT NO. 12 OF 1977)**

No.....

Dated.....

Subject:- Notice under sub-section (2) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977)

Whereas, a Notice was issued under rule 28 of the Himachal Pradesh Town and Country Planning Rules, 2014 to Shri/Smt./M/s; and

Whereas, the directions issued vide aforesaid Notice have not complied with.....;

Now, therefore, a Notice is served under sub-section (2) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) to Shri/Smt./M/s.....and he / she/ them is /are directed to stop or to seal the un-authorized development on the land situated on Khasra No.....Ward/Mohal/Village.....Tehsil.....District.....Himachal Pradesh in the following manner:-

- 1.....
- 2.....
- 3.....

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

Shri/Smt./M/s

.....

(Owner/Occupier)

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla / District Public Relation Officer, DistrictHimachal Pradesh for information and circulation of this news item so that public may not go for purchase of illegal plot / flat / apartment /building as referred to above.
2. The Executive Engineer, Division No. ..., Himachal Pradesh State Electricity Board Ltd..... with the request that service connection may not be released or to disconnect the service connection of the above said owner/ occupier immediately.
3. The Executive Engineer, Division No....., Himachal Pradesh Irrigation and Public Health Department,..... with the request that service connection may not be released or to disconnect the service connection of the above said owner/ occupier immediately.
4. Notice Board.

Director

Town and Country Planning Department
Himachal Pradesh, Shimla

Registered (AD)/Speed Post

***TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

¹FORM- 23

(See rule 31)

**ORDER UNDER SUB-SECTION (1) SECTION 39-A OF THE HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING ACT, 1977
(ACT NO. 12 OF 1977)**

No.....

Dated.....

Subject:- Order under sub-section (1) of section 39-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) to discontinue or to stop the development on land bearing Khasra No Ward/ Mohal/ Village Tehsil District..... Himachal Pradesh, situated in the Planning /Special Area.

Whereas, it has been brought to the Notice of the undersigned, pursuant to the inspection conducted on dated.....,that un-authorized development is being or has been carried out by Shri/Smt./M/s.....on the above referred land, as detailed in Annexure-A to this order;

And, whereas the said un-authorized development falls within Planning /Special Area and is being or has been carried out, in contravention of the Interim Development Plan/ Development Plan / Sectoral Plan/ Himachal Pradesh Town and Country Planning Rules, 2014 or without permission or approval or sanction as required under sub-section (2) of section 15-A or clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or sub-section (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) or in contravention of any conditions subject to which such permission, approval or sanction has been granted vide Order Nodated.....;

Now, therefore, in exercise of the powers vested under sub-section (1) of section 39-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), it is hereby ordered that the said development be discontinued/stopped forthwith on the above referred land.

.....(Signature)
.....(Designation) for on behalf
of the State Government of Himachal Pradesh

Shri/Smt./M/s.....

Address.....

**ANNEXURE-A
(Details of un-authorized constructions)**

- 1.....
- 2.....
- 3.....

.....(Signature)
.....(Designation)
for on behalf of the State Government of Himachal Pradesh

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**FORM 24
(See rule 32)**

FORM FOR POLICE ASSISTANCE

No.....

Dated.....

Whereas it has been noticed that Shri/Smt./M/s
S/o/W/o Shri/Smt resident of is/ are carrying out/had carried
out un-authorized development on the land situated on Khasra No
.....Ward/Mohal/Village..... Tehsil..... District
..... Himachal Pradesh, in contravention of the Interim Development Plan/
Development Plan/Sectoral Plan/ Himachal Pradesh Town and Country Planning Rules, 2014 or
without permission or approval or sanction as required under sub-section (2) of section 15-A or
clause (a) of section 16 or sub-section (1) of section 28 or section 29 or sub-sections (1) or (2) of
section 30-A (beyond the limits as specified under section 30-A) or sub-section (1) of section 31 of
the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) or in
contravention of any conditions subject to which such permission, approval or sanction has been
granted vide Order No Dated

And, whereas the undersigned in pursuant to the powers vested under sub-section (1) of
section 39-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977)
had ordered the discontinuance/stoppage of the said development vide this Office Order
No.....dated.....;

And, whereas the said development has not been discontinued /stopped by the said person,
in pursuance of the orders issued under sub-section (1) of section 39-A of the Himachal Pradesh
Town and Country Planning Act, 1977 (Act No.12 of 1977);

Now, therefore, the undersigned, being the authorized Officer in this behalf, in pursuance of
the provisions contained in sub-section (2) of section 39-A of the Himachal Pradesh Town and
Country Planning Act, 1977 (Act No.12 of 1977) requires you to deploy adequate Police force to
remove, withindays, the said person by whom the development has been commenced
and all his/her/their assistants and workmen from the place of development and to seize all
construction material, tools, machinery, scaffolding or other things used in such development.

.....(Signature)

.....(Designation) for on

behalf of the State Government of Himachal

Pradesh

Station House Officer,

.....

.....

Registered (AD)/Speed Post

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**FORM- 25
(See rule 34)**

**NOTICE TO SEAL UN-AUTHORISED DEVELOPMENT UNDER SECTION
39-B OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING
ACT, 1977 (ACT NO. 12 OF 1977)**

No.....

Dated.....

To

Sh./Smt./M/s.....

.....

.....

Whereas, it has been brought to the notice of the undersigned, pursuant to the inspection conducted on dated..... that un-authorized development is being or has been carried out by you on the land situated on Khasra No Ward/Mohal/Village Tehsil District Himachal Pradesh, in contravention of the Interim Development Plan/ Development Plan/ Sectoral Plan/ Himachal Pradesh Town and Country Planning Rules, 2014 or without permission or approval or sanction as required under sub-section (2) of section 15-A or clause (a) of section 16 or subsection (1) of section 28 or section 29 or sub-sections (1) or (2) of section 30-A (beyond the limits as specified under section 30-A) or sub-section (1) of section 31 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977) or in violation of the conditions of the permission/approval/sanction given to you vide Order No.....dated; and

In order to prevent any dispute as to the nature and extent of the un-authorized development and for the purpose of carrying out the provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), it is proposed to make an order sealing the said un-authorized development under section 39-B of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977); and

Therefore, you are hereby called upon to show cause within a period of.....days from the service of this Notice to the satisfaction of the undersigned, as to why the said un-authorized development be got directed to be sealed under section 39 (B) of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977); and

Take further notice that on.....(date) between.....(time) you and /or your authorized representative shall appear for hearing in my below referred office in support of your contentions, failing which you shall be proceeded against ex-parte; and

At the time of hearing you may also, in addition to the above, produce such evidence, as you may desire to produce in support of your contentions.

.....(Signature)

.....(Designation)

for on behalf of the State Government of
Himachal Pradesh.

**¹TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH
FORM- 25-A
[See rule 34(2)]**

UNDERTAKING

That I, Sh./Smt./Miss.....
s/o/w/o/d/o....., Resident of have
undertaken un-authorized construction/development comprising of..... on land
bearing Khasra No....., Hadbast No..... Mohal /
Mauza Tehsil..... District..... Himachal
Pradesh, on my own land.

That I have been served with a Notice under provisions of the Himachal Pradesh Town and
Country Planning Act, 1977 by..... vide letter No.....
dated.....

That in view of the opportunity of hearing afforded to me by the Competent Authority
namely....., I hereby agree to remove the un-authorized
construction/development, within a period of.....days / months from the date of issue of orders
by the Competent Authority vide its Order No.
dated.....

That I may be allowed to use the remaining authorized portion of the building temporarily
during this period.

That I shall remain entitled to the service connection(s) issued to me for the aforesaid
building during the period mentioned above, after which the connections shall be liable to be
disconnected and the Competent Authority shall be at liberty to initiate any action as per the
provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977)
and Rules framed there under.

That I shall seal the un-authorized portion of the building on my own as per directions of the
Competent Authority and the entire expenditure involved in sealing of the unauthorized portion of
the building shall be borne by me, be it related to material or labour. In case sealing is done by the
Competent Authority, the entire expenditure shall be paid by me to the Competent Authority,
failing which the same shall be recovered from me as arrears of land revenue.

Signature of applicant(s)

Address.....

.....

Phone No.....

¹As amended vide Himachal Pradesh Town and Country Planning (Second Amendment), Rules 2018

FORM 26

(See rule 35(1))

**FORM OF APPLICATION FOR COMPOSITION OF OFFENCES UNDER SECTION
39-C READ WITH SUB-SECTION (3) OF SECTION 39 OF THE HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING ACT, 1977
(ACT NO. 12 OF 1977)**

No.....

Dated:.....

To

The Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

Subject:-

Reference:- Your Notice Nodated.....

Sir,

With reference to your Notice referred to above, I/we beg to submit that I/we may kindly be granted permission under section 39-C read with sub-section (3) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12, of 1977) for composition of offences i.e. deviations / un-authorized constructions/ developments having carried out on land bearing Khasra No Khata/ Khatauni No measuring square Metre situated at Mauza..... ParganaTehsil.....District.....Himachal Pradesh. My /our original map was approved vide order No.....dated..... (strike out if no map was approved).

The reasons for composition of offences i.e. deviations / un-authorized constructions/developments are as under:-

- 1.....
- 2.....
- 3.....
- 4.....

The details of offences i.e. deviations / un-authorized constructions/ developments are as under:-

1. In case of building where plan was approved and deviations have been carried out from the approved plan, beyond the prescribed limits, as specified under Rules and Regulations. Details of deviations /developments carried out are as under:-

(I) Schedule of Area:

(i)	Built up Area	=	M ²
(ii)	Open area	=	M ²
(iii)	Total Plot Area	=	M ²

(II) Schedule of Open Spaces:

(i)	Front Set Back	=	M
(ii)	(ii) Left Side Set Back	=	M
(iii)	Right Side Set Back	=	M
(iv)	Rear Set Back	=	M

(III)Number of storeys of the building = Nos.

(IV)	Deviations in the Set Backs (Storey wise)		
(i)	Ground Storey	=	M ²
(ii)	First Storey	=	M ²
(iii)	Second Storey	=	M ²
(iv)	Third Storey	=	M ²
(v)	Fourth Storey	=	M ²
(vi)	Fifth Storey	=	M ²
(vii)	=	M ²

2. In case of building where plan was not approved and construction carried out is as per the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12, of 1977), the Himachal Pradesh Town and Country Planning Rules, 2014 and Regulations of the Interim Development Plan or Development Plan. Details of developments carried out are as under:-

(I)	Schedule of Area:		
(i)	Built up Area	=	M ²
(ii)	Open area	=	M ²
(iii)	Total Plot Area	=	M ²
(II)	Schedule of Open Spaces:		
(i)	Front Set Back	=	M
(ii)	Left Side Set Back	=	M
(iii)	Right Side Set Back	=	M
(iv)	Rear Set Back	=	M
(III)	Number of storeys of the building	=	Nos.

3. In case of building where plan was not approved and deviations have also been carried out plan, beyond the prescribed limits, as specified under Rules and Regulations. Details of deviations /developments carried out are as under:-

(I)	Schedule of Area:		
(i)	Built up Area	=	M ²
(ii)	Open area	=	M ²
(iii)	Total Plot Area	=	M ²
(II)	Schedule of Open Spaces:		
(i)	Front Set Back	=	M
(ii)	Left Side Set Back	=	M
(iii)	Right Side Set Back	=	M
(iv)	Rear Set Back	=	M
(III)	Number of storeys of the building-	=	Nos.

(IV) Deviations in the Set Backs (Storey wise)

(i)	Ground Storey	=	M ²
(ii)	First Storey	=	M ²
(iii)	Second Storey	=	M ²
(iv)	Third Storey	=	M ²
(v)	Fourth Storey	=	M ²

(vi)	Fifth Storey	=	M ²
(vii)	=	M ²

4. In case of building constructed on an under size plot i.e. less than the permissible plot size, as specified under Rules and Regulations. Details of deviations/ development carried out are under:-

(I) Schedule of Area

(i)	Plot Area as specified under Rules and Regulations	=	M ²
(ii)	Minimum Plot Area over which building has been constructed	=	M ²
(iii)	Total area of under size Plot (i)-(ii)	=	M ²
(iv)	Percentage of under size Plot Area	=	%

The following documents are enclosed herewith:

- (i) A copy of title/ ownership documents i.e. latest jamabandi in original.
- (ii) A copy of latest original tatima showing dimensions of plot and width of access to the plot.
- (iii) Two sets of Location Plan in the scale of 1:1000 showing North direction, land/building in question, abutting path, approach road, important buildings.
- (iv) Two sets of Site Plan in the scale of 1:200, clearly showing the building within tatima dimensions and also showing all drainage lines, sewerage connection or location of septic tank, soak pit, rain water harvesting tank, solar passive arrangements and house drainage.
- (v) Two sets of detailed architectural drawing of the existing building showing each storey with two cross- sections and two elevations of the building in the scale of 1:100. These drawings are in the form of working drawing showing all the dimensions of rooms, openings, thickness of wall, floor and slab etc.
- (vi) Two sets of photographs taken from all sides of the building, clearly showing the number of storeys.
- (vii) A copy of Affidavit to the effect that building has been constructed on own land and has not encroached upon any Government or other's land.
- (viii) A copy of Structural Stability Certificate as per Section 31-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No 12 of 1977).
- ¹(ix) For the plots abutting National Highways: The access permission to properties along National Highways provided in Guidelines for access permission to Fuel Station and Properties along National Highways-amendments vide letter no RW-NH33032/01/2017 dated 19th July 2018 shall be mandatory. For other State Highways, and Himachal Pradesh Public Works Department's scheduled roads the applicant shall be required to submit a self-declaration/undertaking to maintain minimum control width/ setback as per provisions of the Himachal Pradesh Road Side Land Control Act, 1968.

Certified that the Plans have been prepared, designed and signed by Sh./Smt./M/s (Name and address of the registered Town Planner/ Architect/ Engineer /Draughtsman/ Surveyor), having Registration No.....dated..... and the Structural Stability Certificate has been issued by Sh./Smt./M/s.....(Name and address of the Registered Architect/ Planner/ Engineer /Draughtsman), having Registration No.....dated.....

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

I/We have deposited a sum of Rs...../- only (Rs.only) towards the Application Fee and a sum of Rs..... only (Rs..... only), on account of Composition Fee in accordance with the scale as specified in sub-rule (3) of Rule 35 of the Himachal Pradesh Town and Country Planning Rules, 2014, vide Treasury Challan No....., dated.....(Original copy attached)/e-payment.

Enclosers: As above.

Yours faithfully,

Signature of applicant(s)

Address.....

.....

.....

Phone No.....

Registered (AD)/Speed Post**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH****FORM- 27
(See rule- 35(1))****FORM OF PERMISSION FOR COMPOSITION OF OFFENCES**

No.....

Dated.....

To

Sh./Smt./M/s.....

.....

.....

Subject:- Permission for Composition of Offences.

Reference:- Your Application No.dated.....

This is in reply to your Application under reference on above cited subject. You are hereby granted permission under sub-section (5) of section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) for Composition of Offences carried out on the land bearing Khasra No. Mauja Tehsil District Himachal Pradesh.

A copy of map duly compounded is enclosed herewith.

Please acknowledge the receipt of this Order.

Enclosers: As above.

Director
Town and Country Planning Department,
Himachal Pradesh, Shimla

**TOWN AND COUNTRY DEVELOPMENT AUTHORITY
HIMACHAL PRADESH**

**FORM 28
(See rule 36(1))**

**NOTICE OF DECLARATION OF INTENTION TO PREPARE TOWN DEVELOPMENT
SCHEME**

No.....

Dated.....

It is hereby declared and published for the information of the general public as required under sub-section (2) of section 52 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), that the Town and Country Development Authority intends to prepare Town Development Scheme for Planning/Special Area.

A copy of the said Scheme is available for inspection in the office of the undersigned.

Place.....

Chairman

Date

Town and Country Development Authority
Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Chairman

Town and Country Development Authority
Himachal Pradesh.

TOWN AND COUNTRY DEVELOPMENT AUTHORITY**HIMACHAL PRADESH****FORM 29****(See rule 36(2))****NOTICE OF PUBLICATION OF DRAFT TOWN DEVELOPMENT SCHEME**

No.....

Dated.....

Notice is hereby given that a draft Town Development Scheme has been prepared for the(Planning/Special Area) under sub-section (3) of section 52 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) and a copy thereof is available for inspection during office hours in the following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

Any objection or suggestion with respect to the draft Scheme, which is received in writing from any person(s) likely to be affected thereby within thirty days of the publication of this Notice in the Official Gazette of Himachal Pradesh, will be considered, by the Town and Country Development Authority after having been given him/them opportunity of being heard in person, if he/ they so desire.

Place.....

Chairman

Date

Town and Country Development Authority

Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Chairman

Town and Country Development Authority

Himachal Pradesh

TOWN AND COUNTRY DEVELOPMENT AUTHORITY**HIMACHAL PRADESH****FORM 30****(See rule 36(2))****NOTICE OF PUBLICATION OF FINAL TOWN DEVELOPMENT SCHEME**

No.....

Dated.....

Whereas, objections and suggestions were invited vide Notice No.....dated..... with respect to the draft Town Development Scheme for.....(Planning/ Special Area) under sub-section (3) of section 52 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977);and whereas, no objection or suggestion has been received.

Or

Whereas, objections and suggestions were received which were considered and rejected.

Or

Whereas, objections and suggestions were received and the amendments have been made in the said draft Scheme.

And, whereas the Town Development Scheme for the (Planning/ Special Area), has been approved under sub-section (4) of section 52 of the Himachal Pradesh, Town and Country Planning Act, 1977 (Act No. 12 of 1977) by the Committee constituted under sub-section (5) of section 52 of the Act ibid;

Now, the Town Development Scheme for the (Planning/Special Area), is hereby published for the information of the general public and copies of the said Scheme are available for inspection during office hours in the following offices:-

- 1.....
- 2.....
- 3.....
- 4.....

The said Town Development Scheme shall come in operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh.

Place.....

Chairman

Date.....

Town and Country Development Authority

Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Chairman

Town and Country Development Authority,
Himachal Pradesh.

TOWN AND COUNTRY DEVELOPMENT AUTHORITY

HIMACHAL PRADESH

FORM-31

(See rule 38(1))

NOTICE OF INTENTION TO LEVY DEVELOPMENT CHARGES UNDER SUB-SECTION (1) OF SECTION 62 OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977 (ACT NO 12 OF 1977)

No.....

Dated.....

It is hereby notified and declared for the information of general public that the Town Development Scheme for(Planning/Special Area) has been completed. The Town and Country Development Authority intends to levy Development Charges, as per Schedule given below, in the (Planning/Special Area) affected by the Scheme adjacent to it.

The owner(s) of land falling within the aforesaid area are liable to pay the aforesaid development charges.

The objections, if any, in this behalf are invited, by the undersigned bydate (not later than thirty days from the date of publication of this Notice) in the Official Gazette of Himachal Pradesh.

Sr. No.	Name of Owner	Original Plot		Incremental value effected due to implementation of Scheme	Incremental difference in value (Col. 4&5).	Amount payable by plot owner as Developmental Charges	Remarks
		Are	Value				
1	2	3	4	5	6	7	8

Place.....

Chairman

Date.....

Town and Country Development Authority

Himachal Pradesh

Copy to:-

1. The Director, Information and Public Relation Department, Himachal Pradesh, Shimla for publication of this Notice in one or more newspapers in circulation in the Planning / Special Area.
2. The Controller, Printing and Stationeries Department, Himachal Pradesh, Shimla for publication of this Notice in the Official Gazette of Himachal Pradesh. A copy of Gazette publication may be sent to this office.
3. The Director, Town and Country Planning Department, Himachal Pradesh, Shimla.
4. Notice Board.

Chairman

Town and Country Development Authority

Himachal Pradesh

**TOWN AND COUNTRY DEVELOPMENT AUTHORITY
HIMACHAL PRADESH**

FORM 32

(See rule 38 (2))

NOTICE FOR ASSESSMENT OF DEVELOPMENT CHARGES

No.....

Dated.....

To

Sh./Smt./M/s.....

.....

.....

Your landed property bearing Khasra No.....Mauja
Village/Town Tehsil District Himachal Pradesh, is
affected by the Town Development Scheme for(Planning /Special Area) of this
Authority.

You are hereby given Notice under sub-section (4) of section 62 of the Himachal Pradesh
Town and Country Planning Act, 1977 (Act No. 12 of 1977) that the development charges of
Rs.....only (Rs..... only) have been assessed to be due from you.

You are hereby called upon to deposit the Development Charges as mentioned above with
the Town and Country Development Authority within a period of thirty days from the date of
receipt of this Notice.

Chairman

Town and Country Development Authority
Himachal Pradesh

FORM-33**(See rule 39)****APPLICATION FORPERCENT DEBENTURE(S) ISSUED BY THE
TOWN AND COUNTRY DEVELOPMENT AUTHORITY**

(Broker's Stamp to be affixed here).

To

The Chairman,
Town and Country Development Authority,
Himachal Pradesh.

Sir,

I/We.....hereby apply for the debentures of the face value of Rs.....only (Rs. only) of the above issue and tender Cash/Cheque/Draft for Rs.....only (Rs. only) for the purchase ofpercent debentures of the Town and Country Development Authority, of the nominal value of Rs..... only (Rs. only). The debentures may kindly be issued to me/us in the denomination stated below:-

*Debenture of Rs.....only (Rs..... only)

*Debenture of Rs..... only (Rs..... only)

*Debenture of Rs..... only (Rs..... only)

*Debenture of Rsonly (Rs..... only)

Yours faithfully,

Dated.....

Name of Applicant(s) (in Block letters)

Address (in Block letters).....

.....

.....

*To be given in the figures and words.

Note:-1 The debentures will be issued in the denominations of Rs 100, Rs.500, Rs. 1000, Rs.5000, Rs.10,000, Rs. 25,000, Rs.50,000, Rs.1,00,000 and Rs.5,00,000.

- 2 If the Applicant(s)'s signature is by thumb marks, it should be witnessed by two persons. The full name(s), occupation(s) and address (es) of the witness (es) should be appended to their signatures.
- 3 If the Application is made in the name of a Registered Body excepting Trusts, the under noted documents, if not already registered at the Public Debt Office, should be enclosed with the investment application:-
 - (i) Certificate of Registration Incorporation.
 - (ii) Memorandum and Articles of Association or a certified copy of the Rules, Regulations and Bye-laws of the Body/Company.
 - (iii) Certified copy of the Resolution in favour of the person(s) authorized to deal in Government securities on behalf of the Body/Company.

APPLICATION RECEIPT

Received..... percent debentures of the Town and Country Development Authority from Shri/Smt./M/s..... for the sum of Rs..... only (Rs.....only) by Cash/Cheque/ Draft subject to realization, being Application money for the above mentioned debentures.

(Signature and designation of the Officer receiving money)
Town and Country Development Authority, Himachal Pradesh

Note:- This Receipt must be carefully preserved, as it is to be surrendered to the Authority duly discharged at the time of taking delivery of debentures.

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

¹FORM -34

(See rules 13, 14 and 16)

**APPLICATION FOR GRANT OF PLANNING PERMISSION FOR REAL ESTATE
PROJECT**

To

.....
.....
.....

Sir,

I/we hereby wish to apply for the grant of planning permission to set up a Real Estate Project having name and style of project..... in Khata No..... Khatauni No..... Hadbast No Mauja/Mohal No Khasra No..... measuring..... square Metres, Tehsil District Himachal Pradesh.

1. The requisite particulars are as under:-

- (i) Status of the Applicant, whether individual or Company or Firm or Association of Persons or Co-operative Society or joint family
- (ii) In case of Individual or Association of Persons or joint family:-
- (a) Name
- (b) Father's Name
- (c) Occupation
- (d) Permanent Address
- (iii) In case of Firm or Co-operative Society or Company:-
- (a) Name
- (b) Address
- (c) Copy of Registration Certificate
- (d) Major activities
- (e) Name and Address of Partners/ Chief Executive/ Full time Directors.....
- (i) Whether applicant is Income Tax payee/ assesses, if so, give Permanent Account Number (PAN)
No..... alongwith Aadhar
No.....
- (ii) Whether the applicant had ever been granted permission to set up a Real Estate Project or Building or Apartment under any other law, if yes, details thereof.....
- (iii) Whether the applicant has ever established a Real Estate Project or is establishing a Real Estate Project, if, yes details thereof.....

¹ As amended vide Himachal Pradesh Town and Country Planning (Eighth Amendment), Rules 2022

2. The following Plans, Drawings and other documents are submitted online, namely:-

- (i) a copy of latest Jamabandi (not being more than six month old), in original showing the title/ownership of the land under the Real Estate Project;
- (ii) a copy of latest original Tatima(not being more than six month old), showing Khasra number(s), description and area of land in question, abutting path with its width as well as adjoining Khasra numbers falling on all the outer limits/ boundaries of the land in question. The land applied for shall be shown in red, in the Tatima;
- (iii) details of encumbrances on the land on which development of project is proposed including details of any rights, title, interest, dues, mortgage, litigation in Revenue Courts and name of party in or over such land or non-encumbrance certificate from an Advocate having experience of atleast ten years or from the revenue authority not below the rank of Tehsildar/ Naib Tehsildar, as the case may be;
- (iv) three sets of Location Plan in the scale of 1:1000 showing North direction, indicating the land in question, showing main approach road(s), name of road(s) on which the property and boundaries abuts, important public buildings like hospital, school, cinema, petrol pump, existing land uses / building uses surrounding the land;
- (v) The Site Plan to be submitted along with the application for seeking permission shall be drawn to a scale of 1:200 for plots up to 2500 square metres in size and on a scale of 1:500 for plots more than 2500 square metres in size. The plan shall show the following:-
 - (e) The boundaries of the site conforming to revenue tatima and any contiguous features;
 - (f) The position of the site in relation to neighbouring street/ revenue road/rasta;
 - (g) The names and width of the streets on which the building is proposed to be situated, if any;
 - (h) All existing buildings standing on, over or under the site;
 - (i) The means of access from the street to the building, and to all other buildings, if any which the applicant intends to erect upon his contiguous land, referred to above in clause (a);
 - (j) The width of the street, in front, if any at the sides or rear of building;
 - (k) The direction of North point relative to the plan of the buildings;
 - (l) Any existing physical features such as drains, trees, overhead/ underground electric supply lines including its capacity, etc;
 - (m) The area of land under scheme as per revenue record and as available at site, ground coverage and the covered area on each floor alongwith its percentage to the total area of the site;
 - (n) The contour plan @ contour interval of 2 mtrs for plots up to 2500 square metres and 5 mtrs for plots above 2500 square metres;
 - (o) Details of utilities and services like water supply, drainage, sullage, sewage, sewerage along with disposal of drainage, sullage, sewage, position of septic

tank, soak pit, Sewerage Treatment Plant, rain harvesting tank, electric and telephone poles, fire hydrants, emergency evacuation signage.

- (vi) For Plotted Development projects i.e. sub-division of land into plots, three sets of drawings in the scale of 1:200 for plots of size up to an area of 2500 Sqm and to the scale 1:500 for plots of sizes more than 2500 Sqm showing,
- (c) Layout plan/site plan showing boundaries of site conforming to revenue tatima and status of land on all four sides;
 - (d) Existing road(s) with its width, abutting the plot, as per Revenue Record/ Tatima and/ or as existing at site physically, if not in Revenue Records;
 - (e) Contours, with contour interval of 2 mtrs for plots of size up to 2500 Sqm and contour interval of 5mtrs for plots of size more than 2500 Sqm;
 - (f) Existing water bodies like Bauri, Well, Nallah, khud, if any;
 - (g) Overhead or underground electrical lines with their capacities;
 - (h) Water or sewerage lines private or government with their capacities; 60
 - (i) Trees and Forest Boundary, if within or abutting the land under reference;
 - (j) Layout plan showing all plots with their dimensions, internal roads/ Driveways, setbacks from the internal roads and boundaries, Green areas comprising of parks and open spaces, community buildings such as school, dispensary, post office, bank etc. and all development
 - (k) proposals including a general report and mode, so as to make the scheme self-explanatory;
 - (l) Area Schedule detailing total plot area as per revenue records and as available at site, total area of different land uses i.e. Residential, Commercial, Public/ Semi-Public, if any , area under internal roads/ driveways, footpaths, cycle tracks, Green area (parks and green belts), area under services like sewerage treatment Plants/ septic tanks and soak pits, Electrical Transformer or sub-station, overhead or underground water tanks with their respective capacities, accommodation for watch and ward staff.
- A separate 'area calculation drawing sheet' showing the calculations of worked out area of each plot and space by sub-dividing the plot / space into geometrical shapes and working out area on the basis of dimensions of the sub-divided geometrical shapes to arrive at absolutely correct area of each plot / each space including open area, green area etc;
- (m) North direction; and
 - (n) Table/ Chart showing details of sub divided/ carved out plots i.e. number of plots in each category, Plot area, Ground Coverage and its percentage , front sides and rear setbacks , FAR etc.

- (vii) For Residential/ Commercial or Mixed Development Projects:

Three sets of drawings in the scale of 1:100, in the format of working drawing, showing North direction, dimensions and area of building, apartment/flats/Shops etc. and other architectural details and specifications of proposed building, apartment/flat /shop and all development proposals along with Schedule of built up area and open area, setbacks, area calculation sheet showing

the calculations of worked out area of each plot or apartment/flat/shop, so as to make the scheme self explanatory.

The plans, elevations and sections of the building shall be drawn to a scale of 1:100 for plots measuring up-to 2500 M² ; and 1:200 for plots measuring more than 2500 M².

A separate area calculation drawing sheet showing the calculations of “carpet area” of each saleable unit like flat/ apartment/ villa/ cottage/ garage/ covered parking/ commercial unit/ club house/ gym/ community centre/ exclusive balcony or verandah/ exclusive terrace etc, that the promoter intends to sell/ lease to prospective allottees in a real estate project, in accordance with the definition of “carpet area” as per the provisions of Real Estate(Regulation and Development) Act, 2016 and as is required as per serial no 2(XII) FORM ‘A’ specified in Himachal Pradesh Real Estate(Regulation and Development) Rules, 2017.

Similarly, the area calculation drawing sheet showing the calculations of all “common areas” that the promoter intends to sell/ lease to prospective allottees in a real estate project on pro rata share basis, in accordance with the definition of “common areas” as per the provisions of Real Estate(Regulation and Development) Act, 2016.

The carpet area of each saleable unit and common areas in a real estate project should be worked out by sub-dividing the saleable unit / space into geometrical shapes and working out area on the basis of dimensions of the sub-divided geometrical shapes to arrive at absolutely correct area of each saleable unit and common area in a real estate project \

These shall show:-

- (j) the plans of all the floors including basements and all external elevations and cross sections illustrating distinctly all the different levels and minimum one section through stair case;
- (k) the plinth level of the building with reference to the level of the mean level of street from where approach to the site is taken;
- (l) the schedule indicating the size of the doors, windows, openings and other methods of ventilation of each room/ area;
- (m) the means of access to the buildings and to its various floors as well as the means of escape in case of fire, if required under the specific law/ Code; along with ramps and steps with respect to the building;
- (n) in case of proposed additions and alterations in the existing building, all new works shall be shown on the drawings in distinctive colors along with index;
- (o) the method of disposal of waste water, sewage, storm water and water supply in detail;

- (p) provision of rain water harvesting system as per relevant Code in force ;
and
 - (q) provision for photo voltaic solar power plant as per relevant Code in force; and
 - (r) provision for differently abled person(s) as per Act/rules in force
- (viii) an explanatory note explaining the salient features of the proposed Real Estate Project in particular, the source of whole some water supply arrangements and site for disposal and treatment of storm and sullage water. Detailed specifications and designs of water supply schemes, storm water, sullage, sewage and sewerage and provision for much disposal with estimated costs;
- (ix) three sets of drawings showing the cross-sections of the proposed roads indicating, in particular the width of the proposed drainage ways, cycle tracks and footpaths, green verges, position of electric poles, telephone poles and of any of other works connected with such roads. These drawings shall indicate the position of sewers, storm water channel, water supply and any other public health services. The detailed specifications and designs of roads, works thereof;
- (x) one set of detailed specifications and structural design of buildings or apartments/flats with the detailed component wise estimated cost of buildings or apartments/flats and an undertaking regarding the Structural Stability Certificate and Soil Investigation Report thereof in Form 15;
- (xi) a set of detailed specification and design for electric supply including street lighting, etc ;
- (xii) an undertaking in the shape of self-declaration/undertaking to the effect that while constructing the building or apartment/flat, the promoter shall abide by and conform to the Himachal Pradesh Public Works Department's specification(s) for the quality of material to be used and quality of constructions;
- (xiii) a note indicating the type of development proposed i.e. land Use or building use, namely residential or commercial or industrial or public and semi-public use etc; and
- (xiv) the name and address of the registered Town Planner/ Architect/ Engineer.

3. I/We further hereby enclose the following documents, namely:-

- (i) Check List as per Appendix 7.
- (ii) Receipt in the shape of e-Challan or Challan or e -payment or Demand Draft drawn in favour of the Competent Authority amounting to Rs.....only (Rsonly) as application fee.

4. It is further requested that I /we may be exempted from providing the following amenity or amenities in the proposed Real Estate Project and an explanatory note, in duplicate, alongwith plans marked A.B.C. (so on) as to why the said amenity or amenities are not required to be provided in the Real Estate Project are enclosed herewith:-

- (i).....
- (ii).....
- (iii).....

5. I/We solemnly affirm and declare that the particulars given in para 1 to 4 above are correct to the best of my/our knowledge and belief.

Enclosures: As above.

Yours faithfully,

Dated:.....
Place:.....

Signature of Applicant(s)
alongwith full Name(s)
Phone No.....
E-mail address.....

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

**¹FORM-35
(See rule 42)**

***APPLICATION FOR PART COMPLETION/COMPLETION CERTIFICATE
IN RESPECT OF REAL ESTATE PROJECTS**

To

The Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

Sir,

I/We hereby apply for Part/Completion Certificate for Real Estate Project registered under The Real Estate (Regulation and Development) Act, 2016(Act No. 16 of 2016) vide No dated valid upto As required, I/we hereby submit the following documents and information as under,-

- (i) a copy of development permission granted by the Competent Authority;
- (ii) a copy of the detailed Plan of the project showing the works undergoing or completed for which the Part Completion Certificate is required, alongwith detailed list of apartments/plots completed;
- (iii) Structure Stability Certificate in accordance within the provision of Section 31-A of the Himachal Pradesh Town and Country Planning Act, 1977.
- (iv) an explanatory note clearly indicating the details of external development works which have been completed or are in progress or are yet to be undertaken in conformity with the approved plan;
- (v) valid copy of the Consent to Establish the project issued by the Competent Authority;
- (vi) No Objection Certificate from Fire Department; and
- (vii) any other information,-
.....

Yours faithfully,

Applicant (s)
Address
Phone No
E-mail address.....

***Note:** - Strike out which is not applicable.

¹ As amended vide Himachal Pradesh Town and Country Planning (Eighth Amendment), Rules 2022

**TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH**

¹FORM-36

(See rule 42)

***PART COMPLETION/COMPLETION CERTIFICATE
IN RESPECT OF REAL ESTATE PROJECTS**

No.....

Dated.....

To

Shri/Smt./M/s

.....

Subject: Part Completion/Completion Certificate.

Reference: Your Application No..... dated

This is in reply to your Application under reference for issuance of Part Completion/Completion Certificate. This Part Completion/Completion Certificate is hereby granted in your favour for the Building/Apartment /Flat/Plot No Block No situated at Village/Town Tehsil District Himachal Pradesh and to the Real Estate Project registered under the Real Estate Regulation and Development) Act, 2016 vide No (Name of Real Estate Project) situated at Village/Town Tehsil District Himachal Pradesh, as the development works have been completed by you, in respect above named of Building/Apartment /Flat/Plot No Block No or in respect of Real Estate Project , as per terms and conditions of the permission granted to you under provisions of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977).

Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

Copy to:-

The Chairman, Real Estate Regulatory Authority, Shimla, Himachal Pradesh for information and further necessary action.

Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla.

***Note: -** Strike out which is not applicable.

¹ As amended vide Himachal Pradesh Town and Country Planning (Eighth Amendment), Rules 2022

***APPENDIX-1**

(See rules 13 and 14)

REGULATIONS FOR SUB-DIVISION OF LAND OR CHANGE OF LAND USE OR DEVELOPMENT OF LAND OR CONSTRUCTION OF BUILDING IN AREAS WHERE LAND USE IS FROZEN AND INTERIM DEVELOPMENT PLAN OR DEVELOPMENT PLAN HAS NOT BEEN PREPARED.**I. Application for permission:-**

After the boundaries of the land in question are marked, the applicant shall make an application in Forms 11 or 12, as the case may be addressed to the Director and such application shall be accompanied by such documents as specified in Forms 11 or 12.

II. The minimum Plot Area, minimum Set Backs and maximum Floor Area Ratio (FAR) shall be as under:-

Sr. No.	Description and Minimum Plot Area	Minimum Set Backs (in Metre)				Maximum Floor Area Ratio	Maximum Height in Metres*
		Front	Left	Right	Rear		
1	2	3	4	5	6	7	8
Residential Use							
1.	Detached Houses						
	(i) 150 M ² to 250 M ²	2.00	1.50	1.50	1.50	1.75	21.00
	(ii) Above 250 M ² to 500 M ²	3.00	2.00	2.00	2.00	1.75	21.00
	(iii) Above 500 M ²	5.00	3.00	3.00	2.00	1.75	21.00
2.	Semi-detached Houses with common wall on one side						
	Upto 120 M ²	2.00	1.50	1.50	1.50	1.75	21.00
	Above 120 M ² to 250 M ²	2.00	1.75	1.75	1.75	1.75	21.00
3.	Row Houses with common wall on two sides						
	90 M ² to 120 M ²	2.00	Nil	Nil	1.50	1.75	18.00
Commercial Use							
1.	Booths upto 10 M ²	1.00	Nil	Nil	Nil	-	4.00
2.	Shops						
	(i) Independent Shop/ Showrooms (standalone) above 10 M ² to 30 M ²	2.00	Nil	Nil	1.00	-	6.00
	(ii) Row Shops with common wall on two sides above 30 M ² to 100 M ²	2.00	Nil	Nil	1.00	1.75	9.00
	(iii) Row Shops with common wall on two sides above 100 M ² to 250 M ²	2.00	1.50	1.50	1.50	1.75	21.00
	(iv) Above 250 M ² to 500 M ²	3.00	2.00	2.00	2.00	1.75	21.00
3.	Shopping Complex						
	(i) 500 M ² to 1500 M ²	5.00	3.00	3.00	3.00	1.75	21.00
	(ii) Above 1500 M ² to 4000 M ²	10.00	5.00	5.00	5.00	1.75	21.00
	(iii) Above 4000 M ²	12.00	7.50	7.50	6.00	1.50	21.00

	Parking (i) 500 M ² to 1500 M ² = 1.50 ECS per 100 M ² of built up area (ii) 1500 M ² to 4000 M ² = 2.00 ECS per 100 M ² of built up area (iii) Above 4000 M ² = 3.00 ECS per 100 M ² of built up area						
4.	Tourism Unit (i) 250 M ² to 500 M ² (ii) Above 500 M ² to 1500 M ² (iii) Above 1500 M ²	3.00	2.00	2.00	2.00	1.75	21.00
		5.00	4.00	4.00	3.00	1.50	21.00
		7.50	5.00	5.00	4.00	1.50	21.00
* As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016							
	Parking (i) 250 M ² to 500 M ² = 1.00 ECS per 100 M ² of built up area. (ii) Above 500 M ² to 1500 M ² = 1.50 ECS per 100 M ² of built up area. (iii) Above 1500 M ² = 2.00 ECS per 100 M ² of built up area. (iv) Tourism Units, can be known by the name of Hotel or Guest House or Eco-Tourism or by any other name. (v) In existing built up areas like Bazaars, the building line can be maintained.						
5.	Cinema / Cineplex 4000 M ² and above	15.00	7.50	7.50	6.00	1.50	21.00
	Parking (i) 3.00 ECS per 100 M ² of built up area (ii) Other Regulations as per Cinematography Act shall also apply.						
6.	Multiplexes 4000 M ² and above	15.00	9.00	9.00	9.00	1.50	21.00
	Parking (i) Permissible within the complex. (ii) Parking space to be provided within Multiplex @ 3 ECS for every 100 M ² of built up area. (iii) Other Regulations as per Cinematography Act shall also apply. (iv) Multiplex complex shall mean an integrated entertainment and shopping centre/ complex having at least 2 Cinema Halls. The minimum area on which this use shall be permitted should not be less than 4000 M ² . Apart from Cinema Halls, the Multiplexes may also have Restaurant, Fast Food, Outlet, Pubs, Health Spas/ Centers, Hotels and other Re-creational activities. The shopping center may have Retail Outlet, Video Games, Parlours, Bowling Alleys, Health Centers, Shopping Malls, Office space.						
	Note:- 1.00 ECS (Equivalent Car Space) shall mean as under:- (i) For parking in open = 23 M ² (ii) For parking in stilts or ground floor = 28 M ² (iii) For parking in basement floor = 32 M ²						
7.	Multi level parking (i) 500 M ² to 1500 M ² (ii) Above 1500 M ² to 4000 M ² (iii) Above 4000 M ²	5.00	3.00	3.00	3.00	1.75	21.00
		10.00	5.00	5.00	5.00	1.75	21.00
		12.00	7.50	7.50	6.00	1.50	21.00
Other Uses including public & semi –public, educational buildings, police/fire-stations, medical, community hall, library / religious buildings, etc.							

1.	(i) 250 M ² to 500 M ²	3.00	2.00	2.00	2.00	2.00	21.00
	(ii) Above 500 M ² to 1000 M ²	5.00	2.00	2.00	3.00	1.75	21.00
	(iii) Above 1000 M ² to 5000 M ²	10.00	5.00	5.00	5.00	1.50	21.00
	(iv) Above 5000 M ²	15.00	7.50	7.50	7.50	1.50	21.00

*Note: - The Maximum height of building further be dictated by the General Regulation clause No 2.

Industrial Use

Sr. No.	Type of Industry and Minimum Plot Area	Minimum Set Back in Metres				Maximum FAR	Maximum Height in Metres from Mean Sea Level upto 1000M	Maximum Height in Metres from Mean Sea Level above 1000M
		Front	Left	Right	Rear			
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	Small Scale Industries 250 M ² to 500 M ²	3.00	2.00	2.00	2.00	1.75	15.00	12.00
2.	Service/Light scale Industries Above 500 M ² to 1000 M ²	5.00	2.00	2.00	3.00	1.50	15.00	12.00
3.	Medium Scale Industries Above 1000 M ² to 5000 M ²	10.00	5.00	5.00	5.00	1.25	20.00	15.00
4.	Large and Heavy Scale Industries Above 5000 M ²	15.00	7.50	7.50	7.50	1.00	20.00	15.00

III. General Regulations

The following provisions shall be applicable where no specific mention is made, namely:-

- Every plot should abut with path having 3.00 Meter width. In case the width is on lesser side, the applicant has to surrender land to make it 3.00 Metre wide.
- The height of a building shall further be related to the width of abutting path:

For path less than 3.0M and non-vehicular	-	10 Metres
For path less than 3.0M but vehicular	-	13 Metres
For path between 3.0M to 5.00M	-	15 Metres
- Maximum acceptable slope for development shall be 45 degrees.
- Maximum height of plinth level shall be 2.00 Meters.
- One parking floor shall be mandatory wherever feasible. Maximum height of parking floor shall be 3.00 Metres for residential use and 4.00 Metres for other uses. Shear walls shall be constructed on all the three sides of parking floor, so that it does not behave as a soft storey.

6. In case, space as per requirement for parking is available in open, over and above the set backs, condition of parking floor shall not be insisted. The closed floors in a building at any level, if proposed and feasible for parking may be converted into parking floors. However, only one parking floor shall be exempt from Floor Area Ratio (FAR), subject to the height of building restriction and structural stability.
- Though, one parking floor is mandatory yet second parking floor can be constructed which will be optional. Here too only one parking floor shall be exempt from Floor Area Ratio (FAR), subject to the height of building restriction and structural stability.
- Fee for parking floor(s) shall have to be payable in all cases.
7. Every room used or intended to be used for the purpose of an office or for habitation in any building shall have a height of minimum 2.75Meters and maximum 3.50 Meters measured from the surface of floor to lowest point of the ceiling (bottom of slab). The chimneys, elevators, poles, tanks and other projections not used for human occupancy may extend above the prescribed height limits. The cornices and window sills may also project into any required Set Backs.
8. Sloping roof shall be mandatory in hill areas (As per the URDPFI Guidelines, 2014 and National Building Code, 2005 hilly areas is any area above 600 m in height from mean sea level, or any area with average slope of 30°) which may be CGI, GI sheet or slate roof with fascia.
- (i) The roof shall be painted with post office red or forest green or natural roofing material such as slates. Height of sloping roof zero at eaves and maximum 2.75Metres at centre shall be permissible. The Dormer at suitable distance on either side of the roof shall be permissible subject to the condition that the ridge of Dormer shall be below the ridge line of main roof.
 - (ii) Roof top @ 12 M² per 1 Kilo Watt peak (KWp) shall be used for Solar Photovoltaic (PV) installations.
9. Set Backs:-
- (i) Minimum front Set Backs from the line of controlled width of Highways and Himachal Pradesh Public Works Department's scheduled roads falling within the Planning Area /Special Area limits (excluding the land, included in the inhabited sites of a village as entered and demarcated in the Revenue record or on sites in notified Municipal or town area that are already built up) shall be 3.00Metres.
 - (ii) Minimum front Set Back from non-scheduled roads and Municipal roads shall be 3.00 Metres.
 - (iii) Every building should have a clear means of access there to from a street or road. The competent authority may require the provisions of an access lane or access road within the site of any new building. Where for the purpose of this Regulation, it is necessary to determine the width of any road or street, the same shall be determined by the competent authority.
- ¹10. For the plots abutting National Highways: The access permission to properties along National Highways provided in Guidelines for access permission to Fuel Station and Properties along National Highways-issued vide letter no RW-NH33032/01/2017 dated

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

19th July 2018 shall be mandatory. For other State Highways, and Himachal Pradesh Public Works Department's scheduled roads the applicant shall be required to submit a self-declaration/undertaking to maintain minimum control width/ setback as per provisions of the Himachal Pradesh Road Side Land Control Act, 1968.

11. Maximum hill cut of 3.50 Metre height shall be permissible. No building shall be built to abut against an earth cutting including a toe wall supporting an earth cutting and minimum 1.00 Metre distance shall be maintained between building and toe wall etc.
12. Issuance of No Objection Certificate (NOC) for water supply and electricity and sewerage connection:-

(i)	Temporary	At plinth level
(ii)	Permanent	On completion of dwelling unit /floor /whole building.

13. Any subsequent deviations made in the building constructed after getting the plan approved and after grant of No Objection Certificate (NOC) issued by the Department shall entail the entire building unauthorized and NOC so issued shall be withdrawn and the services shall be disconnected.
- ¹14. Adequate distance from all the electric lines including HT/LT lines as per the requirement of Himachal Pradesh State Electricity Board Limited (HPSEB Ltd.) Rules shall have to be maintained. A Self Declaration/Certificate to this effect shall be submitted by the applicant in this regard.
15. Minimum permissible distance between two Blocks constructed on a plot shall be 5.00 Metres.
16. The construction shall be allowed at distance of 3.00 Metre and 5.00 Metre from Nullah and Khud respectively.
17. No residential building shall be permissible on land having buildable width less than 5.00 Metres after leaving Set Backs.
18. No construction shall be allowed within a radius of 2.00 Metre from the existing tree and 5.00 Metres from the Forest boundary measured from the circumference of an existing tree.
19. Construction on sandwiched plots in Bazaar area shall be permissible for shops as per existing building lines, only in existing built up areas.
20. In new sub-division of land :-

(i)	Minimum width of pedestrian links to smaller cluster of plots, not exceeding 5 in number.	3.00 M.
(ii)	Minimum width of vehicular access, if number of plots is above 5.	5.00 M (with cul-de-sac) at the end.
(iii)	Minimum area for open/green space for the scheme having more than 5 plots.	10%
(iv)	Minimum area for soak pit etc. (irrespective of number of plots)	5% of the scheme area

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

(v)	Orientation of the plots shall be provided in such a manner so as to be in conformity with the integration of existing plots/infrastructure, wind direction, natural flow of surface drainage to allow unobstructed rain water discharge.	-
(vi)	Layout of plots shall be governed by easy access having acceptable grades minimum 1 in 15 and which may not obstruct view or vista.	-

21. Permissible Area Standard/Norms for different parts of a Building shall be as under:-

Habitable room	Minimum floor area Minimum width	9.50 M ² 2.40 M
Kitchen	Minimum floor area Minimum width	4.50 M ² 1.80 M
Bath room	Minimum floor area Minimum width	1.80 M ² 1.20 M
Water Closet (WC)	Minimum floor area Minimum width	1.10 M ² 0.90 M
Toilet (WC+ Bath)	Minimum floor area Minimum width	2.30 M ² 1.20 M
Minimum width of corridor	For Residential use For Other uses	1.00 M 1.20 M
Minimum width of stairs	For Residential use For Other uses	1.00 M 1.50 M
Minimum width of treads without nosing	For Residential use For Other uses	25 Centimeter wide for internal stairs 30 Centimeter wide for internal stairs case
Maximum height of riser	For Residential use For Other uses	19 Centimeter 15 Centimeter
Provision of spiral stair case	For Other uses except Residential use	Provision of spiral stair case not less than 1.50 Metredia with adequate head height for fire escape in addition to regular stair case
Openings	For sufficient air and light, windows and ventilators should have minimum area equivalent to 1/6 th of Floor area.	
Projections over doors, windows and ventilators.	0.60 M	-
Balcony Projections	1.20 M wide Balcony complete open on two sides with restriction of 50 % of building frontage where minimum front Set Back is 3.00 M shall be permissible.	

22. The habitable basement and attic shall be counted as independent storey.

23. The Apartments and Colonies shall be dealt with as per Regulations contained in Appendix-7. The powers for Registration of Promoters / Estate Agents and powers for issuance of Licenses shall vest with the Director (TCP) only and none other authorities.
24. Though minimum area of plot has been defined in Regulation II, yet the plots allotted by the Central or State Government under various Social Housing Schemes including Gandhi Kutir Yojana, Indira Awas Yojana, Rajiv Awas Yojana, Affordable Housing Schemes, launched by the Central or State Government, may be considered and permission accorded in relaxation of Regulations. However, the minimum area of plot for the persons belonging to the Economically Weaker Sections and Low Income Groups of society should not be less than 45 M² and 80 M² respectively.
25. Service floor wherever proposed for installation of plumbing and other services and to maintain the hygiene of habitable area in case of Commercial/ Shopping Complex and Tourism Unit. Service floor, wherever proposed shall have height restriction of 2.10 Metres and this floor shall not be counted in the FAR. However, the overall height restriction of building will remain the same.
26. **Re-construction of existing buildings:-**

Regulations regarding re-construction of houses/ buildings in the existence shall be on predominantly existing building lines, provided minimum width of road as per Rules is available and roof projections, sun shades shall be permitted over streets or paths, as the case may be.

27. **Change of Land Use:-**

Change of existing land use for Residential, Commercial, Public and semi-public and Industrial, shall be on existing pattern of development and site conditions subject to the conditions that where basic services like paved roads, drainage, water supply, sewerage disposal, electrical supply line, street lighting etc. do not exist, change of land use or development of land shall not be permitted unless the applicant undertakes that these services shall be provided at his own cost.

- ¹28. Relaxation in set backs, height of floors and building etc. may be allowed in Government projects in the public interest. In case of private construction/projects relaxation in set backs, height of floors and building etc. may be considered by the Competent Authority keeping in view the site conditions. However, in private projects having plot area of more than one hectare, relaxation shall be allowed by the State Government only.
29. Fire fighting provisions and specification shall be as per National Building Code of India, 2005.
- ²30. The onus of obtaining all the necessary approvals/clearances required from all the concerned Departments in respect of Self-Declaration/Certificate given by the applicant before starting actual execution of the work shall be on the applicant. The Department of Town & Country Planning shall not be liable for any violations done by the applicant in respect of other applicable acts, rules and any legal dispute.

¹ As amended vide Himachal Pradesh Town and Country Planning (Seventh Amendment), Rules 2021

² As amended vide Himachal Pradesh Town and Country Planning (Sixth Amendment), Rules 2020

- ¹31. For all buildings located on valley side or hill sides of the roads and having minimum clear setback of 2.0 M within the plot, after controlled width/retaining wall and having clear access from the road, open to sky parking (uncovered and parallel to the building) on 50% frontage of such setback shall be permissible. In case of buildings on valley side, owners shall be permitted to construct temporary steel frame structure/ramp on 50% frontage of such setback for open to sky parking. The temporary parking platform so proposed should be see-through/ perforated/meshed (not solid sheet) in order to have sufficient gaps/spaces for light and ventilation and should not obstruct any disaster management efforts and smooth flow of traffic on the abutting road and should be duly certified by a registered Structural Engineer.

Explanation.—Notwithstanding anything contained in Interim Development Plan and Development Plans prepared for Planning Areas and Special Areas and in areas referred under Appendix-I appended to these Rules, the provisions contained in this regulation shall apply.

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

¹APPENDIX-2**(See rules 13 and 14)
REGULATIONS FOR INDUSTRIAL USE**

For Industrial use/activities, following Regulations shall be applicable:-

1. Minimum area of plot:-

- (a) For small scale industry shall be 150 M² to 500 M².
- (b) For services/light scale industry shall be above 500 M² to 1000 M².
- (c) For medium scale industry shall be above 1000 M² to 5000 M².
- (d) For large and heavy scale industry shall be above 5000 M² to 10000 M² and above 10000 M².
- (e) The plot area as mentioned in clauses (a) to (d) above would not be applicable in the cases where the sub-division of land has taken effect before the commencement of the Himachal Pradesh Town and Country Planning Rules, 2014.
- (f) The plot area as mentioned under clauses (a) to (d) above would not be applicable for the individual plots, if any, created/allotted by the Himachal Pradesh Industries Department or the Himachal Pradesh State Industrial Development Corporation (HPSIDC) or the Himachal Pradesh Housing and Urban Development Authority (HIMUDA) or any Local Authority or any Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) or any other Authority prior to coming into force of the Himachal Pradesh Town and Country Planning Rules, 2014.
- (g) The layout and design of industrial area, if any, shall be as per requirement of the Industry and shall be got approved from the Director.

2. Height of floor/storey:-

The minimum floor/ storey height of industrial building shall be 3.00 M and sloping roof height shall be in accordance with volume of the structure. In case of roof trusses, height of building should be adjusted /relaxed accordingly.

3. Type of Industry, minimum Plot Area, minimum Set Backs, maximum Floor Area Ratio (FAR) and maximum height of building:-

The minimum plot area, minimum set backs, maximum Floor Area Ratio (FAR) and maximum height of building for different type of Industry shall be governed by the following Table: -

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

Sr. No.	Type of Industry	Plot area in M ²	Minimum Set Back in Metres				Max. FAR	Max. Height
			Front	Left	Right	Rear		
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	Small Scale Industries	150 to 500	3.00	2.00	2.00	2.00	2.00	There shall be no upper limit for height of structure of Industrial use, which shall be flexible as per the requirement of Industrial Enterprise. However the total floor area should be within the prescribed FAR.
2.	Services/ Light scale Industries	Above 500 to 1000	5.00	2.00	2.00	3.00	2.00	
3.	Medium Scale Industries	Above 1000 to 5000	10.00	5.00	5.00	5.00	1.50	
4.	Large and Heavy Scale Industries	Above 5000 to 10000	15.00	7.50	7.50	7.50	1.25	
		Above 10000	15.00	7.50	7.50	7.50	1.00	

Note:-

- (i) Right of Way should not be less than 5.0 Mts. for plot having area upto 1,000 Sq. Mts. and in case of plots having area more than 1000 Sq. Mts., the Right of Way should not be less than 10.0 Mts.
- (ii) Service area required for pharmaceutical units or such type of Industries under requirement of Goods Manufacturing Practice (G.M.P) shall not be included for calculation of FAR, provided it is only used for utilities and services but not in any case for production.
- (iii) The Security Room/ Driver's Rest Room up to floor area of 25 M² would not be counted in permissible FAR.
- (iv) Parking Floor up to 15 feet height (4.50 Mts.) shall be allowed and such parking floor would not be counted in permissible FAR. However, the subsequent parking floors shall be counted within FAR.
- (v) 10% of the area at parking floor shall be allowed for drivers' room and toilets etc.
- (vi) In case of plots having area of 5,001 Sq. Mts. and above regulations of minimum setbacks would be of mandatory. In other category of plots regulation of minimum front set back would be mandatory and rest of the setbacks shall be relaxable as per functional requirements of the industrial enterprise(s). This relaxability in set back's is subject to condition that the overall area under setbacks should be minimal area which was to be kept under the setbacks in case relaxability was not provided.
- (vii) Micro, Small and Medium Enterprises after obtaining the title of land and applying for development permission may start physical implementation of project without waiting for statutory approvals under the Himachal Pradesh Town and Country

Planning Act, 1977 in accordance with the provisions of self-certification as stated in para 7 (ii)(xii) of the “Himachal Pradesh Industrial Investment Policy-2019”.

4. **Construction of Cellar:-**

(a) Construction of Basement / Cellar exclusively for industries set up on plot size exceeding 1,000 Sq. Mts for captive use shall be allowed and same shall not be counted as a storey or in permissible FAR and should be constructed within the prescribed setbacks and prescribed building lines and subject to maximum coverage on floor i.e. entrance floor and may be put for following uses:-

- (i) storage of household or other goods of ordinarily combustible material;
- (ii) strong rooms, bank cellars etc;
- (iii) air conditioning equipment and other machines used for services and utilities of the building; and
- (iv) parking spaces.

(b) The cellar shall have following requirements:-

- (i) all the walls shall be kept dead and below the natural ground level except the portion kept for ventilation purpose;
- (ii) every cellar shall be, in every part, at least 2.40 M in height from the floor to the underside of the roof slab or ceiling;
- (iii) adequate ventilation shall be provided for the cellar and any deficiency in ventilation requirements may be met by providing mechanical ventilation in the form of blowers, exhaust fans and air conditioning system etc;
- (iv) the minimum height of the ceiling of any cellar shall be 0.90 M and the maximum 1.20 M above the average surrounding ground level;
- (v) adequate arrangements shall be made such that surface drainage does not enter the cellar;
- (vi) the walls and floors of the cellar shall be watertight and be so designed that the effects of the surrounding soil and moisture if any, are taken into account in design and adequate damp proofing treatment is given;
- (vii) the access to the cellar shall be separate from the main and alternative staircase providing access and exit from higher floor. Where the staircase is continuous in the case of buildings served by more than one staircase, the same shall be enclosed type, serving as a fire separation from the cellar floor and higher floors. Open ramps shall be permitted, if they are constructed within the building line subject to the provision of clause (v) above;
- (viii) in case partition in the cellars is allowed by the Authority, no compartment shall be less than 50.00 M² in area and each compartment shall have proper ventilation provision and the cellar partition shall however, conform to the norms laid down by the Fire Services; and
- (ix) in no circumstances, construction of Toilet, Bath, Kitchen etc. shall be allowed in the cellar.”

APPENDIX-3
(See rules 13 and 14)

REGULATIONS FOR DEVELOPMENT OF INFORMATION TECHNOLOGY PARK

1. Slope

Buildings of Information Technology (IT) Park shall be allowed upto 30° slope. The infrastructural services including roads shall be developed in accordance with the slope of the area.

2. Land Use structure of complex

Sr. No.	Land Use Structure	Maximum limit
1.	Total Covered Area	50%
	(i) IT related activities	22% to 44%
	(ii) Commercial	1% to 5%
	(iii) Recreational (Indoor)	1% to 3%
	(iv) Residential	9% to 15 %
2.	Parks and Tot Lots	8% to 12%
3.	Area under Traffic and Transportation	16% to 20%
4.	Area under Set Backs and other Open Spaces	20% to 24%

3. Means of Access

- (i) The access to the site of IT Park area shall not be less than 5.00 M wide. (ii) Provisions of internal roads shall be as under:-

Sr.No.	Width	Length
1.	9.00 M	Up to 1000.00 M
2.	12.00 M	Above 1000.00 M

4. Parking Provision

- i Residential = @ 1.00 car space per 75 M² floor area
 ii Commercial = @ 1.50 car space per 75 M² floor area
 iii Office Use = @ 1.25 car space per 75 M² floor area
 iv Hardware Manufacturing Unit = @ 1.00 car space per 60 M² floor area
 v Software development/ITES = @ 1.00 car space per 40 M² floor area

Maximum height of parking floor shall be 3.00 M including depth of beam below the ceiling of the slab.

5. Maximum Floor Area Ratio (FAR)

Maximum Floor Area Ratio (FAR) shall be 1.75.

6. Maximum height of buildings

Maximum height of buildings for IT and related activities shall be 21.00 M.

7. Set Backs

- (i) Block to Block distance shall be 2/3rd of average height of the Blocks.
 (ii) Distance of structures from the adjoining properties and side Set Backs shall not be less than 1/3rd of the height of the Blocks.

(iii) Minimum 3.00 M distance from internal roads shall have to be maintained.

8. **Expansion Joints**

The structures exceeding 45.00 M in length shall be divided by one or more expansion joints as per the Structural Design calculations.

9. **Structural Stability**

The Structural Stability provisions including Soil Investigation Report have to be strictly adhered, as enshrined in section 31-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) and under Rule 21 of the Himachal Pradesh Town and Country Planning Rules, 2014.

10. **Environment and Health**

- (i) Proper air, light and ventilation to each dwelling unit shall have to be ensured. At least three hours sun may be available for each building during winters. In case of residential structures, kitchen and services shall have to be provided along the external walls. However, if the water closets and bath rooms are not opening to the front, sides, rear and interior open spaces, these shall open to the ventilation shaft. The maximum size of ventilation shaft shall be 4.00 M² with minimum one dimension of 1.50 M.
- (ii) The Developer shall ensure prior environmental clearance under the provisions of the Environment Protection Act, 1986 from the Competent Authority, besides consent of the Himachal Pradesh State Environment Protection and Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

11. **Safety Measures**

- ¹(i) In case of buildings above 15.00 M height, No Objection Certificate from the Director of Fire Services or Chief Fire Officer, as the case may be, shall be required only at the completion stage.
- (ii) The provision of stair cases shall be as per clause *‘‘4.6.2’’ of Part-IV of the National Building Code of India i.e. minimum two stair cases for floor area of more than 500 M². At least one of the stair case shall be on external wall of the buildings and shall open directly to the exterior. Width of stair case shall not be less than 3.00 M i.e. 1.50 M in each flight.
- (iii) Provision for lift shall be optional upto 3 storeys and 1 parking floor. However, for more than 3 storeys and one parking floor, it shall be mandatory requirement. The Developer shall make provision of power back up for the lift and general lighting within and outside the building at his own cost.
- (iv) Provision for proper Fire Hydrants shall have to be made in the Complex and the layout, showing position and location of the same. It shall be made available to the nearest Fire Office.

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

12. Potable Water Supply and Rain Water Harvesting

- ¹(i) Water Availability Certificate from the Himachal Pradesh Irrigation and Public Health Department regarding availability of adequate water supply and viability of design of rain water harvesting structure shall have to be furnished.
- (ii) Adequate provision for rain water harvesting structure, @ 20 Liters per M² of the roof top area, shall have to be made underground in the parks and open spaces and the same shall be used for the purposes other than drinking and cooking.

13. Parks and Tot Lots

Area under parks and tot lots shall have to be properly developed in regular shape by providing retaining walls, railings, plantation etc. and amidst the Blocks, proper landscaping of the IT Park area in accordance with the design shall be ensured by the Developer.

14. Existing trees and plantation

- (i) No construction shall be allowed within a radius of 2.00 M from the existing tree and 5.00 M from the forest boundary measured from the circumference of an existing tree.
- (ii) Plantation shall be ensured @ 125 trees per Hectare.

15. Distance from Natural drainage

Distance from the Highest Flood Level (HFL) along Rivers, Khuds and Nullahs shall be as delineated in the Interim Development Plans / Development Plans. In other areas, no construction shall be allowed in parcel of land prone to floods.

16. Distance from Roads

Minimum distance of structures from National Highways, State Highways, Himachal Pradesh Public Works Department (HPPWD)'s Scheduled roads, Bye-Passes and other District roads shall be 15.00 M.

¹17. Distance from Electric Lines

Adequate distance from the electric lines as per the requirement of Himachal Pradesh State Electricity Board Limited (HPSEB Ltd.) Rules shall have to be maintained.

¹18. Assessment of Power requirement

In case power requirement assessment exceeds 50 KW, proper space for installation of electric Transformer and Transmission Lines of 11 KV shall be provided in the layout plan. The proposed space is to be got verified from the concerned Officer of the HPSEB Ltd. and accordingly report shall have to be furnished.

19. Development of Infrastructure and its maintenance

- (i) The Developer shall construct roads and drains, lay electric and sewerage lines and shall make provision for disposal of solid waste etc. Suitable site has to be reserved for placement of dumpers. The provision of services infrastructure shall be made through a duct to be constructed on the sides of the internal roads.

¹ As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

- (ii) The Developer shall provide street light poles each at a distance of 30.00 M on either side of the roads.
- (iii) The provision of community water reservoir has to be made in the Complex.
- (iv) All the infrastructural services shall be maintained by the Developer, till such time when a Society is formed and got registered by the stakeholders and residents of the Complex or a Municipality or Gram Panchayat takes over the maintenance pursuits of the area.

20. Supervision

The registered Architect from the Council of Architecture and Structural Engineer, Graduate in Civil Engineering with 3 years experience in Structural Engineering and the Town Planner shall be competent for supervision of development of land as per provisions of Annexure-A of Part II of the National Building Code of India, 2005.

21. Integration

Proper integration of the IT park area shall have to be ensured with the surrounding uses and infrastructural provisions like roads, drainage, sewerage etc.

22. Preservation of local Heritage and Hill Architecture

As far as possible local Heritage and Hill Architecture imperatives shall have to be ensured and incorporated in the designs in terms of facades, sloping roof, windows, doors etc. in hilly areas.

23. Other Regulations and instructions as issued by the Government from time to time shall be adhered strictly.

APPENDIX-4

(See rules 13 and 14)

REGULATIONS FOR SOLAR PASSIVE BUILDING DESIGN

1. Scope

The Solar Passive Building Design shall be required in the following type of buildings:-

- (i) All the Government and Semi-Government buildings.
- (ii) Public and Semi-Public Institutions including Educational, Health, Community Centres, Banquet Halls, Inns and buildings of Autonomous Bodies.
- (iii) Urban Local Bodies and Panchayati Raj Institutions.
- (iv) Residential buildings in Urban and Urbanisable Areas.
- (v) Residential Colonies and Apartments.
- (vi) Commercial complexes and buildings related thereto including Hotels, Resorts, Lodges and Guest Houses.
- (vii) Industrial buildings and complexes thereof.
- (viii) Transport buildings such as Airport Terminals, Bus Terminals, Railway Stations etc.
- (ix) New Townships.

2. Building Map

The map for the proposed building should accompany a statement giving detail of specifications of solar passive heating and cooling system, day lighting features, solar photovoltaic panels, energy efficient and other renewal energy devices as shown in the drawing and proposed to be installed where required. Expected energy saving in the building should also be mentioned.

3. Site Selection

The site should preferably be selected on southern slopes or sunny side. Availability of sun shine duration during the winter months of December to March should also be mentioned.

4. Orientation

The longer axis of the building should preferably lie along east-west directions to trap maximum solar energy during winters.

5. Planning of Spaces

The main habitable spaces of a building may be planned and designed in such a manner, so that natural day light is available. The stair cases, garages, toilets and stores may be planned preferably on northern side. Minimum door and window openings on north side be proposed to avoid heat losses. In order to capture maximum heat in winters, maximum glazing be proposed on southern side. Glazing in proportion to total surface area of outer wall should not exceed more than 50% in mid-altitude regions i.e. 1500 M to 2200 M and not more than 70% in high altitude regions i.e. 2200 M and higher.

6. Integrating Solar Heating Systems in Building Designs

- 6.1 Passive solar heating systems like solar air heating, water heating, sun space, solar walls, space heating, green houses and solar trombe wall etc. shall be integrated in the building design, wherever possible on southern side, so as to allow maximum direct solar access to these systems.

6.2 The suitability of space heating systems to be installed or incorporated in the design of a solar passive building is to be decided by the registered Town Planner/Architect/Engineer/Designer/Solar Expert in accordance with building site, climate and space heating requirements.

7. **Solar Photovoltaic Panel (SPV) for Lighting**

Wherever possible and required, the solar photovoltaic panels may be integrated preferably in the building design for providing light in the building, emergency lighting and street lighting, so that use of electricity is minimized.

8. **Solar Passive Cooling Design Features**

The ventilation and Solar Passive cooling features may be incorporated wherever required as follows:

8.1 Cross Ventilation: Windows on opposite sides of rooms may be provided for proper circulation and ventilation of fresh and cool air in summers. Windows on southern side may be fixed with overhangs of adequate height and width to provide shade during the summers.

8.2 Colour and Shading: The external surface of the wall may be painted with white or light colours to reflect instant solar radiation.

8.3 Ground Embankments: Ground floor may be provided with earth berming upto a height of around 1.00 M for taking the advantage of constant temperature of the earth throughout the year.

8.4 Outside Temperature: Outside temperature may be modified by landscaping.

9. **Reducing Thermal Losses**

The local building materials including stone, slate and mud may be utilized to meet the heating and cooling requirements by storing warmth and keeping the building cool.

10. **Outer Wall Thickness**

Outer walls of the building should be made at least 0.23M thick or with cavity with air or with insulation for thermal comfort and to avoid the transfer of heat from outer environment to inner environment and vice-versa.

11. **Installation of Solar assisted Water Heating System in Buildings**

11.1 The capacity of the Solar hot water system is to be determined as per the requirement of particular building. The following building plans shall be submitted along with provision of solar water heating system.- (a) Hospitals and Nursing Homes.

(b) Hotels, Lodges, Guest Houses, Group Housing or Apartments on an area of more than 1000 M².

(c) Hostels of Schools, Colleges, Training Centres and other Institutions.

(d) Barracks of Police.

(e) Functional Buildings of public institutions like Airports, Bus Stands and Railway Stations.

(f) Community Centres, Banquet Halls and buildings for similar use.

¹(g) Roof top @ 12 M² per 1 Kilo Watt peak (KWp) shall be used for Solar Photovoltaic (PV) installations.

- 11.2 (a) New buildings should have open space on the roof top which receives direct sun light. The load bearing capacity of the roof should at least be 50 Kg. per M². All new buildings of above categories must complete installation of solar water heating system before putting the same in use.
- (b) Installation of solar assisted water heating systems in the existing building as given in Regulation 11.1 shall be required at the time of change of building use to above said categories, provided there is a system or installation, for supplying hot water.
- 11.3 Installation of solar assisted water heating systems shall conform to the Bureau of Indian Standards (BIS) specifications. The solar collectors used in the system shall have the Bureau of Indian Standards (BIS) certification mark.
- 11.4 All solar water heating systems may have an automatic electric backup system, so that the same is functional during cloudy or low / non-sunshine days.
- 11.5 Provision in the building design itself may be kept for an insulated pipeline from the roof top in the building to various distribution points where hot water or hot air is required.
- 11.6 The solar water heating system has to be integrated preferably in roof of the building, wherever possible, so that the panels become integral part of the roof. The solar air /water collectors/ green houses / sunspaces on the roof for receiving maximum solar radiation will be allowed.

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

APPENDIX 5

(See rules 13 and 14)

REGULATIONS FOR DEVELOPMENT OF BARRIER FREE ENVIRONMENT FOR THE PERSONS WITH DISABILITIES IN PUBLIC AND SEMI-PUBLIC BUILDINGS AND RECREATIONAL AREAS WITHIN THE LIMITS OF ECONOMIC CAPACITY**1. Site Planning:**

Every public and semi-public building shall have at least one access to main entrance/¹exit to the disabled, which shall be indicated by proper signage. This entrance shall have approach through a ramp together with stepped entry. The ramp should have a landing after 9 M run and in front of the doorway. Minimum size of landing shall be 1000 mm x 2000 mm.

2. Access Path/Walkway:

Access path from plot entry and surface parking to building entrance shall be minimum of 1800 mm wide having even surface without any step. The slope, if any shall not be greater than 5%. Selection of floor material shall be made suitably to attract or to guide visually impaired persons (limited to floor material whose colour texture is conspicuously different from that of the surrounding floor material or the material that emit different sound to guide visually impaired persons). Finishes shall have a non-slip surface with texture traversable by a wheel chair. Curbs wherever provided should blend to common level.

3. Parking Provision:

- (a) Surface parking for two equivalent car spaces shall have to be provided near entrance with maximum travel distance of 30 M from building entrance. Width of parking bay shall be minimum 3.60 M.
- (b) Guiding floor materials shall be provided or a device which guides visually impaired persons with audible signals or other devices which serves the same purpose shall be provided.

4. Approach to Plinth Level:

- (a) Ramp shall be provided with non-slip material to enter the building. Minimum clear width of ramp shall be 1800 mm with maximum gradient of 1:12 between top and bottom of the ramp. Length of ramps shall not exceed 9.00 M having 800 mm high handrail on both sides extending 300 mm beyond the ramp. Minimum gap from the adjacent wall to the handrail shall be 50 mm.
- (b) For stepped approach, size of tread shall not be less than 300 mm and maximum riser shall be 150 mm. Provision of 800 mm high handrails on both sides of the stepped approach similar to the ramped approach shall be provided.

5. Entrance Door: Minimum clear opening for the entrance door shall be 1000 mm.**6. Corridor connecting the Entrance/Exit:**

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

The corridor connecting the entrance/exit for handicapped, leading directly outdoors to a place where information concerning the overall views of the specific building can be provided to visually impaired persons either by a person or signs shall be provided as follows:-

- (a) Guiding floor materials shall be provided or devices that emit sound to guide visually impaired persons.
- (b) The minimum width shall be 1500 mm.
- (c) In case there is a difference of level, slope ways shall be provided with a gradient of 1:12.
- (d) Handrails shall be provided for ramps/slope ways.

7. Lift:

For the buildings with more than 15.00 M in height, one lift shall be provided for the wheel chair user with the following clear dimensions:-

- (a) Clear internal depth 1100 mm
- (b) Clear internal width 2000 mm
- (c) Entrance door width 910 mm

A handrail not less than 600 mm long at 900 mm above floor level shall be fixed adjacent to the control panel. The lift lobby shall be of an inside measurement of 1800 mm x 2000 mm or more. Operational details of lift shall conform to the National Building Code of India.

8. Toilets:

One special toilet in a set of a toilets shall be provided for use of handicapped with following specifications:-

- (a) Provision of wash basin near the entrance.
- (b) The minimum size shall be 1500 mm x 750 mm.
- (c) Minimum clear opening of the door shall be 900 mm and the door shall be swinging/sliding type.
- (d) Suitable arrangements for vertical/horizontal handrails with 50 mm clearance from wall shall be made in the toilet.
- (e) The Water Closet (WC) seat shall be 500 mm from the floor.

9. Refuge Area:

Refuge area shall have to be provided at the fire protected stair landing on each floor having doorways with clear opening width of 900 mm that can safely hold one or two wheelchairs. The alarm switch should be installed between 900mm and 1200 mm from the floor level.

APPENDIX 6**(See rules 13 and 14)****REGULATIONS FOR COLLECTION OF RAIN WATER**

1. The collection of rain water from the roof tops of the buildings shall be compulsory where the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) is in operation in the State as under :-
 - (a) For all the buildings existing or proposed for construction in future; and
 - (b) The Guidelines for capturing, storage, integration and distribution of rain water shall be as under:-
 - (i) The Rain Water Harvesting Structures are allowed to be constructed in set backs below ground level. If the storage is desired at any level above ground level, it has to be away from set backs within the permitted covered area.
 - (ii) The community Rain Water Harvesting Structure shall also be permissible.
 - (iii) Proper system for rain water capturing, storage as well as integration and distribution shall be ensured.
 - (iv) The stored rain water shall be utilized regularly for non-drinking usages including fire fighting, landscaping, gardening apart from domestic usages.
 - (v) No water supply connection shall be given to any building till Rain Water Harvesting System is put in place and subsequently operationalised.
 - (vi) The minimum capacity of Rain Water Harvesting Structure shall be worked out @ 20 Liters per square Metre of the roof top area.
 - (vii) Violator shall be liable for disconnection of Public Water Supply connection.
 - (viii) The owners of existing buildings without Rain Water Harvesting System shall have to install Rain Water Harvesting System within eighteen months after coming into the operation of these Regulations.

APPENDIX 7

(See rules 13, 14 and 67)

REGULATIONS FOR DEVELOPMENT OF APARTMENTS AND COLONIES

1. Site selection

The site may be selected in such area which is going to be proposed for Residential Use and the same is not having non-conforming uses like obnoxious uses, industrial and dumping ground etc. in its vicinity.

2. Check List

A Check List showing Regulatory provisions and fulfillment thereof shall have to be submitted alongwith the proposal for Apartments as under:-

Sr. No.	Description	As per Regulations	As proposed
1.	Scheme Area.		
2.	Slope of Area.		
3.	Means of Access.		
4.	Land Use Structure.		
5.	Coverage (i) Under Flats (Block wise). (ii) Under other uses (Block wise).		
6.	Total Built up Area.		
7.	Floor Area Ratio (FAR).		
8.	No. of storeys in each Block.		
9.	Height of each floor.		
10.	Total Height of Block.		
11.	No. of Flats/Dwelling Units in each Block.		
12.	Total Population.		
13.	Density per Hectare.		
14.	Detail of facilities like school, health services etc. with respect to population.		
15.	Parking provision.		
16.	Structural Stability Certification.		
17.	Distance of structures from natural drainage.		
18.	Distance of structures from Highways and other District Roads.		
19.	Distance of structures from HT/LT lines.		
20.	No Objection Certificate of competent authority of the Himachal Pradesh State Electricity Board Limited in case HT/LT line is crossing over/ nearby proposed site.		

21.	No Objection Certificate of the competent authority of National Highway / Himachal Pradesh Public Works Department or Local Bodies for approach to the proposed project as the case may be.		
22.	No Objection Certificate of the competent authority of Himachal Pradesh Forest Department.		
23.	No Objection Certificate of the competent authority of Himachal Pradesh Irrigation and Public Health Department or consent of Central Ground Water Authority regarding use of ground water.		
24.	No Objection Certificate of the competent authority of Himachal Pradesh Fire Services Department.		
25.	No Objection Certificate of the competent authority of Urban Local Bodies/Panchayats.		
26.	Provision of Rain Water Harvesting Structure.		
27.	Arrangement for disposal and treatment of solid waste, sullage, sewage, sewerage and storm water.		
28.	Provision for street lighting.		
29.	Name of the registered Town Planner / Architect/Engineer with full correspondence address, appointed for the job.		
30.	Name of the registered Structural Engineer with full correspondence address, appointed for the job.		

3. Size and shape of Scheme Area

The cases for permission of Apartments shall be considered in the form of complexes and not on ribbon development pattern along Highways/Major Roads.

4. Slope

¹Apartment shall be allowed upto 45⁰ slopes.

²5. Land Use structure of a Colony:-

Sr.No.	Land Use	Percentage of Total Area
1.	Area under Apartments	30-35 %
2.	Commercial	02 -03 %

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

² As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

3.	Public and Semi- Public	06 -10 %
4.	Traffic and Transportation	10-15 %
5.	Parks and Open Spaces	10-15 %
6.	Area under Set Backs, pavement, plantation and landscaping etc.	Balance
-	Total	100 %”

Provided that Director may, for the reasons to be recorded in writing revise the percentage prescribed above keeping in view the location of the colony/project.

Note:-

Under Commercial Use, convenient shops @ of one shop per 150 persons shall have to be provided. These will include service shops like vegetable, shoe repair, dry cleaning, tailor, barber, general merchandise etc. The purpose of these shops should clearly be mentioned in the Plan and should be accordingly allotted after completion. In case Public and semi-Public amenities like schools, health centres etc. are available in the vicinity and the same are adequate to cater for the requirements of inhabitants, detail thereof shall have to be given in the Check List at Regulation 2. However, provision of toilets and urinals @ two toilets, one for ladies and one for gents, per 1000 persons and provision for Kindergarten/ tot lots etc. shall have to be made in every Scheme.

6. ¹Means of Access

- (i) The minimum access/approach from main road to the project site for construction of colony or apartments with a population of 1000 persons shall not be less the 5.00Metres and for population above 1000 persons shall not be less than 6.00Metres.

However, in case of low-rise, low-density and isolated vacation group housing projects an access / approach not less than 3.0 Metres can be considered. Such a project shall have an overall F.A.R. of not more than 1.0 and maximum building height of 10M.

- (ii) Width and length of means of internal access for Colonies shall be as under:-

(a) For plain areas:-

Sr. No.	Width (in Metre)	Length upto (in Metre)
1.	5.00	250
2.	7.50	400
3.	9.00	1000
4.	12.00	Above 1000

For hilly areas:-

Sr. No.	Width (in Metre)	Length upto (in Metre)
1.	5.00	400
2.	7.50	Above 1000

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment) Rules, 2016

(iii) Promoter shall endeavor to provide footpaths within the prescribed width of roads/ lanes as above along with the main roads/ lanes.

7. Parking Provision

Parking provision shall have to be provided @ one vehicle i.e. 18.00 M² area per 100 M² floor area. Maximum height of parking floor shall be 3.00 Metre including the depth of beam below the ceiling of the slab.

8. ¹Maximum Floor Area Ratio (FAR) shall be 1.75.

9. Floor Height and Maximum Height of Building

The minimum floor height of Apartments may vary from 3.00 Metres to 3.50 M. However, the overall height of the building shall not exceed 30.00 Metres in plains areas and 25.00 M including sloping roof in hilly areas of the State. Maximum height of sloping roof shall be in accordance with the volume of structure and the same shall not be less than 300 slope of the roof. The height of the Block shall be measured from plinth of the Block to the ridge of the roof including parking and roof. The minimum slope of the roof/ dormer shall not be less than 300. The colour of the roof shall be in post office red or grey green or any other colour conforming to the colour of the natural roofing material.

10. Set Backs

The Block to Block distance shall be 1/3rd of average height of Blocks subject to minimum of 6.00 M. Distance of Apartments from the adjoining properties and side Set Backs for plain area shall not be less than 1/3rd and for hilly area 1/4 th of the height of the respective adjacent Block subject to minimum of 3.00 M.*All the projections of the Apartments including any appurtenant shall be at a minimum distance of 1.00 M. from footpath or 2.00 M. from the roads/ lane.

11. Structural Stability

The Structural Stability provisions including Soil Investigation Report have to be strictly adhered as enshrined under section 31-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) and under Rule 21 of the Himachal Pradesh Town and Country Planning Rules, 2014. Monitoring of the same shall have to be ensured at each floor level and Completion Certificate in this regard shall be furnished to the Director, Town and Country Planning Department, Himachal Pradesh, Shimla.

12. Environment and Health

- (i) Proper air, light and ventilation to each dwelling unit shall have to be ensured. At least 3 hours sun may be available for each flat during winters. Kitchen and services shall have to be provided along the external walls. However, if the Water Closets (WCs) and bath rooms are not opening on to front, side, rear and interior open spaces, these shall open on to the ventilation shaft. The minimum size of which shall be as under:-

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

Sr. No.	Height of Buildings (in Metre)	Size of Ventilation Shaft (in square Metre)	Minimum one dimension of the Ventilation Shaft (in Metre)
1.	Upto 10.00	1.20	0.90
2.	Upto 12.00	2.80	1.20
3.	Upto 18.00	4.00	1.50
4.	24.00 & above	5.40	1.80

(ii) In view of Notification No. S.O. 801 (E) dated 7.7.2004 of the Ministry of Environment and Forests, Government of India, New Delhi and accordingly further directions of the State Government circulated vide letter No. STE-A (3)11/2003 dated 28.3.2005, in case of population more than 1000 persons or discharging sewage more than 50 Kilo Liter per Day (KLD) or above or with an investment of Rs.50 Crores or above, the Promoter has to ensure the Environmental Clearance from the Government of India, besides consent of the Himachal Pradesh State Environment Protection and Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

13. Safety Measures

- (i) In case of buildings above 15.00 M of height, No Objection Certificate (NOC) from the Director, Fire Services or Chief Fire Officer, as the case may be, shall be required.
- (ii) The provision of stair cases shall be as per clause *4.6.2 of Part-IV of National Building Code of India i.e. minimum of 2 stair cases for floor area of more than 500 M². At least one of the stair case shall be on external wall of the buildings and shall open directly to the exterior. Width of stair case shall not be less than 3.00 M i.e. 1.50 M in one flight.
- (iii) Upto 4 storeys and 1 parking floor, provision for a lift shall be optional. However, for more than 4 storeys and one parking floor, it shall be mandatory requirement. The Promoter has to make provision of power back up for the lift and general lighting within and outside the building at his own cost.
- *(iv) Adequate system of fire hydrants/ fire fighting systems to the satisfaction of Director General, Fire Services or Chief Fire Officers or the District Level Fire Officer, as the case may be, shall be required.

14. Potable Water Supply and Rain Water Harvesting

- (i) No Objection Certificate (NOC) from the Himachal Pradesh Irrigation and Public Health Department (HPI & PH), regarding availability of adequate water supply and viability of design of rain water harvesting structure shall have to be furnished.
- (ii) Adequate provision for rain water harvesting structure @ 20 Liters per M² of the roof top area shall have to be made underground in the parks and open spaces and the same shall be used for the purposes other than drinking and cooking.

15. Parks and Open Spaces

Area under parks and tot lots shall have to be properly developed in regular shape by providing retaining walls, railings, plantation etc. and amidst the Blocks, proper landscaping of the Apartment area in accordance with the design shall be ensured by the Promoter.

16. Existing Trees and Plantation

- (i) No construction shall be allowed within a radius of 2.00 M from the existing tree and 5.00 M from the forest boundary measured from the circumference of an existing tree.
- (ii) The Promoter shall ensure plantation of trees at least equivalent to the anticipated population of the area and the same shall have to be monitored by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla. Local varieties of trees with exotic impact and attraction shall have to be planted.

17. Distance from Natural Drainage

Distance from the Highest Flood Level (HFL) along Rivers, Khuds and Nullahs shall be as delineated in the Interim Development Plans / Development Plans. In other areas, no construction shall be allowed in parcel of land prone to floods.

18. Distance from Roads

Distance of structures from roads shall have to be adhered as under:-

- | | | |
|---|---|---------|
| (i) National/ State Highways/ Himachal Pradesh Public Works Department's Scheduled Roads and Bye-passes | = | 15.00 M |
| (ii) Other District Roads. | = | 10.00 M |
| (iii) Other Roads | = | 5.00 M |

19. Distance from Electric Lines

Adequate distance from the electric lines as per the requirement of Himachal Pradesh State Electricity Board Limited (HPSEB Ltd) Rules shall have to be maintained. The No Objection Certificate (NOC) of the competent authority shall also be required, if HT/LT line is crossing through the Scheme.

20. Assessment of Power Requirement

In case, power assessment exceeds 50 KW, proper space for installation of electricity Transformer is required to be provided in the layout plan and provision has to be made for coming 11 KV line. The proposed space is to be got verified from the concerned Officer of the Himachal Pradesh State Electricity Board Limited (HPSEB Ltd) and accordingly No Objection Certificate (NOC) alongwith verification at site shall have to be furnished.

21. Reservation for Economically Weaker Sections, Low Income Groups of Society and Bonafide Himachalis

The promoter shall have to ensure the reservation for Economical Weaker Section (EWS), Low Income Group (LIG) of the society and Bonafide Himachalis as prescribed in the Rule 56 of the Himachal Pradesh Town and Country Planning Rules, 2014.

22. Development of Infrastructure and its Maintenance

The Promoter shall construct roads, drains, lay electricity lines, sewerage and make provision for disposal of solid waste etc. Suitable site has to be reserved for placement of dumpers. The provision of services infrastructure shall be made through a duct to be constructed on sides of the road and the same have to be ascertained by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla during the course of development at site. The Promoter has to provide street light poles, each at a distance of 30.00 M on either side of the roads. The provision of community water reservoir has to be made in the Scheme. All the infrastructural services shall be maintained till such time that a Society is formed and got registered by the residents of the Scheme or Municipal Corporation or Municipal Council or Nagar Panchayat or Special Area Development Authority (SADA) or Panchayat, undertakes the maintenance pursuits of the area.

23. Control on Registration of Apartments and release of service connections

The Sub-Registrar shall not register sale deed of a Flat/ Apartment which has been constructed in violation of an approved plan. Similarly, the Himachal Pradesh State Electricity Board Limited as well as Himachal Pradesh Irrigation and Public Health Department shall not release any service connection without obtaining No Objection Certificate (NOC) of the Director, Town and Country Planning Department, Himachal Pradesh, Shimla under provision of section 83-A of the Himachal Pradesh Town and Country Planning Act, 1977(Act No. 12 of 1977).

24. Supervision

The registered Architect from the Council of Architecture and Structural Engineer, Graduate in Civil Engineering with 3 years experience in Structural Engineering and the Town Planner shall be competent for supervision of development of land as per provisions of Annexure-A of Part II of the National Building Code of India, 2005.

***25. Preservation of the Natural Hill Profile:**

Promoter shall endeavor to develop the colony along the slopes of hill without much disturbance to the natural hill profile. In no case hill cut at any level shall not exceed 3.50Metres. ”

26. Preservation of local Heritage and Hill Architecture

As far as possible local Heritage and Hill Architecture imperatives shall have to be ensured and incorporated in the designs in terms of facades, sloping roof, windows, doors etc. in hilly areas.

***27. Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines.**

In case of any clarification with reference to any proviso or if there is no any specific provision, the provisions as envisaged in the Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines, 2014 of the Government of India or the National Building Code,2005 of India shall have to be adhered to.

APPENDIX 8

(See rules 13, 14 and 18)

REGULATIONS OF PRESCRIBED LIMITS FOR DEVELOPMENT ACTIVITIES EXEMPTED UNDER SECTION 30-A OF THE HIMACHAL PRADESH TOWN AND COUNTRY PLANNING ACT, 1977 (ACT NO. 12 OF 1977)

1. Residential Buildings and Farm Houses

- (i) Maximum floor area = 600.00 M²
- (ii) Maximum number of storeys = 3 Nos +1 Parking floor wherever feasible.

Note:- The applicant may have a maximum floor area of 600.00 M² distributed over not more than three storeys.

2. Commercial Use

- (i) Maximum floor area = 100.00 M²
- (ii) Maximum number of storeys = 2 Nos.
- (iii) Minimum access = 3.00 M
- (iv) Parking = For loading, un-loading and parking purpose suitable community parking space has to be arranged by the Shop owners.

Note:- The applicant may have a maximum floor area of 100.00 M² distributed over not more than two storeys.

3. Service Industries

- (i) Maximum floor area = 100.00 M²
- (ii) Number of storeys = 1 No.
- (iii) Minimum access = 3.00 M
- (iv) Parking = For loading, un-loading and parking purpose suitable community parking space shall have to be ensured by the Industrialists.

4. Public Amenities

- (i) Maximum floor area = As per requirement of the particular amenity.
- (ii) Maximum Number of storeys = 3 Nos.
- (iii) Minimum access = 3.00 M
- (iv) Parking = @ 0.50 to 1.50 equivalent car space per 100 M² of floor area.
- (v) Play fields in case of Educational buildings. = 0.20 Hectare to 1.60 Hectare is Desirable, however, as per availability of land.

5. Other Imperatives

- (i) Structural safety and seismic proofing including soil investigation should be ensured.
- (ii) Attic and basement shall be counted as a storey.

- (iii) Sloping roof shall have to be ensured.
 - ¹(iv) No construction shall be raised within a distance of 3.00 Metre from the edge of the roads in respect of village roads.
 - (v) No construction shall be raised within the controlled width of major District roads.
 - ¹(vi) Minimum Set Back of 3.00 M from the controlled width of National Highways, State Highways and Scheduled Roads under the Himachal Pradesh Road Side Land Control Act, 1968 shall be kept.
 - (vii) Minimum Set Back of 2.00 M in front and 1.50 M in sides and rear side and from the adjoining property, Government land and 5.00 M from Forest land shall have to be maintained.
 - ²(viii) Adequate distance from all the electric lines including HT/LT lines as per the requirement of Himachal Pradesh State Electricity Board Limited (HPSEBLtd.) Rules shall have to be maintained. A Self Declaration/Certificate to this effect shall be submitted by the applicant in this regard.
 - ¹(ix) The applicant shall endeavor to develop the colony along the slopes of hill without much disturbance to the natural hill profile. In no case hill cut at any level shall not exceed 3.50 Metres.
 - (x) Provision of Rain Water Harvesting structure @ 20 Liters per M² of roof area should be made.
 - (xi) Septic Tank and Soak Pit should be constructed.
 - (xii) Preference shall be given for Solar Passive Building Design.
 - (xiii) Locational attributes, aesthetics, local building material, heritage and environmental aspects should also be taken into account.
- 6. Remarks :**
- (i) The benefit of above exemptions shall only be available to the residents and original inhabitants of the areas, who owned the property at the time of commencement of the Act and their natural heirs only and not to the persons who purchased land in rural areas.
 - ²(ii) Any person intending to carry out development activities exempted under section 30-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) shall give information on simple paper alongwith a copy of original jamabandi and original tatima to the concerned Panchayat before carrying out development activities. The concerned Panchayat after verifying the documents, shall grant No Objection Certificate for releasing Service Connections or Completion Certificate to the applicant under Section 83-A of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977) for obtaining service connections.”
 - *(iii) In case of any constraints as per the site conditions in maintaining set backs, or any other regulations the Director or the concerned officer vested with the powers of the Director may relax the same. In case of any clarification with reference to any proviso or if there is no any specific provision, the provisions as envisaged in the Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines, 2014 of the Government of India or the National Building Code of India shall have to be adhered to.

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

² As amended vide Himachal Pradesh Town and Country Planning (Fifth Amendment), Rules 2020

APPENDIX 9
(See rules 13 and 14)

REGULATIONS FOR INSTALLATION OF COMMUNICATION TOWERS.

The Policy communicated by the Department of Information Technology, Govt. of Himachal Pradesh Shimla shall be applicable into in all the Planning Areas and Special Areas in the State of Himachal Pradesh subject to the condition that minimum set backs as applicable for residential buildings in that Planning Area or Special Area shall be applicable, in case tower is installed on ground. A Structural Stability Certificate of the building shall be mandatory for roof top towers and towers erected on ground.

APPENDIX 10
(See rule 17)

REGISTRATION OF PRIVATE PROFESSIONALS NAMELY TOWN PLANNERS/ARCHITECTS/ ENGINEERS/ DRAUGHTSMEN / SURVEYORS, THEIR QUALIFICATIONS AND COMPETENCY

1. Essential requirements-

Every Plan / Design within the limits of Planning Area/ Special Area shall be prepared/ designed/ signed by the Town Planner/ Architect / Engineer/ Draughtsman /Surveyor belonging to an appropriate class of Town Planner/ Architect / Engineer/ Draughtsman/Surveyor duly registered by the Director.

2. Categorization-

The registered Town Planner/ Architect / Engineer/ Draughtsman/Surveyor for the purpose of preparation of Plans/Design/sign shall be classified into following 3 classes namely A, B and C. The classification being based on the plot area for which they will be eligible to prepare Plans/ Design and sign the same within Planning Area/Special Area. The limit of the plot area for the preparation of Plans /Design/sign by such class of the registered Town Planner/ Architect / Engineer/ Draughtsman/ Surveyor shall be as under:-

Class	Plot Area for Building Plan	Area for Sub-Division of land	Class of Town where entitled to function
A-Class	No limit	No limit	Municipal Corporation, Municipal Councils, Nagar Panchayats and Rural Areas
B-Class	500 M ²	5000 M ² .	Municipal Councils, Nagar Panchayats and Rural Areas
C-Class	250 M ²	Nil	Nagar Panchayats and Rural Areas

3. Class wise Qualification-

The minimum qualification necessary for the registration of Town Planner/ Architect / Engineer/ Draughtsman/ Surveyor of an appropriate class shall be as under:-

(i) Class-A-

- (a) A Degree or equivalent qualification in Town Planning or Regional Planning from a recognized University or Institute making the holder eligible for the Associateship or Fellowship of the Institute of Town Planners (India) or Royal Institute of Town Planners(London).
- (b) A Degree or equivalent qualification in Architecture from a recognized University or Institute, making the holder eligible for Associateship or Fellowship of the Royal Institute of British Architects or Institute of Architects (India) and registered with the Council of Architecture.
- (c) A Degree or equivalent qualification in Civil Engineering from a recognized University or Institute, making the holder eligible for the Associate Membership of the Institute of Engineers (India).

(ii) Class-B-

Three years Diploma in Civil Engineering or equivalent or three years Diploma in Architectural Assistantship awarded by the State Board of Technical Education or Intermediate in Architecture or equivalent.

(iii) Class-C-

Two years Diploma in Civil Draughtsmanship /Surveyor or equivalent from a recognized Polytechnic/ Industrial Training Institute and recognized for recruitment as a Civil Draughtsman/ Surveyor.

4. Registration and Renewal Fee-

The non-refundable Registration Fee and Renewal Fee after a period of five years of initial Registration shall be as given in the following Table.

Sr. No.	Category of Registered Private Professionals	Registration Fee (Rupee)	Renewal Fee (Rupee)
1.	Class-A : (a) Town Planner/ Architect/ Engineer. (b) Group or Company of Town Planners/Architects/ Engineers.	2000.00 6000.00	2500.00 7500.00
2.	Class-B	1000.00	1250.00
3.	Class-C	600.00	750.00

The Renewal Fee shall be payable every five years after the initial Registration.

¹Provided that the Architects registered with the Council of Architecture, New Delhi under the Architects Act, 1972the Engineers registered with the Institution of Engineers (India), Kolkata and the Planners registered with the Institute of Town Planners (India) New Delhi shall not be required to be registered under these rules. However, such professionals

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

shall be required to get empanelled with the Director without paying any fees. These professionals once empanelled shall not require any renewal of empanelment.

5. Cancellation of Registration-

The Director may suspend or cancel the Registration of any Town Planner/ Architect / Engineer/ Draughtsman/ Surveyor, who in the opinion of the Director is not carrying out the requirements of the Zoning Regulations framed under Interim Development Plan, Development Plan and the Guidelines issued under the Himachal Pradesh Town and Country Planning Act, 1977 and the Himachal Pradesh Town and Country Planning Rules, 2014.

Provided that before the Registration is cancelled, an opportunity of being heard shall be afforded to the concerned Town Planner/ Architect / Engineer/ Draughtsman/ Surveyor.

Provided further that three opportunities shall be given to a professional before finally cancelling the Registration.

¹Provided further that the Architects, Engineers and Planners registered with the Council of Architecture, New Delhi under the Architects Act 1972, the Institution of Engineers (India), Kolkata and the Institute of Town Planners (India), New Delhi respectively and empanelled with the Director shall only be suspended or cancelled by the said Institutions in which they are registered, on recommendations of the Director.

¹ As amended vide Himachal Pradesh Town and Country Planning (Amendment), Rules 2016

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

ARRANGEMENT OF SECTIONS

**CHAPTER I
PRELIMINARY**

SECTIONS

1. Short title, extent and commencement.
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THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

ACT NO. 16 OF 2016

[25th March, 2016.]

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Real Estate (Regulation and Development) Act, 2016.

(2) It extends to the whole of India except the State of Jammu and Kashmir¹.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “adjudicating officer” means the adjudicating officer appointed under sub-section (1) of section 71;
- (b) “advertisement” means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;
- (c) “agreement for sale” means an agreement entered into between the promoter and the allottee;
- (d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

¹ Vide notification No. S.O. 3912(E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

² 1st May, 2016, vide notification No. S.O. 1544(E), (Except ss. 3 to 19, 40, 59 to 70, 79 & 80) dated 26th April, 2016, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

- (e) “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;
- (f) “Appellate Tribunal” means the Real Estate Appellate Tribunal established under section 43;
- (g) “appropriate Government” means in respect of matters relating to,—
 - i. the Union territory without Legislature, the Central Government;
 - ii. the Union territory of ¹[Puducherry and Union territory of Jammu and Kashmir], the Union territory Government;
 - iii. the Union territory of Delhi, the Central Ministry of Urban Development;
 - iv. the State, the State Government;
- (h) “architect” means a person registered as an architect under the provisions of the Architects Act, 1972 (20 of 1972);
- (i) “Authority” means the Real Estate Regulatory Authority established under sub-section (1) of section 20;
- (j) “building” includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;
- (k) “carpet area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

- (l) “Chairperson” means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;
- (m) “commencement certificate” means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;
- (n) “common areas” mean—
 - (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
 - (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
 - (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

¹ Subs. by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020).

- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
 - (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
 - (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
 - (vii) all community and commercial facilities as provided in the real estate project;
 - (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;
- (o) “company” means a company incorporated and registered under the Companies Act, 2013 (18 of 2013) and includes,—
- (i) a corporation established by or under any Central Act or State Act;
 - (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;
- (p) “competent authority” means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;
- (q) “completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;
- (r) “day” means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;
- (s) “development” with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes redevelopment;
- (t) “development works” means the external development works and internal development works on immovable property;
- (u) “engineer” means a person who possesses a bachelor’s degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;
- (v) “estimated cost of real estate project” means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;
- (w) “external development works” includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;
- (x) “family” includes husband, wife, minor son and unmarried daughter wholly dependent on a person;
- (y) “garage” means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

- (z) “immovable property” includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;
- (za) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;
- (zb) “internal development works” means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;
- (zc) “local authority” means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;
- (zd) “Member” means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;
- (ze) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (zf) “occupancy certificate” means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;
- (zg) “Person” includes,—
 - (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company;
 - (iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;
 - (v) a competent authority;
 - (vi) an association of persons or a body of individuals whether incorporated or not;
 - (vii) a co-operative society registered under any law relating to co-operative societies;
 - (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;
- (zh) “planning area” means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority

and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

- (zi) “prescribed” means prescribed by rules made under this Act;
- (zj) “project” means the real estate project as defined in clause (zn);
- (zk) “promoter” means,—
 - (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
 - (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
 - (iii) any development authority or any other public body in respect of allottees of—
 - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
 - (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
 - (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
 - (vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;

- (zl) “prospectus” means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;
- (zm) “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

- (zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;
- (zo) “regulations” means the regulations made by the Authority under this Act;
- (zp) “rule” means the rules made under this Act by the appropriate Government;
- (zq) “sanctioned plan” means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;
- (zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

CHAPTER II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. Prior registration of real estate project with Real Estate Regulatory Authority.—(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

- (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

4. Application for registration of real estate projects.—(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be ¹[prescribed].

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

- (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;
- (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;
- (i) the number and area of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—
 - (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

¹ Subs. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347 (E)], for “specified by the regulations made by the Authority” (w.e.f. 28-10-2016).

- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;
- (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.—For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

- (E) that he shall take all the pending approvals on time, from the competent authorities;
- (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and
- (m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

5. Grant of registration.—(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

- (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or
- (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter

for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

6. Extension of registration.—The registration granted under section 5 may be extended by the Authority on an application made by the promoter, due to force majeure, in such form and on payment of such fee as may be ¹[prescribed]:

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.— For the purpose of this section, the expression “force majeure” shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

7. Revocation of registration.—(1) The Authority may, on receipt of a complaint or *suomotu* in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;
- (b) the promoter violates any of the terms or conditions of the approval given by the competent authority;
- (c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- (A) the practice of making any statement, whether in writing or by visible representation which,—
 - (i) falsely represents that the services are of a particular standard or grade;
 - (ii) represents that the promoter has approval or affiliation which such promoter does not have;
 - (iii) makes a false or misleading representation concerning the services;
- (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;
- (d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds

¹ Subs. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347 (E)], for “specified by regulations made by the Authority” (w.e.f. 28-10-2016).

on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

- (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;
- (b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;
- (c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;
- (d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

8. Obligation of Authority consequent upon lapse of or on revocation of registration.—

Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

9. Registration of real estate agents.—(1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

(2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

(3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfilment of such conditions, as may be prescribed—

- (a) grant a single registration to the real estate agent for the entire State or Union territory, as the case may be;

- (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or this rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

(5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.

(6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

(7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

10. Functions of real estate agents.—Every real estate agent registered under section 9 shall—

- (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;
- (b) maintain and preserve such books of account, records and documents as may be prescribed;
- (c) not involve himself in any unfair trade practices, namely:—
 - (i) the practice of making any statement, whether orally or in writing or by visible representation which—
 - (A) falsely represents that the services are of a particular standard or grade;
 - (B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - (C) makes a false or misleading representation concerning the services;
 - (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- (d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
- (e) discharge such other functions as may be prescribed.

CHAPTER III

FUNCTIONS AND DUTIES OF PROMOTER

11. Functions and duties of promoter.—(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

- (a) details of the registration granted by the Authority;
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- (c) quarterly up-to-date the list of number of garages booked;
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- (e) quarterly up-to-date status of the project; and
- (f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter, at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

- (a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;
- (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

- (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;
- (c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and

charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

- (d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;
- (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

- (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;
- (g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person;

- (h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

- (5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

- (6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

12. Obligations of promoter regarding veracity of the advertisement or prospectus.—

Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be,

intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

13. No deposit or advance to be taken by promoter without first entering into agreement for sale.—(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

14. Adherence to sanctioned plans and project specifications by the promoter.—(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the 16 apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

- (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

- (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by

whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

15. Obligations of promoter in case of transfer of a real estate project to a third party.—(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

16. Obligations of promoter regarding insurance of real estate project.—(1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

- (i) title of the land and building as a part of the real estate project; and
- (ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

17. Transfer of title.—(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the ¹[completion] certificate.

18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

¹ Subs. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016[S.O. 3347(E), for “occupancy” (w.e.f. 28-10-2016).

CHAPTER IV
RIGHTS AND DUTIES OF ALLOTTEES

19. Rights and duties of allottees.—(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

CHAPTER V

THE REAL ESTATE REGULATORY AUTHORITY

20. Establishment and incorporation of Real Estate Regulatory Authority.—(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

21. Composition of Authority.—The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

22. Qualifications of Chairperson and Members of Authority.—The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

23. Term of office of Chairperson and Members.—(1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.

(2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

24. Salary and allowances payable to Chairperson and Members.—(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 23, the Chairperson or a Member, as the case may be, may,—

- (a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or
- (b) be removed from his office in accordance with the provisions of section 26 of this Act.

(3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of three months from the date on which such vacancy occurs.

25. Administrative powers of Chairperson.—The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

26. Removal of Chairperson and Members from office in certain circumstances.—(1) The appropriate Government may, in accordance with the procedure notified, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence, involving moral turpitude; or
- (c) has become physically or mentally incapable of acting as a Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Member shall not be removed from his office on the ground specified under clause (d) or clause (e) of sub-section (1) except by an order made by the appropriate Government after an inquiry made by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

27. Restrictions on Chairperson or Members on employment after cessation of office.—(1) The Chairperson or a Member, ceasing to hold office as such, shall not—

- (a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act;

- (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to the Authority;
- (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;
- (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

28. Officers and other employees of Authority.—(1) The appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

29. Meetings of Authority.—(1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.

(2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

30. Vacancies, etc., not to invalidate proceeding of Authority.—No act or proceeding of the Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person acting as a Member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

31. Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be ¹[prescribed].

32. Functions of Authority for promotion of real estate sector.—The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on,—

- (a) protection of interest of the allottees, promoter and real estate agent;
- (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
- (c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
- (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;
- (f) measures to encourage grading of projects on various parameters of development including grading of promoters;
- (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
- (i) to render advice to the appropriate Government in matters relating to the development of real estate sector;
- (j) any other issue that the Authority may think necessary for the promotion of the real estate sector.

33. Advocacy and awareness measures.—(1) The appropriate Government may, while formulating a policy on real estate sector (including review of laws related to real estate sector) or any other matter, make a reference to the Authority for its opinion on possible effect of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a

¹ Subs. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347 (E)], for “specified by regulations” (w.e.f. 28-10-2016).

period of sixty days of making such reference, give its opinion to the appropriate Government, which may thereafter take further action as it deems fit.

(2) The opinion given by the Authority under sub-section (1) shall not be binding upon the appropriate Government in formulating such policy or laws.

(3) The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.

34. Functions of Authority.—The functions of the Authority shall include—

- (a) to register and regulate real estate projects and real estate agents registered under this Act;
- (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- (c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefore, for access to the general public;
- (d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;
- (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

35. Powers of Authority to call for information, conduct investigations.—(1) Where the Authority considers it expedient to do so, on a complaint or suomotu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefore call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- i. the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- ii. summoning and enforcing the attendance of persons and examining them on oath;
- iii. issuing commissions for the examination of witnesses or documents;
- iv. any other matter which may be prescribed.

36. Power to issue interim orders.—Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

37. Powers of Authority to issue directions.—The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

38. Powers of Authority.—(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

- (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or
- (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may, *suomotu*, make reference in respect of such issue to the Competition Commission of India.

39. Rectification of orders.—The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

40. Recovery of interest or penalty or compensation and enforcement of order, etc.—

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case

of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

CHAPTER VI

CENTRAL ADVISORY COUNCIL

41. Establishment of Central Advisory Council.—(1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.

(2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.

(3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

42. Functions of Central Advisory Council.—(1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

CHAPTER VII

THE REAL ESTATE APPELLATE TRIBUNAL

43. Establishment of Real Estate Appellate Tribunal.—(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the —(name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

44. Application for settlement of disputes and appeals to Appellate Tribunal.—(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

45. Composition of Appellate Tribunal.—The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation.—For the purposes of this Chapter,—

- (i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;
- (ii) “Technical or Administrative Member” means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

46. Qualifications for appointment of Chairperson and Members.—(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

- (a) in the case of Chairperson, is or has been a Judge of a High Court; and
- (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and
- (c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

(3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

47. Term of office of Chairperson and Members.—(1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

(2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.

48. Salary and allowances payable to Chairperson and Members.—(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 47, the Chairperson or a Member, as the case may be, may:—

- (a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months;
- (b) be removed from his office in accordance with the provisions of section 49.

(3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of three months from the date on which such vacancy occurs.

49. Removal of Chairperson and Member from office in certain circumstances.—(1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member or Technical or Administrative Member of the Appellate Tribunal, who—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or
- (c) has become physically or mentally incapable; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or 27
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member or Technical or Administrative Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial Member or Technical or Administrative Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The appropriate Government may suspend from the office of the Chairperson or Judicial Member or Technical or Administrative Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

(4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

50. Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office.—(1) The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not:—

- (a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act;

- (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had, before cessation of office, acted for or provided advice to, the Authority;
- (c) give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public;
- (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson or Judicial Member or Technical or Administrative Member shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

51. Officers and other employees of Appellate Tribunal.—(1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

52. Vacancies.—If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

53. Powers of Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examinations of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or directing it ex parte; and
- (g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

54. Administrative powers of Chairperson of Appellate Tribunal.—The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.—No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal; or
- (b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or
- (c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

56. Right to legal representation.—The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Explanation.—For the purposes of this section,—

- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) or any other law for the time 29 being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

57. Orders passed by Appellate Tribunal to be executable as a decree.—(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.

58. Appeal to High Court.—(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—The expression “High Court” means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

CHAPTER VIII

OFFENCES, PENALTIES AND ADJUDICATION

59. Punishment for non-registration under section 3.—(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both.

60. Penalty for contravention of section 4.—If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project, as determined by the Authority.

61. Penalty for contravention of other provisions of this Act.—If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

62. Penalty for non-registration and contravention under sections 9 and 10.—If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

63. Penalty for failure to comply with orders of Authority by promoter.—If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.

64. Penalty for failure to comply with orders of Appellate Tribunal by promoter.—If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the 30 Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

65. Penalty for failure to comply with orders of Authority by real estate agent.—If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

66. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent.—If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

67. Penalty for failure to comply with orders of Authority by allottee.—If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

68. Penalty for failure to comply with orders of Appellate Tribunal by allottee.—If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.

69. Offences by companies.—(1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the

consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- (a) “company” means anybody corporate and includes a firm, or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.

70. Compounding of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed:

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

71. Power to adjudicate.—(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for 31 holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections.

72. Factors to be taken into account by the adjudicating officer.—While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

CHAPTER IX

FINANCE, ACCOUNTS, AUDITS AND REPORTS

73. Grants and loans by Central Government.—The Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

74. Grants and loans by State Government.—The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

75. Constitution of Fund.—(1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto,—

- (a) all Government grants received by the Authority;
- (b) the fees received under this Act;
- (c) the interest accrued on the amounts referred to in clauses (a) to (b).

(2) The Fund shall be applied for meeting—

- (a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal;
- (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend money out of the Fund for carrying out the objects for which the Fund has been constituted.

76. Crediting sums realised by way of penalties to Consolidated Fund of India or State account.—(1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.

(2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

77. Budget, accounts and audit.—(1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

78. Annual report.—(1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government,—

- (a) a description of all the activities of the Authority for the previous year;
- (b) the annual accounts for the previous year; and
- (c) the programmes of work for the coming year.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union Territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

CHAPTER X

MISCELLANEOUS

79. Bar of jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

80. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

81. Delegation.—The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

82. Power of appropriate Government to supersede Authority.—(1) If, at any time, the appropriate Government is of the opinion,—

- (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
- (c) that circumstances exist which render it necessary in the public interest so to do, the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

- (2) Upon the publication of a notification under sub-section (1) superseding the Authority,—
 - (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;
 - (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and
 - (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union 34 Territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

83. Powers of appropriate Government to issue directions to Authority and obtain reports and returns.—(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final.

(3) The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

84. Power of appropriate Government to make rules.—(1) The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- ¹[(a) the form, time and manner of making application and fees payable therewith under sub-section (1) of section 4;
- (ab) information and documents for application to the Authority for registration under clause (m) of sub-section (2) of section 4;
- (ac) the form of application and the fees for extension of registration under section 6;]
- (b) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;
- (c) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;
- (d) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;
- (e) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;
- (f) the discharge of other functions by the real estate agent under clause (e) of section 10;
- (g) the rate of interest payable under section 12;
- (h) the form and particulars of agreement for sale under sub-section (2) of section 13;
- (i) the rate of interest payable under clause (b) of sub-section (1) of section 18;
- (j) the rate of interest payable under sub-section (4) of section 19;
- (k) the rate of interest payable under sub-section (7) of section 19;
- (l) the manner of selection of Chairperson and Members of Authority under section 22;
- (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;
- (n) the administrative powers of the Chairpersons under section 25;
- (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 28;
- ²[(oa) the form, manner and fees for filing of a complaint under sub-section (2) of section 31;]
- (p) the details to be published on the website as under clause (b) and under clause (d) of section 34;
- (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 35;
- (r) the manner of recovery of interest, penalty and compensation under sub-section (1) of section 40;

¹ Subs. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347(E)], for clause (a) (w.e.f. 28-10-2016).

² Ins. by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347(E)], (w.e.f. 28-10-2016).

- (s) the manner of implementation of the order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal under sub-section (2) of section 40;
- (t) recommendations received from the Central Advisory Council under sub-section (2) of section 42;
- (u) the form and manner and fee for filing of appeal under sub-section (2) of section 44;
- (v) the manner of selection of Members of the Tribunal under sub-section (3) of section 46;
- (w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 48;
- (x) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 49;
- (y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 51;
- (z) any other powers of the Tribunal under clause (g) of sub-section (4) of section 53;
- (za) the powers of the Chairperson of the Appellate Tribunal under section 54;
- (zb) the terms and conditions and the payment of such sum for compounding of the offences under section 70;
- (zc) the manner of inquiry under sub-section (1) of section 71;
- (zd) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 77;
- (ze) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 78;
- (zf) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

85. Power to make regulations.—(1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

1 * * * *

- (c) such other information and documents required under clause (f) of sub-section (1) of section 11;
- (d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;
- (e) preparation and maintenance of other details under sub-section (6) of section 11;
- (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;

2* * * *

- (h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;
- (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

¹ Omitted by *ibid.* (w.e.f. 28-10-2016).

² Omitted by the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 [S.O. 3347 (E)], (w.e.f. 28-10-2016).

86. Laying of rules.—(1) Every rule made by the Central Government, every regulation made by the Authority under the Union territory of Delhi and the Union territories without Legislature and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, every regulation made by the Authority under the State Government or ¹[the Union territory Government of Puducherry or the Union territory Government of Jammu and Kashmir], as the case may be, and every notification issued by the State Government or ¹[the Union territory Government of Puducherry or the Union territory Government of Jammu and Kashmir], as the case may be, under this Act, shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

87. Members, etc., to be public servants.—The Chairperson, Members and other officers and employees of the Authority, and the Appellate Tribunal and the adjudicating officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

88. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

89. Act to have overriding effect.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

90. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

91. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act.

¹ Subs. by the Jammu and Kashmir Reorganization (adaptation of Central Laws) Third Order, 2020, *vide* notification No. S.O. 3807(E) dated (26-10-2020).

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

92. Repeal.—The Maharashtra Housing (Regulation and Development) Act, 2012 (Maharashtra Act No. II of 2014) is hereby repealed.

(Authoritative English text of this Department Notification No. TCP-A(3)-1/2016- Loose dated 28-09-2017 as required under clause (3) of article 348 of the Constitution of India)

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

NOTIFICATION

Dated, Shimla-2, 28-09-2017

No.TCP-A(3)-1/2016-loose.-In exercise of the powers conferred by section 84 of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016), the Governor of Himachal Pradesh is pleased to make the following rules for carrying out the purposes of the Act, namely:

**“CHAPTER I
PRELIMINARY**

1. Short title and Commencement.— (1) These rules may be called the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) “Act” means the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016);
- (b) “association of allottees” means a collective of the allottees of a real estate project, by whatever name called, registered under any law for the time being in force, acting as a group to serve the cause of its members, and shall include the authorised representatives of the allottees;
- (c) “authenticated copy” means a self-attested copy of any document;
- (d) “Form” means a Form appended to these rules;
- (e) “Government” or “State Government” means the Government of Himachal Pradesh.
- (f) “section” means a section of the Act.

(2) Words and expressions used herein but not defined in these rules, shall have the same meanings as have been assigned to them in the Act.

**CHAPTER II
REAL ESTATE PROJECT**

3. Information and documents to be furnished by promoter for registration of real estate project.-(1) Every promoter shall furnish the following information and documents, alongwith those specified under section 4 of the Act, for registration of the project with the Authority, namely:-

- (a) authenticated copy of the PAN card of the promoter;
- (b) annual report including audited profit and loss account, balance sheet, cash flow statement, directors report and the auditors report of the promoter for the immediately preceding three financial years; and where annual report is not available, the audited

profit and ¹[loss] account, balance sheet, cash flow statement and the auditors report of the promoter for the immediately preceding three financial years; or as ²[the] case may be

- (c) the number of open parking areas and the number of covered parking areas available in the real estate project;
- (d) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents for claim of title with authentication of such title;
- (e) details of encumbrances on the land on which development of project is proposed including details of any rights, title, interest, dues, mortgage litigation in Revenue Courts and name of party in or over such land or non encumbrance certificate from an advocate having experience of atleast ten years or from the revenue authority not below the rank of Tehsildar/ Naib Tehsildar, as the case may be;
- (f) where the promoter is not the owner of the land on which development of project is proposed details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land on which project is proposed to be developed;
- (g) name, photograph, contact details and address of the promoter if it is an individual and the name, photograph, contact details and address of the chairman, partners, directors, as the case may be, and the authorised person in case of other entities.

(2) An application to the Authority for registration of the real estate project shall be made in writing in **Form 'A'**, in triplicate, until the procedure is made web based for filing of such application.

³[(3)(a) The promoter shall pay a registration fee at the time of application for registration by way of a demand draft or through online payment mode, as the case may be, as under:-

Table 3.1
Registration Fee

Sr. No.	Type of Real Estate Project	Rate
1.	Plotted development for Residential Use.	Rs. 10/- per M ² of total project land as per Jamabandi.
2.	Lotted development for Commercial Use.	Rs. 20/- M ² of total project land as per Jamabandi.
3.	Plotted development for Mixed Residential and Commercial Use.	Rs. 15/- per M ² of total project land as per Jamabandi.
4.	Flatted development for Residential Use.	Rs. 10/- per M ² of total built up area as per Sanctioned Plan.
5.	Flatted development for Commercial Use.	Rs. 20/- per M ² of total built up

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Inserted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

³ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

		area as per Sanctioned Plan.
6.	Flatted development for Mixed Residential and Commerical Use.	Rs. 15/- per M ² of total built up area as per Sanctioned Plan.

(c) In case of ongoing projects where completion certificate has not been issued no application fee shall be payable.]

Provided that the State Government may levy e-charges on the real estate project by notification for on-line services.

(4) The declaration to be submitted under clause (1) of sub-section (2) of section 4, shall be in **Form 'B'**, which shall include a declaration stating that the promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

4. Additional disclosure by the promoters of ongoing projects.-(1)The promoter of an ongoing project which has not received completion certificate shall make an application to the Authority as provided in rule 3.

(2) The promoter shall in addition to disclosures provided in rule 3 disclose the following information, namely:-

- a) the original sanctioned plan, layout plan and specifications and the subsequent modifications carried out, if any, including the existing sanctioned plan, layout plan and specifications;
- b) the total amount of money collected from the allottees and the total amount of money used for development of the project including the total amount of balance money lying with the promoter;
- c) status of the project (extent of development carried out till date and the extent of development pending) including the original time period disclosed to the allottee for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall ¹[**] commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant in practice.

(3) The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

(4) In case of plotted development, the promoter shall disclose the area of the plot being sold to the allottees as per the layout plan.

(5) For projects that are ongoing and have not received completion certificate, on the date of commencement of the Act, the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, seventy percent of the amounts already realized from the allottees, which have not been utilized for construction of

¹ Omitted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

the project or the land cost for the project as required under sub-clause (D) of clause (1) of sub-section (2) of section 4 of the Act which shall be used for the purposes specified therein.

5. Grant or rejection of registration of project.-(1) Upon the registration of a project as per section 5, the Authority shall issue a registration certificate with a registration number in **Form 'C'** to the promoter.

(2) In case of rejection of the application as per section 5, the Authority shall inform the applicant in **Form 'D'**:

Provided that the Authority may grant an opportunity to the applicant to rectify the defects in the application within such time period as may be specified by it.

6. Extension of registration of project.- (1) The registration granted under the Act, may be extended by the Authority, on an application made by the promoter in **Form 'E'**, within three months prior to the expiry of the registration granted.

(2) The application for extension of registration shall be accompanied with a demand draft or through online payment mode, as the case may be, for an amount equivalent to half the registration fees as prescribed under sub-rule (3) of rule 3 alongwith an explanatory note ¹[stating] the reasons for delay in the completion of the project and the need for extension of registration for the project, alongwith documents supporting such reasons:

Provided that where the promoter applies for extension of registration of the project due to force majeure he shall not be liable to pay any fee.

(3) In case of extension of registration, the Authority shall inform the promoter about such extension in **Form 'F'** and in case of rejection of the application for extension of registration, the Authority shall inform the promoter about such rejection in **Form 'D'**.

Provided that the Authority may grant an opportunity to the promoter to rectify the defects in the application within such time period as may be specified by it.

7. Revocation of registration of the project.-Upon the revocation of registration of a project as per section 7, the Authority shall inform the promoter about such revocation in **Form 'D'**.

CHAPTER III REAL ESTATE AGENTS

8. Application for registration by the real estate agents.-(1) Every real estate agent required to register as per sub-section (2) of section 9 shall make an application in writing to the Authority in **Form 'G'**, until the application procedure is made web based, along with the following documents, namely:-

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

- (a) the brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, company etc.);
- (b) the particulars of registration (whether as a proprietorship, partnership, company, society etc.) including the Bye-laws, Memorandum Of Association (MOA) and Articles Of Association (AOA) etc. as the case may be;
- (c) name, address, contact details and photograph of the real estate agent, if it is an individual and the name, address, contact details and photograph of the partners, directors etc. in case of other entities;
- (d) the authenticated copy of the PAN card of the real estate agent;
- (e) the authenticated copy of the address proof of the place of business.

(2) The real estate agent shall pay a registration fee at the time of application for registration by way of a demand draft or through online payment, as the case may be, for a sum of five thousand rupees in case of the applicant being an individual or twenty thousand rupees in case of the applicant other than an individual.

Provided that the State Government may levy e-charges on the real estate agent by notification for online services.

9. Grant of registration to the real estate agents.-(1) On receipt of the application under rule 8, the Authority shall within a period of thirty days either grant registration to the real estate agent or reject the application, as the case may be:

Provided that the Authority may grant an opportunity to the real estate agent to remove the deficiencies in the application within such time period as may be specified by it.

(2) Upon the registration of a real estate agent, the Authority shall issue a registration certificate with a registration number in **Form 'H'** to the real estate agent.

(3) In case of rejection of the application, the Authority shall inform the applicant in **Form 'I'**.

(4) The registration granted under this rule shall be valid for a period of five years.

10. Renewal of registration of real estate agents.-(1) The registration granted to a real estate agent under the Act, may be renewed, on an application made by the real estate agent in **Form 'J'**, which shall not be less than three months prior to the expiry of the registration granted.

(2) The application for renewal of registration shall be accompanied with a demand draft or through online payment, as the case may be, for a sum of rupees two thousand and five hundred in case of the real estate agent being an individual or rupees ten thousand in case of the real estate agent other than an individual.

(3) The real estate agent shall also submit all the updated documents set out in clauses (a) to (e) of sub-rule (1) of rule 8 at the time of application for renewal.

(4) In case of renewal of registration, the Authority shall inform the real estate agent about the same in **Form 'K'** and in case of rejection of the application for renewal of registration the Authority, shall inform the real estate agent in **Form 'I'**:

Provided that no application for renewal of registration shall be rejected, unless the applicant has been given an opportunity of being heard in the matter:

Provided further that the Authority may grant an opportunity to the real estate agent to remove the deficiencies in the application within such time period as may be specified by it.

(5) The renewal granted under this rule shall be valid for a period of five years.

11. Revocation of registration of real estate agents.-The Authority may, due to reasons specified under sub-section (7) of section 9, revoke the registration granted to the real estate agent or renewal thereof, as the case may be, and intimate the real estate agent of such revocation in **Form 'I'**.

12. Books of accounts, records and documents.-The real estate agent shall maintain and preserve its books of account, records and documents in accordance with the provisions of the Income Tax Act, 1961 (43 of 1961) and the rules made thereunder.

13. Other functions of a real estate agents.-The real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfill their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be.

CHAPTER IV

DETAILS TO BE PUBLISHED ON THE WEBSITE OF THE AUTHORITY

14. Details to be published on website.- (1) The Authority shall ensure that the following information, as applicable, shall be made available on its website in respect of each project registered under the Act, namely:-

(a) Details of the promoter including the following, namely:-

i. promoter or group profile,-

(A) a brief detail of his enterprise including its name, registered address, type of enterprise (Proprietorship/ Firm/ Societies/ Trust/ Company/ Limited Liability Partnership/ Competent Authority etc) and the particulars of registration as such enterprise and in case of a newly incorporated or registered entity, brief details of the parent entity including its name, registered address, type of enterprise (whether as Proprietorship/ Firm/ Societies/ Trust/ Company/ Limited Liability Partnership/ Competent Authority etc);

(B) background of promoter, work experience of the promoter and in case of a newly incorporated or registered entity work experience of the chairman,

directors, partners, as the case may be and that of the authorised persons of the parent entity;

(C) name, address, contact details and photograph of the promoter in case of an individual and the name, address, contact details and photograph of the chairman, directors, partners, as the case may be and that of the authorised persons.

ii. track record of the promoter,-

(A) number of years of experience of the promoter or parent entity, as the case may be, in real estate development ¹[*****];

¹[* * * * *]

²[(B)] number of completed projects and area constructed till date in the past five years including the status of the projects, delay in its completion, details of type of land and payments pending;

²[(C)] number of ongoing projects and proposed area to be constructed launched in the past five years including the status of the said projects, delay in its completion, details of type of land and payments pending;

²[(D)] details and profile of ongoing and completed projects for the last five years as provided under clause (b) of sub-section (2) of section 4.

iii. litigations,- Details of litigation in the past five years in relation to the real estate projects developed or being developed by the promoter.

iv. website,-

(A) web link of the promoter or parent entity, as the case may be;

(B) web link of the project;

(b) Details of the real estate project including the following, namely:-

i. advertisement and prospectus issued in regard to the project;

ii. compliance and registration,-

(A) authenticated copy of the approvals and commencement certificate received from the competent authority as provided under clause (c) of sub-section (2) of section 4;

(B) the sanctioned plan, layout plan and specifications of the project or the phase thereof, and the whole project as sanctioned by the competent authority as provided under clause (d) of sub-section (2) of section 4; and

(C) details of the registration granted by the Authority under the Act;

iii. apartment, plot and garage related details,-

(A) details of the number, type and carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas with the apartment, if any, or details of the number, type and area of plots for sale in the project or both, as the case may be;

¹ Omitted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Re-numbered vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

- (B) details of the number and area of garage for sale in the project; and
 (C) details of the number of open parking areas and covered parking areas available in the real estate project;
- iv. **Registered Agents,-** names and addresses of the real estate agents for the project.
- v. **Consultants,-** details, including name and addresses, of contractors, architect, structural engineers and other persons concerned with the development of the real estate project such as-
- (A) name and address of the person;
 (B) names of promoters;
 (C) year of establishment; and
 (D) names and profile of key projects completed;
- vi. **Location,-** the details of the location of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project; and
- vii. **Development Plan,-**
- (A) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy etc.;
- (B) **amenities:-** a detailed note explaining the salient features of the proposed project including access to the project, design for electric supply including street lighting, water supply arrangements and site for disposal and treatment of storm and sullage water, and any other facilities and amenities or public health services proposed to be provided in the project;
- (C) **gantts¹ charts or milestone charts and project schedule:-** the plan of development works to be executed in the project and the details of the proposed facilities to be provided thereof and the timelines to achieve the same; and
- (D) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity etc.
- (c) Financial details of the promoter,-**
- i. the authenticated copy of the PAN card of the promoter;
- ii. the annual report including audited profit and loss account, balance sheet, cash flow statement, directors report and the auditors report of the promoter for the immediately preceding three financial years and where annual report is not available then the audited profit and loss account, balance sheet, cash flow statement and the auditors report of the promoter for the immediately preceding three financial years and in case of newly incorporated or registered entity such information shall be disclosed for the parent entity;

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

(d) The details of approvals, permissions, clearances, legal documents,-

i. approvals-

- (A) authenticated copy of the license or land use permission, building sanction plan and the commencement certificate from the competent authority obtained in accordance with the laws applicable for the project, and where the project is proposed to be developed in phases, an authenticated copy of the license or land use permission, building sanction plan and the commencement certificate for each of such phases;
- (B) authenticated copy of the site plan or site map showing the location of the project land along with names of revenue estates, survey numbers, cadastral numbers, khasra numbers and area of each parcels of the project land;
- (C) authenticated copy of the layout plan of the project or the phase thereof, and also the layout plan of the whole project as sanctioned by the competent authority and other specifications of the project;
- (D) floor plans for each tower and block including clubhouse, amenities and common areas;
- (E) any other permission, approval, or license that may be required under applicable law including fire no-objection certificate, permission from water and sewerage department etc.; and
- (F) authenticated copy of occupancy certificate and completion certificate including its application.

ii. legal documents-

- (A) the details including the Performa of the application form, allotment letter, agreement for sale and the conveyance deed;
- (B) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents for chain of title with authentication of such title;
- (C) land title search report from an advocate having experience of at least ten years;
- (D) details of encumbrances on the land on which development of project is proposed including details of any rights, title, interest, dues, mortgage, litigation in Revenue Courts and name of party in or over such land or non encumbrance certificate from an advocate having experience of atleast ten years or from the revenue authority not below the rank of Tehsildar, as the case may be;
- (E) where the promoter is not the owner of the land on which development is proposed details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed; and

(F) details of mortgage or charge, if any, created on the land and the project;

(e) Contact details- (1) Contact address, contact numbers and email-id of the promoter, authorised person and other officials related to the project.

(2) The Authority shall maintain a database and ensure that the information specified therein shall be made available on its website in respect of each project revoked or penalised, as the case may be.

(3) The Authority shall ensure that the following information shall be made available on its website in respect of each real estate agent registered with it or whose application for registration has been rejected or revoked, namely:-

(a) For real estate agents registered with the Authority:-

- i. registration number and the period of validity of the registration of the real estate agent with the Authority;
- ii. brief details of his enterprise including its name, registered address, type of enterprise (whether as proprietorship, societies, partnership, company etc.);
- iii. particulars of registration as proprietorship, societies, partnership, company etc. including the Bye-laws, Memorandum Of Association, (MOA) Articles Of Association (AOA) etc. as the case may be;
- iv. name, address, contact details and photograph of the real estate agent, if it is an individual and the name, address, contact details and photograph of the partners, directors etc. in case of other persons;
- v. authenticated copy of the PAN card of the real estate agent; and
- vi. authenticated copy of the address proof or the place of business and the contact address, contact numbers and email-id of the real estate agent and its other officials;

(b) In case of applicants whose application for registration as a real estate agent have been rejected or real estate agents whose registration has been revoked by the Authority-

- i. registration number and the period of validity of the registration of the real estate agent with the Authority;
- ii. brief details of his enterprise including its name, registered address, type of enterprise (whether as proprietorship, societies, partnership, company etc.);
- iii. name, address, contact details and photograph of the real estate agent if it is an individual and the name, address, contact details and photograph of the partners, directors etc. in case of other persons; and

(c) such other documents or information as may be specified by the Act or the rules and regulations made thereunder.

- (4) The Authority shall maintain a back-up, in digital form, of the contents of its website in terms of this rule, and ensure that such back-up is updated on the last day of each month.

(f) Details to be published in respect of real estate agent.

The Authority shall maintain a database and ensure that the information specified in section 34 of the Act, therein shall be made available on its website.

**CHAPTER V
INTEREST PAYABLE BY PROMOTER AND ALLOTTEE AND
TIMELINES FOR REFUND**

15. Interest payable by promoter and allottee.— The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two per cent as mentioned under section 12,18 and 19 of the Act:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

Provided further if the allottee does not intend to withdraw from the project, he shall be paid by the promoter an interest which shall be the State Bank of India highest Marginal Cost of Lending Rate.

16. Timelines for refund.— Any refund of monies along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the rules and regulations made thereunder, shall be payable by the promoter to the allottee within sixty days from the date on which such refund along with applicable interest and compensation, as the case may be, becomes due.

17. Agreement for sale,-(1) For the purpose of sub-section (2) of section 13 of the Act, the agreement for sale shall be in the form as per **Form ‘L’**.

(2) Any application letter, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottees under the agreement for sale or under the Act or the rules or the regulations made thereunder.

**CHAPTER VI
REAL ESTATE REGULATORY AUTHORITY**

18. Selection of Chairperson and other Members of Authority,- (1) As and when vacancy of Chairperson or any other Members in the Authority exist or arise, or is likely to arise, the State Government may make a reference to the Selection Committee in respect of the vacancy to be filled.

(2) The Selection Committee may, for the purpose of selection of the Chairperson or Member of the Authority, follow such procedure as deemed fit including the appointment of a Search Committee consisting of such persons as the Selection Committee considers appropriate to suggest a panel of names for appointment as Chairperson or Member of the Authority.

(3) The Selection Committee shall select two persons for each vacancy and recommend the same to the State Government.

(4) The Selection Committee shall make its recommendation to the State Government within a period of sixty days from the date of reference made under sub-rule (1).

(5) The State Government shall within thirty days from the date of receipt of the recommendations by the Selection Committee, appoint one of the two persons recommended by the Selection Committee for the vacancy of the Chairperson or other Member, as the case may be.

19. Salary and allowances payable and other terms and conditions of service of Chairperson and other Members of Authority.-(1) The salaries and allowances payable to the Chairperson and other Members of the Authority shall be as specified by way of notification by the State Government.

(2) The Chairperson and other Member shall be entitled to thirty days of earned leave for every completed year of service.

20. Administrative powers of the ¹ [Chairperson] of the Authority.- (1) The ¹[Chairperson] of the Authority with prior approval of the State Government shall exercise the administrative powers in respect of-

- a) matters pertaining to staff strength, wages and salary structures, emoluments, perquisites and personnel policies;
- b) matters pertaining to creation and abolition of posts;
- c) matters pertaining to appointments, promotions and confirmation for all posts;
- d) acceptance of resignations by any Member, officer or employee of the Authority;
- e) authorisation of tours to be undertaken by any Members, officers or employees of the Authority outside India; and
- f) to sanction tour programme of Members and others within India.

(2) The ¹[Chairperson] of the Authority shall also exercise powers in respect of following matters:-

- i. disbursement of salary, allowances, medical claims etc.
- ii. sanction or rejection of leave.
- iii. permission for hiring of vehicle for official use.
- iv. nominations for attending seminars, conferences and training courses in India or abroad; ²[***]

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Omitted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

- v. permission for invitation of guests to carry out training course; ¹[and]
- “vi Other expenses of the Authority in the connection with the discharge of its functions for the purposes of Act, rules and regulations”.

21. Salary and allowances payable to and the other terms and conditions of service of the officers and of the employees of the Authority.- The conditions of service of the officers and employees of the Authority in the matter of pay, allowances, leave, joining time, joining time pay, age of superannuation and other conditions of service, shall be regulated in accordance with such rules and regulations as are, from time to time, applicable to officers and employees of the State Government and drawing the corresponding scales of pay.

22. ²[Recovery of interest, penalty and compensation and enforcement of order, direction or decision of Adjudicating Officer or the Authority or the Appellate Tribunal. - (1) The recovery of the amounts due such as interest, penalty or compensation shall be recovered as arrears of land revenue in the manner provided under applicable local laws.

(2) Every order, direction or decision passed/made by the Adjudicating Officer or the Authority or the Appellate Tribunal, as the case may be, under the Real Estate (Regulation and Development) Act, 2016 or rules and regulations made there under, shall be enforced by the Adjudicating Officer or the Authority or the Appellate Tribunal in the same manner as if it were a decree or an order, direction or decision passed/made by a Civil Court in a suit pending therein, and it shall be lawful for the Adjudicating Officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, direction or decision, to send such order, direction or decision to the Civil Court within the local limits of whose jurisdiction the real estate project is located to execute such order, direction or decision or to the Civil Court within the local limits of whose jurisdiction the person against whom the order, direction or decision is being issued, actually or voluntarily resides or carries on business or personally works for gain.]

CHAPTER VII FILING OF COMPLAINT WITH THE AUTHORITY AND THE ADJUDICATING OFFICER

23. Filing of complaint with the Authority and inquiry by Authority.-(1) Any aggrieved person may file a complaint with the Authority for any ³[***]violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in **Form ‘M’**, which shall be accompanied by a fees of rupees five hundred in the form of a demand draft ¹[**] in favour of Authority and payable at the branch of that bank at the station where the seat of the said Authority is situated or through online payment, as the case may be.

(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:-

¹ Added vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Substituted vide Notification No. HSG-A(3)-6/2020 dated 25th November, 2020.

³ Omitted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021 for the figure [100] and the word [or].

- (a) upon receipt of the complaint, the Authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;
- (b) the respondent against whom such notice is issued under clause (a) of sub-rule (2), may file his reply in respect of the complaint within the period as specified in the notice;
- (c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
- (d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,-
 - i. pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;
 - ii. does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;
- (e) In case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;
- (f) in case the Authority is satisfied on the basis of the submissions made that there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by it;
- (g) the Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;
- (h) the Authority shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the ¹[Authority], may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence, the Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872);
- (i) on the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that,-
 - i. the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;
 - ii. the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;
- ²[(j) if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.]

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021 for the word “adjudicating officer”.

² Added clause (j) vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

CHAPTER VIII
REAL ESTATE APPELLATE TRIBUNAL

24. Appeal and the fees payable.-(1) Every appeal filed under sub-section (1) of section 44 shall be accompanied by a fees of rupees one thousand in the form of a demand draft in favour of the Appellate Tribunal and payable at the branch of that Bank at the station where the seat of the said Appellate Tribunal is situated or through online payment, as the case may be.

- (2) Every appeal shall be filed in **Form 'N'**, along with the following documents, namely:-
- a) true copy of the order against which the appeal is filed;
 - b) copies of the documents relied upon by the appellant and referred to in the appeal; and
 - c) an index of the documents.

(3) Every appeal shall be either filed at the filing counter of the Registry of the Appellate Tribunal or through a registered post or through online system, as applicable.

(4) In case of an appeal sent by post under sub-rule (3), it shall be deemed to have been presented to the Appellate Tribunal on the day on which it is received in its office.

(5) Where a party to the appeal is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the appeal or the reply to the notice of the appeal, as the case may be.

(6) On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents, as the case may be, to appear before the Appellate Tribunal:

Provided that where the appellant or his authorised person, as the case may be, fails to appear before the Appellate Tribunal on such days, the Appellate Tribunal may in its discretion either dismiss the appeal for default or decide it on merits and where the opposite party or his authorised person fails to appear on the date of hearing, the Appellate Tribunal may decide the ex-parte appeal.

(7) The procedure for day to day functioning of the Appellate Tribunal, which have not been provided by the Act or the rules made thereunder, shall be as specified by the Appellate Tribunal.

25. Selection of Members of Appellate Tribunal.-(1) As and when vacancy of a Member in the Appellate Tribunal exists or arises, or is likely to arise, the State Government may make a reference to the Selection Committee in respect of the vacancy to be filled.

¹[(2)] The Selection Committee may, for the purpose of selection of the Member of the Appellate Tribunal, follow such procedure as deemed fit including the appointment of a Search

¹ Re-numbered as sub-rule (2), (3), (4) and (5) vide Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

Committee consisting of such persons as the Selection Committee considers appropriate to suggest a panel of names for appointment as Member of the Appellate Tribunal.

¹[(3)] The Selection Committee shall select two persons for each vacancy and recommend the same to the State Government.

¹[(4)] The Selection Committee shall make its recommendation to the State Government within a period of sixty days from the date of reference made under sub-rule (1).

¹[(5)] The State Government shall within thirty days from the date of the receipt of the recommendation by the Selection Committee, appoint one of the two persons recommended by the Selection Committee for the vacancy of the Member.

26. Salary and allowances payable ¹[to] and other terms and conditions of ²[service] of Chairperson and Members of Appellate Tribunal.-(1) The salaries and allowances payable to the Chairperson and Members of the Appellate Tribunal shall be as specified by way of notification by the State Government.

(2) The Chairperson and every other Member shall be entitled to thirty days of earned leave for every completed year of service.

27. Inquiry of the charges against Chairperson or Member of Authority or Appellate Tribunal.-(1) The State Government shall on the occurrence of any of the circumstances specified sub-section (1) of section 49 in case of a Chairperson or Member of the Appellate Tribunal, either on receipt of a complaint in this regard or *suo motu*, as the case may be, make a preliminary scrutiny with respect to such charges against the Chairperson or any Member of the Authority or Appellate Tribunal, as the case may be.

(2) If, on preliminary scrutiny, the State Government considers it necessary to investigate into the allegation, it shall place the complaint, if any, together with supporting material as may be available, before the Chief Justice of the High Court to appoint a Judge of the High Court.

(3) The State Government shall forward to the Judge appointed under sub-rule (2), copies of,-

- a. the statement of charges against the Chairperson or Member of the Authority or Appellate Tribunal, as the case may be; and
- b. material documents relevant to the inquiry.

(4) The Chairperson or Member of the Authority or Appellate Tribunal, as the case may be, shall be given a reasonable opportunity of being heard with respect to the charges within the time period as may be specified in this behalf by the Judge conducting the inquiry in the matter.

¹ Inserted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Substituted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

(5) Where it is alleged that the Chairperson or Member of an Appellate Tribunal is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Judge may arrange for the medical examination of the Chairperson or Member of the Appellate Tribunal.

(6) After the conclusion of the investigation, the Judge shall submit his report to the State Government stating therein his findings and the reasons thereof on each of the articles of charges separately with such observations on the whole case as he thinks fit.

(7) After receipt of the report under sub-rule (6), the State Government shall pass an order either to remove or not to remove the Chairperson or Member of the Authority or Appellate Tribunal, as the case may be.

28. Salary and allowances payable ¹[to] and other terms and conditions of service of officers and other employees of the Appellate Tribunal.-The conditions of service of the officers and employees of the Appellate Tribunal and any other category of employees in the matter of pay, allowances, leave, joining time, joining time pay, age of ²[superannuation and] other conditions of service, shall be regulated in accordance with such rules and regulations as are, from time to time, as applicable to officers and employees of the State Government and drawing the corresponding scales of pay.

29. Administrative powers of the Chairperson of the Appellate Tribunal.- (1) The Chairperson of the Appellate Tribunal with prior approval of the State Government shall exercise the administrative powers in respect of-

- (a) matters pertaining to staff strength, wages and salary structures, emoluments, perquisites and personnel policies;
- (b) matters pertaining to creation and abolition of posts;
- (c) matters pertaining to appointments, promotions and confirmation for all posts;
- (d) acceptance of resignations by any Member, officer or employee;
- (e) authorisation of tours to be undertaken by any Members, officers or employees outside India; and
- (f) to sanction tour programme of Members and others with in India.

(2) The Chairperson of the Appellate Tribunal shall also exercise powers in respect of following matters:-

- i. disbursement of salary, allowances, medical claims etc.;
- ii. sanction or rejection of leave;
- iii. permission for hiring of vehicle for official use.;
- iv. nominations for attending seminars, conferences and training courses in India or abroad; and
- v. permission for invitation of guests to carry out training course.

¹ Inserted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Substituted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

**CHAPTER IX
OFFENCES AND PENALTIES**

30. Terms and conditions and the fine payable for compounding of offence.- (1) The court shall, for the purposes of compounding any offence punishable with imprisonment under the Act, accept an amount as specified in the Table below:

¹“Table-30.1

Sr. No.	Offence	Amount to be paid for compounding the offence
1.	Punishable with imprisonment under sub-section (2) of section 59	Ten percent of the estimated cost of the real estate project.
2.	Punishable with imprisonment under section 64.	Ten per cent of the estimated cost of the real estate project.
3.	Punishable with imprisonment under section 66.	Ten percent of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.
4.	Punishable with imprisonment under section 68.	The percent of the estimated cost of the plot, apartment or building, as the case may be”

(2) The promoter, allottee or real estate agent, as the case may be, shall comply with the orders of the Authority or the Appellate Tribunal, within the period specified by the court, which shall not be more than thirty days from the date of compounding of the offence.

(3) On payment of the sum of money in accordance with sub-rule (1) and subsequent to compliance of the orders of the Authority or the Appellate Tribunal as provided in sub-rule (2), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such person in any court for that offence.

(3) The acceptance of the sum of money for compounding an offence under sub-rule (1), by the Court shall be deemed to be an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

31. Filing of complaint with the adjudicating officer and inquiry by adjudicating officer.- (1) Any aggrieved person may file a complaint with the adjudicating officer appointed under section 71 of the Act for interest and compensation as provided under section 12, 14, 18 and 19 in **Form ‘O’**, which shall be accompanied by a fees of rupees five hundred in the form of a demand draft or a online payment, as the case may be.

(2) The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:-

¹ Substituted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

- (a) Upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;
- (b) The respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his reply in respect of the complaint within the period as specified in the notice;
- (c) The notice may specify a date and time for further hearing and the same shall also be communicated to the complainant;
- (d) On the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,-
 - i. pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he thinks fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder;
 - ii. does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;
- (e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;
- (f) in case the adjudicating officer is satisfied on the basis of the submissions made that there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by him;
- (g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;
- (h) the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence, the adjudicating officer shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872);
- (i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is,-
 - i. liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 15 and such compensation as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder; or

- ii. not liable to any interest and compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;
- (j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.

(4) Where a party to the complaint is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.

CHAPTER X BUDGET AND REPORT

32. Budget, accounts and audit.-(1) At the end of the financial year the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in **Form ‘P’**.

(2) The accounts and other relevant records under sub-rule (1) shall be signed by the Chairperson, ¹[Members] and the officer in-charge of Finance and Accounts.

(3) The accounts of the Authority and the audit report shall, as soon as possible, shall be submitted to the State Government ²[for laying before the Legislative Assembly].

33. Annual Report.-(1)The Authority shall prepare its annual report in **Form ‘Q’**.

(2) The Authority may also include in the Annual Report such other matters as deemed fit by the Authority for reporting to the State Government.

(3) The annual report shall, after adoption at a meeting of the Authority and signed by the Chairperson and the Members and authenticated by affixing the common seal of the Authority, with requisite number of copies thereof, shall be submitted to the State Government within a period of six months following the close of the year for which it has been prepared.

34. Digitization of Forms.- The Form-‘A’ to Form ‘Q’ as prescribed in these rules shall be digitized as per notification by the State Government, separately.

¹ Substituted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

² Inserted vide Notification No. Notification No. HSG-A(3)-6/2020 dated 4th December, 2021.

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

**FORM 'A'
[See rule 3(2)]**

APPLICATION FOR REGISTRATION OF PROJECT

To

The Real Estate Regulatory Authority
Himachal Pradesh, Shimla.

Affix latest stamp size photograph
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Sir,

I/ We hereby apply for the grant of registration to set up a Group of Housing Project or mixed development (Residential and Commercial project) or Commercial Project or Plotted Development Project or Any on Going Project to be set up at Khasra No Hadbast No.....Mauja Tehsil District Himachal Pradesh.

1. The requisite particulars are as under:-

- i. Status of the applicant - [Individual / Association of People / Company / Partnership Firm /Proprietorship Firm / Societies / Competent Authority etc.];
- ii. In case of individual /Joint Family
 - (a) Name
 - (b) Father's Name
 - (c) Occupation
 - (d) Permanent Address
 - (e) Contact Details
 - Phone number
 - E-mail
 - Fax Number
 - PAN No. _____ of the Individual/Head of Joint Family
 - (f) In case of [Firm / Societies / Trust / Company / Limited Liability Partnership/ Competent Authority etc.]-
 - Name and type of Enterprise
 - Registered Address
 - Name of Authorized Signatory
 - Address
 - Copy of Resolution Regarding Authorization
 - Copy of registration certificate as [Firm / Societies / Trust / Company/Limited Liability Partnership/Competent Authority etc.] including the by Laws, Memorandum Of Association, Article Of Associations etc. as the case may be.
 - Main objects
 - Contact Details (Phone number, E-mail, Fax Number etc.)
Name, photograph, contact details and address of [Chairman/Partners Directors] and Authorized person etc.

iii. PAN No. _____ of the promoter/ Enterprise

- iv. Name and address of the bank or banker with which account in terms of sub-clause (D) of clause (1) of sub-section (2) of section 4 will be maintained;
- v. Brief details of the projects launched by the promoter in the last five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending etc. _____;
- vi. Agency to take up external development works _____ [Local Authority / Self Development];
- vii. calculated Registration fee by way of a demand draft dated _____ drawn on _____ bearing no. _____ for an amount of Rs. _____ or through online payment as the case may be _____ (give details of online payment such as date paid, transaction no. etc.); as per sub-rule (3) of rule 3.
- viii. Any other information the applicant may like to furnish.

2. [I/We] enclose the following documents, namely:-

- I. a copy of latest Jamabandi in original showing the title/ownership of the Promoter/Entity in the land under the project;
- II. a copy of latest original Tatima showing Khasra no., description and area of land in question
- III. details of encumbrances on the land on which development of project is proposed including details of any rights, title, interest, dues, mortgage litigation in Revenue Courts and name of party in or over such land or non encumbrance certificate from an advocate having experience of atleast ten years or from the revenue authority not below the rank of Tehsildar/ Naib Tehsildar, as the case may be;
- IV. an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- V. the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- VI. the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire-fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- VII. the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- VIII. authenticated copy of the PAN card along with Income Tax return of preceding three years of the promoter or as the case may be;
- IX. annual report including audited profit and loss account, balance sheet, cash flow statement, directors report and the auditors report of the promoter for the immediately preceding three financial years and where annual report is not available, the audited profit and lost account, balance sheet, cash flow statement and the auditors report of the promoter for the immediately preceding three financial years; or as the case may
- X. where the promoter is not the owner of the land on which development of project is proposed details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner

- and copies of title and other documents reflecting the title of such owner on the land on which project is proposed to be developed;
- XI. proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
 - XII. the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas with the apartment, if any;
 - XIII. the number and areas of garage for sale in the project;
 - XIV. the number of open parking areas and the number of covered parking areas available in the real estate project;
 - XV. copy of project report alongwith soft copy explaining the salient feature of the proposed colony, in particular the source of whole some water supply arrangements and sites for disposal and treatment of storm and sullage water. Detailed specifications and designs of water supply scheme, storm water, sullage, sewage and sewerage with estimated costs of each component with cost analysis thereof; showing the cross-sections of the proposed roads indicating, in particular the width of the proposed drainage ways, cycle tracks and footpaths, green verges, position of electric poles, telephone poles and of any of other works connected with such roads. These drawings are indicating the position of sewers, strom water channel, water supply and any other public health services. The detailed specifications and designs of roads, works and component wise estimated cost with cost analysis thereof; a set of detailed specification and design for electric supply including street light with component wise estimated cost with analysis of each component.
 - XVI. a set of detailed specifications and structural design of buildings or apartments with the detail component wise estimated cost of buildings or apartments , structural design and soil investigation report and construction thereof;
 - XVII. the names and addresses of his real estate agents, if any, for the proposed project;
 - XVIII. the names and addresses of the contractors, architect, structural engineer, and consent to execute the development works of the proposed project;
 - XIX. document showing Managerial and Financial Capability of Promoter
 - XX. a declaration in **Form 'B'**.
3. [I/We] enclose the following additional documents and information regarding **ongoing projects**, as required under rule 4, and under other provisions of the Act or the rules and regulations made thereunder, namely:-
- a) the original sanctioned plan, layout plan and specifications and the subsequent modifications carried out, if any, including the existing sanctioned plan, layout plan and specifications;
 - b) the total amount of money collected from the allottees and the total amount of money used for development of the project including the total amount of balance money lying with the promoter;
 - c) status of the project (extent of development carried out till date and the extent of development pending) including the original time period disclosed to the allottee for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant in practice.
4. The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

5. In case of plotted development, the promoter shall disclose the area of the plot being sold to the allottees as per the layout plan.
6. For projects that are ongoing and have not received completion certificate, on the date of commencement of the Act, the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, seventy per cent. of the amounts already realized from the allottees, which have not been utilized for construction of the project or the land cost for the project as required under sub-clause (D) of clause (1) of sub-section (2) of section 4, which shall be used for the purposes specified therein.
7. [I/We] solemnly affirm and declare that the particulars given herein are correct to [my/our] knowledge and belief and nothing material has been concealed by [me/us] there from.

Dated:

Place:

Yours faithfully,

Signature and seal of the applicant(s)

**GOVERNMENT OF HIMACHAL PRADESH
TOWN AND COUNTRY PLANNING DEPARTMENT**

**FORM 'B'
[See rule 3(4)]**

**DECLARATION SUPPORTED BY AN AFFIDAVIT WHICH SHALL BE SIGNED BY
THE PROMOTER OR ANY PERSON AUTHORISED BY THE PROMOTER**

Affidavit-cum-Declaration

Affidavit cum Declaration of [Mr./Ms.]_____ [promoter of the project/duly authorised by the promoter of the project, vide its/his/her/their authorisation dated _____];

I _____ [promoter of the project/duly authorised by the promoter of the project] do hereby solemnly declare, undertake and state as under:

1. That [I / promoter] [have / has] a legal title to the land on which the development of the project is proposed.

OR

_____ [have/has] a legal title to the land on which the development of the proposed project is to be carried out and a legally valid authentication of title of such land along with an authenticated copy of the agreement between such owner and promoter for development of the real estate project is enclosed herewith.

2. That the said land is free from all encumbrances.

OR

That details of encumbrances_____ including details of any rights, title, interest, dues, litigation and name of any party in or over such land.

3. That the time period within which the project shall be completed by [me / the promoter] is _____.
4. That seventy percent of the amounts realised by [me / the promoter] for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.
5. That the amounts from the separate account, to cover the cost of the project, shall be withdrawn by [me / the promoter] in proportion to the percentage of completion of the project.
6. That the amounts from the separate account shall be withdrawn by [me / the promoter] after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
7. That [I / the promoter] shall get the accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the

project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

8. That [I / the promoter] shall take all the pending approvals on time, from the competent authorities.
9. That [I / the promoter] [have / has] furnished such other documents as have been prescribed by the Act and the rules and regulations made there under.
10. That [I / the promoter] shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

Deponent

Verification

The contents of my above Affidavit cum Declaration are true and correct and nothing material has been concealed therefrom.

Verified by me at _____ on this _____ day of _____.

Deponent

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'C'
[See rule 5(1)]**

REGISTRATION CERTIFICATE OF PROJECT

No.....

Dated.....

This registration No.....dated is granted under section 5 of the Real Estate (Regulation and Development) Act, 2016 to:-

1. [In the case of an individual] Sh./Smt. _____ son of
Sh. _____ Village/Town _____ Tehsil _____
District _____ State _____

OR

[in the case of a Firm / Society / Company / Trust / Limited Liability Partnership /Competent Authority etc] having its [registered office / principal place of business] _____ for developing land as Housing Project or mixed development (Residential and Commercial project) or Commercial Project or Plotted Development Project at Village/Town _____ Tehsil _____ District _____ Himachal Pradesh.

2. Name/style of the project.
3. License No..... issued by the Competent Authority. Validity of license.
4. This registration is granted subject to the following conditions, namely:-
 - i. The promoter shall enter into an agreement for sale with the allottees as prescribed by the State Government;
 - ii. The promoter shall execute and register a conveyance deed in favour of the allottee or the association of the allottees, as the case may be, of the apartment, plot or building, as the case may be, or the common areas as per section 17 of the Real Estate (Regulation and Development) Act, 2016;
 - iii. The promoter shall deposit seventy percent of the amount realised by the promoter in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost to be used only for that purpose as per sub-clause (D) of clause (1) of sub-section (2) of section 4 of the Real Estate (Regulation and Development) Act, 2016;
 - iv. The registration shall be valid for a period of _____ years commencing from _____ and ending with _____ unless extended by the Authority in accordance with the Act and the rules made thereunder;
 - v. The promoter shall comply with the provisions of the Act and the rules and regulations made thereunder; and

- vi. The promoter shall not contravene the provisions of any other law for the time being in force as applicable to the Real Estate (Regulation and Development) Act, 2016.
5. If the above mentioned conditions are not fulfilled by the promoter, the Authority may take necessary action against the promoter including revoking the registration granted herein, as per the Act and under the rules and regulations made thereunder.

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

Dated:

Place:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

FORM 'D'

[See rule 5(2), rule 6(3); rule 7]

**INTIMATION OF REJECTION OF APPLICATION FOR REGISTRATION OF
PROJECT/ REJECTION OF APPLICATION FOR EXTENSION OF REGISTRATION OF
PROJECT/ REVOCATION OF REGISTRATION OF PROJECT**

From:

The Real Estate Regulatory Authority

To

[Application/Registration] No.: _____ Dated: _____

You are hereby informed that your application for registration of your project is rejected
OR

You are hereby informed that your application for extension of the registration of your
project is rejected.

OR

You are hereby informed that the registration granted to your project is hereby revoked.
for the reasons set out:- _____

Place:

Dated:

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'E'
[See rule 6(1)]**

APPLICATION FOR EXTENSION OF REGISTRATION OF PROJECT

From:

To

The Real Estate Regulatory Authority (Name of Place)

Sir,

[I/We] hereby apply for extension of registration of the following project:

registered with the Authority vide project registration certificate bearing No. _____, which expires on _____.

As required [I/We] submit the following documents and information, namely:-

- i. A demand Draft No. _____ dated _____ for rupees _____ in favour of _____ drawn on _____ bank as extension fee as provided under sub rule (2) of rule 6 or through online payment as the case may be _____ (give details of online payment such as date paid, transaction no. etc.);
- ii. Authenticated Plan of the project showing the stage of development works undertaken till date;
- iii. Explanatory note regarding the state of development works in the project and reason for not completing the development works in the project within the period declared in the declaration submitted in **Form 'B'** at the time of making application for the registration of the project _____;
- iv. Authenticated copy of the [permission/approval] from the competent authority which is valid for a period which is longer than the proposed term of extension of the registration sought from the Authority;
- v. The authenticated copy of the project registration certificate; and
- vi. Any other information as may be specified by regulations.

Yours faithfully,
Signature and seal of the applicant(s)

Place:

Dated:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'F'
[See rule 6(3)]**

CERTIFICATE FOR EXTENSION OF REGISTRATION OF PROJECT

1. This extension of registration is granted under section 6, to the following project:

_____, registered with the Authority vide project registration certificate bearing No. _____ of:-

[In the case of an individual] Sh./Smt. _____ son of
Sh. _____ Village/Town _____ Tehsil _____
District _____ State

OR

[in the case of a Firm / Society / Company / Trust / Limited Liability Partnership /Competent Authority etc] having its [registered office / principal place of business] _____ for developing land as Housing Project or mixed development (Residential and Commercial project) or Commercial Project or Plotted Development Project at Village/Town _____ Tehsil _____ District _____ Himachal Pradesh.

2. This extension of registration is granted subject to the following conditions, namely:-

- i. The promoter shall execute and register a conveyance deed in favour of the allottee or the association of the allottees, as the case may be, of the apartment, plot or building, as the case may be, or the common areas as per section 17;
- ii. The promoter shall deposit seventy percent of the amounts realised by the promoter in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost to be used only for that purpose as per sub-clause (D) of clause (l) of sub-section (2) of section 4;
- iii. The registration shall be extended by a period of _____ [days / weeks / months] and shall be valid until _____;
- iv. The promoter shall comply with the provisions of the Act and the rules and regulations made thereunder;
- v. The promoter shall not contravene the provisions of any other law for the time being in force as applicable to the project; and
- vi. If the above mentioned conditions are not fulfilled by the promoter, the Authority may take necessary action against the promoter including revoking the registration granted herein, as per the Act and the rules and regulations made thereunder.

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

Dated:

Place:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'G'
[See rule 8(1)]**

APPLICATION FOR REGISTRATION OF REAL ESTATE AGENT

To

The Real Estate Regulatory Authority
Town and Country Department
Himachal Pradesh, Shimla

Affix latest stamp size photograph
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I/We apply for the grant of registration as a real estate agent under sub section (2) of Section 9 of the Real Estate (Regulation and Development) Act, 2016 to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in real estate projects registered in the Himachal Pradesh. In terms of the Act and the rules and regulations made thereunder,

1. The requisite particulars are as under:-

- i. Status of the applicant - [Individual / Association of People / Company / Partnership Firm / Proprietorship Firm / Societies / Competent Authority etc.];
- ii. In case of individual /Joint Family
 - (a) Name
 - (b) Father's Name
 - (c) Permanent Address
 - (d) Contact Details:-
 - Phone number
 - E-mail
 - Fax Number
 - PAN No. _____ of the Individual/Head of Joint Family
 - Address proof of the Place of business:-
 - (e) In case of [firm / societies / trust / company / limited liability partnership /competent authority etc.] -
 - Name and type of Enterprise
 - Registered Address
 - Name of Authorized Signatory
 - Address
 - Copy of Resolution Regarding Authorization
 - Copy of registration certificate as [firm/societies/trust/company/limited liability partnership/competent authority etc.] including the Bye Laws, Memorandum Of Association, Article Of Associations etc. as the case may be.
 - Contact Details (Phone number, e-mail, Fax Number etc.)
- iii. PAN No. _____ of the promoter or as the case may be;

2. The requisite particulars are as under:-
- i. Status of the applicant, whether [individual / company / proprietorship firm / societies / partnership firm /limited liability partnership etc.];
 - ii. In case of individual –
 - a. Name of [Individual / Proprietorship firm]
 - b. Father’s Name
 - c. Occupation
 - d. Address
 - e. Contact Details (Phone number, e-mail, Fax Number etc.)
 - f. Name, photograph, contact details and address of the proprietor
- OR
- In case of [firm / societies / company etc.] –
- a. Name
 - b. Address
 - c. Copy of registration certificate as [firm / societies / company etc.]
 - d. Major activities
 - e. Contact Details (Phone number, e-mail, Fax Number etc.)
 - f. Name, photograph, contact details and address of [partners / directors etc.]
- iii. Particulars of registration as [proprietorship, societies, partnership, company etc.] including the bye-laws, memorandum of association, articles of association etc. as the case may be;
 - iv. Authenticated copy of the address proof or the place of business;
 - v. Details of registration in any other State or Union Territory;
 - vi. Any other information as specified by regulations.
3. [I/We] enclose the following documents along with, namely:-
- i. Demand Draft/_____ dated_____ for a sum of Rs._____, in favour of_____, drawn on_____ bank as registration fee as per sub-rule(2) of rule 8 or through online payment as the case may be_____(give details of online payment such as date paid, transaction no. etc.);
 - ii. Authenticated copy of the PAN card of the real estate agent; and
 - iii. Authenticated copy of the registration as a real estate agent in any other State or Union Territory, if applicable.
4. [I/We] solemnly affirm and declare that the particulars given in herein are correct to [my /our] knowledge and belief and nothing material has been concealed by [me/us] there from.

Yours faithfully,

Signature and seal of the applicant(s)

Dated:

Place:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'H'
[See rule 9(2)]**

REGISTRATION CERTIFICATE OF REAL ESTATE AGENT

1. This registration is granted under section 9 with registration certificate bearing No. _____ to –
 [in the case of an individual] Sh./Smt. _____ son of
 Sh./Smt. _____ Tehsil _____ District _____ State
 _____;

OR

 [in the case of a firm / society / company etc.] _____ [firm / society /
 company etc.] _____ having its [registered office / principal place of business]
 at _____ to act as a real estate agent to facilitate the sale or purchase of any plot,
 apartment or building, as the case may be, in real estate projects registered in
 the _____ Himachal Pradesh in terms of the Act and the rules and regulations made
 thereunder.

2. This registration is granted subject to the following conditions, namely:-
 - i. The real estate agent shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter which is required but not registered with the Authority;
 - ii. The real estate agent shall maintain and preserve such books of account, records and documents as provided under rule 12;
 - iii. The real estate agent shall not involve himself in any unfair trade practices as specified under clause (c) of section 10 of the Real Estate Act (Regulation and Development) Act, 2016;
 - iv. The real estate agent shall facilitate the possession of all information and documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
 - v. The real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfill their respective obligations at the time of booking and sale of any plot, apartment or building as the case may be;
 - vi. The real estate agent shall comply with the provisions of the Act and the rules and regulations made thereunder;
 - vii. The real estate agent shall not contravene the provisions of any other law for the time being in force as applicable to him;
 - viii. The real estate agent shall discharge such other functions as may be specified by the Authority by regulations.

3. The registration is valid for a period of five years commencing from _____ and ending with _____ unless renewed by the Authority in accordance with the provisions of the Act or the rules and regulations made thereunder.

4. If the above mentioned conditions are not fulfilled by the real estate agent, the Authority may take necessary action against the real estate agent including revoking the registration granted herein, as per the Act and the rules and regulations made thereunder. :

:

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

Dated:

Place

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

FORM 'I'

[See rule 9(3), 10(4), 11]

**INTIMATION OF REJECTION OF APPLICATION FOR REGISTRATION OF
REAL ESTATE AGENT / REJECTION OF APPLICATION FOR RENEWAL OF
REGISTRATION OF REAL ESTATE AGENT / REVOCATION OF REGISTRATION OF
REAL ESTATE AGENT**

From:

The Real Estate Regulatory Authority (Name of Place)

To

[Application / Registration] No.: _____

Dated: _____

You are hereby informed that your application for registration as real estate agent is rejected.

OR

You are hereby informed that your application for the renewal of the registration as real estate agent is rejected.

OR

You are hereby informed that the registration granted to you as real estate agent is hereby revoked for the reasons set out:- _____

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

Place:

Dated:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'J'
[See rule 10(1)]**

APPLICATION FOR RENEWAL OF REGISTRATION OF REAL ESTATE AGENT

From:

To

The Real Estate Regulatory Authority (Name of Place)

Sir,

[I/We] apply for renewal my/our registration as a real estate agent under registration certificate bearing No._____, which expires on_____.

1. As required [I/We] submit the following documents and information, namely:-
 - i. A demand draft no._____ dated_____ for rupees_____ in favour of_____ drawn on_____ bank as renewal fee as per sub-rule (2) of rule 10 or through online payment as the case may be_____ (give details of online payment such as date paid, transaction no. etc.);
 - ii. The authenticated copy of the registration certificate; and
 - iii. Status of the applicant, whether [individual / company / proprietorship firm / societies / partnership firm / limited liability partnership etc.];
 - iv. In case of individual –
 - a) Name of [Individual / Proprietorship Firm]
 - b) Father's Name
 - c) Occupation
 - d) Address
 - e) Contact Details (Phone number, e-mail, Fax Number etc.)
 - f) Name, photograph, contact details and address of the proprietor

OR

 In case of [firm / societies / company etc.] –
 - a) Name of Enterprise
 - b) Address
 - c) Copy of registration certificate as [firm / societies / company etc.]
 - d) Major activities
 - e) Contact Details (Phone number, e-mail, Fax Number etc.)

- f) Name, photograph, contact details and address of [partners / directors etc.];
 - v. particulars of registration as [proprietorship, societies, partnership, company etc.] including the bye-laws, memorandum of association, articles of association etc. as the case may be;
 - vi. authenticated copy of the address proof of the place of business;
 - vii. authenticated copy of the PAN card of the real estate agent;
 - viii. authenticated copy of the registration as a real estate agent in any other State or Union Territory, if applicable;
 - ix. Any other information as specified by regulations.
2. [I/We] solemnly affirm and declare that the particulars given in herein are correct to [my /our] knowledge and belief and nothing material has been concealed by [me/us] therefrom.

Yours faithfully,
Signature and seal of the applicant(s)

Dated:

Place:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'K'
[See rule 10(4)]**

CERTIFICATE FOR RENEWAL OF REGISTRATION OF REAL ESTATE AGENT

1. This renewal of registration is granted under section 9 to –
 [in the case of an individual] Mr./Ms. _____ son of
 [Mr./Ms. _____ Tehsil _____ District _____
 State/Union Territory _____ ;

OR

- [in the case of a firm / society / company etc.] _____ [firm/ society /
 company etc.] _____ having its [registered office/ principal place of
 business] at _____ in continuation to registration certificate bearing No.
 _____, of _____.
2. This renewal of registration is granted subject to the following conditions, namely:-
 - i. The real estate agent shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter which is required but not registered with the Authority;
 - ii. The real estate agent shall maintain and preserve such books of account, records and documents as provided under rule 12;
 - iii. The real estate agent shall not involve himself in any unfair trade practices as specified under clause (c) of section 10;
 - iv. The real estate agent shall facilitate the possession of all information and documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
 - v. The real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfill their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be;
 - vi. The real estate agent shall comply with the provisions of the Act and the rules and regulations made thereunder;
 - vii. The real estate agent shall not contravene the provisions of any other law for the time being in force as applicable to him;
 - viii. The real estate agent shall discharge such other functions as may be specified by the Authority by regulations.
3. The registration is valid for a period of five years commencing from _____ and ending with _____ unless renewed by the Authority in accordance with the provisions of the Act or the rules and regulations made thereunder.

4. If the above mentioned conditions are not fulfilled by the real estate agent, the Authority may take necessary action against the real estate agent including revoking the registration granted herein, as per the Act and the rules and regulations made thereunder.

Signature and seal of the Authorised Officer
Real Estate Regulatory Authority

Dated:

Place:

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

**FORM 'L'
[See rule 17(1)]**

AGREEMENT FOR SALE

This Agreement for Sale ("Agreement") executed on this _____ (Date) day of _____ (Month), 20____,

By and Between

[If the promoter is a company]

_____ (CIN no. _____), a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at _____ and its corporate office at _____ (PAN _____), represented by its authorized signatory _____ (Aadhar No. _____)

1. Vide G.S.R. 1026 (E), dated 31st October, 2016, published on the Gazette of India, Extra, Pt.II, Sec. 3(i), No. 760, dated 31st October, 2016.
2. Came into force on 31.10.2016.

authorized vide board resolution dated _____ hereinafter referred to as the "**Promoter**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns).

[OR]

[If the promoter is a Partnership firm]

_____, a partnership firm registered under the Indian Partnership Act, 1932, having its principal of business at _____, (PAN _____, represented by its authorized Partner _____ (Aadhar No. _____) authorized vide _____, hereinafter referred to as the "**Promoter**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/ their assigns).

[OR]

[If the promoter is an Individual]

Mr./Ms. _____, (Aadhar no. _____) son/ daughter of _____, aged about _____, residing at _____, (PAN _____), hereinafter called the "**Promoter**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/ her heirs, executors, administrators, successors-in-interest and permitted assigns).

AND**[if the Allottee is a company]**

_____, (CIN no._____) a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at_____, (PAN_____), represented by its authorized signatory,_____, (Aadhar no._____) duly authorized vide board resolution dated_____, hereinafter referred to as the “**Allottee**” (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor in interest, and permitted assigns).

[OR]

[If the Allottee is a Partnership]

_____ a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of business at_____, (PAN_____), represented by its authorized partner,_____,)Aadhar no._____) authorized vide_____, hereinafter referred to as the “**Allottee**” (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/their assigns).

[OR]

[If the Allottee is an Individual]

Mr./Ms._____, (Aadhar no._____) son/ daughter of_____, aged about_____, residing at_____, (PAN_____), hereinafter called the “**Allottee**” (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/ her heirs, executors, administrators, successors-in-interest and permitted assigns).

[OR]

[If the Allottee is a HUF]

Mr./Ms._____, (Aadhar no._____) son of_____aged about_____for self and as the Karta of the Hindu Joint Mitakshara Family known as_____HUF, having its place of business / residence at_____(PAN_____), hereinafter referred to as the “**Allottee**” which expression shall unless repugnant to the context or meaning thereof be deemed to mean and the members or member for the time being of the said HUF, and their respective heirs, executors, administrators and permitted assigns).

[Please insert details of other allottee(s), in case of more than one allottee]

The Promoter and Allottee shall hereinafter collectively be referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS:

A. The Promoter is the absolute and lawful owner of [Khasra nos. / survey nos.] [Please insert land details as per local laws] _____ totally admeasuring _____ square meters situated at _____ in Tehsil & District _____ (“Said land”) vide sale deed (s) dated _____ registered as documents no. _____ at the office of the Sub-Registrar;

[OR]

_____ (“Owner”) is the absolute and lawful owner of [Khasra nos./ survey nos.] [Please insert land details as per local laws] totally admeasuring _____ square meters situated at _____ in Tehsil & District _____ (“Said Land”) vide sale deed(s) dated _____ of the Sub-Registrar. The Owner and the Promoter have entered into a [collaboration/ development / joint development] agreement dated _____ registered as document no. _____ at the office of the Sub-Registrar;

B. The Said Land is earmarked for the purpose of building a [commercial/residential/any other purpose] project, comprising _____ multistoried apartment buildings and [insert any other components of the projects] and the said project shall be known as _____ (“Project”);

[OR]

The Said Land is earmarked for the purpose of building a [commercial/residential/any other purpose] project, comprising _____ plots and [insert any components of the Projects] and the said project shall be known as _____ (“Project”);
Provided that where land is earmarked for any institutional development the same shall be used for those purposes only and no commercial/ residential development shall be permitted unless it is a part of the plan approved by the competent authority;

C. The Promoter is fully competent to enter into this Agreement and all the legal formalities with respect to the right, title and interest of the Promoter regarding the Said Land on which Project is to be constructed have been completed;

D. The _____ [Please insert the name of the concerned competent authority] has granted the commencement certificate to develop the Project vide approval dated _____; bearing registration no. _____;

E. The Promoter has obtained the final layout plan, sanctioned plan specifications and approvals for the Project and also for the apartment, plot or building, as the case may be, from _____ [Please insert the name of the concerned competent authority] The Promoter agrees and undertakes that it shall not make any changes to these approved plans except in strict compliance with section 14 of the Act and other laws as applicable;

F. The Promoter has registered the Project under the provisions of the Act with the _____ (Name of Union Territory) Real Estate Regulatory Authority at _____ on _____ under registration no. _____;

G. The Allottee has applied for an apartment in the Project vide application no. _____ dated _____ and has been allotted apartment no. _____ having carpet area of _____ square feet, type _____, on _____ floor in [tower/ block/ building] no. _____ (“**Building**”) along with garage/ covered parking no. _____ admeasuring _____ square feet in the _____ [Please insert the location of the garage/covered parking], as permissible under the applicable law and of pro rata share in the common areas (“**Common Areas**”) as defined under clause (n) of Section 2 of the Act (hereinafter referred to as the “**Apartment**” more particularly described in **Schedule A** and the floor plan of the apartment is annexed hereto and marked as **Schedule B**);

[OR]

The Allottee had applied for a plot in the Project vide application no. _____ dated _____ and has been allotted plot no. area of _____ square feet and plot for garage/ covered parking admeasuring _____ square feet (if applicable) in the _____ [Please insert the location of the garage/covered parking], as permissible under the applicable law and of pro rata share in the common areas (“**Common Areas**”) as defined under clause (n) of Section 2 of the Act (hereinafter referred to as the “**Plot**” more particularly described in **Schedule A**);

H. The Parties have gone through all the terms and conditions set out in this Agreement and understood the mutual rights and obligations details herein;

I. [Please enter any additional disclosures/ details];

J. The Parties, hereby confirm that they are signing this Agreement with full knowledge of all the laws, rules, regulations, notifications, etc., applicable to the Project;

K. The Parties, relying on the confirmations, representations and assurances of each other to faithfully abide by all the terms, conditions and stipulations contained in this Agreement and all applicable laws, are now willing to enter into this Agreement on the terms and conditions appearing hereinafter,

L. In accordance with the terms and conditions set out in this Agreement and as mutually agreed upon by the between the Parties, the Promoter hereby agrees to sell and the Allottee hereby agrees to purchase the [Apartment/Plot] and the garage/ covered parking (if applicable) as specifies in para G.

NOW THEREFORE, in consideration of the mutual representations, covenants, assurances, promises and agreements contained herein and other good and valuable consideration, the Parties agree as follows:

1. TERMS:

1.1 Subject to the terms and conditions as detailed in this Agreement, the Promoter agrees to sell to the Allottee and the Allottee hereby agrees to purchase, the [Apartment /Plot] as specified in para G.

1.2 The Total Price for the [Apartment /Plot] based on the carpet area is Rs. _____
(Rupees _____ only (“**Total Price**”) (Give break up and description):

Block/Building/Tower no. _____ Apartment no. _____ Type _____ Floor _____	Rate of Apartment per square feet*
Total price (in rupees) _____	

*Provide breakup of the amounts such as cost of apartment, cost of exclusive balcony or verandah areas, cost of exclusive open terrace area, proportionate cost of common areas, preferential location charges, taxes, maintenance charges as per para 11 etc., if/ as applicable.

[AND] [if /as applicable]

Garage/Covered parking =1	Price for 1
Garage/Covered Parking_2	Price for 2
Total price (in rupees)	_____

[OR]

Plot no. _____	Rate of Plot per square feet*
Total price (in rupees)	_____

*Provide break up of the amounts such as cost of plot, proportionate cost of common areas, taxes, maintenance charges as per para 11 etc.,
if/ as applicable.

[And] [if/as applicable]

Garage/Covered parking-1	Price for 1
Garage/Covered parking-2	Price for 2
Total price (in rupees)	_____

Explanation:-

- i. The Total Price above includes the booking amount paid by the allottee to the Promoter towards the [Apartment / Plot];
- ii. The Total Price above includes Taxes (excluding the fee, duty or tax to be paid to the Government Authorities on account of registering of sale deed) upto the date of handing over the possession of the apartment/ plot to the allottee and the project to the association of allottees or the competent authority as the case may be after obtaining the completion certificate:

- iii. The Promoter shall periodically intimate in writing to the Allottee, the amount payable as stated in (i) above and the Allottee shall make payment demanded by the Promoter within the time and in the manner specified therein. In addition, the Promoter shall provide to the Allottee the details of the taxes paid or demanded alongwith the acts/ rules/ notifications together with dates from which such taxes/ levies etc. have been imposed or become effective.
- iv. The Total Price of [Apartment Plot] includes recovery of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and fire fighting equipment in the common areas, maintenance charges as per para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided with the (Apartment / Plot) and the Project.

1.3 The Total Price is escalation-free, save and except increase which the Allottee hereby agrees to pay, due to increase on account of development charges payable to the competent authority and/ or any other increase in charges which may be levied or imposed by the competent authority from time to time. The Promoter undertakes and agrees that while raising a demand on the Allottee for increase in development charges, cost/ charges imposed by the competent authorities, the Promoter shall enclose the said notification/ order/ rule/ regulation to that effect along with the demand letter being issued to the Allottee, which shall only be applicable on subsequent payments. Provided that if there is any new imposition or increase of any development charges after the expiry of the scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, if any, granted to the said project by the Authority, as per the Act, the same shall not be charged from the allottee.

1.4 The Allottee(s) shall make the payment as per the payment plan set out in Schedule C (**“Payment Plan”**).

1.5 The Promoter may allow, in its sole discretion, a rebate for early payments of installments payable by the Allottee by discounting such early payments @ % per annum for the period by which the respective installment has been preponed. The provision for allowing rebate and such rate of rebate shall not be subject to any revision / withdrawal, once granted to an Allottee by the Promoter.

1.6 It is agreed that the Promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described herein at Schedule ‘D’ and Schedule ‘E’ (which shall be in conformity with the advertisement, prospectus etc., on the basis of which sale is effected) in respect of the apartment, plot or building, as the case may be, without the previous written consent of the Allottee as per the provisions of the Act. Provided that the Promoter may make such minor additions or alterations as may be required by the Allottee, or such minor changes or alterations as per the provisions of the Act.

1.7 [Applicable in case of an apartment] The Promoter shall confirm to the final carpet area that has been allotted to the Allottee after the construction of the building is complete and the occupancy

certificate or such other certificate by whatever name called/ issued by the competent authority is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate prescribed in the Rules, from the date when such in excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule C. All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.

1.8 Subject to para 9.3 the Promoter agrees and acknowledges, the Allottee shall have the right to the [Apartment / Plot] as mentioned below:

- i. The Allottee shall have exclusive ownership of the [Apartment / Plot];
- ii. The Allottee shall also have undivided proportionate share in the Common Areas. Since the share/ interest of Allottee in the Common Areas is undivided and cannot be divided or separated, the Allottee shall use the Common Areas along with other occupants, maintenance staff etc., without causing any inconvenience or hindrance to them. It is clarified that the promoter shall hand over the common areas to the association of allottees after duly obtaining the completion certificate from the competent authority as provided in the Act;
- iii. That the computation of the price of the [Apartment / Plot] includes recovery of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water, line and plumbing, finishing with paint, marbles, tiles, doors, window, fire detection and fire fighting equipment in the common areas maintenance charges as per para 11 etc. the includes cost for providing all other facilities, amenities and specifications to be provided within the [Apartment / Plot] and the Project;
- iv. The Allottee has the right to visit the project site to assess the extent of development of the project and his apartment / plot, as the case may be.

1.9 It is made clear by the Promoter and the Allottee agrees that the [Apartment/ Plot] along with _____ garage / covered parking shall be treated as a single indivisible unit for all purposes. It is agreed that the Project is an independent, self-contained Project covering the said Land and is not a part of any other project or zone and shall not form a part of and / or linked / combined with any other project in its vicinity or otherwise except for the purpose of integration of infrastructure for the benefit of the Allottee. It is clarified that Project's facilities and amenities shall be available only for use and enjoyment of the Allottees of the Project.

1.10 The Promoter agrees to pay all outgoings before transferring the physical possession of the apartment to the Allottees, which it has collected from the Allottees, for the payment of outgoings

(including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project). If the Promoter fails to pay all or any of the outgoings collected by it from the Allottees or any liability, mortgage loan and interest thereon before transferring the apartment to the Allottees, the Promoter agrees to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

1.11 The Allottee has paid a sum of Rs. _____ (Rupees _____ only) as booking amount being part payment towards the Total Price of the [Apartment / Plot] at the time of application the receipt of which the Promoter hereby acknowledges and the Allottee hereby agrees to pay the remaining price of the [Apartment / Plot] as prescribed in the payment Plan [Schedule C] as may be demanded by the Promoter within the time and in the manner specified therein:

Provided that if the allottee delays in payment towards any amount which is payable, he shall be liable to pay interest at the rate prescribed in the Rules.

2. MODE OF PAYMENT:

Subject to the terms of the Agreement and the Promoter abiding by the construction milestones, the Allottee shall make all payments, on written demand by the Promoter, within the stipulated time as mentioned in the Payment Plan [Schedule c] through A/c Payee cheque/ demand draft/ bankers cheque or online payment (as applicable) in favour of _____ payable at _____ .

3. COMPLIANCE OF LAWS RELATING TO REMITTANCES:

3.1 The Allottee, if resident outside India, shall be solely responsible for complying with the necessary formalities as laid down in the Foreign Exchange Management Act, 1999, the Reserve Bank of India Act, 1934 and the Rules and Regulations made thereunder or any statutory amendment(s) modification(s) made thereof and all other applicable laws including that of remittance of payment acquisition / sale / transfer of immovable properties in India etc. and provide the Promoter with such permission, approvals which would enable the Promoter to fulfill its obligations under this Agreement. Any refund, transfer of security, if provided in terms of the Agreement shall be made in accordance with the provisions of the Foreign Exchange Management Act, 1999 or the statutory enactments or amendments thereof and the Rules and Regulations of the Reserve bank of India or any other applicable law. The Allottee understands and agrees that in the event of any failure on his/ her part to comply with the applicable guidelines issued by the Reserve Bank of India, he/she may be liable for any action under the Foreign Exchange Management Act, 1999 or other laws as applicable, as amended from time to time.

3.2 The Promoter accepts no responsibility in regard to matter specified in para 3.1 above. The Allottee shall keep the Promoter fully indemnified and harmless in this regard. Whenever there is any change in the residential status of the Allottee subsequent to the signing of this Agreement, it shall be the sole responsibility of the Allottee to intimate the same in writing to the Promoter immediately and comply with necessary formalities if any under the application laws. The Promoter shall not be responsible towards any third party making payment remittances on behalf of any Allottee and such third party shall not have any right in the application / allotment of the said apartment applied for herein in any way and the Promoter shall be issuing the payment receipts in favour of the Allottee only.

4. ADJUSTMENT/ APPROPRIATION OF PAYMENTS:

The Allottee authorizes the Promoter to adjust/ appropriate all payments made by him/ her under any head(s) of dues against lawful outstanding of the allottee against the [Apartment / Plot], if any, in his / her name and the Allottee undertakes not to object / demand / direct the Promoter to adjust his payments in any manner.

5. TIME IS ESSENCE:

The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the [Apartment / Plot] to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be.

6. CONSTRUCTION OF THE PROJECT / APARTMENT:

The Allottee has seen the proposed layout plan, specifications, amenities and facilities of the [Apartment / Plot] and accepted the floor plan, payment plan and the specification, amenities and facilities [annexed along with this Agreement] which has been approved by the competent authority, as represented by the Promoter. The Promoter shall develop the Project in accordance with the said layout plans, floor plans and specification, amenities and facilities. Subject to the terms in this Agreement, the Promoter undertakes to strictly abide by such plans approved by the competent Authorities and shall also strictly abide by the bye-laws, FAR and density norms and provisions prescribed by the _____ [Please insert the relevant State laws] and shall not have an option to make any variation / alteration / modification in such plans, other than in the manner provided under the Act, the breach of this term by the Promoter shall constitute a material breach of the Agreement.

7. POSSESSION OF THE APARTMENT / PLOT:

7.1 **Schedule for possession of the said [Apartment / Plot]** – The Promoter agrees and understands that timely delivery of possession of the [Apartment / Plot] to the allottee and the common areas to the association of allottees or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the [Apartment /Plot] along with ready and complete common areas with all specifications,

amenities and facilities of the project in place on _____, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affection the regular development of the real estate project (“Force Majeure”). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the [Apartment / Plot], provided that such Force Majeure conditions are not of a nature which makes its impossible for contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within sixty days from that date. The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement.

7.2 Procedure for taking possession – The Promoter, upon obtaining the occupancy certificate or such other certificate by whatever name called/ issued by the competent authority from the competent authority shall offer in writing the possession of the [Apartment / Plot], to the Allottee in terms of this Agreement to be taken within two months from the date of issue of occupancy certificate. [Provided that, in the absence of local law, the conveyance deed in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate]. The Promoter agrees and undertakes to indemnify and Allottee in case of failure of fulfilment of any of the provisions, formalities, documentation on part of the Promoter. The Allottee, after taking possession, agree(s) to pay the maintenance charges as determined by the Promoter/ association of allottees, as the case may be after the issuance of the completion certificate for the project. The promoter shall hand over the occupancy certificate of the apartment / plot, as the case may be, to the allottee at the time of conveyance of the same.

7.3 Failure of Allottee to take Possession of [Apartment / Plot] – Upon receiving a written intimation from the Promoter as per para 7.2 , the Allottee shall take possession of the [Apartment / Plot] from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the [Apartment / Plot] to the allottee. In case the Allottee fails to take possession within the time provided in para 7.2, such Allottee shall continue to be liable to pay maintenance charges as specified in para 7.2.

7.4 Possession by the Allottee – After obtaining the occupancy certificate or such other certificate by whatever name called/ issued by the competent authority and handing over physical possession of the [Apartment/ Plot] to the Allottees, it shall be the responsibility of the Promoter to hand over the necessary documents and plans, including common areas, to the association of Allottees or the competent authority, as the case may be, as per the local laws. [Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate].

7.5 Cancellation by Allottee- The Allottee shall have the right to cancel/ withdraw his allotment in the Project as provided in the Act:

Provided that where the allottee proposes to cancel / withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within sixty days of such cancellation.

7.6 Compensation- The Promoter shall compensate the Allottee in case of any loss caused to him due to defective title of the lan, on which the project is being developed or has been developed, in the manner as provided under the Act and the claim for interest and compensation under this provision shall not be barred by limitation provided under any law for the time being in force. Except for occurrence of a Force Majeure event, if the promoter fails to complete or is unable to give possession of the [Apartment / Plot]:

- i. In accordance with the terms of this Agreement, duly completed by the date specified in para 7.1 or;
- ii. Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act; or for any other reason; the Promoter shall be liable, on demand to the allottees, in case the Allottee wishes to withdraw from the Project, without prejudice to any other remedy available, to return the total amount received by him in respect of the [Apartment / Plot], with interest at the rate prescribed in the Rules including compensation in the manner as provided under the Act within sixty days of it becoming due. Provided that where if the Allottee does not intend to withdraw from the Project, the Promoter shall pay the Allottee interest at the rate prescribed in the Rules for every month of delay, till the handing over of the possession of the [Apartment / Plot], which shall be paid by the promoter to the allottee within sixty days of it becoming due.

8. REPRESENTATIONS AND WARRANTIES OF THE PROMOTER

The Promoter hereby represents and warrants to the Allottee as follows:

- i. The [Promoter] has absolute, clear and marketable title with respect to the said Land; the requisite rights to carry out development upon the said Land and absolute, actual, physical and legal possession of the said Land for the Project.
- ii. The Promoter has lawful rights and requisite approvals from the competent Authorities to carry out development of the Project;
- iii. There are no encumbrances upon the said Land or the Project; [In case there are any encumbrances on the land provide details of such encumbrances including any rights, title, interest and name of party in or over such land]
- iv. There are no litigations pending before any Court of law or Authority with respect to the said Land, Project or the [Apartment / Plot];
- v. All approvals, licenses and permits issued by the competent authorities with respect to the Project, said Land and [Apartment / Plot] are valid and subsisting and have been obtained by following due process of law. Further, the Promoter has been shall, at all

- times, remain to be in compliance with all applicable laws in relation to the Project, said Land, building and [Apartment / Plot] and common areas;
- vi. The Promoter has the right to enter into this Agreement and has not committed or omitted to perform any act or thing, whereby the right, title and interest of the Allottee created herein, may prejudicially be affected;
 - vii. The Promoter has not entered into any agreement for sale and / or development agreement or any other agreement / arrangement with any person or party with respect to the said land, including the Project and the said [Apartment / Plot] which will, in any manner, affect the rights of Allottee under this Agreement;
 - viii. The Promoter confirms that the Promoter is not restricted in any manner whatsoever from selling the said [Apartment / Plot] to the Allottee in the manner contemplated in this Agreement;
 - ix. At the time of execution of the conveyance deed the Promoter shall handover lawful, vacant, peaceful, physical possession of the [Apartment / Plot] to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be;
 - x. The Schedule property of not the subject matter of any Hindu Undivided Family (HUF) and that no part thereof is owned by any minor and / or no minor has any right, title and claim over the Schedule Property;
 - xi. The Promoter has duly paid and shall continue to pay and discharge all governmental dues, rates, charges and taxes and other monies, levies, impositions, premiums, damages and / or penalties and other outgoings, whatsoever, payable with respect to the said project to be competent Authorities till the completion certificate has been issued and possession of apartment, plot or building, as the case may be, along with common areas (equipped with all the specifications, amenities and facilities) has been handed over to the allottee and the association of allottees or the competent authority, as the case may be; and
 - xii. No notice from the Government or any other local body or authority or any legislative enactment, Government Ordinance, Order Notification (including any notice for acquisition or requisition of the said property) has been received by or served upon the Promoter in respect of the said land and/ or the Project.

9. EVENTS OF DEFAULTS AND CONSEQUENCES:

9.1 Subject to the Force Majeure clause, the Promoter shall be considered under a condition of Default, in the following events:

- i. Promoter fails to provide ready to move in possession of the [Apartment / Plot] to the Allottee within the time period specified in para 7.1 or fails to complete the project within the stipulated time disclosed at the time of registration of the project with the Authority. For the purpose of this para, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects including the provision of all specification, amenities and facilities, as agreed to between the parties, and for which occupation certificate and completion certificate, as the case may be, has been issued by the competent authority.

- ii. Discontinuance of the Promoter's business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.

9.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:

- i. Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter the Allottee be required to make the next payment without any interest; or
- ii. The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate prescribed in the Rules within sixty days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over the possession of the [Apartment / Plot] which shall be paid by the promoter to the allottee within sixty days of it becoming due.

9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- i. In case the Allottee fails to make payments for_____consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;
- ii. In case of Default by Allottee under the condition listed above continues for a period beyond_____ consecutive months after notice from the Promoter in this regard, the Promoter may cancel the allotment of the [Apartment / Plot] in favour of the Allottee and refund the money paid to him by the allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated. Provided that the Promoter shall intimate the allottee about such termination at least thirty days prior to such termination.

10. CONVEYANCE OF THE SAID APARTMENT:

The Promoter, on receipt of Total Price of the [Apartment / Plot] as per para 1.2 under the Agreement from the Allottee, shall execute a conveyance deed and convey the title of the [Apartment / Plot] together with proportionate indivisible share in the Common Areas within 3 months from the date of issuance of the occupancy certificate* and the completion certificate, as the case may be, to the allottee. [Provided that, in the absence of local law, the conveyance deed

in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate]. However, in case the Allottee fails to deposit the stamp duty and or registration charges within the period mentioned in the notice, the Allottee authorizes the Promoter to withhold registration of the conveyance deed in his/ her favour till payment of stamp duty and registration charges to the Promoter is made by the Allottee.

11. MAINTENANCE OF THE SAID BUILDING/ APARTMENT / PROJECT:

The Promoter shall be responsible to provide and maintain essential services in the Project till the taking over of the maintenance of the project by the association of allottees upon the issuance of the completion certificate of the project. The cost of such maintenance has been included in the Total Price of the [Apartment / Plot].

12. DEFECT LIABILITY:

It is agreed that in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the Promoter as per the agreement for sale relating to such development is brought to the notice of the Promoter within a period of 5 (five) years by the Allottee from the date of handing over possession, it shall be the duty of the Promoter to rectify such defects without further charge, within 30 (thirty) days, and in the event of Promoter's failure to rectify such defects within such time, the aggrieved Allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.

13. RIGHT TO ENTER THE APARTMENT FOR REPAIRS:

The Promoter / maintenance agency / association of allottees shall have rights of unrestricted access of all Common areas, garages / covered parking and parking spaces for providing necessary maintenance services and the Allottee agrees to permit the association of allottees and / or maintenance agency to enter into the [Apartment / Plot] or any part thereof, after due notice and during the normal working hours, unless the circumstances warrant otherwise, with a view to set right any defect.

14. USAGE:

Use of Basement and Service Areas: The basement (s) and service areas, if any, as located within the _____ (project name), shall be earmarked for purposes such as parking spaces and services including but not limited to electric sub-station, spaces and services including but not limited to electric sub-station, transformer, DG set rooms, underground water tanks, pump rooms, maintenance and service rooms, fire fighting pumps and equipment's etc. and other permitted used as per sanctioned plans. The Allottee shall not be permitted to use the services areas and the basements in any manner whatsoever, other than those earmarked as parking spaces, and the same shall be reserved for use by the association of allottees formed by the Allottees for rendering maintenance services.

15. GENERAL COMPLIANCE WITH RESPECT TO THE APARTMENT:

15.1 Subject to para 12 above, the Allottee shall, after taking possession, be solely responsible to maintain the [Apartment / Plot] at his/her own cost, in good repair and condition and shall not do or suffer to be done anything in to the building or the [Apartment / Plot], of the staircases, lifts, common passages, corridors, circulation areas, atrium or the compound which may be in violation of any laws or rules of any authority or change or alter to make additions to the [Apartment / Plot] and keep the [Apartment / Plot], its walls and partitions, sewers, drains, pipe and appurtenances thereto or belonging thereto, in good and tenantable repair and maintain the same in a fit and proper condition and ensure that the support, shelter etc. of the Building is not in any way damaged or jeopardized.

15.2 The Allottee further undertakes, assures and guarantees that he/ she would not put any sign-board / name-plate, neon light, publicity material or advertisement material etc. on the face / façade of the Building or anywhere on the exterior of the Project, buildings therein or Common Areas. The Allottees shall also not change the colour scheme of the outer walls or painting of the exterior side of the windows or carry out any change in the exterior elevation or design. Further the Allottee shall not store any hazardous or combustible goods in the [Apartment / Plot] or place any heavy material in the common passage or staircase of the Building. The Allottee shall also not remove any wall, including the outer and load bearing wall of the [Apartment / Plot].

15.3 The Allottee shall plan and distribute its electrical load in conformity with the electrical system installed by the Promoter and thereafter the association of allottees and or maintenance agency appointed by association of allottees. The Allottee shall be responsible for any lose or damages arising out of breach of any of the aforesaid conditions.

16. COMPLIANCE OF LAWS, NOTIFICATIONS ETC. BY PARTIES:

The parties are entering into this Agreement for the allotment of a [Apartment / Plot] with the full knowledge of all laws, rules, regulations, notifications applicable to the project.

17. ADDITIONAL CONSTRUCTIONS:

The Promoter undertakes that it has no right to make addition or to put up additional structure(s) anywhere in the Project after the building plan, layout plan, sanction plan and specification amenities and facilities has been approved by the competent authority (ies) and disclosed except for a provided in the Act.

18. PROMOTER SHALL NOT MORTGAGAGE OR CREAT A CHARGE:

After the Promoter executes this Agreement he shall not mortgage a create a charge on the [Apartment / Plot / building] and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, such mortgage or charge shall not affect the right and interest of the Allottee who has taken or agreed to take such [Apartment / Plot / Building].

19. APARTMENT OWNERSHIP ACT (OF THE RELEVANT STATE):

The Promoter has assured the Allottee that the project in its entirety is in accordance with the provision of the _____ [Please insert the name of the state Apartment ownership] Act. The Promoter showing compliance of various laws/ regulations as applicable in _____.

20. BINDING EFFECT:

Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules along with the payments due as stipulated in the Payment Plan within 30 (thirty) days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub-Registrar _____ (specify the address of the Sub-Registrar) as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and/ or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 30 (thirty) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.

21. ENTIRE AGREEMENT:

This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all understandings, any other agreements, allotment letter, correspondences, arrangements whether written or oral, if any, between the Parties in regard to the said apartment / plot / building, as the case may be.

22. RIGHT TO AMEND:

This Agreement may only be amended through written consent of the Parties.

23. PROVISIONS OF THIS AGREEMENT APPLICABLE ON ALLOTTEE/ SUBSEQUENT ALLOTTEES:

It is clearly understood and so agreed by and between the Parties hereto that all the provisions contained herein and the obligations arising hereunder in respect of the [Apartment / Plot] and the Project shall equally be applicable to and enforceable against and by any subsequent Allottees of the [Apartment / Plot], in case of a transfer, as the said obligations go along with [Apartment / Plot] for all intents and purposes.

24. WAIVER NOT A LIMITATION TO ENFORCE:

24.1 The Promoter may, at its sole option and discretion, without prejudice to its rights as set out in this Agreement, waive the breach by the Allottee in not making payments as per the Payment Plan [Annexure C] including waiving the payment of interest for delayed payment. It

is made clear and so agreed by the Allottee that exercise of discretion by the Promoter in the case of one Allottee shall not be construed to be a precedent and / or binding on the Promoter to exercise such discretion in the case of other Allottees.

24.2 Failure on the part of the Parties to enforce at any time or for any period of time the provision hereof shall not be construed to be a waiver of any provisions or of the right thereafter to enforce each and every provision.

25. SEVERABILITY

If any provision of this Agreement shall be determined to be void or unenforceable under the Act or the Rules and Regulations made thereunder or under other applicable laws, such provisions of the Agreement shall be deemed amended or deleted in so far as reasonably inconsistent with the purpose of this Agreement and the extent necessary to conform to Act or the Rules and Regulations made thereunder or the applicable law, as the case may be, and remaining provisions of this Agreement shall remain valid and enforceable as applicable at the time of execution of this Agreement.

26. METHOD OF CALCULATION OF PROPORTIONATE SHARE WHEREVER REFERRED TO IN THE AGREEMENT:

Wherever in this Agreement it is stipulated that the Allottee has to make any payment, in common with other Allottee(s) in Project, the same shall be proportion which the carpet area of the [Apartment / Plot] bears to the total carpet area of all the [Apartment / Plot] in the Project.

27. FURTHER ASSURANCES:

Both Parties agrees that they shall execute, acknowledge and deliver to the other such instruments and take such other actions, in additions to the instruments and actions specifically provided for herein, as may be reasonably required in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

28. PLACE OF EXECUTION:

The execution of this Agreement shall be complete only upon its execution by the Promoter through its authorized signatory at the Promoter's Office, or at some other place, which may be mutually agreed between the Promoter and the Allottee, in _____ after the Agreement is duly executed by the Allottee and the Promoter or simultaneously with the execution the said Agreement shall be registered at the office of the Sub-Registrar at _____ (specify the address of the Sub-Registrar). Hence this Agreement shall be deemed to have been executed at _____.

29. NOTICES:

That all notices to be served on the Allottee and the Promoter as contemplated by this Agreement shall be deemed to have been duly served if sent to the Allottee or the Promoter by Registered Post at their respective addresses specified below:

_____ Name of Allottee
 _____ (Allottee Address)
 M/s _____ Promoter Name
 _____ (Promoter Address)

It shall be the duty of the Allottee and the Promoter to inform each other of any change in address subsequent to the execution of this Agreement in the above address by Registered Post failing which all communications and letters posted at the above address shall be deemed to have been received by the promoter or the Allottee, as the case may be.

30. JOINT ALLOTTEES:

That in case there are Joint Allottees all communications shall be sent by the Promoter to the Allottee whose name appears first and at the address given by him/her which shall for all intents and purposes to consider as properly served on all the Allottees.

31. SAVINGS:

Any application letter, allotment letter, agreement, or any other document signed by the allottee, in respect of the apartment, plot or building, as the case may be prior to the execution and registration of this Agreement for Sale for such apartment, plot or building as the case may be, shall not be construed to limit the rights and interests of the allottee under the Agreement for Sale or under the Act or the rules or the regulations made thereunder.

32. GOVERNING LAW:

That the rights and obligations of the parties under or arising out of this Agreement shall be construed and enforced in accordance with the Act and the Rules and Regulations made thereunder including other applicable laws of India for the time being in force.

33. DISPUTE RESOLUTION:

All or any disputes arising out or touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which the same shall be settled ¹[as per provisions of the Act.]

[Please insert any other terms and conditions as per the contractual understanding between the parties, however, please ensure that such additional terms and conditions are not in derogation of or inconsistent with the terms and conditions set out above or the Act and the Rules and Regulations made thereunder].

IN WITNESS WHEREOF parties hereinabove named have set their respective hands and signed this Agreement for Sale at _____ (city / town name) in the presence of attesting witness, signing as such on the day first above written.

¹ Substituted vide Notification No. HSG-A(3)-6/2020 dated 3rd June, 2022.

SIGND AND DELIVERED BY NAME

Allottee: (including Joint buyers)

(1) Signature _____
 Name _____
 Address _____

Please affix photograph and sign across the photograph

(2) Signature _____
 Name _____
 Address _____

Please affix photograph and sign across the photograph

SIGNED AND DELIVERED BY THE NAME

Promoter:

(1) Signature (Authorised Signatory) _____
 Name _____
 Address _____
 At _____ on _____ in the presence of:

Please affix photograph and sign across the photograph

WITNESSES:

(1) Signature _____
 Name _____
 Address _____

(2) Signature _____
 Name _____
 Address _____

SCHEDULE 'A'	PLEASE INSERT DESCRIPTION OF THE [APARTMENT/PLOT] AND THE GARAGE/ COVERED PARKING (IF APPLICABLE) ALONGWITH BOUNDARIES IN ALL APARTMENT
SCHEDULE 'B'	FLOOR PLAN OF THE APARTMENT
SCHEDULE 'C'	PAYMENT PLAN
SCHEDULE 'D'	SPECIFICATIONS, AMENITIES, FACILITIES (WHICH ARE PART OF THE APARTMENT/ PLOT)
SCHEDULE 'E'	SPECIFICATIONS, AMENITIES, FACILITIES (WHICH ARE PART OF THE PROJECT)

[The 'Schedules' to this Agreement for Sale shall be as agreed to between the Parties]

FORM 'M'
[See rule 23(1)]

COMPLAINT TO AUTHORITY

Complaint under section 31

For use of Regulatory Authority(s) office:

Date of filing: _____

Date of [receipt at the filing counter of the Registry/ receipt by post/ online filing]: _____

Complaint No.: _____

Signature: _____

Registrar: _____

IN THE REGULATORY AUTHORITIES OFFICE (Name of place)

Between

_____ Complainant(s)

And

_____ Respondent(s)

Details of claim:

1. Particulars of the complainant(s):
 - i. Name(s) of the complainant:
 - ii. Address of the existing office / residence of the complainant:
 - iii. Address for service of all notices:
 - iv. Contact Details (Phone number, e-mail, Fax Number etc.):

2. Particulars of the respondents:
 - i. Name(s) of respondent:
 - ii. Office address of the respondent:
 - iii. Address for service of all notices:
 - iv. Contact Details (Phone number, e-mail, Fax Number etc.):

3. Jurisdiction of the Authority:

The complainant declares that the subject matter of the claim falls within the jurisdiction of the Authority.

4. Facts of the case:

[give a concise statement of facts and grounds for complaint]

5. Relief(s) sought:

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s)_____.

[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

6. Interim order, if prayed for:

Pending final decision on the complaint the complainant seeks issue of the following interim order:

[Give here the nature of the interim order prayed for with reasons]

7. Complainant not pending with any other court, etc.: The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).

8. Particulars of [demand draft / bankers cheque or online payment] in respect of the fee in terms of sub-rule (1) of rule 31:

- i. Amount (
- ii. Name of the bank on which drawn
- iii. [Demand draft number / bankers cheque / online payment transaction no.]

9. List of enclosures:

- i. Copies of the documents relied upon by the complainant and referred to in the complaint
- ii. An index of documents
- iii. Other documents as annexed along with the complaint

Signature of the complainant(s)

Verification

I _____ (name in full block letters) [son / daughter] of _____ the complainant do hereby verify that the contents of paragraphs [1 to 9] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the complainant(s)

Instructions:

- (1) Every complaint shall be filed in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeters width on top and with a right margin on 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.
- (2) Every complaint shall be presented along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, then sufficient number of extra empty file size envelopes bearing full address of each respondent shall be furnished by the party preferring the complaint.

APPELLATE TRIBUNAL**FORM 'N'**
[See rule 24(2)]**APPEAL TO APPELLATE TRIBUNAL**

Appeal under section 44

For use of Appellate Tribunal's office:

Date of filing: _____

Date of [receipt at the filing counter of the Registry / receipt by post / online filing]:

Appeal No.: _____

Signature: _____

Registrar: _____

IN THE REAL ESTATE APPELLATE TRIBUNAL (Name of place)

Between

_____ Appellant(s)

And

_____ Respondent(s)

Details of appeal:

1. Particulars of the appellants:

- i. Name(s) of the appellant:
- ii. Address of the existing office / residence of the appellant:
- iii. Address for service of all notices:
- iv. Contact Details (Phone number, e-mail, Fax Number etc.):

2. Particulars of the respondents:

- i. Name(s) of respondent:
- ii. Office address of the respondent:
- iii. Address for service of all notices:
- iv. Contact Details (Phone number, e-mail, Fax Number etc.):

3. Jurisdiction of the Appellate Tribunal:

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

4. Limitation:

The appellant declares that the appeal is within the limitation specified in subsection (2) of section 44

OR

If the appeal is filed after the expiry of the limitation period specified under subsection (2) of section 44 specify reasons for delay_____.

5. Facts of the case:

(give a concise statement of facts and grounds of appeal against the specific order of the Authority or the adjudicating officer, as the case may be, passed under section(s)_____ or rule(s)_____ or regulation(s)_____.

6. Relief(s) sought:

In view of the facts mentioned in paragraph 5 above, the appellant prays for the following relief(s)_____.

[Specify below the relief(s) sought explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

7. Interim order, if prayed for: Pending final decision on the appeal the appellant seeks issue of the following interim order:

[Give here the nature of the interim order prayed for with reasons]

8. Matter not pending with any other court, etc.:

The appellant further declares that the matter regarding which this appeal has been made is not pending before any court of law or any other authority or any other tribunal(s).

9. Particulars of [demand draft / bankers cheque or online payment] in respect of the fee in terms of sub-rule (1) of rule 23:

- i. Amount:
- ii. Name of the bank on which drawn:
- iii. [Demand draft number / bankers cheque / online payment transaction no.]:

10. List of enclosures:

- i. An attested true copy of the order against which the appeal is filed
- ii. Copies of the documents relied upon by the appellant and referred to in the appeal
- iii. An index of the documents
- iv. Other documents as annexed along with the complaint

Signature of the appellant(s)

Verification:-

I _____(name in full block letters) [son / daughter] of _____the appellant do hereby verify that the contents of paragraphs [1 to 10] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the appellant(s)

Instructions:

- (1) Every appeal shall be filed in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written,

lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimetres width on top and with a right margin on 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

- (2) Every appeal shall be presented along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, then sufficient number of extra empty file size envelopes bearing full address of each respondent shall be furnished by the party preferring the appeal.

APPELLATE TRIBUNAL

FORM 'O'
[See rule 31(1)]

COMPLAINT TO ADJUDICATING OFFICER

Claim for interest and compensation under section 31 read with section 71

For use of Adjudicating Officers office:

Date of filing: _____

Date of [receipt at the filing counter / receipt by post / online filing]: _____

Complaint No.: _____

Signature: _____

Authorised Officer: _____

IN THE ADJUDICATING OFFICER'S OFFICE

Between

_____ Complainant(s)

And

_____ Respondent(s)

Details of claim:

1. Particulars of the complainant(s):

- i. Name(s) of the complainant:
- ii. Address of the existing office / residence of the complainant:
- iii. Address for service of all notices:
- iv. Contact Details (Phone number, e-mail, Fax Number etc.):
- v. Details of allottees apartment, plot or building, as the case may be:

2. Particulars of the respondents:

- i. Name(s) of respondent:
- ii. Office address of the respondent:
- iii. Address for service of all notices:
- iv. Contact Details (Phone number, e-mail, Fax Number etc.):
- v. Registration no. and address of project:

3. Jurisdiction of the adjudicating officer:

The complainant declares that the subject matter of the claim falls within the jurisdiction of the adjudicating officer.

4. Facts of the case:

[give a concise statement of facts and grounds of claim against the promoter]

5. Compensation(s) sought:

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following compensation(s)_____.

[Specify below the compensation(s) claimed explaining the grounds of claim(s) and the legal provisions (if any) relied upon]

6. Claim not pending with any other court, etc.:
The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).
7. Particulars of [demand draft / bankers cheque or online payment] in respect of the fee in terms of sub-rule (1) of rule 31
 - i. Amount:
 - ii. Name of the bank on which drawn:
 - iii. [Demand draft number / bankers cheque / online payment transaction no]:
8. List of enclosures:
 - i. Copies of the documents relied upon by the complainant and referred to in the complaint
 - ii. An index of documents
 - iii. Other documents as annexed along with the complaint

Signature of the complainant(s)

Verification

I_____ (name in full block letters) [son / daughter] of_____ the complainant do hereby verify that the contents of paragraphs [1 to 8] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the complainant(s)

Instructions:

- (1) Every complaint shall be filed in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimetres width on top and with a right margin on 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.
- (2) Every complaint shall be presented along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, then sufficient number of extra empty file size envelopes bearing full address of each respondent shall be furnished by the party preferring the complaint.

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH, SHIMLA**

FORM 'P'
[See rule 32(1)]

ANNUAL STATEMENT OF ACCOUNTS

Receipts and Payments Account
For the year ended _____ (In Rupees)

A/c Code	Receipts	Current year As on	Previous Year As on	A/c Code	Payments	Current year As on	Previous year As on
1	2	3	4	5	6	7	8

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer In-charge (Finance and Accounts)

Income and Expenditure Account

For the period 1st _____ to 31st _____ (In Rupees)

A/c Code	Expenditure	Schedule	Current Year As on	Previous Year As on	A/c Code	Income	Schedule	Current Year As on	Previous Year As on
1	2	3	4	5	6	7	8	9	10

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer In-charge (Finance and Accounts)

Balance Sheet as on 31st (Month) (Year)_____ (In Rupees)

A/c Code	Expenditure	Schedule	Current Year As on	Previous Year As on	A/c Code	Income	Schedule	Current Year As on	Previous Year As on
1	2	3	4	5	6	7	8	9	10

Instructions:

- (1) The Schedules referred / referenced above shall be prepared by the Authority based on accounting principles followed by the State Government or by other regulatory authorities or as suggested by the Comptroller and Auditor General of India from time to time.
- (2) The Schedules referred to above shall form an integral part of the Income and Expenditure Account or the Balance Sheet, as the case may be.

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer In-charge (Finance and Accounts)

C. Number of cases filed before the Authority and the adjudicating officer for settlement of disputes and number of cases disposed:

Sr. No.	No. of cases pending in the last quarter with the Authority	No. of cases received during the quarter by the Authority	No. of cases disposed of by the Authority
1	2	3	4

Sr. No.	No. of cases pending in the last quarter with the adjudicating officer	No. of cases received during the quarter by the adjudicating officer	No. of cases disposed of by the adjudicating officer
1	2	3	4

D. Statement on the periodical survey conducted by the Authority to monitor the compliance of the provisions of the Act by the promoters, allottees and real estate agents:

Sr. No.	Survey conducted during the quarter with details	Observation of Authority	Remedial steps taken
1	2	3	4

E. Statement on steps taken to mitigate any non-compliance of the provisions of the Act and the rules and regulations made thereunder by the promoters, allottees and real estate agents:

Sr. No.	Subject	Steps taken	Result achieved
1	2	3	4

F. Statements on directions of the Authority and the penalty imposed for contraventions of the Act and the rules and regulations made thereunder and statement on interest and compensations ordered by the adjudicating officer:

Sr. No.	Name of the promoter	Details of the directions issued by the Authority/adjudicating officer	Penalty/interest/compensations imposed	Whether paid
1	2	3	4	

Sr. No.	Name of the allottee	Details of the directions issued by the Authority/adjudicating officer	Penalty/interest/compensations imposed	Whether paid
1	2	3	4	

Sr. No.	Name of the real estate agent	Details of the directions issued by the Authority/adjudicating officer	Penalty/interest/compensations imposed	Whether paid
1	2	3	4	

- G. Investigations and inquiries ordered by the Authority or the adjudicating officer: A brief narrative of investigations and inquiries taken up by the Authority or the adjudicating officers and references received from the competent authority or the State Government.
- H. Orders passed by the Authority and the adjudicating officer: A brief narrative of orders passed by the Authority or the adjudicating officers separately for where no offence is made out, and in case offence is proved, category-wise for each category of orders passed along with a tabular statement indicating the sections under which the order was passed and brief particulars of the orders.
- I. Execution of the orders of the Authority and imposition of penalties:
- i. monetary penalties – details of recovery of penalty imposed, details of penalty imposed but not recovered, total number of matters and total amount of monetary penalty levied, total amount realized by resorting to rule 22;
 - ii. matters referred to court under section 59 – total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year; and
 - iii. matters referred to court for execution of order under section 40 – total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year.
- J. Execution of the orders of the adjudicating officer and imposition of interest and compensation:
- i. interest and compensations – details of interest and compensation imposed, details of interest and compensation imposed but not paid, total number of matters and total

amount of interest and compensations imposed, total amount realized by resorting to rule 22; and

- ii. matters referred to court for execution of order under section 40 – total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year.

K. Appeals:

- i. Number of appeals filed against the orders of the Authority or the adjudicating officer in the year:
- ii. Number of appeals pending at the beginning of the year:
- iii. Appeals filed during the year:
- iv. Number of appeals allowed by the Appellate Tribunal during the year:
- v. Number of appeals disallowed by the Appellate Tribunal during the year:
- vi. Brief write up on the appeals allowed by the Appellate Tribunal:

L. References received from the State Government under section 33: a brief narrative on references received from the State Government under section 33 providing for – number of references received during the year, number of references disposed of during the year, number of references pending at the end of the year.

M. Advocacy measures under sub-section (3) of section 33: a brief narrative on activities undertaken under subsection (3) of section 33 –

- i. workshops, seminars and other interactions with public / experts / policy-makers / regulatory bodies on laws and policies relating to the real estate sector and for creating awareness on the same;
- ii. papers and studies published for advocacy on laws and policies relating to the real estate sector and for creating awareness on the same;
- iii. (consultation papers published/placed on website of the Authority);
- iv. analytical papers prepared and examined;
- v. others.

N. Administration and establishment matters:

- i. report of the Secretary;
- ii. composition of the Authority;
- iii. details of Chairperson and Members appointed in the year and of those who demitted office;
- iv. details of adjudicating officers appointed in the year and those who demitted office;
- v. organizational structure; and
- vi. a tabular statement containing information on personnel in the Authority, category-wise: sanctioned posts, posts filled up, vacancies, appointments made in the year etc.

O. Experts and consultants engaged: details of number of experts and consultants appointed in the year and of those who demitted office.

- P. Employee welfare measures, if any, beyond the regular terms and conditions of employment, undertaken by the Authority.
- Q. Budget and Accounts:
- i. budget estimates and revised estimates, under broad categories;
 - ii. receipts under broad categories in the Real Estate Regulatory Fund established under sub-section (1) of section 75;
 - iii. actual expenditure under broad categories;
 - iv. balance available in the Real Estate Regulatory Fund under sub-section (1) of section 75; and
 - v. any other information.
- R. International cooperation: A brief narrative of international cooperation, if any, undertaken by the Authority.
- S. Capacity Building: A brief narrative of capacity building initiative undertaken including
- i. number of employees (category wise and grade wise) trained in house with details of such programmes like content, duration and faculty;
 - ii. number of employees (category wise and grade wise) trained by outside institutions (separately within Indian and outside India) with details of names of institutions and duration also to specify whether training was under internship, exchange programme, fellowships, study leave, special arrangements with foreign universities/institutions; and
 - iii. expenditure of capacity building initiatives.
- T. Ongoing programmes: A brief narrative of ongoing programmes.
- U. Right to Information: A brief narrative of :
- i. number of applications received by Public Information Officer (PIO)/Assistant Public Information Officer (APIO) seeking information under RTI Act;
 - ii. number of applications for which information has been provided by PIO;
 - iii. number of applications pending with PIO;
 - iv. number of appeals filed before the First Appellate Authority against the order of PIO;
 - v. number of appeals which have been disposed of by First Appellate Authority;
 - vi. number of appeals pending with the First Appellate Authority;
 - vii. number of applications/appeals not disposed of in the stipulated time frame.

Chairperson (Signature)

Member(s) (Signature)"

By Order

(Manisha Nanda)

Addl. Chief Secretary (TCP) to the,
Govt. of Himachal Pradesh, Shimla.

THE HIMACHAL PRADESH REQUISITION OF IMMOVABLE PROPERTY ACT, 1987**ARRANGEMENT OF SECTIONS**

SECTIONS:

1. Short title, extent and commencement.
 2. Definitions.
 3. Power to requisition immovable property.
 4. Power to take possession of requisitioned property.
 5. Rights over requisitioned property.
 6. Release from requisition.
 7. Application for release from requisition.
 8. Further application for release from requisition.
 9. Principles and methods of determining compensation.
 10. Payment of compensation.
 11. Appeal from order of requisition.
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 14. Competent authority and arbitrator to have certain powers of civil courts.
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 25. Validation of certain requisitions of immovable properties.
 26. Power to recover rent or damages in respect of requisitioned property as arrears of land revenue.
 27. Repeal and savings.
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THE HIMACHAL PRADESH REQUISITION OF IMMOVABLE PROPERTY ACT, 1987
(ACT NO. 1 OF 1988)¹

(Received the assent of the President on the 1st February, 1988 and was published in Hindi in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 1st February, 1988, pp. 169-184 and in English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 7th March, 1988, pp. 255-268).

An Act to provide for the requisition of immovable property or the continuance of requisition of immovable property for purposes of the State.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Requisition of Immovable Property Act, 1987.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall be deemed to have come into force on the 28th day of July, 1983.

2. Definitions.- In this Act, unless the context otherwise requires,-

- (a) "award" means an award of an arbitrator made under section 9;
- (b) "competent authority" means any person or authority authorised by the Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification;
- (c) "Government" means the Government of Himachal Pradesh;
- (d) "landlord" means any person, who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account, or on account or on behalf or for the benefit of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant;
- (e) "Official Gazette" means the Rajpatra, Himachal Pradesh;
- (f) the expression "person interested" in relation to any property includes all persons claiming or entitled to claim an interest in the compensation payable on account of the requisition of that property under this Act;
- (g) "premises" means any building or part of a building and includes-
 - (i) the garden, grounds and out-houses, if any, pertaining to such building or part of the building; and
 - (ii) any fittings affixed to such building or part of the building for more beneficial enjoyment thereof;
- (h) "prescribed" means prescribed by rules made under this Act;
- (i) "property" means immovable property of every kind and includes any rights in or over such property; and
- (j) "tenant" means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under the tenant under any law for the time being in force.

¹ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 22nd December, 1987, pp. 2529 and 2543.

3. Power to requisition immovable property.- (1) Where the competent authority is of the opinion that any property is needed or is likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned, the competent authority-

- (a) shall call upon the owner or any other person who may be in possession of the property, by notice in writing (specifying therein the purpose of the requisition) to show cause within thirty days of the date of the service of such notice on him, as to why the property should not be requisitioned; and
- (b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of or structurally alter the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such further orders as appears to it to be necessary or expedient in connection with the requisition:

Provided that no property or part thereof-

- (a) which is bona fide used by the owner thereof as residence for himself or his family, or
- (b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of a person connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned:

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under subsection (1), possession of the property shall not be taken unless the competent authority has provided such tenant with alternative accommodation which, in its opinion, is suitable.

4. Power to take possession of requisitioned property.- (1) Where any property has been requisitioned under section 3, the competent authority may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary.

(3) On taking possession of any property under this section, the competent authority shall, in the absence of an agreement as to the amount of compensation under clause (a) of sub-section (1) of section 9 and without prejudice to other provisions of this Act, tender every month payment of eighty per centum of the rental as estimated by him, provisional compensation for such property, to the owners or persons entitled thereto.

(4) The amount paid or tendered under sub-section (3) shall be taken into account for determining the amount of compensation required to be paid under section 9 and where the compensation so paid exceeds the compensation determined under section 9, the excess, unless refunded within three months from the date of award, shall be recoverable by deduction from the rental payable thereafter.

5. Rights over requisitioned property.- (1) All property requisitioned under section 3 shall be used for such purposes as may be mentioned in the notice of requisition.

(2) Where any premises are requisitioned under section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice within such reasonable time as may be mentioned therein and if the landlord fails to execute the repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any mode of recovery, be deducted from the compensation payable to the landlord.

6. Release from requisition.- (1) The competent authority may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good condition as it was when possession thereof was taken, subject only to the changes caused by reasonable wear and tear and irresistible force:

Provided that where the purposes for which any requisitioned property was being used cease to exist, the competent authority shall release the property, as soon as may be, from requisition.

(2) Notwithstanding anything contained in sub-section (1), the State Government shall release from requisition-

- (a) any property requisitioned under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973), the possession of which is still with the Government, on or before the expiry of a period of ten years from the 28th day of July, 1983;
- (b) any property requisitioned or deemed to be requisitioned under this Act, after the 27th day of July, 1983, on or before the expiry of a period of ten years from the date on which possession of such property was surrendered or delivered to or taken by the competent authority under section 4.

(3) Where any property is to be released from requisition, the competent authority may, after such enquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing, the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successor(s)-in interest of such person.

(4) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property to which any other person may be entitled, by due process of law, to enforce against the person to whom possession of the property is given.

(5) Where any person to whom possession of any requisitioned property is to be given is not traceable and has no agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice, declaring that the property is released from requisition, to be affixed on some conspicuous part of the property and shall also publish the notice in the Official Gazette.

(6) When a notice referred to in sub-section (5) is published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof

and the Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(7) Where any property requisitioned under this Act or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or operation of any army or violence of any mob or other irresistible force, the requisition shall at the option of the Government, be void:

Provided that the benefit of this sub-section shall not be available to the Government where the injury to such property is caused by any wrongful act or default of the Government.

7. Application for release from requisition.- (1) After a period of two years from the date of requisition of any property, the owner or any person interested in such property, may apply to the competent authority to release it from requisition:

Provided that such application may be made before the expiry of two years from the date of requisition of the property if circumstances have arisen which the owner or any person interested in the property could not have urged when given an opportunity to show cause under clause (a) of sub-section (1) of section 3.

(2) On receipt of an application under sub-section (1) the competent authority may, after calling for such information as it may find necessary, from the owner or any person interested in the property or making such further inquiry as it may consider necessary, pass orders in respect of that as it deems fit.

8. Further application for release from requisition.- After the application for release from requisition made under section 7 has been rejected by the competent authority and the appeal filed before the Government under section 12 has also been rejected, no further application for release will be entertained by the competent authority till the expiry of a further period of two years:

Provided that another application may be made by the owner or any person interested in the property within two years of rejection of the first appeal if any further circumstances have arisen which he could not have urged in his previous application.

9. Principles and methods of determining compensation.- (1) Where any property is requisitioned under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say-

- (a) where the amount of compensation is fixed by agreement, it shall be paid in accordance with such agreement;
- (b) where no such agreement can be reached, the Government shall appoint as an arbitrator a person who is or has been or is qualified for appointment as a Judge of a High Court;
- (c) the Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned to assist the arbitrator and where such nomination is made the person to be compensated, may also nominate an assessor for the same purpose;
- (d) at the commencement of the proceedings before the arbitrator, the Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;
- (e) the arbitrator shall, after hearing the dispute, make an award, within a period of one year reckoned from the date of order of requisition made by the competent authority under subsection (2) of section 3, determining the amount of compensation which

appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have due regard to the circumstances of each case and the provisions of sub-section (2) of this section;

- (f) where there is any dispute as to the person or persons who is/are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more than one persons are entitled to compensation, he shall apportion the amount thereof amongst such persons; and
- (g) nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitration under this section,

(2) The amount of compensation payable for the requisition of any property shall, subject to the provisions of sub-sections (3) and (4), consist of-

- (a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it has been taken on lease for that period; and
- (b) such sum or sums, if any, as may be found necessary to compensate the person interested in all or any of the following matters, namely:-
 - (i) pecuniary loss due to requisition;
 - (ii) expenses on account of vacating the requisitioned premises;
 - (iii) expenses on account of re-occupying the premises upon release from requisition; and
 - (iv) damages (other than normal wear and tear) caused to the property during the period of requisition including the expenses that may have to be incurred for restoring the property to the same condition in which it was at the time of requisition.

(3) The recurring payment, referred to in clause (a) of sub-section (2), in respect of any property shall, unless the property is sooner released from requisition under section 6, be revised in accordance with the provisions of sub-section (4),-

- (a) in a case where such property has been subject to requisition for a period of five years or a longer period immediately preceding the commencement of this Act-
 - (i) in the first instance with effect from the date of such commencement, and
 - (ii) further with effect from the expiry of five years from such commencement;
- (b) in a case where such property has been subject to requisition immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of subsection (2) of section 6, be released from requisition, extends beyond five years from the date of its requisition,-
 - (i) in the first instance with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4, and
 - (ii) further with effect from the date of expiry of a period of five years from the date on which the revision made under clause (i) takes effect;
- (c) in any other case, with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4.

(4) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in sub-section (1) read with clause (a) of sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which the revision has to be made under sub-section (3).

(5) Where there are several persons interested in the compensation, it shall be lawful for the Government either on its own motion or on an application from any person interested therein, to appoint the same or any other arbitrator to make an award or supplementary award in respect of the disputes.

Explanation.- In computing the period referred to in clause (e) of subsection (1), any period or periods during which proceedings are held up on account of any stay or injunction by an order of any court, shall be excluded.

10. Payment of compensation.- (1) The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid or given by the competent authority to the person or persons entitled therein in such manner and within such time as may be specified.

(2) An interest at the rate of 9 per centum per annum shall be payable on the amount of compensation or any part thereof from the date of order of requisition made by the competent authority under sub-section (2) of section 3 till the date the amount stands paid or tendered:

Provided that where such compensation or part thereof is not paid or tendered within one year from the date it becomes due, interest at the rate of 15 per centum per annum shall be payable for the period exceeding one year.

Explanation I.- For computing interest under this sub-section, the amount paid as provisional compensation under sub-section (3) of section 4, if not already reduced while making the award, shall be deducted from the amount of compensation payable under the award.

Explanation II.- For the removal of doubts it is clarified that tender of amount of compensation to the persons entitled thereto shall, without prejudice to other provisions of this Act, be deemed to be the payment of compensation to the persons interested therein, for the purposes of this subsection.

11. Appeal from order of requisition.- (1) Any person aggrieved by an order of requisition made by the competent authority under sub-section (2) of section 3 may, within thirty days from the date of service of the order prefer an appeal to the Government :

Provided that the Government may entertain the appeal after expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) on receipt of an appeal under sub-section (1), the Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further enquiry, if any, as may be necessary, pass such orders as it thinks fit and the orders of the Government shall be final.

(3) Where an appeal is preferred under sub-section (1), the Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit.

12. Appeal from order of competent authority rejecting application for release from requisition.- (1) Any person aggrieved by an order made by the competent authority under sections 7 and 8 may, within thirty days from the date of service of the order, prefer an appeal to the Government:

Provided that the Government may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Government may, after calling for a report from the competent authority and after making such further inquiry as it may consider necessary, pass such orders as it deems fit and the orders of the Government shall be final.

13. Appeal from award in respect of compensation.- (1) Any person aggrieved by an award of the arbitrator made under section 9 may, within sixty days, from the date of such award prefer an appeal to the High Court of Himachal Pradesh:

Provided that the High Court may entertain the appeal after expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) If the sum which, in the opinion of the High Court, the arbitrator ought to have awarded as compensation is in excess of the sum which the arbitrator did award as compensation, the High Court may direct that the competent authority shall pay interest on such sum in excess at the rate of 9 per centum per annum from the date of the order of requisition made by the competent authority under sub-section (2) of section 3 till the date the amount of such sum in excess stands paid or tendered:

Provided that the High Court may also direct that where such sum in excess or any part thereof is paid or tendered after the date of expiry of a period of one year from the date on which the order of requisition is made under sub-section (2) of section 3, interest at the rate of 15 per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such sum in excess or part thereof which has not been paid or tendered before the date of such expiry.

Explanation.- For the removal of doubts it is clarified that tender of amount of compensation to the persons entitled thereto, without prejudice to the provisions contained in this Act, shall be deemed to be valid payment for the purposes of this sub-section.

14. Competent authority and arbitrator to have certain powers of civil courts.- The competent authority and the arbitrator appointed under section 9, while holding an inquiry or arbitration proceedings, as the case may be, under this Act, shall have all powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office; and
- (e) issuing commission for examination for witnesses.

15. Power to obtain information.- The Government or the competent authority may, with a view to carrying out the purposes of section 3 or section 6 or section 9 by order require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or intended to be requisitioned under this Act.

16. Power to enter and inspect.- The competent authority or any officer, empowered in this behalf by such authority by general or special order, may enter and inspect any property for the purposes of determining whether and if so in what manner an order under this Act should be made in relation to such property or with a view to securing compliance with an order made under this Act.

17. Service of notice and order.- (1) Subject to the provisions of this section and any rules that may be made under this Act, every notice or order issued or made under this Act shall,-

- (a) in case of any notice or order of a general nature affecting a class of persons, be published in the Official Gazette;
- (b) in case of any notice or order affecting an individual, corporation or firm be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 (5 of 1908); and
- (c) in the case of any notice or order affecting an individual person (not being a corporation or firm) be served on such person-
 - (i) by delivering or tendering it to that person; or
 - (ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer or such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or
 - (iii) failing service by these means, by post.

(2) Where the ownership of the property is in dispute or where the persons interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

18. Easement not to be disturbed.- No person interested in any property requisitioned or acquired under this Act shall, without the previous written consent of the competent authority or except for the purpose of affecting repairs or complying with municipal requirement, willfully disturb any convenience or easement attached to such property or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property.

19. Delegation of powers.- (1) The Government may, by notification in the Official Gazette, direct that the powers except those under sections 11, 12 and 24 exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to that Government.

(2) All notifications issued under sub-section (1) shall be laid, as soon as may be, before the Legislative Assembly.

20. Protection of action taken in good faith.- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the competent authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

21. Bar of jurisdiction of civil courts.- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

22. Penalty for offences.- Whoever contravenes any provision of this Act or any rule made thereunder or any order made or direction given under this Act or obstructs the lawful exercise of any power conferred by or under this Act shall be punishable with fine which may extend to one thousand rupees, and when the offence is a continuing one with a further fine which may extend to fifty rupees for every day after the first during which the offence continues.

23. Certain persons to be public servants.- The competent authority, every arbitrator and every officer empowered by the Government or by the competent authority, while exercising any power or performing any duty under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 1860 (45 of 1860).

24. Power to make rules.- (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the procedure to be followed by the competent authority in making inquiries under section 3 or section 6;
- (b) the procedure to be followed in arbitration proceedings and appeals under this Act;
- (c) the principles to be followed in determining the amount of compensation, method of payment and conditions of such compensation;
- (d) the principles to be followed in apportioning the cost of proceeding before the arbitrator and an appeal under this Act;
- (e) the manner of service of notices and orders ;
- (f) rent and its recovery; and
- (g) any other matter which has to be, or may be prescribed.

(3) Every rule framed 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 not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session, in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. Validation of certain requisitions of immovable properties.- Notwithstanding anything to the contrary contained in any law for the time being in force-

- (i) any immovable property requisitioned by the competent authority under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973) (including any property deemed to have been requisitioned under that Act) which had not been released from such requisition before the 28th day of July, 1983;
- (ii) any immovable property which purports to have been requisitioned after the 28th day of July, 1983, by an Officer of the Government, under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973) and which has not been released from such requisition; shall, as from the date of such requisition, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purposes for which the said property was requisitioned or held and all provisions of this Act shall apply accordingly:

Provided that all agreements for determination and awards for payment of compensation in respect of any such property for any period of requisition shall be binding in so far as future compensation is concerned shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to payment of compensation in respect of that property.

26. Power to recover rent or damages in respect of requisitioned property as arrears of land revenue.- (1) Subject to any rule that may be made in this behalf by the Government, any sum due by way of rent in respect of any requisitioned property which is in arrears may be recovered by the competent authority from the persons liable to pay the same in the same manner as an arrear of land revenue.

(2) Where any person is in unauthorised occupation of any requisitioned property, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the said property as it thinks fit and may, by notice served by post or in such other manner, as may be prescribed by rules made in this behalf, order that person to pay the damages within such time as may be specified in the notice.

(3) If any person refuses or fails to pay the damages within the time specified in the notice under sub-section (2), damages may be recovered in the same manner as arrears of land revenue.

27. Repeal and savings.- (1) The Himachal Pradesh Requisition of Immovable Property Ordinance, 1987 (7 of 1987) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act had come into force on the day on which such thing was done or action was taken.

THE TRANSFER OF PROPERTY ACT, 1882

ARRANGEMENT OF SECTIONS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS

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CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

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6. What may be transferred.
7. Persons competent to transfer.
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THE SCHEDULE.

THE TRANSFER OF PROPERTY ACT, 1882

ACT NO. 4 OF 1882

[17th February, 1882.]

An Act to amend the law relating to the Transfer of Property by act of Parties.

Preamble.—WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Short title.—This Act may be called the Transfer of Property Act, 1882.

Commencements.—It shall come into force on the first day of July, 1882.

Extent.—¹[It extends² in the first instance to the whole of India. except ³[the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of], Bombay, Punjab and Delhi.]

⁴[But this Act or any part thereof may by ⁵notification in the Official Gazette be extended to the whole or any part of ⁶[the said territories] by the State Government concerned.]

¹ Subs. by the A.O. 1950, for the third paragraph.

² The application of this Act was barred in the Naga Hills District, including the Mokokchung Sub-division, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasi and Jantia Hills and the Mikir hills Tract, by notification under s. 2 of the Assam Frontier Tracts Regulation, 1880 (2 of 1880). Partially extended to Berar by Act 4 of 1941. Extended to Manipur by Act 68 of 1956; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I; to Goa, Daman and Diu by Reg. 11 of 1963, s. 3 and Sch.; to Lakshadweep by Reg. 8 of 1965, s. 3 and Sch., to Pondicherry by Act 26 of 1968, s. 3 and Sch.

It has been amended to Bombay by Bombay Act 14 of 1939, S7 of 1959, in U.P. by U.P. Act 24 of 1954, 14 of 1970 and 57 of 1976.

Extended to the Union territory of Jammu and Kashmir and Union territory of Ladakh by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

³ Subs. by the Adaptation of Laws (No. 2) Order, 1956, for “Part B States”.

⁴ Subs. by the A.O. 1937, for the original paragraph.

⁵ The Act has been extended to— The Presidency of Bombay (except Scheduled Districts) w.e.f. 1-1-1893; to Mehwas Estate by Born. Reg. 1 of 1949; and to former princely area w.e.f. 1-4-1951; now applicable to whole of Maharashtra; Gujarat (Saurashtra area) by Saurashtra Ordinance 25 of 1949, and to Kutch area w.e.f. 1-1-1950.

Madhya Pradesh:

Mysore, w.e.f. 1-4-1951;

Rajasthan, w.e.f. 1-7-1952;

the former State of Travancore-Cochin, w.e.f. 1-5-1952, now applicable to whole of Kerala.

The provisions of sections 54, 107 and 123 were extended to—

Delhi, w.e.f. 30-5-1939. Section 129 was extended to certain areas of Delhi w.e.f. 16-11-1940 and to the remaining areas w.e.f. 1-12-1962. the remaining provisions were also extended to the Union territory of Delhi w.e.f. 1-12-1962;

Himachal Pradesh, w.e.f. 7-12-1970:

Punjab, w.e.f. 1-4-1955 and to former princely area w.e.f. 15-5-1957. (Section 59 was enforced in Haryana area, w.e.f. 5-8-1967).

The Act has been declared in force in the Pargana of Manpur by the Manpur Law Regulation, 1926 (2 of 1926), in Panth Piploda by the PanthPiploda Laws Regulation, 1929 (1 of 1929) and in the State of Sikkim on 1.9.1984 vide Notification No. S.O. 643(E), dated 24-8-1984, Gazette of India, Extraordinary, Pt. II, sec. 3(0).

The Act has been repealed as to Government Grants by the Government Grants Act, 1895 (15 of 1895).

The Act has been repealed or modified to the extent necessary to give effect to the provisions of Madras Act 3 of 1922, in the City of Madras see s. 13 of Madras Act 3 of 1922.

⁶ Subs. by the Adaptation of Laws (No. 2) Order, 1956, for “the said States”.

¹[And any State Government may, ^{2****} from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely:—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

³[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, ⁴[1908 (16 of 1908)], under the power conferred by the first section of that Act or otherwise.]

2. Repeal of Acts. Saving of certain enactments, incidents, rights, liabilities, etc.— In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

- (a) the provisions of any enactment not hereby expressly repealed;
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction; and nothing in the second Chapter of this Act shall be deemed to affect any rule of ^{5****} Muhammadan ^{6****} law.

3. Interpretation-clause.—In this Act, unless there is something repugnant in the subject or context,—

“immoveable property” does not include standing timber, growing crops or grass; “instrument”, means a non-testamentary instrument;

⁷[“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;]

“registered” means registered in ⁸⁹ [any part of the territories] to which this Act extends] under the laws¹⁰ for the time being in force regulating the registration of documents;

¹ Subs. by Act 3 of 1885, s. 1, for the original paragraph.

² The words “with the previous sanction of the Governor General in Council” omitted by Act 38 of 1920, s. 2 and the Schedule.

³ Added by Act 3 of 1885, s. 2 (w.e.f. 1-7-1882).

⁴ Subs. by Act 20 of 1929, s. 2, for “1877”.

⁵ The word “Hindu” omitted by s. 3, *ibid*.

⁶ The words “or Buddhist” omitted by s. 3, *ibid*.

⁷ Ins. by Act 27 of 1926, s. 2, as amended by Act 10 of 1927, s. 2 and Sch. 1.

⁸ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “a Part A State or a Part C State” (w.e.f. 1-4-1951).

⁹ Subs. by the Adaptation of Laws (No. 2) Order 1956, for “any State”.

¹⁰ See the Indian Registration Act, 1908 (16 of 1908).

“attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

¹ [“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]

² [“a person is said to have notice”] of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, ³ [where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]:

Provided that—

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian. Registration Act, 1908 (16 of 1908) and the rules made thereunder,
- (2) the instrument ⁴ [or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.]

¹ Ins. by Act 2 of 1900, s. 2.

² Subs. by Act 20 of 1929, s. 4, for certain words.

³ Subs. by Act 5 of 1930, s. 2, for certain words.

⁴ Ins. by s. 2, *ibid.*

4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act.—The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872):

¹[And sections 54, paragraphs 2 and 3, 59, 107 and 123, shall be read as supplemental to the Indian Registration Act, ²[1908 (16 of 1908)]]

CHAPTER II³
OF TRANSFERS OF PROPERTY BY ACT OF PARTIES
(A) *Transfer of property, whether moveable or immoveable*

5. “Transfer of property” defined.—In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, ⁴[or it himself] and one or more other living persons; and “to transfer property” is to perform such act.

⁵[in this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

⁶[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

(e) A mere right to sue ⁷***cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, ⁸[naval], ⁹[air-force] and civil pensioners of ¹⁰[the Government] and political pensions cannot be transferred.

¹ Added by Act 3 of 1885, s. 3.

² Subs. by Act 20 of 1929, s. 5, for “1877”

³ Nothing in Chapter II is to be deemed to affect any rule of Muhammandan law—see s. 2, supra

⁴ Ins. by Act 20 of 1929, s. 6.

⁵ Added by s. 6, *ibid.*

⁶ Ins. by s. 7, *ibid.*

⁷ The words “for compensation for a fraud or for harm illegally caused” omitted by Act 2 of 1900, s. 3.

⁸ Ins. by Act 35 of 1934, s. 2 and the Schedule.

⁹ Ins. by Act 10 of 1927, s. 2 and the First Schedule.

¹⁰ The word “Government” successively adapted by the A.O. 1937 and the A.O. 1950 to read as above.

(h) No transfer can be made (1) in so far as it opposed to the nature of the interest affected thereby, or (2) ¹[an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee].

² [(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a court of Wards, to assign his interest as such tenant, farmer or lessee.]

7. Persons competent to transfer.—Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer.—A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.—Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

¹ Subs. by Act 2 of 1900, s. 3, for “for an illegal purpose”.

² Added by Act 3 of 1885, s. 4.

¹[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

12. Condition making interest determinable on insolvency or attempted alienation.—

Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person.—Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. Rule against perpetuity.—No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to class some of whom come under sections 13 and 14.—If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14; such interest fails ²[in regard to those persons only and not in regard to the whole class].

³**16. Transfer to take effect on failure of prior interest.—**Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation.—(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

- (a) the life of the transferor, or
- (b) a period of eighteen years from the date of the transfer,

¹ Subs. by Act 20 of 1929, s. 8, for the second paragraph.

² Subs. by Act 20 of 1929, s. 9, for “as regards the whole class”.

³ Subs. by s. 10, *ibid.*, for sections 16, 17 and 18.

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public.—The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.]

19. Vested interest.—Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit.—Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest.—Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age.—Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Transfer contingent on happening of specified uncertain event.—Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified.—Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. Conditional transfer.—An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations

- (a) lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.
- (b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.
- (c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.
- (d) A transfer Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Fulfilment of condition precedent.—Where the terms of a transfer of property impose a conditions to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been substantially complied with.

Illustrations

- (a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.
- (b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.—Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. Ulterior transfer conditional on happening or not happening specified event.—On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. Fulfillment of condition subsequent.—An ulterior disposition of the kind contemplated by the last preceding section cannot, take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. Prior disposition not affected by invalidity of ulterior disposition.—If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to B for her life, and, if she do not desert her husband to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.—Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. Such condition must be invalid.—In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Transfer conditional on performance of act, no time specified for performance.—Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the

condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Transfer conditional on performance of act, time being specified.—Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfillment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfillment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election

35. Election when necessary.—Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge of waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representative may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Appointment

36. Apportionment of periodical payments determination of interest of person entitled.—In the absence of a contract or local usage to the contrary, all rents annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. Apportionment of benefit of obligation on severance.—When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.

Illustrations

(a) A sells to B, C and D a house situated in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7.50 to C, and Rs. 7.50 to D, and must deliver the sheep according to the Joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a duke to prevent inundation E had agreed as a term of his lease to perform this work for A. B, C and D

severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immovable Property

38. Transfer by person authorised only under certain circumstances to transfer.—

Where any person, authorised only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Transfer where third person is entitled to maintenance.—Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred ^{1***} the right may be enforced against the transferee, if he has notice ²[thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

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40. Burden of obligation imposing restriction on use of land.—Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment ⁴[in a particular manner of the latter property], or

Or of obligation annexed to ownership but not amounting to interest or easement.—

Where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

¹ The words "with the intention of defeating such right" omitted by Act 20 of 1929, s. 11.

² Subs. by s. 11, *ibid.*, for "of such intention".

³ The Illustrations omitted by Act 20 of 1929, s. 11.

⁴ Subs. by s. 12, *ibid.*, for "of the latter property or to compel its enjoyment in a particular manner".

41. Transfer by ostensible owner.—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be violable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Transfer by person having authority to revoke former transfer.—Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards a, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person ¹[fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him .

44. Transfer by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Joint transfer for consideration.—Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them

¹ Ins. by s. 13, *ibid.*

respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Transfer for consideration by persons having distinct interests.—Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustration

(a) A, coving a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money. B and C to receive Rs. 4000.

47. Transfer by co-owners of share in common property.—Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Transferee's right under policy.—Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. Rent bona fide paid to holder under defective title.—No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. Improvements made by bona fide holders under defective titles.—When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. Transfer of property pending suit relating thereto.—During the ¹[pendency] in any Court having authority ²[³[within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by ⁴[the Central Government ^{5***}] of ⁶[any] suit or proceeding ⁷[which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

⁸[*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

⁹[53. Fraudulent transfer.—(1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

¹Subs. by Act 20 of 1929, s.14, for “active prosecution”.

²Subs. by the A.O. 1950, for “in the Provinces or reestablished beyond the limits of the Provinces”.

³ Subs. by Act 3 of 1951, s. 3 and the Schedule, for “within the limits of Part A States and Part C States” (w.e.f. 1-4-1951).

⁴ Subs. by the A.O. 1937, for “the Governor General in Council”.

⁵The words “or the Crown Representative” omitted by the A.O. 1948.

⁶ Subs. by Act 20 of 1929, s. 14, for “a contentious

⁷ Ins. by s. 14, *ibid*

⁸ Added by 14, *ibid*

⁹ Subs. by s. 15, *ibid.*, for section 53.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

¹[**53A. Part performance.**—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that ^{2***}, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

CHAPTER III OF SALES OF IMMOVEABLE PROPERTY

54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

¹ Ins. by Act 20 of 1929, s. 16.

² The words “the contract though required to be registered, has not been registered, or” omitted by Act 48 of 2001, s. 10 (w.e.f. 24-9-2001).

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property ¹[or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers the buyers, of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer, of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

¹ Ins. by Act 20 of 1929, s. 17.

- (a) to the rents and profits of the property till the ownership thereof passes to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, ¹[any transferee without consideration or any transferee, with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part ¹[from the date on which possession has been delivered].

(5) The buyer is bound—

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person, as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
- (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
- (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him ^{2****} to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

³[**56. Marshalling by subsequent purchaser.**—If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to

¹ Ins. by Act 20 of 1929, s. 17.

² The words “with notice of the payment” omitted by Act 20 of 1929, s. 17.

³ Subs. bys. 18, *ibid.*, for section 56.

prejudice the rights of the mortgagee or persons claiming under him or any other person who has for consideration acquired an interest in any of the properties.]

Discharge of incumbrances on sale

57. Provision by Court for incumbrances, and sale freed therefrom.—(a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

- (1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Central Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrance, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section “Court” means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the State Government may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV
OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES

58. “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed” defined.—(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) **Simple mortgage.**—Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) **Mortgage by conditional sale.**—Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

¹[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

(d) **Usufructuary mortgage.**—Where the mortgagor delivers possession ²[or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property ³[or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest ⁴[or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) **English mortgage.**—Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

⁵[(f) **Mortgage by deposit of title-deeds.**—Where a person in any of the following towns, namely, the towns of Calcutta, Madras ⁶[and Bombay], ⁷*** and in any other town which the ⁸[State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) **Anomalous mortgage.**—A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.]

¹ Added by Act 20 of 1929, s. 19.

² Added by Act 20 of 1929, s. 19.

³ Subs. by s. 19, *ibid.*, for “and to appropriate them”.

⁴ Subs. by s. 19, *ibid.*, for “and”.

⁵ Added by Act 20 of 1929, s. 20.

⁶ Subs. by the A.O. 1948, for “Bombay and Karachi”. The word “and” had been ins. by the A.O. 1937.

⁷ The words “Rangoon, Moulmein, Bassein and Akyab” omitted by the A.O. 1937

⁸ The words “Governor General in Council” successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

¹**60A. Obligation to transfer to third party instead of retransference to mortgagor.**—

(1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance: but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60B. Right to inspection and production of documents.—A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.]

²**61. Right to redeem separately or simultaneously.**—A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.]

62. Right of usufructuary mortgagor to recover possession.—In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property ³[together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],—

- (a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property.—when such money is paid:
- (b) where the mortgagee is authorised to pay himself from such rents and profits ⁴[or any part thereof a part only of the mortgage-money,]—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee ⁵[the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided.

63. Accession to mortgaged property.—Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.—Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible,

¹ Sections 60A and 60B ins. by s. 23, *ibid.*

² Subs. by s. 24, *ibid.*, for s. 61.

³ Ins. by s. 25, *ibid.*

⁴ Subs. by s. 25, Act 20 of 1929, for “the interest of the principal money”.

⁵ Subs. by s. 25, Act 20 of 1929, for “the principal money”.

the accession must be delivered with the property; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, ¹[with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum].

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

² [63A. **Improvements to mortgaged property.**—(1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to, pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.]

64. Renewal of mortgaged lease.—Where the mortgaged property is a lease ^{3***}, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. Implied contracts by mortgagor.—In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease ^{4***}, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions

¹ Subs. by Act 20 of 1929, s. 26, for "at the same rate of interest".

² Ins. bys. 27, Act 20 of 1929.

³ The words "for a term of years" omitted by s. 28, Act 20 of 1929.

⁴ The words "for a term of years" omitted by s. 29, Act 20 of 1929.

contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the a non-performance or non-observance of the said conditions and contracts;

- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

1* * * *

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

²[**65A. Mortgagor's power to lease.**—(1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased it or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.]

66. Waste by mortgagor in possession.—A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

¹ Certain words omitted by Act 20 of 1929, s. 29.

² Ins. by s.30 *ibid.*

Rights and liabilities of mortgagee

67. Right to foreclosure or sale.—In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become ¹[due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court ²[a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or ²[a decree] that the property be sold.

A suit to obtain ²[a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

³[(a) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or]

(b) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorise the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorise a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

⁴[**67A. Mortgagee when bound to bring one suit on several mortgages.**—A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.]

⁵[**68. Right to sue for mortgage-money.**—(1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

¹ Subs. by s. 31, *ibid.*, for “payable”.

² Subs. by s. 31, *ibid.*, for “an order”.

³ Subs. by Act 20 of 1929, s. 31, for clause (a).

⁴ Ins. by s. 32, *ibid.*

⁵ Subs. by s. 33, *ibid.*, for section 68.

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for, the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.]

69. Power of sale when valid.—¹[(1)] ²[³*** a mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or ,concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely:—]

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist ⁴[or a member of any other race, sect, tribe or class from time to time specified in this behalf by ⁵[the State Government], in the Official Gazette];
- (b) where ⁶[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and] the mortgagee is ⁷[the Government];
- (c) where ⁶[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and] the mortgaged property or any part thereof ⁸[was, on the date of the execution of the mortgage-deed,] situate within the towns of Calcutta, Madras, Bombay, ⁹*** ¹⁰[or in any other town or area which the State Government may, by notification in the Official Gazette, specify' in this behalf].

¹¹[(2)] ¹²*** No such power shall be exercised unless and until—

¹³[(a)] notice in writing requiring payment of the principal money has been served on the mortgagor, or, one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

¹⁴[(b)] some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

¹[(3)] When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or

¹ Section 69 re-numbered as sub-section (1) of that section by Act 20 of 1929, s. 34.

² Subs. by s. 34, *ibid.*, for certain words

³ The words “Notwithstanding anything contained in the Trustees’ and Mortgagees’ Powers act, 1899 (28 of 1866)” omitted by Act 48 of 1952, s. 3 and the Second Schedule.

⁴ Ins. by Act 3 of 1885, s. 5.

⁵ The words “the L.G., with the previous sanction of the G. G. in C.” successively adapted by the A.O. 1937 and the A.O. 1950 to read as above.

⁶ Ins. by Act 20 of 1929, s. 34.

⁷ The words “the Secretary of State for India in Council” successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

⁸ Subs. by Act 20 of 1929, s. 34, for “is”.

⁹ The word “Karachi” omitted by the A.O. 1948.

¹⁰ The words “or Rangoon” have been successively amended by Acts 6 of 1904, 11 of 1915, 20 of 1929, the A.O. 1937 and the A.O. 1950 to read as above.

¹¹ Second paragraph numbered as sub-section (2) by Act 20 of 1929, s. 34.

¹² The word “But” omitted by s. 34, *ibid.*

¹³ Clause (1) was lettered (a) by s. 34, *ibid.*

¹⁴ Clause (2) was lettered (b) by s. 34, *ibid.*

that due notice was not given, or that the power was otherwise improperly or irregularly 'exercised; but any person damnified by an unauthorised, or improper, or irregular' exercise of the power shall have his remedy in damages against the person exercising the power.

²[(4)] The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

³[(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882.]

4* * * *

⁵[**69A. Appointment of receiver.**—(1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.

¹ Third paragraph numbered as sub-section (3) by s. 34, *ibid.*

² Fourth paragraph numbered as sub-section (4) by Act 20 of 1929, s. 34.

³ Subs. by s. 34, *ibid.*, for fifth paragraph.

⁴ The last paragraph of this section omitted by s. 34, *ibid.*

⁵ Ins. by Act 20 of 1929, s. 35.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent. on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:—

- i. in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
- ii. in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;
- iii. in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
- iv. in payment of the interest falling due under the mortgage;
- v. in or towards discharge of the principal money, if so directed in writing by the mortgagee; and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(11) In this section, “the Court” means the Court which would have jurisdiction in a suit to enforce the mortgage.]

70. Accession to mortgaged property.—If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. Renewal of mortgaged lease.—When the mortgaged property is as lease ^{1***}, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. Rights of mortgagee in possession.—²[A mortgagee] may spend such money as is necessary—

- ^{3*} * * * *
- (b) for ⁴[the preservation of the mortgaged property] from destruction, forfeiture or sale;
 - (c) for supporting the mortgagor's title to the property;
 - (d) for making his own title thereto good against the mortgagor; and
 - (e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum:

⁵[Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be ⁶[added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum]. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorised to insure.

⁷[73. Right to proceeds of revenue sale or compensation on acquisition.—(1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim

¹ The words “for a term of years” omitted by Act 20 of 1929, s. 36

² Subs. by s. 37, *ibid.*, for certain words.

³ Clause (a) omitted by s. 37, *ibid.*

⁴ Subs. by s. 37, *ibid.*, for “its preservation”.

⁵ Ins. by Act 20 of 1929, s. 37.

⁶ Subs. by s. 37, *ibid.*, for certain words.

⁷ Subs. by s. 38, *ibid.*, for section 73.

payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due.]

74. [*Right of subsequent mortgagee to pay off prior mortgagee.*] *Rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 39.*

75. [*Rights of mesne mortgagee against and subsequent mortgagees.*] *Rep. by s. 39, ibid.*

76. Liabilities of mortgagee in possession.—When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature ¹[and all rent] accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the- property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or, so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof shall, after deducting the expenses ²[properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest ^{3***} and, so far as such

¹ Ins. by s. 40, *ibid.*

² Ins. by Act 20 of 1929, s. 40.

³ The words “on the mortgage-money” omitted by s. 40, *ibid.*

receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his¹ receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be [and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property].

Loss occasioned by his default.—If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

77. Receipts in lieu of interest.—Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority

78. Postponement of prior mortgagee.—Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed.—If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000; C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled to the extent of Rs. 10,000, to priority over C.

80. [Tacking abolished.] *Rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 41.*

Marshalling and Contribution

²**81. Marshalling securities.**—If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage debt

¹ The word “gross” omitted by s. 40, *ibid.*

² Subs. by Act 20 of 1929, s. 42, for s. 81.

satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.]

82. Contribution to mortgage-debt.—¹[Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.]

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the ²[subsequent] mortgagee.

Deposit in Court

83. Power to deposit in Court money due on mortgage.—At any time after the principal money ³[payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.—The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by ⁴law for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed ⁵[and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed, ⁶[and all such other documents], so deposited shall be delivered to the mortgagor or such other person as aforesaid.

⁷[Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.]

84. Cessation of interest.—When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest

¹ Subs by s. 43, *ibid.*, for the first paragraph.

² Subs. by s. 43, *ibid.*, for “second”.

³ Subs. by s. 44, *ibid.*, for “has become payable”.

⁴ See the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order VI, rule 15.

⁵ Subs. by Act 20 of 1929, s. 44, for “if then in his possession or power”.

⁶ Ins. by s. 44, *ibid.*

on the principal money shall cease from the date of the tender or ¹[in the case of a deposit, where no previous tender of such amount has been made,] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, ²[and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal].

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money ³[and such notice has not been given before the making of the tender or deposit, as the case may be].

Suits for foreclosure, sale or redemptions⁴

85. *[Parties to suits for foreclosure, sale and redemption] Rep. by the Code of Civil Procedure, 1908 (5 of 1908), s. 156 and the Fifth Schedule.*

Foreclosure and sale⁴

86. *[Decree of foreclosure suit.] Rep. by the Code of Civil Procedure, 1908 (5 of 1908), s. 156 and the Fifth Schedule.*

87. *[Procedure in case of payment of amount due.] Rep. by s. 156 and the fifth Schedule, *ibid.**

88. *[Decree of sale.] Rep. by s. 156 and the fifth Schedule, *ibid.**

89. *[Procedure when defendant pay amount due.] Rep. by s. 156 and the fifth Schedule, *ibid.**

90. *[Recovery of balance due on mortgage.] Rep. by s. 156 and the fifth Schedule, *ibid.**

Redemption

⁵**[91. Persons who may sue for redemption.**—Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;
- (b) any surety for the payment of the mortgage-debt or any part thereof; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.]

¹ Ins. by Act 20 of 1929, s. 45.

² Subs. by s. 45, *ibid.*, for “as the case may be”.

³ Added by s. 45, *ibid.*

⁴ For the repealed provisions, as re-enacted. see (Act 5 of 1908), Sch. I, Order XXXIV.

⁵ Subs. by Act 20 of 1929, s. 46, for section 91.

¹**92. Subrogation.**—Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. Prohibition of tacking.—No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee—making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

94. Rights of *mesne* mortgagee.—Where a property is mortgaged for successive debts to successive mortgagees, a *mesne* mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.]

²**95. Right of redeeming co-mortgagor to expenses.**—Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

96. Mortgage by deposit of title-deeds.—The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.]

97. ³[*Application of proceeds.*] *Rep. by the Code of Civil Procedure, 1908 (5 of 1908), s. 156 and the Fifth Schedule.*

Anomalous mortgages

98. Rights and liabilities of parties to anomalous mortgages.—In the case of ⁴[an anomalous mortgage] the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

*Attachment of mortgaged property*⁵

99. [*Attachment of mortgaged property.*] *Rep. by the Code of Civil Procedure, 1908 (5 of 1908), s. 156 and the Fifth Schedule.*

¹ Ins. by s. 47, *ibid.* Original ss. 92 to 94 were rep. by Act 5 of 1908, s. 156 and the fifth Schedule.

² Subs. by Act 20 of 1929, s. 48, for section 95. Original s. 96 was rep. by Act 5 of 1908, s. 156 and Sch. V.

³ For the repealed provisions, as re-enacted, see (Act 5 of 1908), Sch. I, Order XXXIV, rules 12 and 13.

⁴ Subs. by Act 20 of 1929, s. 49, for certain words.

⁵ For the repealed provisions, as re-enacted, see (Act 5 of 1908), Sch. I, Order XXXIV, rule 14.

Charges

100.Charges.—Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained ¹[which apply to a simple mortgage shall, so far as may be, apply to such charge].

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, ²[and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

³[**101. No merger in case of subsequent encumbrance.**—Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such Mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to for close or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.]

Notice and tender

102. Service or tender on or to agent.—Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

⁴[Where no person or agent on whom such notice should be served can be found or is known] to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed Sufficient:

⁵[Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.]

⁶[Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit, ⁷[in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

¹ Subs. by Act 20 of 1929, s 50, for certain words.

² Added by s. 50, *ibid.*

³ Subs. by s. 51, *ibid.*, for section 101.

⁴ Subs. by Act 20 of 1929, s. 52, for certain words.

⁵ Ins. by s. 52, *ibid.*

⁶ Subs. by Act 20 of 1929, s. 52, for certain words.

⁷ Subs. by s. 52, *ibid.*, for “in such Court as last aforesaid”.

103. Notice, etc., to or by person incompetent to contract.—Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served ¹[on or by], or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian and item for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of ²[Order XXXII in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908)] shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. Power to make rules.—The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V OF LEASES OF IMMOVEABLE PROPERTY

105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

³[106. Duration of certain leases in absence of written contract or local usage.—

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be

¹ Ins. by s. 53, *ibid*.

² Subs. by s. 53, *ibid.*, for "Chapter XXXI of the Code of Civil Procedure".

³ Subs. by Act 3 of 2003, s. 2, for section 106 (w.e.f. 31-12-2002).

tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

107. Leases how made.— A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

¹[All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

²[Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may, ^{3***} from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

108. Rights and liabilities of lessor and lessee.— In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) Rights and liabilities of the lessor

- (a) the lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:
- (b) the lessor is bound on the lessee's request to put him in possession of the property:
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested;

(B) Rights and liabilities of the lessee

- (d) if during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:
- (e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

¹ Subs. by Act 6 of 1904, s. 5, for the Second paragraph.

² Ins. by Act 20 of 1929, s. 55.

³ The words "with the previous sanction of the Governor General in Council" omitted by the A. O. 1937.

- (f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:
- (g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:
- (h) the lessee may ¹[even after the determination of the lease] remove, at any time ²[whilst he is in possession of the property leased but not afterwards,] all things which he has attached to the earth:

Provided he leaves the property in the state in which he received it:

- (i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:
- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

- (k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:
- (l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:
- (m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:
- (n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:
- (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell ³[or sell] timber, pull down or damage buildings ¹[belonging to the lessor or] work mines or

¹ Ins. by Act 20 of 1929, s. 56.

² Subs. by s. 56, *ibid.*, for "during the continuance of the lease".

³ Ins. by Act 20 of 1929, s. 56.

quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

- (p) he must not, without the lessor's consent, correct on the property any permanent structure, except for agricultural purposes:
- (q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee.— If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Exclusion of day on which term commences.—Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.—Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.—Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease.—A lease of immoveable property determines—

- (a) by efflux of the time limited thereby:
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:
- (f) by implied surrender:
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter^{1***}; or (2) in case the lessee

¹ The words "or the lease shall become void" omitted by Act 20 of 1929, s. 57.

renounces his character as such by setting up a title in a third person or by claiming title in himself; ¹[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in ²[any of these cases] the lessor or his transferee ³[gives notice in writing to the lessee of] his intention to determine the lease:

- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture.—A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture; such acceptance is not a waiver.

113. Waiver of notice to quit.—A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent.—Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejection, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

⁴**[114A. Relief against forfeiture in certain other cases.**—Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejection shall lie unless and until the lessor has served on the lessee a notice in writing—

- (a) specifying the particular breach complained of; and
 (b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

¹ Ins. by s. 57, *ibid.*

² Subs. by Act 20 of 1929, s. 57, for “either case”.

³ Subs. by s. 57, *ibid.*, for “does some act showing”.

⁴ Ins. by s. 58, *ibid.*

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, underletting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

115. Effect of surrender and forfeiture on under-leases.— The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. Exemption of leases for agricultural purposes.—None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the State Government ^{1***} may by notification published in the Official Gazette, declare all or any of such provisions to be so applicable ²[in the case of all or any such leases], together with, or subject to, those of the local law, if any, for the time being in force. Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI OF EXCHANGES

118. “Exchange” defined.—When two persons mutually transfer the ownership of one thing for the ownership of another neither thing or both things being money only, the transaction is called an “exchange”.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

¹ The words “with the previous sanction of the Governor General in Council” omitted by Act 38 of 1920, s. 2 and the First Schedule.

² Ins. by Act 6 of 1904, s. 6.

¹[**119. Right of party deprived of thing received in exchange.**—If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.]

120. Rights and liabilities of parties.—Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and the rights and is subject to the liabilities of a buyer as to that which he takes.

121. Exchange of money.—On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII OF GIFTS

122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving,

If the donee dies before acceptance, the gift is void.

123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property.—A gift comprising both existing and future property is void as to the latter.

125. Gift to several, of whom one does not accept.—A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a it shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

¹ Subs. by Act 20 of 1929, s. 59, for section 119.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants dies before A, B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10, 000 out of the lakh. The gift holds good as to Rs. 90, 000, but is void as to Rs. 10, 000, which continue to belong to A.

127. Onerous gifts.—Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.—A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by his refusal forfeit the money.

128. Universal donee.—Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by ¹[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.

129. Saving of donations *mortis causa* and Muhammadan law.—Nothing in this Chapter related to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law ²***.

³[CHAPTER VIII
OF TRANSFERS OF ACTIONABLE CLAIMS

130. Transfer of actionable claim.—(1) The transfer of an actionable claim ⁴[whether with or without consideration] shall be effected only by the execution of an instrument in writing

¹Ins. by Act 20 of 1929, s. 60.

² The words and figures "or, save as provided by section 123, any rule of Hindu or Buddhist law" omitted by Act 20 of 1929, s. 61.

³ Subs. by Act 2 of 1900, s. 4, for the original Chapter VIII.

⁴ Ins. by Act 20 of 1929, s. 62.

signed by the transferor or his duly authorised agent,^{1****} shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance²[or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938)].

Illustrations

i. A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

ii. A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or, future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

³[**130A.** *Transfer of policy of marine insurance.*] *Rep. by the Marine Insurance Act, 1963 (11 of 1963), s. 92 (w.e.f. 1-8-1963).*

131. Notice to be in writing, signed.—Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. Liability of transferee of actionable claim.—The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

i. A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

¹ The words and figures “and notwithstanding anything contained in section 123” ins. by Act 38 of 1925, s. 2, omitted by Act 20 of 1929, s. 62.

² Added by Act 4 of 1938, s. 121 (w.e.f. 1-7-1939).

³ Ins. by Act 6 of 1944, s. 2.

ii. A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Warranty of solvency of debtor.—Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Mortgaged debt.—Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

¹[**135. Assignment of rights under policy of insurance against fire.**—Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.]

²[**135A.** *[Assignment of rights under policy of marine insurance.] Rep. by the Marine Insurance Act, 1963 (11 of 1963), s. 92 (w.e.f. 1-8-1963).*]

136. Incapacity of officers connected with Courts of Justice.—No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Saving of negotiable instruments, etc.—Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.]

¹ Subs. by Act 6 of 1944, s. 3, for section 135.

² Ins. by s. 4, Act 6 of 1944.

THE SCHEDULE

(a) STATUTES

Year and Chapter	Subject	Extent of repeal
27 Hen Year VIII, c. 10	Uses. . .	The whole.
13 Eliz., c. 5. . .	Fraudulent conveyances	The whole.
27 Eliz., c. 4. . .	Fraudulent conveyances	The whole.
4 Win, and Marry, c. 16	Clandestine mortgages	The whole.

(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year	Subject	Extent of repeal
IX of 1842	Lease and release	The whole.
XXXI of 1854. . . .	Modes of conveying land	Section 17.
XI of 1855.	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profit-and".
XXVII of 1866.	Indian Trustee Act	Section 31.
IV of 1872.	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875.	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulation XVIII of 1806.
I of 1877.	Specific Relief	In sections 35 and 36, the word. "in writing".

(c) REGULATIONS

Number and Year	Subject	Extent of repeal
Bengal Regulation I of 1798	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; Interest; Mortgagees in possession.	Section 15.

**THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND
ENFORCEMENT OF SECURITY INTEREST ACT, 2002**

(Updated on 29-6-2021)

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THE SCHEDULE

**THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS
AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002**

ACT NO. 54 OF 2002

[17th December, 2002]

¹[An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto.]

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.—(1) This Act may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 21st day of June, 2002.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “Appellate Tribunal” means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

(b) “asset reconstruction” means acquisition by any ²[asset reconstruction company] of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

³[(ba) “asset reconstruction company” means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both;]

(c) “bank” means—

- (i) a banking company; or
- (ii) a corresponding new bank; or
- (iii) the State Bank of India; or
- (iv) a subsidiary bank; or

⁴[(iva) a multi-State co-operative bank; or]

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;

(d) “banking company” shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(e) “Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(f) “borrower” means ⁵[any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which,] has been granted financial assistance by any bank or financial

¹ Subs. by Act 44 of 2016, s. 2, for the long title (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

³ Ins. by s. 4, *ibid.* (w.e.f. 1-9-2016).

⁴ Ins. by Act 1 of 2013, s. 2 (w.e.f. 15-1-2013).

⁵ Subs. by Act 13 of 2021, s. 162, for “any person who” (w.e.f. 1-4-2021).

institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution ¹[and includes a person who, or a pooled investment vehicle which,] becomes borrower of a ²[asset reconstruction company] consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance ³[or who has raised funds through issue of debt securities];

(g) “Central Registry” means the registry set up or cause to be set up under sub-section (1) of section 20;

³[(ga) “company” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013);]

(h) “corresponding new bank” shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

⁴[(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes—

(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain license of such asset;]

(i) “Debts Recovery Tribunal” means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993);

³[(ia) “debt securities” means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992);]

⁵[(j) “default” means—

(i) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or

(ii) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities;]

(k) “financial assistance” means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution [including funds provided for the purpose of acquisition of any tangible asset on hire or financial

¹ Subs. by s. 162, *ibid.*, for “and includes a person who” (w.e.f. 1-4-2021).

² Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

³ Ins. by s. 4, Act 44 of 2016, (w.e.f. 1-9-2016).

⁴ Subs. by s. 4 Act 44 of 2016, for clause (ha) (w.e.f. 1-9-2016).

⁵ Subs. by s. 4, Act 44 of 2016, for clause (j) (w.e.f. 1-9-2016).

lease or conditional sale or under any other contract or obtaining assignment or license of any intangible asset or purchase of debt securities;]

- (l) “financial asset” means debt or receivables and includes—
- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
 - (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
 - (iii) a mortgage, charge, hypothecation or pledge of movable property; or
 - (iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
 - (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
 - ¹[(va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
 - (vb) any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain license of the intangible asset; or]
 - (vi) any financial assistance;
- (m) “financial institution” means—
- (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);
 - (ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);
 - (iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);
 - ¹[(iiia) a debenture trustee registered with the Board and appointed for secured debt securities;
 - (iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;]
 - (iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act;
- ¹[(ma) “financial lease” means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the

¹ Ins. by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).

such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;]

- (n) “hypothecation” means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property;
- ¹[(na) “negotiable document” means a document, which embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under any law for the time being in force including warehouse receipt and bill of lading;]
- (o) “non-performing asset” means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, ²[doubtful or loss asset,—
- (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;
- (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank];
- (p) “notification” means a notification published in the Official Gazette;
- (q) “obligor” means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;
- (r) “originator” means the owner of a financial asset which is acquired by a ³[asset reconstruction company] for the purpose of securitisation or asset reconstruction;
- (s) “prescribed” means prescribed by rules made under this Act;
- (t) “property” means—
- (i) immovable property;
- (ii) movable property;
- (iii) any debt or any right to receive payment of money, whether secured or unsecured;
- (iv) receivables, whether existing or future;
- (v) intangible assets, being know-how, patent, copyright, trade mark, license, franchise or any other business or commercial right of similar nature ⁴[as may be prescribed by the Central Government in consultation with Reserve Bank];
- (u) “⁵[qualified buyer]” means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, [trustee or [asset reconstruction company] which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund] or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations

¹ Ins. by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).

² Subs. by Act 30 of 2004, s. 2, for certain words (w.e.f. 11-11-2004).

³ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

⁴ Ins. by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).

⁵ Subs. by s. 3, *ibid.*, for “qualified institutional buyer” (w.e.f. 1-9-2016).

made thereunder, [any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7] or any other body corporate as may be specified by the Board;

¹* * * * *

- (w) “Registrar of Companies” means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956 (1 of 1956);
- (x) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (y) “scheme” means a scheme inviting subscription to security receipts proposed to be issued by a ²[asset reconstruction company] under that scheme;
- (z) “securitisation” means acquisition of financial assets by any ³[asset reconstruction company] from any originator, whether by raising of funds by such ³[asset reconstruction company] from ⁴[qualified buyers] by issue of security receipts representing undivided interest in such financial assets or otherwise;

⁵* * * * *

- (zb) “security agreement” means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;
- (zc) “secured asset” means the property on which security interest is created;

⁶[(zd) “secured creditor” means—

- (i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);
- (ii) debenture trustee appointed by any bank or financial institution; or
- (iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or
- (iv) debenture trustee registered with ⁷[the Board and appointed] for secured debt securities; or
- (v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance.]

(ze) “secured debt” means a debt which is secured by any security interest;

⁸[(zf) “security interest” means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

- (i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any

¹ Omitted by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

³ Subs. by s. 3, Act 44 of 2016, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

⁴ Subs. by s. 3, Act 44 of 2016, for “qualified institutional buyers” (w.e.f. 1-9-2016).

⁵ Omitted by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).

⁶ Subs. by s. 4, Act 44 of 2016., for clause (zd) (w.e.f. 1-9-2016).

⁷ Subs. by Act 13 of 2021, s. 162, for “the Board appointed by any company” (w.e.f. 1-4-2021).

⁸ Subs. by Act 44 of 2016, s. 4, for clause (zf) (w.e.f. 1-9-2016).

- other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or
- (ii) such right, title or interest in any intangible asset or assignment or license of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or license of intangible asset;]
- (zg) “security receipt” means a receipt or other security, issued by a ¹[asset reconstruction company] to any ²[qualified buyer] pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;
- (zh) “sponsor” means any person holding not less than ten per cent of the paid-up equity capital of a ¹[asset reconstruction company];
- (zi) “State Bank of India” means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);
- (zj) “subsidiary bank” shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).

(2) Words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 (9 of 1872) or the transfer of Property Act, 1882 (4 of 1882) or the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act 1992 (15 of 1992) shall have the same meanings respectively assigned to them in those Acts.

CHAPTER II REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. Registration of ³[asset reconstruction companies].—(1) No ¹[asset reconstruction company] shall commence or carry on the business of securitisation or asset reconstruction without—

- (a) obtaining a certificate of registration granted under this section; and
⁴[(b) having net owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify;]

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of ³[asset reconstruction companies]:

Provided further that a ¹[asset reconstruction company], existing on the commencement of this Act, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “qualified institutional buyer” (w.e.f. 1-9-2016).

³ Subs. by s. 3, *ibid.*, for “securitisation companies or reconstruction companies” (w.e.f. 1-9-2016).

⁴ Subs. by s. 5, *ibid.*, for clause (b) (w.e.f. 1-9-2016).

(2) Every ¹[asset reconstruction company] shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a ¹[asset reconstruction company] to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such ¹[asset reconstruction company], or otherwise, that the following conditions are fulfilled, namely:—

- (a) that the ¹[asset reconstruction company] has not incurred losses in any of the three preceding financial years;
- (b) that such ¹[asset reconstruction company] has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the ²[qualified buyers] or other persons;
- (c) that the directors of ¹[asset reconstruction company] have adequate professional experience in matters related to finance, securitisation and reconstruction;
- (d) ³* * * * *
- (e) that any of its directors has not been convicted of any offence involving moral turpitude;
- ⁴(f) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;]
- (g) that ¹[asset reconstruction company] has complied with or is in a position to comply with prudential norms specified by the Reserve Bank;
- ⁵(h) that ¹[asset reconstruction company] has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.]

(4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the ⁶[asset reconstruction company] to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(6) Every ¹[asset reconstruction company] shall obtain prior approval of the Reserve Bank for any substantial change in its management ⁷[including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof] or change of location of its registered office or change in its name:

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Subs. bys. 3, *ibid.*, for “qualified institutional buyers” (w.e.f. 1-9-2016).

³ Omitted by s. 5, *ibid.* (w.e.f. 1-9-2016).

⁴ Subs. by s. 5, *ibid.*, for clause (f) (w.e.f. 1-9-2016).

⁵ Ins. by Act 30 of 2004, s. 3 (w.e.f. 11-11-2004).

⁶ Subs. by Act 44 of 2016, s. 3, for “securitisation company or the reconstruction company” (w.e.f. 1-9-2016).

⁷ Ins. by s. 5, *ibid.* (w.e.f. 1-9-2016).

Provided that the decision of the Reserve Bank, whether the change in management of a ¹[asset reconstruction company] is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression “substantial change in management” means the change in the management by way of transfer of shares or ²[change affecting the sponsorship in the company by way of transfer of shares or] amalgamation or transfer of the business of the company.

4. Cancellation of certificate of registration.—(1) The Reserve Bank may cancel a certificate of registration granted to a ¹[asset reconstruction company], if such company—

- (a) ceases to carry on the business of securitisation or asset reconstruction; or
- (b) ceases to receive or hold any investment from a ³[qualified buyer]; or
- (c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (d) at any time fails to fulfill any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- (e) fails to—
 - (i) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the ¹[asset reconstruction company] has failed to comply with the provisions of clause (c) or has failed to fulfill any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the ¹[asset reconstruction company], shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(2) A ¹[asset reconstruction company] aggrieved by the order of ⁴**** cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which ⁵[such order of cancellation] is communicated to it, to the Central Government: Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A ¹[asset reconstruction company], which is holding investments of ⁶[qualified buyers] and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation be deemed to be a ¹[asset reconstruction company] until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

¹ Subs. by s. 3, *ibid.*, for “securitisation company or a reconstruction company” (w.e.f. 1-9-2016).

² Ins. by s. 5, *ibid.* (w.e.f. 1-9-2016).

³ Subs. by Act 44 of 2016, s. 3, for “qualified institutional buyer” (w.e.f. 1-9-2016).

⁴ The words “rejection of application for registration or” omitted by Act 30 of 2004, s. 4 (w.e.f. 11-11-2004).

⁵ Subs. by s. 4, *ibid.*, for “such order of rejection or cancellation” (w.e.f. 11-11-2004).

⁶ Subs. by Act 44 of 2016, s. 3, for “qualified institutional buyers” (w.e.f. 1-9-2016).

5. Acquisition of rights or interest in financial assets.—(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any ¹[asset reconstruction company] may acquire financial assets of any bank or financial institution—

- (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
- (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

¹[(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.]

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the ¹[asset reconstruction company], such ¹[asset reconstruction company] shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

²[(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or license of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).]

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the ¹[asset reconstruction company], as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, ¹[asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of ¹[asset reconstruction company], as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial

¹ Subs. by s. 3, *ibid.*, for “securitisation company or the reconstruction company” (w.e.f. 1-9-2016)..

² Ins. by Act 44 of 2016, s. 6 (w.e.f. 1-9-2016).

asset by the ¹[asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the ¹[asset reconstruction company], as the case may be.

²[(5) On acquisition of financial assets under sub-section (1), the ¹[asset reconstruction company], may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the ¹[asset reconstruction company]in such pending suit, appeal or other proceedings.]

³**[5A. Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases.]—**(1) If any financial asset, of a borrower acquired by a ¹[asset reconstruction company], comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals the ¹[asset reconstruction company]may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(2) On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

(4) Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) shall, accordingly, apply to such execution.]

6. Notice to obligor and discharge of obligation of such obligor.—(1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any ⁴[asset reconstruction company], to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned ¹[asset reconstruction company], as the case may be, and payment made to such company in

¹ Subs. by s. 3, *ibid.*, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Ins. by Act 1 of 2013, s. 3 (w.e.f. 15-1-2013).

³ Ins. by Act 30 of 2004, s. 5 (w.e.f. 11-11-2004).

⁴ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the ¹[asset reconstruction company], as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to ¹[asset reconstruction company], as the case may be, or its agent duly authorised in this behalf.

7. Issue of security by raising of receipts or funds by [asset reconstruction company].—(1) Without prejudice to the provisions contained in the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992), any ¹[asset reconstruction company], may, after acquisition of any financial asset under subsection (1) of section 5, offer security receipts to qualified institute buyers ²[or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time,] for subscription in accordance with the provisions of those Acts.

(2) A [asset reconstruction company] may raise funds from the ³[qualified buyers] by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a ³[qualified buyer] and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

⁴[(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the ¹[asset reconstruction company], and the ¹[asset reconstruction company] shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the ³[qualified buyers] holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 1882) shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.]

(3) In the event of non-realisation under sub-section (2) of financial assets, the ³[qualified buyers] of a [asset reconstruction company], holding security receipts of not less than seventy-five per cent. of the total value of the ⁵[security receipts issued under a scheme by such company], shall be entitled to call a meeting of all the ³[qualified buyers] and every resolution passed in such meeting shall be binding on the company.

(4) The ³[qualified buyers] shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the [asset reconstruction company], as the case may be.

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Subs. by s. 7, *ibid.*, for “(other than by offer to public)” (w.e.f. 1-9-2016).

³ Subs. by s. 3, *ibid.*, for “qualified institutional buyers” (w.e.f. 1-9-2016).

⁴ Ins. by Act 30 of 2004, s. 6 (w.e.f. 11-11-2004).

⁵ Subs. by s. 6, *ibid.*, for “Security receipts issued by such company” (w.e.f. 11-11-2004).

8. Exemption from registration of security receipt.—Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908 (16 of 1908),—

- (a) any security receipt issued by the ¹[asset reconstruction company], as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or
- (b) any transfer of security receipts, shall not require compulsory registration.

²9. Measures for assets reconstruction.—(1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:—

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act;
- (g) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2).]

10. Other functions of ¹[asset reconstruction company].—(1) Any ¹[asset reconstruction company] registered under section 3 may—

- (a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;
- (b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;
- (c) act as receiver if appointed by any court or tribunal:

Provided that no ³[asset reconstruction company] shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no ¹[asset reconstruction company] which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Subs. by Act 44 of 2016, s. 8, for section 9 (w.e.f. 1-9-2016).

³ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

Provided that a ¹[asset reconstruction company] which is carrying on, on or before the commencement of this Act, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Act.

Explanation.—For the purposes of this section, “¹[asset reconstruction company]” or “²[asset reconstruction company]” does not include its subsidiary.

11. Resolution of disputes.—Where any dispute relating to securitisation or reconstruction or nonpayment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or ¹[asset reconstruction company] or ³[qualified buyer], such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

12. Power of Reserve Bank to determine policy and issue directions.—(1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any [asset reconstruction company] from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such ¹[asset reconstruction company], it is necessary or expedient so to do, it may determine the policy and give directions to all or any ¹[asset reconstruction company] in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the ¹[asset reconstruction company], as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any ¹[asset reconstruction company] generally or to a class of ⁴[asset reconstruction companies] or to any ¹[asset reconstruction company] in particular as to—

- (a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;
- (b) the aggregate value of financial assets which may be acquired by any ⁵[asset reconstruction company].
- ⁶(c) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;
- (d) transfer of security receipts issued to qualified buyers.]

⁷[12A. Power of Reserve Bank to call for statements and information.—The Reserve Bank may at any time direct a ¹[asset reconstruction company] to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such [asset reconstruction company](including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.]

¹ Subs. by s. 3, *ibid.*, for “securitisation company” (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “reconstruction company” (w.e.f. 1-9-2016).

³ Subs. by s. 3, *ibid.*, for “qualified institutional buyer” (w.e.f. 1-9-2016).

⁴ Subs. by Act 44 of 2016, s. 3, for “securitisation companies or reconstruction companies ” (w.e.f. 1-9-2016).

⁵ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

⁶ Ins. by s. 9, Act 44 of 2016, (w.e.f. 1-9-2016).

⁷ Ins. by Act 30 of 2004, s. 7 (w.e.f. 11-11-2004).

¹[**12B. Power of Reserve Bank to carry out audit and inspection.**—(1) The Reserve Bank may, for the purposes of this Act, carry out or caused to be carried out audit and inspection of an asset reconstruction company from time to time.

(2) It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1).

(3) Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order—

- (a) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or
- (b) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:

Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.

(4) It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody or control and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.]

CHAPTER III ENFORCEMENT OF SECURITY INTEREST

13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

²[Provided that—

- (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and
- (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as

¹ Ins. by Act 44 of 2016, s. 10 (w.e.f. 1-9-2016).

² Ins. by Act 44 of 2016, s. 11 (w.e.f. 1-9-2016).

may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

¹[(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate ²[within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.]

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- ³(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

⁴[(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it

¹ Ins. by Act 30 of 2004, s. 8 (w.e.f. 11-11-2004).

² Subs. by Act 1 of 2013, s. 5, for “within one week” (w.e.f. 15-1-2013).

³ Subs. by Act 30 of 2004, s. 8, for clause (b) (w.e.f. 11-11-2004).

⁴ Ins. by Act 1 of 2013, s. 5 (w.e.f. 15-1-2013).

shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).]

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

¹[(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

- (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
- (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.]

(9) ²[Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than ³[sixty percent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security

¹ Subs. by Act 44 of 2016, s. 11, for sub-section (8) (w.e.f. 1-9-2016).

² Subs. by Act 31 of 2016, s. 251 and the Seventh Schedule, for “In the case of” (w.e.f. 15-11-2016).

³ Subs. by Act 1 of 2013, s. 5, for “three-fourth” (w.e.f. 15-1-2013).

instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.—For the purposes of this sub-section,—

- (a) “record date” means the date agreed upon by the secured creditors representing not less than [sixty per cent.] in value of the amount outstanding on such date;
- (b) “amount outstanding” shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifics in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor:

¹[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
- (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
- (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
- (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
- (vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
- (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
- (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;
- (ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets ²[within a period of thirty days from the date of application]:

²[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

³[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

- (i) to take possession of such assets and documents relating thereto; and
- (ii) to forward such assets and documents to the secured creditor.]

¹ Ins. by Act 1 of 2013, s. 6 (w.e.f. 15-1-2013).

² Ins. by Act 44 of 2016, s. 12 (w.e.f. 1-9-2016).

³ Ins. by Act 1 of 2013, s. 6 (w.e.f. 15-1-2013).

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

15. Manner and effect of take over of management.—(1) ¹[When the management of business of a borrower is taken over by a ²[asset reconstruction company] under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13], the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

- (a) in a case in which the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), to be the directors of that borrower in accordance with the provisions of that Act; or
- (b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section (1),—

- (a) in any case where the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;
- (b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;
- (c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;
- (d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956 (1 of 1956), is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,—

¹ Subs. by Act 30 of 2004, s. 9, for “When the management of business of a borrower is taken over by a secured creditor” (w.e.f. 11-11-2004).

² Subs. by Act 44 of 2016, s. 3, for “Securitisation company or reconstruction company” (w.e.f. 1-9-2016).

- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
- (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
- (c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

¹[Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower.]

16. No compensation to directors for loss of office.—(1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

17. ²[Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, ³[may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

⁴[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

⁵[*Explanation.*—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

⁶[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

- (a) the cause of action, wholly or in part, arises;

¹ Ins. by Act 44 of 2016, s. 13 (w.e.f. 1-9-2016),

² Subs. by s. 14, Act 44 of 2016, for “Right to appeal” (w.e.f. 1-9-2016).

³ Subs. by Act 30 of 2004, s. 10, for “may prefer an appeal” (w.e.f. 21-6-2002).

⁴ Ins. by s. 10, *ibid.* (w.e.f. 21-6-2002).

⁵ Ins. by s. 10, *ibid.* (w.e.f. 11-11-2004).

⁶ Ins. by Act 44 of 2016, s. 14 (w.e.f. 1-9-2016).

- (b) where the secured asset is located; or
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

¹[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

²[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and
- b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
- c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made there under, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

³[(4A) Where—

- (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—
 - (a) has expired or stood determined; or
 - (b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
 - (c) is contrary to terms of mortgage; or
 - (d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and
- (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

¹ Subs. by Act 30 of 2004, s.10, for sub-sections (2) and (3) (w.e.f. 11-11-2004).

² Subs. by Act 44 of 2016, s. 14, for sub-section (3) (w.e.f. 1-9-2016).

³ Ins. by Act 44 of 2016, s. 14 (w.e.f. 1-9-2016).

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

17A. [Making of application to Court of District Judge in certain cases.] Omitted by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal ¹[under section 17, may prefer an appeal along with such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

²[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

³[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

⁴**[18A. Validation of fees levied.**—Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if the amendments

¹ Subs. by Act 30 of 2004, s. 12, for “under section 17, may prefer an appeal” (w.e.f. 21-6-2002).

² Ins. by s. 12, *ibid.* (w.e.f. 21-6-2002).

³ Ins. by s. 12, *ibid.* (w.e.f. 11-11-2004).

⁴ Ins. by s. 13, *ibid.* (w.e.f. 11-11-2004).

made to sections 17 and 18 of this Act by sections 10 and 12 of the said Act were in force at all material times.

18B. *[Appeal to High Court in certain cases.] Omitted by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).*

¹**[18C. Right to lodge a caveat.—**(1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17A or sub-section (1) of section 18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1),—

- (a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);
- (b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1).

(3) Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

(4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.]

²**[19. Right of borrower to receive compensation and costs in certain cases.—**If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made there under and directs the secured creditors to return such secured assets to the ³[concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18A, as the case may be, the borrower or such other person] shall be entitled to the payment of such compensation

¹ Ins. by Act 1 of 2013, s. 7 (w.e.f. 15-1-2013).

² Subs. by Act 30 of 2004, s. 14, for section 19 (w.e.f. 11-11-2004).

³ Subs. by Act 44 of 2016, s. 15, for “concerned borrowers, such borrower” (w.e.f. 1-9-2016).

and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.]

CHAPTER IV CENTRAL REGISTRY

20. Central Registry.—(1) The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908 (16 of 1908), the Companies Act, 1956 (1 of 1956), the Merchant Shipping Act, 1958 (44 of 1958), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (49 of 1988), and the Designs Act, 2000 (16 of 2000) or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

¹[**20A. Integration of registration systems with Central Registry.**—(1) The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed.

Explanation.—For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013 (18 of 2013), the Registration Act, 1908 (16 of 1908), the Merchant Shipping Act, 1958 (44 of 1958), the Motor Vehicles Act, 1988 (59 of 1988), the Patents Act, 1970 (39 of 1970), the Designs Act, 2000 (16 of 2000) or other such records under any other law for the time being in force.

(2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred to in sub-section (1) shall be deemed to be registered with the Central Registry for the purposes of this Act.

20B. Delegation of powers.—The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.]

¹ Ins. by Act 44 of 2016, s. 16 (w.e.f. 1-9-2016).

21. Central Registrar.—(1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Act as he may, from time to time, authorise them to discharge.

22. Register of securitisation, reconstruction and security interest transactions.—(1) For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

- (a) securitisation of financial assets;
- (b) reconstruction of financial assets; and
- (c) creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer, floppies, diskettes or in any other electronic form, under sub-section (2), any reference in this Act to entry in the Central Register shall be construed as a reference to any entry as maintained in computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

23. Filing of transactions of securitisation, reconstruction and creation of security interest.—¹[(1)] The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed^{2***}:

³* * * * *

⁴[Provided^{5***} that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (7) of section 20 within such period and on payment of such fees as may be prescribed.]

⁶[(2) The Central Government may, by notification, require the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry.

(3) The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.]

¹ Section 23 numbered as sub-section (1) by Act 44 of 2016, s. 17 (w.e.f. 24-1-2020).

² The certain words omitted by s. 17, Act 44 of 2016, (w.e.f. 24-1-2020).

³ The proviso omitted by s. 17, Act 44 of 2016, (w.e.f. 24-1-2020).

⁴ Ins. by Act 1 of 2013, s.8 (w.e.f. 15-5-2013).

⁵ The word “further” omitted by Act 44 of 2016, s. 17 (w.e.f. 24-1-2020).

⁶ Ins. by s. 17, *ibid.* (w.e.f. 24-1-2020).

24. Modification of security interest registered under this Act.—Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is ¹[asset reconstruction company] or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification modified, it shall be the duty of the ²[asset reconstruction company] or the of such security interest.

25. ³[Asset reconstruction company] or secured creditors to report satisfaction of security interest.—(1) The ⁴[asset reconstruction company] or the secured creditors as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the ⁴[asset reconstruction company] or the secured creditors and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

⁵[(1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.]

(2) ⁶[If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation], cause a notice to be sent to the ⁷[asset reconstruction company] or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

26. Right to inspect particulars of securitisation, reconstruction and security interest transactions.—(1) The particulars of securitisation or reconstruction or security interest entered in the Central register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fees as may be prescribed.

(2) The Central Register referred to in sub-section (1) maintained in electronic form shall also be open during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

⁸[26A.Rectification by Central Government in matters of registration, modification and satisfaction, etc.]—(1) The Central Government, on being satisfied—

¹ Subs. by Act 44 of 2016, s. 3, for “reconstruction company” (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “securitisation company” (w.e.f. 1-9-2016).

³ Subs. by s. 3, *ibid.*, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

⁴ Subs. by s. 3, *ibid.*, for “securitisation company or the reconstruction company” (w.e.f. 1-9-2016).

⁵ Ins. by Act 30 of 2004, s. 15 (w.e.f. 11-11-2004).

⁶ Subs. by s. 15, *ibid.*, for “The Central Registrar shall, on receipt of such intimation” (w.e.f. 11-11-2004).

⁷ Subs. by Act 44 of 2016, s. 3, for “securitisation company” (w.e.f. 1-9-2016).

⁸ Ins. by Act 1 of 2013, s. 9 (w.e.f. 15-1-2013).

- (a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or
- (b) that on other grounds, it is just and equitable to grant relief,

may, on the application of a secured creditor or ¹[asset reconstruction company] or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.]

²[CHAPTER IVA]

REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

26B. Registration by secured creditors and other creditors.—(1) The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (zd) of sub-section (1) of section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

(2) From the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.

(3) A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.

(4) Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.

(5) If any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Ins. by Act 44 of 2016, s. 18 (w.e.f. 24-1-2020).

26C. Effect of the registration of transactions, etc.—(1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or license of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.

26D. Right of enforcement of securities.—Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

26E. Priority to secured creditors.—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.]

CHAPTER V OFFENCES AND PENALTIES

27. Penalties.—If a default is made—

- (a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a ¹[asset reconstruction company] or secured creditors; or
- (b) in sending under section 24, the particulars of the modification referred to in that section; or
- (c) in giving intimation under section 25, every company and every officer of the company or the secured creditors and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues:

²[Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of this Chapter and section 23 as amended by the

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

² Ins. by s. 19, *ibid.* (w.e.f. 24-1-2020).

Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016).]

28. [Penalties for non-compliance of direction of Reserve Bank.] Omitted by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016(44 of 2016) s. 20 (w.e.f. 1-9-2016).

29. Offences.—If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

¹ **[30. Cognizance of offences.**—(1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

² **[30A. Power of adjudicating authority to impose penalty.**—(1) Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure continues.

(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority shall, by an order, cancel its registration:

Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

(5) No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

(6) Where any complaint has been filed against a person in default in the court having jurisdiction no proceeding for imposition of penalty against that person shall be taken under this section.

¹ Subs. by Act 1 of 2013, s. 10, for section 30 (w.e.f. 15-1-2013).

² Ins. by Act 44 of 2016, s. 21 (w.e.f. 1-9-2016).

Explanation.—For the purposes of this section and sections 30B, 30C and 30D,—

- (i) “adjudicating authority” means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank;
- (ii) “person in default” means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person incharge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

30B. Appeal against penalties.—A person in default, aggrieved by an order passed under sub-section (4) of section 30A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within such period.

30C. Appellate Authority.—(1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power of Appellate Authority.

(2) The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.

(3) The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under section 30A, subject to such terms and conditions, as it deems fit.

(4) Where the person in default fails to comply with the terms and conditions imposed by order under sub-section (3) without reasonable cause, the Appellate Authority may dismiss the appeal.

30D. Recovery of penalties.—(1) Any penalty imposed under section 30A shall be recovered as a “recoverable sum” and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,—

- (a) debit the current account, if any, of the person in default maintained with the Reserve Bank or by liquidating the securities, if any, held to the credit of such person in the books of the Reserve Bank;
- (b) issue a notice to the person from whom any amount is due to the person in default, requiring such person to deduct from the amount payable by him to the person in default, such amount equivalent to the amount of the recoverable sum, and to make payment of such amount to the Reserve Bank.

(2) Save as otherwise provided in sub-section (4), a notice issued under clause (b) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(3) Any claim in respect of any amount, arising after the date of issue of notice under sub-section (1) shall be void as against the demand contained in such notice.

(4) Any person, to whom the notice is sent under sub-section (1), objects to such notice by a statement on oath that the sum demanded or any part thereof is not due to the person in default or that he does not hold any money for or on account of the person in default, then nothing contained in this section shall be deemed to require, such person to pay such sum or part thereof, as the case may be.

(5) Where it is found that statement made by the person under sub-section (4) is false in material particulars, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the person in default on the date of the notice, or to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(6) The Reserve Bank may, at any time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.

(7) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the person in default to the extent of the amount so paid.

(8) Any person discharging any liability to the person in default after the receipt of a notice under this section shall be personally liable to the Reserve Bank—

- (a) to the extent of his own liability to the person in default so discharged; or
- (b) to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(9) Where the person to whom the notice is sent under this section, fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the person in default in respect of the amount specified in the notice and action or proceedings may be taken or instituted against him for the realisation of the amount in the manner provided in this section.

(10) The Reserve Bank may enforce recovery of recoverable sum through the principal civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of the Court.

(11) No recovery under sub-section (10) shall be enforced, except on an application made to the principal civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.]

CHAPTER VI MISCELLANEOUS

31. Provisions of this Act not to apply in certain cases.—The provisions of this Act shall not apply to—

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);
- (e) ¹* * * * *
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);
- (g) ²[any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)]or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);
- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (i) any security interest created in agricultural land;
- (j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

³**31A. Power to exempt a class or classes of banks or financial institutions.**—(1)The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,—

- (a) shall not apply to such class or classes of banks or financial institutions; or
- (b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations, as may be specified in the notification.

⁴(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.]

32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against ⁵[the Reserve Bank or the Central Registry or any secured creditor or any of its officers] for anything done or omitted to be done in good faith under this Act.

33. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

¹ Omitted by Act 44 of 2016, s. 22 (w.e.f. 1-9-2016).

² Subs. by Act 30 of 2004, s. 17, for “any properties not liable to attachment” (w.e.f. 11-11-2004).

³ Ins. by Act 1 of 2013, s. 11 (w.e.f. 15-1-2013).

⁴ Subs. by Act 44 of 2016, s. 23, for sub-section (2) (w.e.f. 1-9-2016).

⁵ Subs. by Act 44 of 2016, s. 24, for “any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower” (w.e.f. 1-9-2016).

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,— (a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

36. Limitation.—No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

37. Application of other laws not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

38. Power of Central Government to make rules.—(1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000 (21 of 2000), make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

¹[(a) other business or commercial rights of similar nature under clause (t) of section 2;]

²[(aa)] the form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

¹ Ins. by Act 44 of 2016, s. 25 (w.e.f. 1-9-2016).

² Clause (a) renumbered as clause (aa) by s. 25, *ibid.* (w.e.f. 1-9-2016).

- ¹[(ba) the fee for making an application to the Debts Recovery Tribunal under sub-section (1) of section 17;
- (bb) the form of making an application to the Appellate Tribunal under sub-section (6) of section 17;
- (bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18;]
- ¹[(bca) the manner of integration of records of various registration systems with the records of Central Registry under sub-section (1) of section 20A;
- (bcb) the terms and conditions of delegation of powers by the Central Government to the Reserve Bank under section 20B;]
- (c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;
- (d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;
- ²[(da) the form for registration of different types of security interests and fee thereof under sub-section (3) of section 23;]
- (e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;
- (f) the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;
- ¹[(fa) the form and the manner for filing particulars of transactions under sub-section (2) of section 26B;
- (fb) the form and manner of filing attachment orders with the Central Registry and the date under sub-section (4) of section 26B;
- (fc) the form and manner of filing particulars of attachment order with the Central Registry and the fee under sub-section (5) of section 26B;]
- (g) any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty 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 the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

39. Certain provisions of this Act to apply after Central Registry is set up or cause to be set up.—The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (1) of section 20.

40. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

¹ Ins. by Act 30 of 2004, s. 18 (w.e.f. 11-11-2004).

² Ins. by Act 44 of 2016, s. 25 (w.e.f. 1-9-2016).

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

41. Amendments to certain enactments.—The enactments specified in the Schedule shall be amended in the manner specified therein.

42. Repeal and saving.—(1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE
(See section 41)

Year	Act No.	Short title	Amendment
1956	1	The Companies Act, 1956	In section 4A, in sub-section (1), after clause (vi), insert the following:— “(vii) the ¹ [asset reconstruction company] which has obtained a certificate of registration under sub-section (4) or section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”.
1956	42	The Securities Contracts (Regulation) Act, 1956	In section 2, in clause (h), after sub-clause (ib), insert the following:— “(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”.
1986	1	The Sick Industrial Companies (Special Provisions) Act, 1985	In section 15, in sub-section (1), after the proviso, insert the following:— “Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any ² [asset reconstruction company] under sub-section (1) of section 5 of that Act: Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Act.”.

¹ Subs. by Act 44 of 2016, s. 3, for “securitisation company or the reconstruction company” (w.e.f. 1-9-2016).

² Subs. by s. 3, *ibid.*, for “securitisation company or reconstruction company” (w.e.f. 1-9-2016).

MINISTRY OF FINANCE AND COMPANY AFFAIRS

(Department of Economic Affairs)

(BANKING DIVISION)

NOTIFICATION

New Delhi, the 20th September, 2002

S.O. 1020 (E), —In exercise, of the powers conferred by Sub-section (!) and clause (b) of Sub-section (2) of Section 38 read with Sub-Sections (4), (10) and (12) of Section 13 of **the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 (Ord. 3 of 2002)**, the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.— (1) These rules may be called the Security Interest (Enforcement) Rules, 2002.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

- (a) "authorised officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the ;. secured creditor, as the case may be, to exercise the rights of a secured creditor under the Ordinance;
- (b) demand notice means the notice in writing issued-by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to sub-Section-(2) of Section 13 of the Ordinance;
- (c) "Ordinance" means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002);
- (d) "approved valuer" means a valuer as approved by the Board of Directors or Board of Trustees of the secured creditor, as the case may be ;
- (e) Words and expressions used and not defined in these Rules but defined in the Ordinance shall have the meanings respectively assigned to them in the Ordinance.

3. Demand Notice:—(1) The service of demand notice as referred to .in Sub-section (2) of Section 13 of the Ordinance shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service can not be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule(1).

(3) Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be Served in the same manner as provided in this rule.

(4) Where there are more than one borrower, the demand notice shall be served on each borrower.

4. Procedure after issue of notice.—If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in Sub-section (4) of Section 13 of the Ordinance for taking possession of movable property, namely:—

- (1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property in the presence of two witnesses after a Panchanama drawn and signed by the witnesses as nearly as possible in Appendix-I to these rules.
- (2) After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix-II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.
- (3) The authorised officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorised or appointed by him. who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property:

Provided that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorised officer may sell it at once.

- (4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.
- (5) In case any secured asset is :—
 - (a) a debt not secured by negotiable instrument; or
 - (b) a share in a body corporate;
 - (c) other movable property not in the possession of the borrower except the property deposited in the custody of any court or any like authority, the authorised officer shall obtain possession or recover the debt by service of notice as under:—
 - (i) in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon, and the debtor from making payment thereof and directing the debtor to make such payment to the authorised officer; or
 - (ii) in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to

the concerned body corporate's Registrar to the issue or share transfer agents, if any;

- (iii) in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorised officer and the authorised officer shall take custody of such movable property in the same manner as provided in Sub-rule (1) to (3) above;
- (iv) movable secured assets other than those covered in this rule shall be taken possession of by the authorised officer by taking possession of the documents evidencing title to such secured assets.

5. Valuation of movable secured assets.— After taking possession under sub-rule (I) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realisation of the dues of the secured creditor.

6. Sale of movable secured assets.—(I) the authorised officer may sell the moveable secured assets taken possession under sub-rule (I) of rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to be so sold—

- (a) obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or .
- (b) inviting tenders from the public; or
- (c) holding public auction; or
- (d) by private treaty.

(2) The authorised officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets. under sub-rule (1) :

Provided that if the sale of such secured assets is being, effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality by setting out the terms of sale, which may include.—

- (a) details about the borrower and the secured creditor;
- (b) description of movable secured assets to be sold with identification marks or numbers, if any. on them;
- (c) reserve price, if any, and the time and manner of payment;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of movable secured assets.

(3) Sale by any methods other than public auction or public lender, shall be on such terms as may be settled between the parties in writing.

7. Issue of certificate of sale.—(I) Where movable secured assets is sold, sale price of each lot shall be paid as per the terms of the public notice or on the terms as may be settled between the parties, as the case may be, and in the event of default of payment, the movable secured assets shall be liable to be offered for sale again.

(2) On payment of sale price, the authorised officer shall issue a certificate of sale in the present form as given Appendix-III to these rules specifying the movable secured assets sold, price paid and the name of the purchaser and thereafter the sale shall become absolute. The certificate of sale so issued shall be *prima facie* evidence of title of the purchaser.

(3) Where the movable secured assets are those referred in sub clauses (iii) to (v) of clause (I) of sub-section (I) of Section 2 of the Ordinance, the provisions contained in these rule and rule 7 dealing with the sale of movable secured assets shall, *mutatis mutandis*, apply to such assets.

8. Sale of immovable secured assets.—(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (I) shall also be published in two leading newspaper, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (I) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:—

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- (b) by inviting tenders from the public;
- (c) by holding public auction; or
- (d) by private treaty.

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured asset , under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include, -

- (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) the secured debt for recovery of which the property is to be sold;
- (c) reserve price, below which the property may not be sold;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deem fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

9. Time of sale, Issue of sale certificate and delivery of possession, etc.— (1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price specified under sub-rule (5) of rule 9:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty five percent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising his power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest, as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

10. Appointment of Manager.— (1) The Board of Directors or Board of Trustees, as the case may be, may appoint in consultation with the borrower any person (hereinafter referred to as the Manager) to manage the secured assets the possession of which has been taken over by the secured creditor.

(2) The Manager appointed by the Board of Directors or Board of Trustees, as the case may be, shall be deemed to be an agent of the borrower and the borrower shall be solely responsible for the commission or omission of acts of the Manager unless such commission or omission are due to improper intervention of the secured creditor or the authorised officer.

(3) The Manager shall have power by notice in writing to recover any money from any person who has acquired any of the secured assets from the borrower, which is due to may become due to the borrower.

(4) The Manager shall give such person who has made payment under sub-rule (3) a valid discharge as if he has made payments to the borrower.

(5) The Manager shall apply all the monies received by him in accordance with the provisions contained in sub section (7) of Section 13 of the Ordinance.

11. Procedure for Recovery of shortfall of secured debt.— (1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of Section 13 of the Ordinance shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.

(2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub rule (1).

(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

[F.No. I/3/2002-B.O.I]
SHEKHAR AGARWAL, Jt. Secy.

APPENDIX-I

[rule-4(1)]

PANCHNAMA

WHERE AS;

We

Sr. No.	Name of Panch and Father's/ Husband's Name	Address	Age	Occupation
---------	--	---------	-----	------------

The above mentioned Panchs on being called by Shri, the authorised officer of (name of the Institution), under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security (Second) Interest Ordinance, 2002 (Ord. 3 of 2002) and in exercise of the powers under Section 13(4) of the said Ordinance today entered the premises of Shri/M/s at, and demanded the payment of the dues mentioned in the demand notice dated in respect of Loan Account bearing No. and on its non-payment, taken over possession of movable properties as detailed in the inventory attached to this Panchnama between the hours M and M in our presence.

We also hereby state that during take over of possession (to be filled in case of occurrence of any incidence)

Therefore, we declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

- | | | | |
|----|------------------------------|------|------|
| 1. | Signature
Name
Address | Date | Time |
| 2. | -do | | |

Drawn before me

Authorised Officer

APPENCIX-II

[rule-4(2)]

INVENTORY

Inventory of movables taken possession in Loan Account bearing No.
 Inventory of movable properties taken possession of at the premises of Shri/M/s,
 Plot No. /Gala No., H.no., Street No. of
 under Section 13(4) of the Secuntisation and Reconstruction of Financial Assets and
 Enforcement of Security Interest (Second) Ordinance, 2002 and the Security Interest (Enforcement)
 Rules. 2002 made thereunder, on this day of 20..... by Shri, authorised
 officer of (name of the Institution) under the said Ordinance, between the hours
 M.

Sr. No.	Description of article	Estimated value	place where kept for safe custody (Name of the person if necessary)
---------	------------------------	-----------------	--

Panchas:

Sr. No.	Name and Address of Panch	Signatures
---------	---------------------------	------------

Drawn by me today the 20..... at M.

Signature of Borrower/Representative

Signature of Authorised Officer

APPENDIX-III

[rule-7(2)]

CERTIFICATE OF SALE

(for movable property)

Whereas the undersigned being the authorised officer of the (name of the institution) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 and in exercise of the powers conferred under Sub-section (12) of Section 13 read with rule 8 of the Security Interest (Enforcement) Rule, 2002 has in consideration of the payment of Rs. (Rupees) sold on behalf of the (name of the secured creditor/institution in favour of (purchaser), the following movable property secured in favour of the (name of the secured creditor) by (the names of the borrowers) towards the financial facility (description) offered by (secured creditor). The undersigned acknowledge the receipt of the sale price in full and hand over the delivery and possession of the items listed below.

Description of the movable property.

Sd/-
Authorised Officer

Date:

Place:

APPENDIX-IV

[rule-8(1)]

POSSESSION NOTICE

(for Immovable property)

Whereas

The undersigned being the authorised officer of the (name of the Institution) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) and in exercise of powers conferred under Section 13(12) read with rule 9 of the Security Interest (Enforcement) Rules, 2002 issued a demand notice dated calling upon the borrower Shri /M/s to repay the amount mentioned in the notice being Rs. (in words) within 60 days from the date of receipt of the said notice.

The borrower having failed to repay the amount, notice is hereby given to the borrower and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him/ her under Section 13(4) of the said Ordinance read with rule 9 of the said rules on this day of of the year

The borrower in particular and the public in general is hereby cautioned not to deal with the property and any dealings with the property will be subject to the charge of the (name of the Institution) for an amount Rs.and interest thereon.

 Description of the Immovable Property

All that part and parcel of the property consisting of Flat No. /Plot No.
 In Survey No. /City or Town Survey No. /Khasara No.
 Within the registration Sub-district and District

Bounded;

On the North by

On the South by

On the East by

On the West by

Sd/-
 Authorised Officer
 (Name of the Institution)

APPENDK-V

[rule-9(6)]

SALE CERTIFICATE

(for Immovable property)

Whereas

The undersigned being the authorised officer of the (name of the Institution) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) and in exercise of the powers conferred under Section 13 read with rule 12 of the Security Interest (Enforcement) Rules, 2002 sold on behalf of the (name of the secured creditor/institution) in favour of (purchaser), the immovable property shown in the schedule below secured in favour of the (name of the secured creditor) by (the names of the borrowers) towards financial facility (description) offered by (secured creditor). The undersigned acknowledge the receipt of the sale price in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of the money demanded by the undersigned.

 DESCRIPTION OF THE MOVABLE PROPERTY

All that part and parcel of the property consisting of Flat No. /Plot No.
 In Survey No..... /City or Town Survey No. /Khasara No.
 Within the registration sub-district and District

Bounded;

On the North by

On the South by

On the East by

On the West by

List of encumbrances :

- 1.
- 2.

Sd-
 Authorised Officer
 (Name of the Institution)

Date :

Place:

APPENDIX VI

FORM

[Sec rule 11(1)]

Application under sub-section (10) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002

For use in Office.

Date of filing _____

Date of receipt by post _____

Registration No. _____

Signature
Registrar

IN THE. DEBTS RECOVERY TRIBUNAL

[Name of the place]

BETWEEN

A.B.

APPLICANT

AND

C.D.

DEPENDANT

Delete whichever is not applicable.

DETAILS OF APPLICATION:

1. Particulars of the applicant
 - (i) Name of the applicant
 - (ii) Address of Registered Office :
 - (iii)Address for service of all notices:
2. Particulars of the (defendant):
 - (i) Name of the (defendant);:
 - (ii) Office address of the (defendant) :
 - (iii)Address for service of ail notices:
3. Jurisdiction of the Tribunal:
The applicant declares that the subject-matter of the recovery of debt due falls within the jurisdiction of the Tribunal.
4. Limitation :
The applicant further declares that the application is within the limitation prescribed in section 24 of the Recovery of Debts Due to Banks and Financial Institutions (Act), 1993.

5. Facts of the case : The facts of the case are given below: -
[Give-here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise].
6. Details of recoveries made by sale of securities :
[Give here security wise details of saie/s conducted and realizations, appropriations of sale proceeds towards, costs interest and principal amount and the balance amount to be recovered.]
7. Reliefs sought :
In view of me facts mentioned in para 5 above, the applicant prays for the the following relief(s) :-
[Specify below the relief(s) sought explaining the ground for relief(s) and the legal provisions (if any relief upon).]
8. Interim order, if prayed for:
Pending final decision on the application, the applicant seeks issue of the following interim order—
[Give here the nature of the interim order prayed for with reasons,]
9. Matter not pending with any other court, etc :
The applicant further declares that the matter Regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.
10. Particulars of Bank Draft/Postal Order in respect .if the application fee :
 - 1) Name of the Bank on which drawn :
 - 2) Demand Draft No :or
 - 1) Number of Indian Postal Order(s):
 - 2) Name of the issuing Post Office :
 - 3) Date of issue of Postal Order(s):
 - 4) Post Office at which payable :
11. Details of Index:
An index in duplicate containing the

details of the documents to be relied upon is enclosed.

[Such documents should include copies of sale certificates or any other documents relating to sale of secured assets and sale proceeds realised]

12. List of enclosures :

Verification

I _____ I _____ (Name in full and block letters)
 son/daughter/wife of Shri _____ being the _____ (designation)
 _____ (name of the company) holding a valid power of attorney from
 _____ (name of the company) do hereby verify that the contents of paras I to II
 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signature of the applicant

Place:

Date :

To

The Registrar,

Debts Recovery Tribunal.