



# PROSECUTION MANUAL

January, 2008

**GOVERNMENT OF HIMACHAL PRADESH  
DEPARTMENT OF HOME  
DIRECTORATE OF PROSECUTION  
HIMACHAL PRADESH, SHIMLA**

## FOREWORD

The prescriptions of laws, rules and procedures are, in the nature of things, general, and it is difficult to make into law, provision for all conceivable eventualities. Fluidity of norms and lack of precision makes the lot of even the most diligent and conscientious public servant difficult. The public servant must be flexible so as to be effective. However, flexibility turns out to be a double edged weapon, and has often served to evade accountability. Strict adherence to the letter of the law on the other hand invites understandable criticism of rigidity, unresponsiveness, or at the very least, of too impersonal an approach.

In these circumstances, limits and safeguards have to be provided enabling service delivery with sufficient creativity but without too much scope for misjudgements, doubts and suspicion. What is required perhaps is the framing of procedures with a far greater attention to detail, seeing that laws and rules are often also interpreted and implemented by public servants who may not be attuned to the policy imperatives underlying the procedures.

Of course, the accountability of the supervisory and senior levels of the administration is the guarantor of the limits and safeguards. The mere prescription of procedures, however, does not mean that they will be followed. It is their proper enforcement and it is the ability of the system to change, modify or add to the procedures to keep up with the passage of time that will ensure flexibility within reasonable limits and safeguards.

In this context, the job of the Public Prosecutor is not always an enviable one. Presenting the results of investigation with all its complexities requires skill and some flair. To be able to convince the court requires not only that the investigation should have been fair, but also that the presentation should be compelling, and that the test of 'guilt beyond reasonable doubt' should be met in the process. Though it is not an easy test to pass, failure to do so is often followed by doubts and suspicions.

The prescription of procedures and the setting down of accountability and its enforcement has to address this central issue and put in such checks and balances that minimize the scope for doubts regarding the diligence and fairness of the Prosecutor. The present Manual is a major step in this direction and I hope it will set standards that will improve the conviction rate.

This Manual is the result of painstaking work of a large number of people and I congratulate Shri S. Vijay Kumar, Principal Secretary (Home) and Shri Satish Thakur, Director of Prosecution from 3.3.2007 to 11.10.2007 and Shri Harmohinder Singh Rana, Director of Prosecution from 19.10.2007, for their initiative. I expect that a similar effort on the part of the investigation machinery to bring out an Investigation Manual will complete the process of imparting transparency into the system and restore and reinforce the confidence of the public in the essential fairness of the system of administration of criminal justice in this State.

**(Prof. Prem Kumar Dhumal)**  
**Chief Minister,**  
**Himachal Pradesh**

**January, 2008.**

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## **PREFACE**

As a result of recent initiatives taken by the Supreme Court of India and Government of India, attention is at last being paid to the system of administration of criminal justice which has to a large extent got subordinated to the development imperatives inherent in a democratic set-up. It is now being realized that proper administration of Criminal Justice is a key ingredient in ensuring that the fruits of democracy reaches to all citizens. As a result, there has been a paradigm shift in planning and budgeting priorities; expenditures on the system of Administration of Justice are no longer seen as being at the cost of development; instead it is being seen as a worthwhile investment to ensure optimum utilization of funds earmarked for development.

It is, however, also a fact that this paradigm shift has so far focused mainly on the Courts and the Policing system, rather ignoring the role of the Prosecutor as an intermediary. The Prosecutor, on the one hand is tasked with presenting fairly and comprehensively the results of the police and investigative effort, and on the other hand, as an officer of the Court, is responsible to help prevent miscarriage of justice. Despite its crucial role in the system, so far the prosecution system is yet to get adequate attention in modernizing itself. Partly it is a result of lack of awareness, but mainly it is because the element of 'soft skill' or knowledge based inputs is very high and planning and budgeting in such matters is difficult unless there are adequate guidelines and monitoring mechanisms to ensure that financial investments are yielding the desired returns. This Manual is intended to fill this gap, in the expectation that planners will be able to adequately fund this sub-sector of the system of Administration of Justice with adequate confidence.

It is indeed gratifying that the drafting of this Manual is coinciding with major legislative reforms in criminal justice. The Criminal Procedure Code (Amendment) Act, 2005 has brought about several changes, including a statutory Directorate of Prosecution and the Criminal Procedure Code (Amendment) Bill, 2006 promises more major reforms, based mainly on the Malimath Committee on reforms of the criminal justice system.

The drafting work of the Manual was completed in about a year's time and was mainly the dedicated efforts and teamwork of Shri Satish Thakur, Director of Prosecution from 3.3.2007 to 11.10.2007 and Shri Harmohinder Singh Rana, currently Director of Prosecution, and S/Sh. Raghuraj Thakur, Jawahar Sharma, Narinder Sharma (Joint Directors), Vinod Behl, District Attorney and Sunil Dutt Vasudeva, Assistant District Attorney. Thanks are also due to S/Shri Deep Ram Sharma, Superintendent Grade-I, Shri Rustam Patial, PA, and Vikrant Chandel, Junior Scale Stenographer of the Directorate of Prosecution who completed the cumbersome job of word processing and performed painstaking proof-reading to get the Manual completed in such a short period.

The draft of the Manual was further discussed in detail with all stakeholders in a workshop on 3<sup>rd</sup> August, 2007 in which senior officers of the Police Department, Law Department, Forensic Science and Prosecution Department participated and made a number of valuable comments and suggestions all of which have been taken into account in the final version. The participation of the Police Department is particularly significant in the context of ongoing policing reforms and the recent enactment of the HP Police Act,

2007. The legislation, which is largely based on Govt. of India's Model Act professionalizes investigation and provides for publication of a comprehensive Investigation Manual within 6 months.

Since this is the first such effort, there are bound to be omissions and errors. However the effort would be worth its while if it leads to systematisation of the Prosecution set up. All suggestions for improvement are most welcome and may be addressed either to Director of Prosecution or Principal Secretary (Home) Govt. of HP. Doubtless in due course a revised version of the Manual incorporating these suggestions will bring about further improvements.

**(S.Vijay Kumar)**  
**Principal Secretary (Home) to the**  
**Government of Himachal Pradesh.**

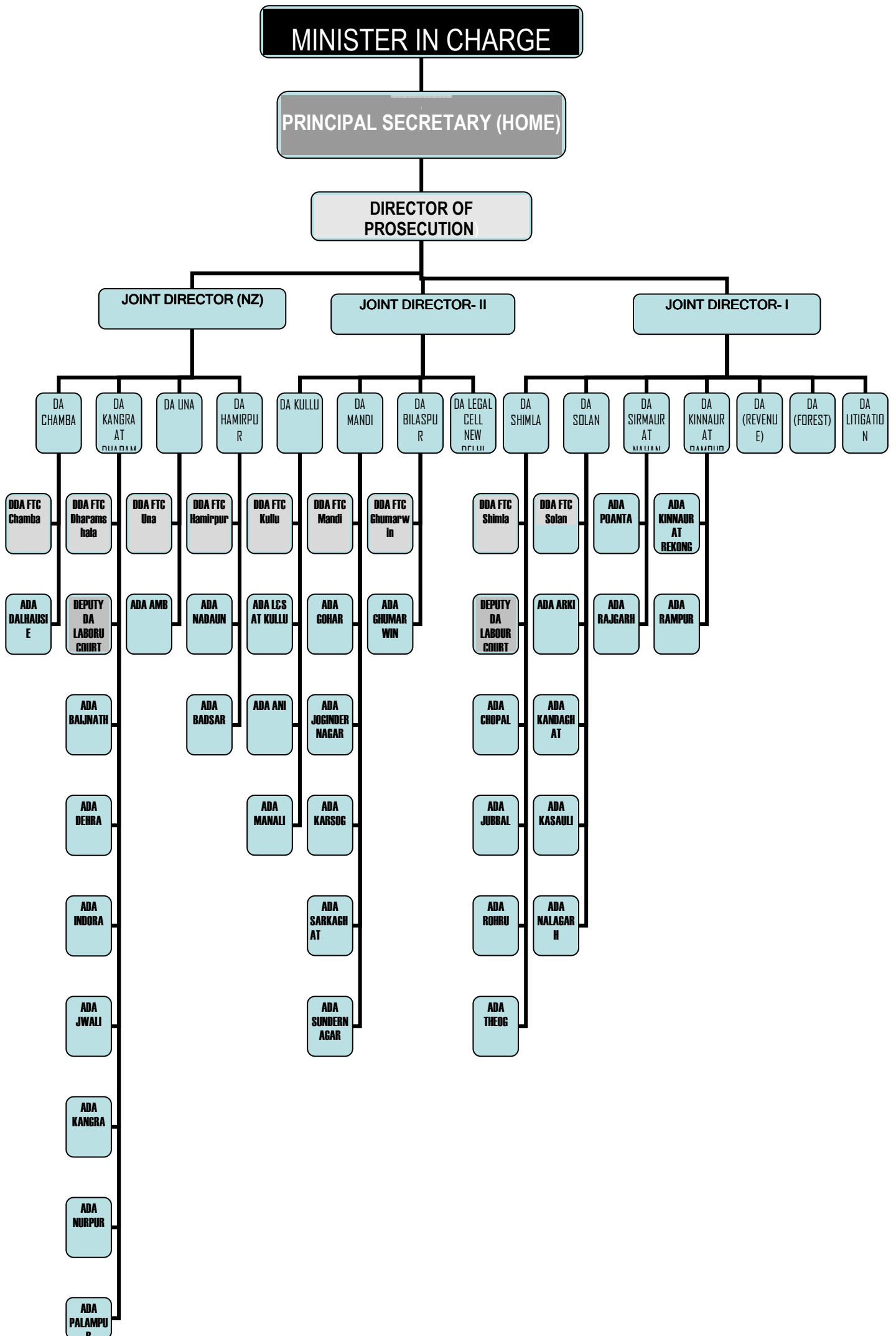
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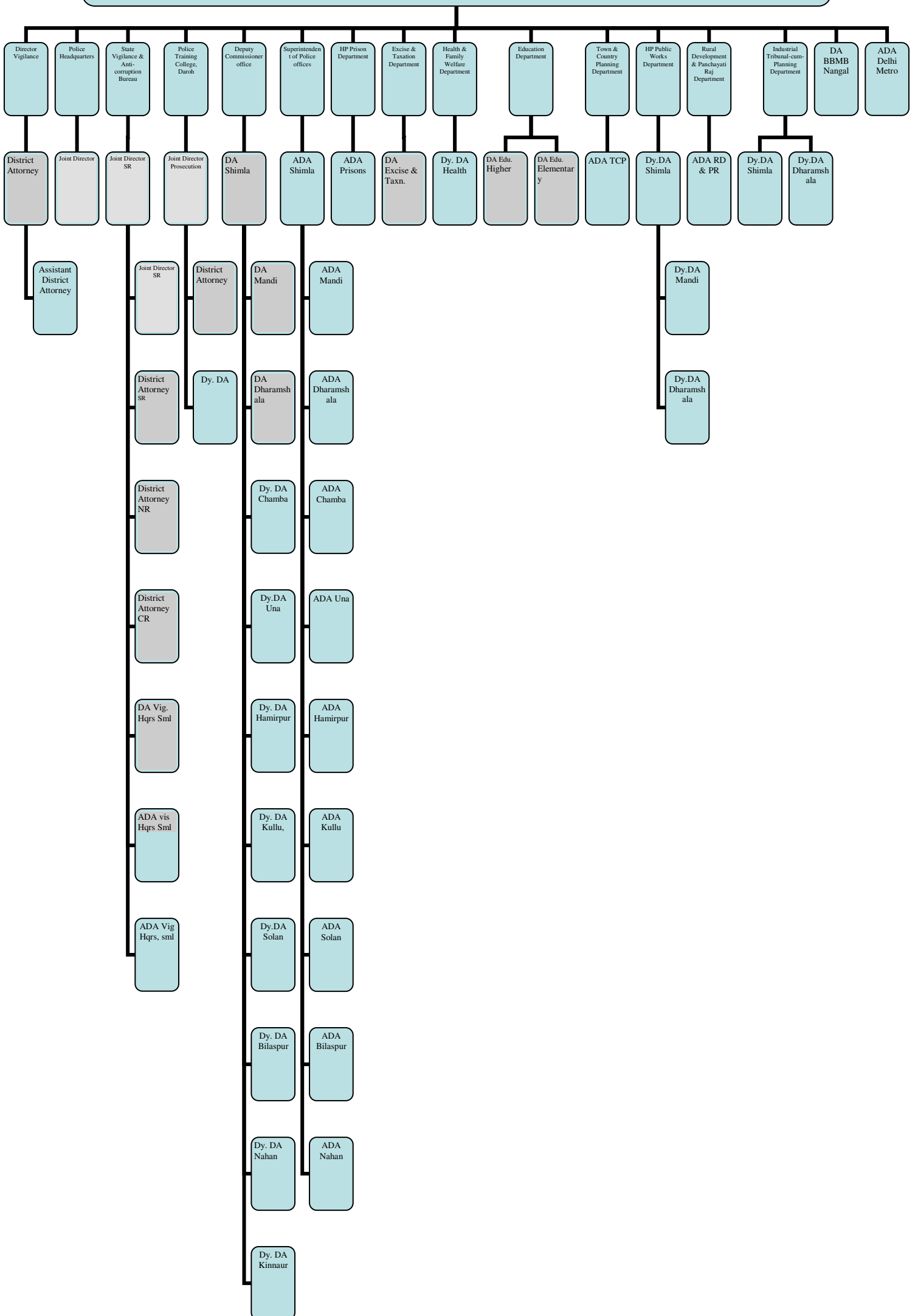
## CONTENTS

Chapter	Particulars	Page Nos.
	Organizational set up in Prosecution Department	1
	Law Officers in other Departments/Boards	2
<b>I</b>	Historical Background	3
<b>II</b>	Directorate of Prosecution	4-10
<b>III</b>	Organizational arrangements of the Directorate of Prosecution	11-12
<b>IV</b>	District Prosecution Agency	13-19
<b>V</b>	Duties of Law Officers posted in offices of SP	20-22
<b>VI</b>	Duties of law officers posted in DC offices	23-25
<b>VII</b>	Prosecution of criminal cases	26-43
<b>VIII</b>	Procedure in appeal/ revisions against acquittal/ inadequacy of sentence etc.	44-48
<b>IX</b>	Action in failed cases	49-51
<b>X</b>	Serious Offences	52
<b>XI</b>	Witness Protection	53-58
<b>XII</b>	Forensics	59-61
<b>XIII</b>	Prosecution of criminal cases before High Court	62-64
<b>XIV</b>	Vigilance Cases	65-68
<b>XV</b>	Monitoring and control	69-73
<b>XVI</b>	Training and Refresher Courses	74-75
<b>XVII</b>	Legal Services Cell	76-80
<b>XVIII</b>	Legal Cell, New Delhi	81-86
<b>XIX</b>	Civil Business	87-100
	Appendix	
	1. Memo of scrutiny challans	(i) to (viii)
	2. Proformas for case diaries	(ix) to (xiii)
	3. Proformas for Monitoring & Inspections	(xiv) to (xviii)
	4. Civil Business - Extract from HP Law Department Manual Chapter 9 to 16	(xix) to (xxxix)
	5. Civil Writs, and PILs	(xl) to (lviii)
	6. Special Leave Petitions	(lix) to (lxv)

**ORGANIZATIONAL SET UP OF  
PROSECUTION DEPARTMENT**



Directorate of Prosecution provides Law Officers to the following Departments/Boards



## CHAPTER I

### HISTORICAL BACKGROUND

Till 1973, the Prosecution Agency of the State was a part of the Police organization in Himachal Pradesh. Police officials who were law graduates were appointed as Assistant Police Prosecutors/Prosecuting Inspectors/Prosecuting Sub-Inspectors. The Police Prosecutors were under the administrative control of the Superintendent of Police at District Level but over-all control rested with the Inspector-General of Police of the State.

With the enactment of the Criminal Procedure Code 1973, the Prosecution Agency was separated from the Police. Posts under the cadre of Police Prosecutors were abolished and a regular cadre of prosecutors was constituted in a separate Directorate of Prosecution, initially consisting of Deputy Director, District Attorney-cum-Public Prosecutor, Assistant District Attorney-cum-Public Prosecutor and Assistant Public Prosecutor (APP). Later on the Assistant District Attorney was designated as District Attorney and the APP as Assistant District Attorney-cum-Assistant Public Prosecutor.

Secretary (Law)-cum-Legal Remembrancer was given the charge of post of Director of Prosecution in 1974. In 1996, the Directorate was brought under the control of Home Department vide notification No. 5-5-2/71-GAD (CC) dt. 5<sup>th</sup> October, 1996 by amending the Business of the Government of Himachal Pradesh (Allocation) Rules, 1971 as under:

*“The Business of the Government of Himachal Pradesh (Allocation) Rules, 1971, under heading "Home Department – (a) Home", the following shall be inserted as new entries: -*

50. *Appointments, postings, transfers, leave etc. of the Government Pleaders, Public Prosecutors, special public prosecutors and District Attorneys, Additional District Attorneys.*
51. *Defence or institution of criminal cases on proceedings filed against or by, the State Government in Supreme Court, entertainment of summons issued by the Supreme Court in these cases.*
52. *Monitoring of all criminal cases and proceedings filed against or by the State in the Supreme Court.*
53. *All matters relating to the establishment, budget of the Directorate of Prosecution.”*

A separate fulltime Director of Prosecution was appointed on 14.2.1997. The Directorate of Prosecution attained statutory status following the enactment of section 25A through the Criminal Procedure Code (Amendment) Act, 2005, which came into force on 23.6.2006



## CHAPTER II

### DIRECTORATE OF PROSECUTION

#### 2.1. Directorate of Prosecution:

Section 25A of the Code of Criminal Procedure provides for the appointment of the Director of Prosecution and establishment of Directorate of Prosecution as under:

**“25A. Directorate of Prosecution-** (1) *The State Government may establish a Directorate of Prosecution consisting of Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.*

(2) *A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.*

(3) *The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.*

(4) *Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.*

(5) *Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section(8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.*

(6) *Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-sections (8), of section 24 to conduct cases in District Courts and every Assistant Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.*

(7) *The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.*

(8) *The provisions of this section shall not apply to the Advocate General for the State while performing the functions of Public Prosecutor.”*

## **2.2. Establishment of Directorate**

**2.2.1.** At present the Directorate has a total cadre strength of 177 Prosecutors comprising of one post of Director of Prosecution, 7 Joint Directors (Prosecution), 27 District Attorneys, 49 Deputy District Attorneys and 92 Assistant District Attorneys; including Law Officers seconded to other (Government) Departments/Boards/Corporations.

**2.2.2.** The Ministerial staff of the Directorate of Prosecution consists of one Superintendent Grade I and 212 other posts at Directorate and District Level.

**2.3. Regular Cadre of Prosecuting Officers:** The Director, Joint Directors, District Attorneys, Deputy District Attorneys and Assistant District Attorneys constitute a regular cadre of prosecuting officers in the State of Himachal Pradesh in terms of explanation to section 24 (6) of the Code of Criminal Procedure which reads as under:

*“(i) ‘regular Cadre of Prosecuting Officers’ means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called and which provides for promotion of Assistant Public Prosecutors, by whatever name called to that post.*

*(ii) ‘Prosecuting Officer’ means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor or Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.”*

**2.4. Public Prosecutors:** There are the following categories of Prosecutors:

**2.4.1.** Public Prosecutors/Additional Public Prosecutors appointed for the High Court in terms of section 24(1) of the Code of Criminal Procedure, 1973. These are the Advocate General, the Additional Advocates General and Deputy Advocates General who are under the administrative control of Home Deptt.

**2.4.2.** Public Prosecutors appointed for the District in terms of section 24(2) of the Code of Criminal Procedure 1973. The District Attorneys and Deputy District Attorney are designated as Public Prosecutors.

**2.4.3.** Assistant Public Prosecutors for conducting prosecution in the courts of Magistrates/Executive Magistrates in terms of section 25(1)

of the Code of Criminal Procedure. Assistant District Attorneys are generally designated as Assistant Public Prosecutors. Assistant District Attorneys with 7 years of service are designated as Additional Public Prosecutors.

**2.5. Recruitment/Appointment of Public Prosecutors:**

**2.5.1. Assistant District Attorneys:** Assistant District Attorneys are recruited through the Himachal Pradesh Public Service Commission, on the basis of a written examination and appointed by the State Government on the basis of the recommendation of the Public Service Commission. Only persons with a law degree and two years of practice after enrolment in the Bar Council of the State are eligible.

**2.5.2. Deputy District Attorneys:** Deputy District Attorneys are appointed by promotion on the basis of the recommendations of the Departmental Promotion Committee on a merit-cum-seniority basis from amongst Assistant District Attorneys with at least 7 years service.

**2.5.3. District Attorneys:** District Attorneys are appointed by promotion on the basis of recommendations of the Departmental Promotion Committee on a merit-cum-seniority basis from amongst Deputy District Attorneys with at least 5 years service

**2.5.4. Joint Directors (Prosecution):** Joint Directors (Prosecution) are also appointed by promotion on the basis of recommendations of the Departmental Promotion Committee on a merit-cum-seniority basis from amongst District Attorneys with at least 5 years service.

**2.5.5. Director of Prosecution:** Director of Prosecution is appointed by the State Government in accordance with the provisions of section 25A of Code of Criminal Procedure with the concurrence of the Chief Justice of the High Court of Himachal Pradesh.

**2.6. Functions of the Prosecution Directorate:** Officers of the Directorate of Prosecution shall discharge any of the following functions, depending on the nature of their posting:-

**2.6.1.** Prosecution of criminal cases in the court of Sessions Judge/ Special Judge/Additional Sessions Judge including Fast Track Courts, and Judicial Magistrates.

**2.6.2.** Institution and defence of suits or proceedings filed by or against the Government in the court of District Judge, Subordinate Courts, before the State Consumer Disputes Redressal Commission,

Industrial Tribunal–cum-Labour Court, Motor Accident Claims Tribunal, Rent Controller and before Executive Magistrates.

- 2.6.3. Drafting/vetting of complaints/written statements/replies, including pleading/presentation on behalf of the Collectorate and such Government Departments where a Law Officer is provided from the Directorate.
- 2.6.4. Conduct of revenue cases before the Financial Commissioner/Divisional Commissioners/Settlement Collectors/Collectors.
- 2.6.5. Legal Opinion in Government Departments where Law Officer is provided from the Directorate.
- 2.6.6. Scrutiny of police challans and legal opinion to the investigating agency through Law Officers provided from the Directorate and also through the Prosecutors.
- 2.6.7. Drafting/vetting/filing of civil, criminal and revenue appeals etc. in respect of Collectorates and in such departments where a Law Officer is provided.

## **2.7. Powers and Functions of Director of Prosecution:**

- 2.7.1. The Head of the Directorate of Prosecution is the Director of Prosecution, who functions under the administrative control of the Head of the Home Department in the State.
- 2.7.2. The State Government has notified the powers and functions of the Director of Prosecution vide notification No. Home (Prosecution) B (14)-2/04 dated 12.1.2007 in exercise of the powers conferred by sub section (7) of section 25-A of the Code of Criminal Procedure, 1973 essentially as under:

*(i) Director of Prosecution shall be the Head of the Prosecution Agency of the State and shall exercise the control over the Prosecution Department in the matters relating to planning, budgeting, human resource management and infrastructure management.*

*(ii) He shall render, or cause to be rendered advice to the Home Department on all the matters relating to prosecution of offences.*

*(iii) He shall ensure effectively coordination with the Police Department to ensure adequate synergy between investigation and*

*prosecution.*

*(iv) He shall be the Head of the Prosecution Department, while exercising the financial powers under the Himachal Pradesh Financial Rules.*

*(v) He shall be the Appointing and Disciplinary Authority under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 65 and Central Civil Services (Conduct) Rules, 1964 in respect of Class III and IV employees of the Prosecution Department.*

*(vi) He shall be the reviewing authority in the case of Class-I (Gazetted Officers ) and accepting authority in the case of Class-III employees posted in the Prosecution Department for the purpose of Annual Confidential Reports.*

*(vii) He causes to be rendered necessary guidance, advice and clarifications to all the prosecuting officers of the Department from time to time in relation to legal, financial and service matters in accordance with the orders and instructions issued by the Himachal Pradesh Government from time to time.*

*(viii) He shall cause the conduct of inspections of the subordinate offices of the Prosecution Department in the State from time to time and issue necessary guidelines to the officers and officials as deemed necessary.*

## **2.8. Joint Directors (Prosecution)**

Three posts of Joint Directors (Prosecution) are sanctioned in the Prosecution Directorate out of which one post of Joint Director of Prosecution is in North Zone, Dharamshala. Vide Office Order No. DPr-B(6)1/07 4229-57 dated 17.4.2007 the work amongst the Joint Directors has been distributed in the following manner:-

### **“Joint Director-1 ( Hqrs):**

- i) To supervise the functioning of the Law Officers and ministerial staff.*
- ii) Any other work including the inspection of subordinate offices as entrusted by the Director of Prosecution.*
- iii) To supervise Budget & Accounts, Audit paras, maintenance of stores & Stationery and Library.*
- iv) Administration of the Right to Information Act in the Department.*

### **Joint Director-II ( Hqrs):**

*To look after the entire litigation work, both civil and criminal*

*including monthly diaries, counsel fee bills etc. at the Directorate.*

- i) To inspect the subordinate offices as per directions and approval of Director of Prosecution.*
- ii) To tender opinion on the matters marked by the Director of Prosecution and any other legal matters i.e. including enactment/amendments of any Act and Rules*
- iii) Controlling officer for the maintenance of vehicles.*

**Joint Director North Zone, Dharamshala**

- i) Controlling Officer of all the Law Officers and their subordinate staff pertaining to Districts of Chamba, Kangra, Una and Hamirpur.*
- ii) To look after the work, both Criminal and Civil pertaining to the offices of DAs/ADAs and APPs of these Districts .*
- iii) To supervise the functioning of the Law Officers/ministerial staff working under his control and shall also be responsible for its smooth and efficient working.*
- iv) To inspect the subordinate offices as per directions of the Director of Prosecution.*
- v) To render opinion on files referred to him by the incharge of the District Prosecution Agency.*
- vi) Any other matter which is entrusted to him by the Director of Prosecution from time to time."*

The Joint Directors (Prosecution) have been notified as Prosecutors for whole of the State of Himachal Pradesh vide notification No. LLR.B(1)1/74-III dt. 28 Aug 1988 for conducting the Prosecution in the courts of Magistrates/Session Judges.

**2.9. Working of District Attorney (Revenue) H.P:**

The District Attorney (Revenue) conducts the revenue cases in the courts of Financial Commissioner (Appeals), Divisional Commissioners and Settlement Commissioner. Cases in the State Consumer Disputes Redressal Commission, District Consumer Disputes Redressal Forum are also conducted by the District Attorney (Revenue). He also examines the judgments/orders of these Courts/Forum and renders legal opinion and takes further steps for filing appeal etc. by submitting case files to the Department concerned.

**2.10. Working of District Attorney (Forest)**

The District Attorney (Forest) conducts the Forest cases in which Indian Forest Act, Forest (Conservation) Act or Wild Life (Protection) Act is invoked before the Special Judge (Forest) Himachal Pradesh. He is also the Office-in-Charge and Drawing and Disbursing Officer and looks after the establishment and accounts section of the office. In addition to this he also does the scrutiny of police challans and examines all cases of acquittal, discharge and inadequate sentence under these three Acts and sends cases for appeal/revision to the Government. Cases of public importance may also be assigned to him by the Director of Prosecution in addition to his own duties.

**2.11. Working of District Attorney, Legal Cell at New Delhi:** The State Government has created a post of District Attorney at Delhi to keep liaison with the Advocates-on-Record/Additional Advocate-General in pending litigation by or against the State of Himachal Pradesh before the Hon'ble Supreme Court, Central Administrative Tribunal, National Human Rights Commission etc. *(for details please see Chapter XVIII)*

**2.12. Working of Deputy District Attorneys, Labour Courts:**

The Deputy District Attorneys posted at Dharamshala and at Shimla conduct different cases instituted under the labour laws before the Presiding Officers, Labour Courts. These Law Officers work under the direct control and supervision of District Attorney, Kangra at Dharamshala and District Attorney Shimla, respectively. These Law Officers are also exercising powers of Drawing & Disbursing Officers of their respective offices. These officers also draft replies etc. on behalf of the State of HP and its functionaries in matters originating from cases filed under the labour laws and also examine all judgments/orders passed by the Labour Courts, draft appeals/revisions and submit the record to the department concerned for further action. They shall also perform any other duty which may be assigned by the District Attorneys concerned.

**2.13. Working of Prosecution Officers in the Districts:**

The working of the District Attorney, Deputy District Attorney and Assistant District Attorney posted in the District to attend to cases of the Judicial Magistrates and Sessions Judges is explained in detail under Chapter IV.

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## **CHAPTER III**

### **ORGANIZATIONAL ARRANGEMENTS OF THE DIRECTORATE OF PROSECUTION**

The Directorate of Prosecution consists of the following sections:

1. Administrative Branch
2. Litigation Branch-I
3. Litigation Branch-II
4. Accounts Branch.

#### **3.1. Administrative Branch:**

3.1.1. The main functions of the administrative branch of the Directorate is to deal with the matters relating to maintenance of service record/transfers/postings of the Class III and IV employees of the Prosecution Department and planning, budgeting, human resource management and infrastructure management and also to issue necessary instructions/guidelines to the subordinate offices.

3.1.2. This branch also deals with conducting refresher courses for the law officers in the National Institute of Criminology & Forensic Science, Delhi, SVP National Police Academy, Hyderabad and Himachal Pradesh Institute of Public Administration (HIPA). This branch works under the supervision of the Superintendent Grade I and under the control of Joint Director of Prosecution-I.

#### **3.2. Litigation Branch -I :**

3.2.1. This branch deals with reports and maintenance of data of criminal and civil cases, scrutiny of monthly diaries of cases received from the districts, issuance/forwarding of directions/instructions of Government from time to time to the subordinate offices in Himachal Pradesh, monitoring of conviction rate and keeping record of the inspections of the prosecution offices.

3.2.2. This branch keeps record of the opinions tendered by the officers of the Directorate to other departments and monitors all criminal cases pending in the courts and prepares the Annual Administration Reports.

3.2.3. Expenses of litigation in Supreme Court are also dealt with by this branch. Litigation Branch-I works under the supervision of the Joint Director of Prosecution-II.

#### **3.3. Litigation Branch-II:**

3.3.1. Government of Himachal Pradesh has sanctioned six posts of various categories i.e. one District Attorney, one Deputy District Attorney, one Senior Assistant, one Stenographer and two Clerks for a Litigation Branch in the Directorate of Prosecution for the purpose



of examination of orders of acquittal passed by various Courts with a view to pinpointing deficiencies, either investigative or prosecutorial, because of which the case failed in the Court despite the Prosecutor scrutinizing the challan before it was filed in the Court. In this branch the copies of judgment received from Home Department are examined, analyzed and deficiencies pinpointed and remedial action for the future suggested. This Branch functions under the supervision of Joint Director of Prosecution-II.

3.3.2. The work procedure in this branch is as follows: -

- (i) *Examination of criminal cases:* The Litigation Branch II on receipt of complete record, will examine the police file, judgment, statement of PWs, DWs, accused and exhibits. After examination, the lapses during the investigation and prosecution will be pointed out and put up before the Joint Director Prosecution –II who will suggest action in such cases as well as remedial measures for the future. The process of examination of the cases shall be completed within 30 days. Where any action is suggested for the lapses in investigation/prosecution the Joint Director will put such files before Director of Prosecution for approval. The Director of Prosecution shall also bring all cases where serious deficiencies in the investigation or prosecution are detected, to the knowledge of Secretary (Home) on a single file of the Directorate along with proposal for issuance of instructions to prevent recurrence of such deficiencies in the future.
- (ii) *Monitoring and follow-up:* The Litigation Cell shall issue instructions in respect of remedial action in case of prosecution deficiencies and shall monitor implementation. The Cell shall maintain district-wise folders of cases where serious investigative or prosecution deficiencies were noticed, and shall each month prepare a summary of cases District-wise so that it can be sent to the Director-General of Police as well as the District Magistrate/Superintendent of Police of the district concerned for remedial action, including disciplinary proceedings where warranted. (See Appendix-3)

**3.4. Accounts Branch:** This branch deals with accounts matters, processing of medical claims/reimbursement senior officials including pensioners/retirees; store and purchase of the Directorate, preparation and maintenance of pay bills, cash books etc.

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## CHAPTER IV

### DISTRICT PROSECUTION AGENCY

**4.1 District Magistrate:** The District Magistrate is the overall Head of the District Prosecution Agency. As such his functions include:

- (i) Maintaining liaison amongst the different agencies forming the criminal justice system including the police and the judiciary in the district.
- (ii) Ensuring adequate cooperation between investigation and prosecution agencies and holding monthly coordination meetings with the Superintendent of Police and the District Attorney for the purpose.
- (iii) Approving appeals under section 377 and 378 of the Code of Criminal Procedure in cases of acquittal/inadequate sentence passed by the Judicial Magistrate.
- (iv) Recommending to Government where necessary, cases where it is expedient for the Public Prosecutor in the public interest, to withdraw from prosecution under section 321 Code of Criminal Procedure.
- (v) Making recommendation from time to time to the Home Department for systemic measures to improve efficiency of the Prosecution Agency in the District.

**4.2 District Attorney:** The District Attorney while functioning as Public Prosecutor/Government Pleader shall work as under:

**4.2.1 Main Functions:**

- (i) The District Attorney shall be the incharge of the district prosecution agency and is responsible for ensuring conduct of State cases civil, revenue, criminal and other miscellaneous matters through-out the District including motor vehicle/labour/consumer matters.
- (ii) He shall tender opinion on legal matters at district level when called upon by the District Magistrate or directed by the Director or Joint Director of Prosecution.
- (iii) He shall facilitate scrutiny of challans in criminal cases by Law Officers/Prosecutors subject to general directions of the Director of Prosecution.
- (iv) He shall cause the preparation of grounds of appeal in civil/criminal matters etc. after examining cases of acquittal/inadequate sentence passed at Sessions level or in other cases where appeal is to be filed in the High Court.

- (v) He shall also perform any other duty assigned by the Director of Prosecution.
- (vi) He shall further communicate all the instructions issued by the Director of Prosecution/State Government to all the Law Officers posted under his control and monitor compliance.

#### **4.2.2 Supervision & Control:**

- (i) The District Attorney is the controlling officer of all the Law Officers and ministerial staff of the District except in the case of Law Officers in the Deputy Commissioner and Superintendent of Police Offices where Deputy Commissioner and the Superintendent of Police respectively will be the Controlling Officers. The District Attorney is the controlling officer of Deputy District Attorney posted to Fast Track Courts (FTC).
- (ii) The District Attorney is required to review and supervise the working of Deputy District Attorneys, Additional District Attorneys and Assistant District Attorneys.
- (iii) The District Attorney gives guidance to Law Officers of the rank of Assistant District Attorney/Deputy District Attorney posted in the office of Deputy Commissioner and Superintendent of Police for making them effective Legal Advisors to the Deputy Commissioner and Superintendent of Police. The Joint Directors of Prosecution incharge of the District concerned will, similarly, give guidance to the Law Officers of the rank of District Attorney (when posted in the offices of Deputy Commissioners at Shimla, Mandi and Dharamshala).
- (iv) Quarterly meetings of all the Prosecutors posted in the District shall be called in the District headquarters by the District Attorney and date of such meeting shall be fixed sufficiently in advance so that no case is fixed for hearing on those days in the Courts. Presence of all prosecutors shall be ensured. Agenda of such meeting shall be finalized in advance. Endeavour shall be made in the quarterly meetings to apprise the Prosecutors about new developments regarding important legal issues/judgments/laws etc. and serious prosecution deficiencies noticed recently and remedial action for the future etc. Record of such meeting, shall be maintained and communicated to the Director of Prosecution.

#### 4.2.3 **Scrutiny Of Challans:**

- (i) The District Attorneys shall scrutinize final reports of investigation (Challans) to be filed in Sessions Court and shall supervise the scrutiny by Deputy District Attorneys/ Law Officers of challans to be filed in the court of Special Judge/Additional Sessions and Fast Track Courts before the challan is submitted to the Supervisory Officer of the Police for approval and filing in the court having jurisdiction.
- (ii) He shall give opinion or advice on challans in other Sessions level trials pertaining to the Court of Additional Sessions Judge/Special Judge and Fast Track Courts which may be submitted to him by the Deputy District Attorneys.
- (iii) In cases of serious crime where the Law Officer of the SP office (see Chapter V) is providing concurrent legal advice during investigation, the Law Officer is supposed to scrutinize the challan and the task of the District Attorney/Deputy District Attorney (as Prosecutor) in such cases will primarily relate to ascertaining whether the observations of the Law Officer have been complied with when the challan is finalized. In case there is non-compliance or in a crucial aspect the investigation is still incomplete, the Prosecutor will bring the matter to the notice of Superintendent of Police who may order action to close the investigation gap.
- (iv) The District Attorney shall also monitor the process of scrutiny of Police challans in other cases by the Prosecutors, who are posted in the District Headquarters and Sub-divisions.
- (v) Police challans shall be scrutinized by Law Officers/Prosecutors only on the scrutiny memo format approved by the Directorate of Prosecution and any deviation in this regard shall be viewed seriously and reported by the District Attorney to the Director of Prosecution.
- (vi) Entries regarding scrutiny shall be entered in the Scrutiny register issued by the Directorate of Prosecution, in the prescribed manner and regularly maintained, separately in respect of each court.
- (vii) In case of difference of opinion between the Prosecutor and SDPO/SHO/Investigation Officer, the Prosecutor should advise that the final report be submitted to the Superintendent of Police for a decision before being filed in Court.

- (viii) During the scrutiny of the challan if the Law Officer/Prosecutor finds that forensic or medical results have been delayed he should bring the matter to the notice of the Superintendent of Police to take up with the Director, Forensic Science or Director Health Services, as the case may be and in case it comes to the notice that the Investigation Officer has not adequately collected material evidence for forensic analysis or did not seek the necessary medical opinion, all such instances must be reported to the Superintendent of Police by the Law Officer/Prosecutor through the District Attorney for suitable action and remedial measures for the future.
- (ix) In case on scrutiny the Prosecutor comes to the conclusion that there are fatal legal flaws in the Investigation and the prosecution is bound to fail, he may, giving detailed reason move the District Attorney to obtain directions of the Superintendent of Police to the Station House Officer to put in a cancellation report/untrace report.
- (x) The Prosecutor should, before the commencement of trial, thoroughly examine the police file and the statement of the complainant/witnesses recorded under section 154, 161 and 164 of the Code of Criminal Procedure.
- (xi) Special care should be taken in serious crime cases where scientific evidence, including forensic evidence, is to be led, to ensure that the requirements of the Evidence Act have been met and the expert opinion is clear and unambiguous.
- (xii) The Prosecutor should check whether the names of all the police officials handling the case properly figure in the list of witness or not.
- (xiii) When the challan is sent to the Court, the Prosecutor concerned should ensure that the copies of the documents which are annexed with the challans exist in the police file. In case necessary documents are not in the police file he should ask the Challan Incharge to complete the police file for the effective prosecution of the case before the cognizance is taken by the court.
- (xiv) The Prosecutor should also ensure that the original record is attached with the challans before recording of evidence so that the documents are exhibited by showing relevant record to the witness. In case the original documents are to be produced at the time of evidence, the Prosecutor should bring this fact to the

notice of the Investigation Officer/Challan Incharge /SHO directly or through the Naib Court in advance for production of such record.

- (xv) Forensic and medical evidence is not merely an aid to prosecution but in fact an aid to investigation. As such, particularly in serious crime, if on scrutiny of the challan the Law Officer/Prosecutor finds that forensic or medical results have been delayed he should bring the matter to the notice of the Superintendent of Police to take up with Director Forensic Science or Director Health Services, as the case may be.
- (xvi) It may also be that during scrutiny of the challan in serious cases, it comes to notice that the investigation did not adequately collect evidence for forensic analysis or did not seek the necessary medical opinion, all such instances must be reported to the Superintendent of Police by the Law Officer/Prosecutor through the District Attorney for remedial action for the future.

#### **4.2.4 Co-Ordination & Liaison:**

- (i) The District Attorney shall keep close liaison with the District Magistrate and Superintendent of Police in the District and apprise them about developments in every sensitive and important case pending in the various Courts including matters affecting the effectiveness of the system of criminal justice.
- (ii) Monthly co-ordination meeting with District Magistrate and Superintendent of Police shall invariably be attended by the District Attorney, where the issues relating to better coordination between Prosecution and Investigation agencies as well as issues arising out of latest judgments of High Court and Sessions Court will be discussed. The District Attorney shall also apprise participants about the legal issues arising out of the functioning of the Law Officer in the office of Superintendent of Police.

### **4.3 Deputy District Attorneys in Additional Sessions Court:**

4.3.1 The Government of Himachal Pradesh vide Notification No. LLR-B(1A)-2/89 18th February, 1994 has notified all the Deputy District Attorneys of Prosecution Department as Public Prosecutors for conducting prosecution in the State of Himachal Pradesh under the provisions of the Code of Criminal Procedure.

4.3.2 The Deputy District Attorneys shall draft complaints/written

statements/replies and affidavits in cases relating to their court and in matters assigned to them by the District Attorney.

4.3.3 The Deputy District Attorneys will generally conduct civil, criminal, revenue and other miscellaneous work in the courts of Additional District & Sessions Judge. They will also look after the work which is assigned to them by the District Attorney and during the leave period of District Attorney, they will attend to court work of District & Sessions Judge and other administrative and miscellaneous work in addition to their own duties as may have been assigned by the District Attorney. They are also to examine decided cases relating to their court on the receipt of certified copies and submit proposals of appeals/revisions etc. to the District Attorney.

4.3.4 The Deputy District Attorneys are also to conduct scrutiny of police challans in respect of their court and such other challans as may be assigned to them by the District Attorney. As in the case of District Attorney, in cases of serious crime where the Law Officer of SP office has scrutinized the challan at an earlier stage, they will verify that the observations of the Law Officer on the scrutiny memo have been complied with by the Investigating Agency.

4.3.5 They will also render legal opinion on different matters and submit their opinion to the District Attorney concerned whenever asked in a case.

#### **4.4 Deputy District Attorneys In Fast Track Courts**

The State Government has created nine posts of Deputy District Attorneys (FTC) for the newly created Fast Track Courts at Dharamshala, Una, Chamba, Hamirpur, Ghumarwin, Solan, Kullu and Mandi. These Law Officers while functioning as Public Prosecutors/Govt. Pleaders are conducting sessions trials/criminal appeals, civil matters, MACT/reference cases etc. before the Presiding Officers of the Fast Track Courts and they also examine the decided cases on receipt of certified copies. In all such cases, Deputy District Attorneys will follow the same procedure as in Additional Sessions Court subject to the requirements of any special procedures applicable under the law or in respect of the Courts.

#### **4.5 Assistant District Attorneys At District Headquarters.**

Assistant District Attorneys at District Headquarters function as Assistant Public Prosecutors/Government Pleaders and work under the overall control and supervision of the District Attorney in the district, and conduct cases in the courts of Chief Judicial Magistrates and other

Judicial Magistrates as per work allocation or as per directions of the District Attorney from time to time. They also examine judgments of acquittals, discharge and cases of inadequate sentence and submit their opinion/reports to the District Attorney for taking further action. An Assistant District Attorney at District Headquarters may be asked by the District Attorney to conduct government cases in revenue/executive courts of Deputy Commissioner/Additional Deputy Commissioner/Additional District Magistrate and take further steps for appeals/revision in decided cases. They will, in respect of the criminal Court to which they are assigned, scrutinize the challan on the scrutiny memo format before the challan is put in the court. Scrutiny of the police challans relating to their court or as marked to them by the District Attorney before its submission to the concerned courts will also be carried out by them and they shall also look after the additional work, which is assigned by the District Attorney. They shall draft plaints/written statements/replies and affidavits relating to their court and matters assigned to them by the District Attorney.

#### **4.6 Assistant District Attorneys At Sub -Division Level:**

The Assistant Public Prosecutor conducts cases in the courts of Additional Chief Judicial Magistrates and other Judicial Magistrates posted in the sub-division. He gives his opinion on each decided case ending in acquittal, conviction, discharge etc. and submits the judgment along with legal opinion to the District Attorney concerned for taking further action. He also appears in the Revenue Courts/Executive Courts on behalf of State of HP. He also does the scrutiny of police challans before forwarding the same to the concerned courts. He shall draft plaints/written statements/affidavit relating to his court and matters assigned to him by the District Attorney. The Assistant District Attorney is the officer-in-charge of the Prosecution Department at Sub Division level and while exercising the powers of Drawing and Disbursing Officer (DDO), he also looks after the establishment and accounts work of the office. Where there is more than one Assistant District Attorney in a sub-divisional Hqrs, the Director of Prosecution shall designate one Assistant Public Prosecutor with aptitude as the DDO.

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## CHAPTER V

### DUTIES OF LAW OFFICERS POSTED IN THE OFFICES OF SUPERINTENDENT OF POLICE

- 5.1** After the enactment of the Code of Criminal Procedure, 1973, Police and Prosecution have become organizationally separated. Despite the coordinating efforts of the District Magistrate, this separation has adversely affected the functional coordination that was earlier possible because of the fact that under the Code of Criminal Procedure, 1898, Prosecutors were Police Officers and worked under the day-to-day supervision of the Superintendent of Police. In order to redress this situation, the State Government has decided to post Law Officers in the offices of the Superintendent of Police to provide legal support and to ensure day-to-day coordination with the Prosecution Agency.
- 5.2** The State Govt. has notified the duties of the Law Officers posted in the office of the Superintendent of Police vide office order No. Home (Pros)B(1)-5/06 dated: 25.5.2007 in consultation with the Director-General of Police and Director of Prosecution. The duties of Law Officers will be as under: -

**“A Officer-In-Charge Of Law Branch:**

- i)** *The Law Officer shall be the incharge of the Law Branch in the office of the District Superintendent of Police and he will work under the supervision of the Superintendent of Police. All the officials posted in the Law Branch will be under the supervision and control of the Law Officer.*
- ii)** *All the matters relating to legal advice will be routed through the Law Officer and thereafter submitted to the Superintendent of Police for final orders; and*
- iii)** *The Law Officer shall carry out other duties involving interpretation of Acts and Rules, drafting of replies etc. in Courts/Tribunals, disciplinary cases etc.*

**B Legal Support to Investigation: The Law Officer will:**

- i)** *Guide IOs on adoption of scientific methods for collecting relevant material during the investigation, keeping in view the legal admissibility, and help develop SOPs.*
- ii)** *Reduce legal defects in investigation procedure and suggest remedial measures in such cases.*
- iii)** *Identify repeated mistakes made by a particular Investigation*

*Officer and bring it to the notice of the Superintendent of Police for strict action.*

- iv) Visit scene of crime or any other place which in opinion of the Superintendent of Police is expedient for collecting relevant material in cases of serious crime.*
- v) Guide the Investigation Officers in collecting relevant legally admissible material including circumstantial evidence to complete the chain of evidence.*
- vi) Guide the Investigation Officers in preparing seizure memos in a manner which is legally admissible in the court during the trial.*
- vii) Guide the Investigation Officers so that statements of witnesses recorded under section 161 CrPC are legally sustainable, and apprise the Investigation Officers about the adverse consequences of 'improvement' during the investigation in the statement of witnesses.*
- viii) Guide Investigation Officers regarding special procedures of NDPS Act and other Special Acts.*
- ix) Assist the Special Investigation Team, constituted to investigate any particular crime, where necessary.*
- x) Assist the Superintendent of Police in analyzing case diaries of ongoing investigation of Serious Offences. The Law Officers will visit Police Stations alongwith the Supervisory Officer in-charge (SDPO/DSP) and discuss legal aspects of Serious Offences cases under investigation and guide and advise IOs. They will scrutinize the challans in all serious cases on the standard Scrutiny sheet so that the IO can remove investigative deficiencies. (The Prosecutor in-charge of the case will check that the challan being put in court has taken into account the observations of the Law Officer made in the Scrutiny Sheet).*

**C Coordination Between Police and Prosecution: -**

- i) The Law Officer will work for proper co-ordination of the Police, Prosecution and Magistracy in order to improve the conviction rate.*
- ii) He will also analyze failed cases for the Superintendent of Police and suggest remedial action and monitor implementation.*
- iii) He will vet the draft letters prepared by the Investigation*

*Officers to GEQD and FSLs and see that the entire documents/material required for examination and analysis are sent to the said authority in one go.*

**D Training:**

- i) He will help to organize Training workshops for IOs at District Level in collaboration with Forensic Science Laboratories.*
- ii) He will also circulate relevant portion of the judgments of the Hon'ble Supreme Court and High Courts which have direct bearing on police working.*

**E Miscellaneous:**

- i) He will participate in monthly crime meetings in Superintendent of Police's office and provide legal advice on issues raised in the meeting.*
- ii) He may form part of a Special Investigation Team to render assistance in the investigation of serious crime, if so decided, on a day-to-day basis.*
- iii) He will assist the Superintendent of Police in any other legal work relating investigation and Court matters as assigned to him in day-to-day functioning as deemed necessary.”*

**5.3** The extent to which the posting of the Law Officer in the office of Superintendent of Police will help in improving the quality of investigation will depend on the effectiveness of the Superintendent of Police in utilizing the Law Officer to identify legal shortcomings in investigation procedures and in using him to train Police Officers at the cutting edge (i.e. Investigation Officers) in adopting legally sound methods of investigation. For this purpose, it is essential that :

- (i) the Superintendent of Police should get the Law Officer to peruse the case diaries received by him of all cases of serious crime and act on his advice;
- (ii) the Superintendent of Police should encourage the Law Officer to tour Police Stations and interact with Investigation Officers; and
- (iii) the Superintendent of Police should ensure effective participation of the Law Officer in the monthly crime meetings.

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## CHAPTER VI

### DUTIES OF LAW OFFICERS POSTED IN THE OFFICES OF DEPUTY COMMISSIONER

#### **6.1. Law Officers to Deputy Commissioners:**

- 6.1.1. In each District except the District of Lahaul & Spiti, a Law Officer of appropriate rank is posted by the State Government from the Prosecution Department. Officers/officials posted in the Litigation Cell in the District Collectorate work under the over-all control and supervision of the Law Officer and submit all the legal matters which require approval of the District Collector through the Law Officer.
- 6.1.2. Law Officers of the rank of District Attorneys are posted in the offices of Deputy Commissioner at Shimla, Mandi and Dharamshala, and in all other Districts except Lahul & Spiti, Deputy District Attorneys are posted to aid and assist in the Deputy Commissioners in their day-to-day working in legal matters.
- 6.1.3. The Deputy District Attorney posted in the office of Deputy Commissioner Kullu also renders legal advice and assists the Deputy Commissioner Lahul & Spiti on a need basis.

#### **6.2. Functions and Control-**

- 6.2.1. Law Officer posted in the office of the Deputy Commissioner functions under the overall control and supervision of the Deputy Commissioner. All matters relating to legal advice and opinion are routed through the Law Officer and thereafter submitted to the Deputy Commissioner for final orders/approval.
- 6.2.2. These Law Officers discharge the functions mentioned hereunder:-
- (i) *Action of section 80 CPC notices:-* Consequent upon the service of notice under section 80 of Civil Procedure Code upon the District Collector, the Law Officer calls for para-wise comments and related documents from the District head of office of the Department concerned and drafts a reply. The reply is to be sent to the applicant(giving notice)by the Nominated Officer of the Collectorate authorized for the purpose of section 80 of the Code of Civil Procedure, on behalf of the District Collector.
  - (ii) *Legal opinion:-* The Law Officer gives advice on legal aspects

of policy and interpretation of Acts and Rules, for matters within the Collectorate and in any local matter relating to a Department which the Deputy Commissioner thinks is likely to help in better coordination or in resolution of an issue.

- (iii) *Coordination with Prosecution:-* In the monthly coordination between the Police, Prosecution and District administration, Law Officers assist the Deputy Commissioner in raising or legally interpreting issues arising out of investigation, prosecution and judicial decision.
- (iv) *Miscellaneous cases:* In civil/revenue/Motor Vehicle Accident Claims Tribunal/Labour matters filed by or on behalf of the District Collector, the Law Officer monitors the progress of the case through the Litigation Cell of the District Collectorate.
- (v) *Monitoring of cases in higher Courts:-* The Law Officer also monitors the progress of the Civil Writ Petitions filed by or against the District Collector and Public Interest Litigation (PIL) filed against the District Collector/Magistrate before the Hon'ble Supreme Court or the Hon'ble High Court as well as appeals etc. in which he is a party and maintains liaison with the Government Pleaders incharge of the cases in such Courts.
- (vi) *Execution Petition:-* Whenever any Execution Petition is filed before any Court in the District in money matters, the Law Officer takes special steps for getting the action taken report of the Department concerned on priority basis to avoid legal and administrative inconvenience to the District Collector.
- (vii) *Contempt cases:-* Whenever any contempt notice is received against the functionaries in the District Collectorate, the Law Officer advises on the action required to be taken to discharge the notice or to defend the case and liaises with the Pleaders/Counsel defending the concerned functionary.
- (viii) *Special attention to important cases:-* In cases of public importance or any other matter in which valuable Government property is involved, special care is taken by the Law Officer to personally brief the Additional Advocate General/Government Pleaders in the matters pending before the Circuit Courts of the State Administrative Tribunal/State Consumer Disputes Redressal Commission/Labour Court etc., in which District Collector is arrayed as party.

- (ix) *Legal drafting of notices and orders:-* The Law Officer shall also assist in drafting orders for promulgation and notifications for issue under the various provisions pertaining to Code of Criminal Procedure or other enactments.

**6.3. Legal Support for cases in the Revenue Courts at District headquarters:**

The Law Officer posted in the Deputy Commissioner's office shall conduct/defend cases on behalf of the State before the Court of Divisional Commissioner and Collectors where such cases are held at the District Headquarters.

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## CHAPTER VII

### PROSECUTION OF CRIMINAL CASES

#### **7.1.Appearance by Public Prosecutors and Other Pleaders: -**

**7.1.1** The Prosecutors detailed in Chapter II may appear and plead without any written authority before any court in which that case is under inquiry, trial or appeal as provided in section 301 of the Code of Criminal Procedure.

**7.1.2** If in any such case a private person instructs a Pleader to prosecute any person in any court, such Pleader shall act under the directions of the Public Prosecutor or Additional/Assistant Public Prosecutor and may with the permission of the Court, submit written arguments after the evidence is closed in the case.

**7.1.3** Any Magistrate inquiring into or trying a case may under section 302 of the Code of Criminal Procedure permit the prosecution to be conducted by any person (other than a Police Officer below the rank of Inspector).

**7.1.4** No Police Officer can conduct a prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

#### **7.2.Scrutiny of Police Challan:**

When an accused person is sent for trial, the chargesheet shall form the final report required by the Section 173 of Criminal Procedure Code, 1973. The Chargesheet shall be thoroughly scrutinized by the Public Prosecutor/Additional Public Prosecutor/Assistant Public Prosecutor attached with the particular court who shall scrutinize the chargesheet and the documents as per the instructions issued from time to time by the Directorate. To ensure that all essential points and requirements of the law have been adequately addressed, the Directorate of Prosecution has vide letter No. DPr-cases/Ins./2006 dt. 6.11.2006 circulated four scrutiny proformas respectively for offences affecting the Human Body; offences against property; offences involving public tranquility, corruption etc.; and NDPS offences (*Appendix-I*). As mentioned in Chapter IX, in all offences designated as 'Serious Offences', the Law Officer of the SP office shall scrutinize the draft final report and fill-up the scrutiny proforma

When the final report is to be put into court, the Public Prosecutor who will be incharge of the case will cross-check that the observations of the Law Officer recorded in the Scrutiny proforma have been complied with. In cases other than serious crime, the Additional Public Prosecutor/Assistant Public Prosecutor shall himself scrutinize the draft final report and make his

observations in the scrutiny proforma so that discrepancies are removed before the challan is approved by the Police Officer competent, and is put into court.

**7.3.Procedure For Scrutiny:** - The following points should be kept in mind by Law Officers/Public Prosecutors while scrutinizing the challans:

**7.3.1** All objections/deficiencies should be pointed out in one go and the observations must be precise. If the deficiencies in police challans are pointed out in piecemeal, unwarranted delay is caused.

**7.3.2** Wherever possible and necessary, the contents of a challan should be discussed with the Investigation Officer, so that unnecessary paper work is avoided. The Law Officers should also give legal guidance – particularly in cases involving important questions of law.

**7.3.3** If during the scrutiny it is found that certain crucial witnesses have not been examined, a clear observation in this regard should be made in the scrutiny memo. If the Investigation Officer is facing any genuine difficulty in recording the statements of some such witnesses, the challan can be scrutinized in its original or partially modified form (i.e. after recording the statements of one or more witnesses)

**7.3.4** Any repeated or deliberate omission by an Investigation Officer should be confidentially brought to the notice of the Supervisory Officer (Additional Superintendent of Police/Deputy Superintendent of Police/SDPO) and Superintendent of Police. Director of Prosecution should also be informed in serious cases.

**7.4.Scrutiny Registers:** -

**7.4.1** Delay in investigation or scrutiny of challans can result in an accused person being released on bail in view of the mandatory provisions of Section 167 and 468 CrPC. To keep track of challans, there will be, in respect of each Judicial Court, a scrutiny register maintained by the Prosecutor in the following format:-

Court of \_\_\_\_\_



Sr. No.	Date of submission of challan for scrutiny.	PS/FIR no. and date	Sections under which offence made out	Law Officer/Prosecutor	Name & designation of IO	Date on which challan returned with objections, if any & signature of police officer receiving.	Date on which the challan was brought by the police after removal of objections	Date on which the Challan was returned after final scrutiny/ signature of police officer receiving.	Verdict of the court with case no. and date	Whether appealed or not?
1	2	3	4	5	6	7	8	9	10	11

**7.4.2** In respect of Serious Offences, where initial scrutiny is done by the Law Officer of the SP office, a separate scrutiny register will be maintained by the Law Officer in the following format:-

District: -----

Sr. No.	Date of presentation of challans for scrutiny	Police Station & FIR No. & Date	Sections under which offence made out.	Name and designation of IO	Date on which challan returned after scrutiny	Observations involving major defects if any.	Verdict of the court with case No. and date.	Whether appeal recommended or not?
1	2	3	4	5	6	7	8	9

The scrutiny register of the Prosecutor will mention whether the challan was scrutinized by the Law Officer of the SP office and whether his observations have been complied with.

**7.4.3** It is expected that there will be similar registers maintained in the Police Stations to record the movement of the challan to the Prosecutor for scrutiny; and a monthly report will be made by the SHOs to the SPs indicating cases of delay.

**7.4.4** It shall be the endeavour of the Prosecutor to complete the scrutiny within a week. In cases of delay reported by the SHO to the SP, the Law officer of the SP office will after consulting the Prosecutor concerned advise the SP on the justification, if any, for the delay and shall make a report to the Director of Prosecution in case there is recurrent delay at the level of any Prosecutor.

**7.5.Naib-Court:** The Superintendent of Police shall provide a *Naib Court* in the rank of Constable or Head Constable for the purpose of

assistance of the Prosecutor attached with each Court. The Naib Court should be well educated (atleast 10+2) and should be selected in consultation with the District Attorney. He should not remain posted for more than five years as Naib Court, and in any case should not remain Naib Court at one station for more than three years. The Naib Court is the coordinator between police and prosecution at the cutting edge and shall;

- i)** Keep close liaison between the Prosecutor and Investigation agency and the Court Registry.
- ii)** Be the custodian of case files of criminal cases under trial.
- iii)** Be responsible for maintenance of the criminal cases register, police files and custody of the other record.
- iv)** Receive the summons/warrants and dispatch/forward them to the Police Station promptly for service.
- v)** Maintain a case diary and enter details of day-to-day proceedings and the decision of the case and intimate the same to the Police Station and Challan Incharge/SHO concerned and dealing Clerk of the office of District Attorney/Assistant District Attorney. He shall get case diary signed from the Public Prosecutor incharge of the case and the SHO. On his transfer he shall deposit the case diaries with the Public Prosecutor of the court who shall check that details of ongoing cases have been properly entered before giving the case diary to the new Naib Court.
- vi)** Ensure that in every decided case, the certified copy is applied for promptly and on receipt of complete certified copies of judgment and other documents, he shall arrange for supplying the photocopy of judgment etc. to the Superintendent of Police as per the instructions of the Department.

The case diary shall be maintained with one (or more) page for each case on the following proforma:

Case No. _____ FIR No. _____ dated _____ PS _____ Sections _____ Date of institution _____ Name of IO:- _____ Name of Challan Incharge: - _____						
Sr. No.	Date of hearing	Proceedings	Date of next hearing	Purpose	Initials of SHO	Initials of Prosecutor

Final decision \_\_\_\_\_ dated of decision \_\_\_\_\_  
Date of applying for copy of order \_\_\_\_\_  
Date of receipt of copy \_\_\_\_\_

Countersigned  
PP Incharge of the case

**7.6.Samanvay:** - Successful prosecution is effective presentation of the results of professional investigation. Coordination between the Investigating Agency and the Prosecution Agency is, therefore, crucial to successful management of the criminal justice system. Government of Himachal Pradesh vide notification No. Home (Prose)A(5)-1/05 dt. 25.6.2007 has issued guidelines regarding this coordination, or as the procedure is called, 'Samanvay', which are essentially as follows, and apply to all cases of 'serious crime':-

- “i) During investigation, the Investigation Officer (IO) should consult the Law Officer posted in the SP Office whenever any issue is likely to have serious legal implications and he is not clear about the procedure.*
- ii) The SP should, conversely, get the Law Officer in his office to peruse the Daily Diaries in all serious crime cases and advise him in case investigative procedures have been deficient.*
- iii) In all serious cases, before finalizing the challan for submission to Court, the IO should bring the papers for scrutiny of the Law Officer, who will record his observations in the Scrutiny Sheet provided for the purpose.*
- iv) After finalizing the challan, and before submitting it to the SDPO/DSP incharge for his approval, the IO/SHO will get the case papers checked from the DA/DDA concerned, from the prosecution point of view. While doing so the DA/DDA will also check that the observations of the Law Officer in the Scrutiny Sheet have been complied with.*

Samanvay mandates the following procedure in cases of serious crime:-

- i) In all serious cases, there shall be a **Challan Incharge** for the case till the final verdict in the Courts. The IO concerned will normally be the Challan Incharge and on his transfer out, the SHO will designate another IO of his Police Station as Challan Incharge and inform the Law Officer and DA/DDA concerned. It is however clarified that the responsibility and accountability of the SHO is in no way diluted by this administrative arrangement.*
- ii) The Challan Incharge should meet the Prosecutor at least a day*

*before the case comes up, to discuss the facts and strengths and weaknesses, and should prepare supplementary brief for the Prosecutor.*

- iii) The Challan Incharge should ensure service of summons/warrants on the witnesses as per the normal procedure and in case address has changed he should ensure service at the new address.*
- iv) The Challan Incharge should arrange for the complainant and the prosecution witnesses to meet the Prosecutor on the day of prosecution evidence, before the hearing commences, so that the Prosecutor recognizes the witness and can ask him for information on any point that may not be available on the record.*
- v) The Challan Incharge should ensure that the case property is produced and taken to Court well in time. If the case is adjourned due to non-production of case property, then the Naib Court shall send a ruqqa to SHO, who shall make an entry in Rapat-Roznamcha and inform the Supervisory Officer, alongwith the comments of the Challan Incharge.*
- vi) On the conclusion of each day's hearing, the Naib-Court shall enter the proceedings in brief in his case diary and show it to the SHO and the Prosecutor who shall initial each entry in token of his having perused the diary. At the end of the Prosecution evidence, the Challan Incharge shall make a full report to the SHO with copy to the Prosecutor which will be forwarded to the Supervisory Officer.*
- vii) In case at any hearing, there is a major surprise, due to an important prosecution witness turning hostile etc., the Challan Incharge shall on the same day consult with the Prosecutor as to how to remedy the situation and shall make a report to the Supervisory Officer through the SHO.*
- viii) When judgment is pronounced, the Prosecutor shall apply for a copy of the charge/accusation, Statements of all Prosecution and Defence Witnesses, Exhibits and Judgment and, in case appeal is to be prepared, forward the case alongwith grounds for appeal to the District Magistrate.”*

## **7.7. Pre-trial Preparation by the Prosecutors and Interaction with Witnesses:**

- 7.7.1** The Prosecutor should also ensure that the defects pointed out by him during the scrutiny have been removed by the police. In case the points raised by him while scrutinizing the challan have not been complied with by the Investigation Officer, he may send a

reference to the Superintendent of Police through the District Magistrate or District Attorney so that such lapses may not recur.

- 7.7.2** The concerned Prosecutor should also visit the spot of occurrence in serious crime cases, along with Investigation Officer/ *Challan Incharge* when it is essential to acquaint himself with the scene of occurrence etc.
- 7.7.3** The Prosecutor should prepare a brief note before the start of trial in the court in which he should mention the name of important witnesses and the facts to be deposed by them and the documents/case property to be exhibited during trial from the witnesses.
- 7.7.4** The Prosecutor should arrange with the Investigation Officer before the deposition starts, so that he can brief the Prosecutor personally to refresh his memory with regard to the various relevant documents, statements and other material. The Prosecutor should also seek the help of the Investigation Officer to collect all possible, additional information including post investigation developments.
- 7.7.5** The Prosecutor should arrange with the *Challan Incharge* so that the complainant is present during his discussions with the witnesses and can bring out facts and circumstances that may not have been appreciated in the normal course.
- 7.7.6** The Prosecutor should prepare in advance the arguments to be addressed at the time of framing of charge so that accused is not discharged for the offence. He must prepare the case well in advance and read the case diary and check the latest law on the points in issue.
- 7.7.7** The Prosecutor must, after going through the Police file of the case, prepare a list of questions to be put to a particular witness and he must try to extract the truth from a witness who has turned hostile by impeaching his character and/or credibility.

## **7.8. Trial Before the Court:**

- 7.8.1** *Language of the Courts:* State Government has notified the language of courts other than the High Court, within the State of Himachal Pradesh vide notification No. Home-B(A)2/-183-L dt. 10.4.2000 and in exercise of the powers conferred by section 272 of the Code of Criminal Procedure, 1973, the Government has determined that Hindi in the *Devnagri* script shall be the language of Courts other than the High Court, within the State of Himachal Pradesh.

**7.8.2 Proper Uniform:** Government has sanctioned a Robe Allowance of Rs. 5,000 every three years to all the Prosecutors in order to enable them to maintain the requisite dress code in Courts. Every Prosecutor/Government Pleader while conducting cases shall invariably appear before the Court of law in proper dress. The dress code prescribed for the purpose is: -

**For male Prosecutors**

- White Shirt
- Black Coat
- Neck Tie
- Black & White striped trousers

**For female Prosecutors**

- White Sari/Suit
- Black Coat

The District Attorney shall ensure that the Prosecutors under his control appear in the prescribed dress.

**7.8.3 Filing of Documents:** Where any document is filed before any court by the Prosecution, such document shall be included in the list of documents and the list shall be in the following form as prescribed by the State Government under section 294 CrPC vide notification No. Home-H(E)1-2/81 dt. 15.9.1981.

*“FORM OF LIST OF DOCUMENTS”*

*In the court of \_\_\_\_\_ District  
 \_\_\_\_\_ Case No. \_\_\_\_\_ of 19 \_\_\_\_\_  
 under section \_\_\_\_\_ Police Station  
 \_\_\_\_\_ versus \_\_\_\_\_  
 (Accused).*

*List of documents produced on behalf of  
 \_\_\_\_\_ on \_\_\_\_\_ 19 \_\_\_\_\_.*

<i>Sr.</i>	<i>Descrip</i>	<i>Action taken on document</i>	<i>Remarks</i>
------------	----------------	---------------------------------	----------------

No.	tion and date, if any of the document	If brought on record the exhibit mark put on the document	If rejected	If rejected date of return to party and signature of party or counsel to whom the document was returned.	If it remains in the record after decision of the case and is enclosed in an envelope, the date of enclosure in the envelope.
1	2	3	4	5	6

*Signature of party or counsel producing the list.”*

#### **7.8.4 Conduct of cases:-**

The prosecutors shall follow the instructions issued by the Directorate of Prosecution vide letter No. DPr-Ins/cases/2006-14086-98 dt. 8.12.2006 regarding conduct of criminal cases as under:

- “1. In order to bring best results in the case under trial, a sequence of witnesses may be got arranged by the Prosecutor which is best suited to the facts and circumstances of each case.
2. Public Prosecutor should not examine unnecessary witnesses or the witnesses who are of repetitive nature particularly in Sessions trial, but at the same time each important and necessary fact should be properly proved.
3. Prosecutors should give detailed reasons for giving up a witness so that there is no dispute at a later stage. In this connection, instructions already issued vide letter No. DPr-Ins/Cases/2006-9829-92 dt. 20.9.2006 may be implemented.
4. Prosecutors should also get calendar of evidence prepared from the Investigation Officer containing names and addresses of each witness along with brief statement of what is expected to be proved from each witness at the time of scrutiny of challan before the case is sent for trial.
5. It has come to notice that the weapon of offence which is taken into possession by the Police during investigation is sometimes not shown to the medical officer or his opinion is not obtained. The concerned Public Prosecutor should insist that the weapon of offence should be shown to the medical officer and in case it is not done at the stage of investigation on account of any reason the Public Prosecutor should show the weapon of offence to the Medical Officer during trial. “

#### **7.8.5 Procedure with regard to the witnesses:**

- (i) The Prosecutor as far as possible may bring on record the entire relevant evidence recorded in the statement of witnesses under section 161, 164 CrPC in the best interest of the case.
- (ii) All the material witnesses should be examined during the trial by the Prosecutor, and the ingredients of the offence and chain of evidence should be properly established.
- (iii) Proper examination of medical experts and other expert

witnesses are to be ensured. Expert reports should be proved in accordance with the law during trial.

- (iv) In case a prosecution witness gives answers adverse to the prosecution case, it shall be the duty of the Prosecutor to treat the witness as hostile with the permission of the court and cross-examine him as provided under section 145/162 Criminal Procedure Code, 1973
- (v) The Prosecutor shall take effective steps for the identification of the articles/case property and the accused.
- (vi) The Prosecutor should also inform the court of the order in which he wants to examine witnesses. This order of calling witnesses should be based on the nature/facts of the case and the impact of the testimony of the various witnesses.
- (vii) The Prosecutor should get the weapon of offence exhibited from the witnesses whenever it is a part of the case and should draw the attention of the eye-witnesses and/or expert witnesses to the weapon in order to link it to the commission of the crime or to its possession or ownership etc. of the accused or other person and may also request the court for re-examination whenever necessary in the interest of prosecution.
- (viii) The Prosecutor should ensure proper presentation of the forensic evidence collected by the police during the course of investigation and should ensure that it is properly appreciated by the court.
- (ix) The Prosecutor should make full use of the presence of the complainant (who is generally present during the trial) to give relevant information for the cross examination of the witnesses who turn hostile or of the defence witnesses.
- (x) The Prosecutor should move an application under section 311 CrPC whenever required for the additional evidence which is essential for a just and equitable decision of the case.
- (xi) The Prosecutor shall also seek opinion from Medical Officer regarding whether the injuries are likely to have been caused by the weapon being exhibited. In offences under section 302 of IPC, whether the injury is likely to have been the cause of death shall invariably be got elucidated from the Medical Officer.
- (xii) The Prosecutor while examining the Doctor conducting



medical examination or the post mortem of the victim, shall question him whether the bodily injury inflicted or intended to be inflicted is sufficient in the ordinary course of nature to cause death, which is an essential ingredient to bring the act of the accused under clause thirdly of section 300 Indian Penal Code. Since, on account of this material omission, the accused-appellant succeeds in pleading that the provisions of section 304 Part I or Part II of Indian Penal Code are attracted and the case is not covered by section 300 of the Indian Penal Code.

- (xiii) The Prosecutor shall carefully examine and keep in view the distinction between the provisions of sections 299 and 300 of Indian Penal Code while conducting a trial in a murder case so that the accused is not able to dilute the charge of murder.
- (xiv) In case the expert witnesses /material witnesses are not served, the Prosecutor should intimate the Challan Incharge in writing for effecting the service on the witnesses through special messenger.
- (xv) *Arguments:* Before the arguments, the Prosecutor will procure the entire evidence examined in the court and copies of exhibits, if not already available with him. He will prepare the case on facts as well as on law keeping in view the probable defences. The list of books to be cited by him also be prepared and kept on the police file.

#### **7.9.Prosecution Sanction-Examination of Sanctioning Authority as a Witness:**

The Prosecutor concerned shall follow the instructions contained in office letter No. DPr-Ins/2006-10077-153, 10160-200, 10211-251 dt. 27/28 September, 2006, for proving prosecution sanction. There is a requirement of obtaining prosecution sanction in respect of public servants under section 19 of Prevention of Corruption Act and under section 197 of Code of Criminal Procedure. The order of sanction should be a speaking one and well reasoned. It should be apparent from the sanction order that the appropriate authority had carefully applied its mind before passing the order. The order should be elaborate enough to describe the involvement and role of the public servant in the commission of the specific offence for which sanction is being granted. It should clearly include the provisions of law which have been violated by the offender and in what manner.

Many a times senior officers are being summoned to give evidence in respect of cases where they have accorded Prosecution Sanction. Such cases must be examined carefully by the Prosecutor and request to Court concerned to summon senior officers need not be made if their testimony can be dispensed with. If the appropriate authority passes a speaking order, normally there is no need of citing the authority as witness. It will suffice to examine an official of the office who is well conversant with the signature of the sanctioning authority. This has been decided by the Apex Court (AIR 1979 SC 677). The Hon'ble Supreme Court of India has held:

*“That an order of valid sanction can be proved by the Sanctioning Authority in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction; or (2) by adducing evidence aliunde to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it.”*

The Hon'ble Supreme Court, in its recent pronouncement in case titled State versus K. Narasimhachary (2006 Criminal Law Journal 518) has held:

*“That the order of sanction for prosecution of public servant was issued under S. 19 of Prevention of Corruption Act (1988). The Secretary to the State Government merely authenticated the said order of sanction which was issued in the name of Governor of the State. The order of sanction was, thus, issued by the State in discharge of its statutory functions in terms of S. 19 of the Act. The order of sanction was authenticated. The said order of sanction was an executive action of a State having been issued in the name of the Governor. It was authenticated in the manner specified in the Rules of the Executive Business. The authenticity of the said order has not been questioned. It was, therefore, a public document within the meaning of S. 74 of the Evidence Act. A public document can be proved in terms of Ss. 76 to 78 of the Evidence Act.”*

The Rules of Business of Government of HP provide that *“All the orders and other instruments shall be made and executed in the name of the Governor. Every such order or instrument shall be signed either by a Secretary, Joint Secretary, Under Secretary or such other officer as may be specifically empowered by the Governor, in that behalf and such signatures shall be deemed to be proper authentication of such order or instrument.”*

In view of the provisions of the Evidence Act, law laid down by the Apex Court and Rules of Business of Government of HP, the prosecution sanction

can be proved by the official who has custody of the relevant record, unless the presumption available under section 79 of the Evidence Act regarding genuineness of certified copies is likely to be challenged, or issues of application of mind etc. are likely to arise during the trial.

**7.9.1 Proposal for transfer:** If a Government servant is found involved in a serious offence and is posted at a place or in a position where he may misuse his official position to influence the investigation or the prosecution, in order to maintain confidence in the administration of justice, the Prosecutor in-charge of the case, immediately after the framing of charge, may recommend to the District Magistrate with supporting reasons that such official be transferred from his present place of posting so that he may not influence or allure or criminally intimidate the Prosecution witnesses during the trial.

**7.9.2 Action on conviction:** Whenever an accused is a Government official, as soon as the judgment is pronounced by the Ld. Trial Court convicting such an accused official, the Prosecutor shall communicate the information to the District Magistrate for onward transmission to the Administrative Department concerned forthwith for further departmental action to be taken against the convicted official.

#### **7.10. Monthly Reports:**

For the proper management, monitoring, follow-up and analysis of prosecuted cases, diaries of civil/criminal cases etc. shall be maintained on the proforma prescribed in the *Appendix* and monthly extracts submitted to the Directorate of Prosecution on or before 10<sup>th</sup> of the next month. For this purpose, each APP/Additional Public Prosecutor/Public Prosecutor will submit the corresponding statement in respect of his work by 5<sup>th</sup> of the month to the District Attorney who shall cause the statement to be compiled in respect of all the Prosecutors in the District and send the consolidated monthly statement to the Director of Prosecution and Joint Director of Prosecution NZ in respect of the districts in his charge alongwith his comments. (*See Appendix 2*)

#### **7.11. Prosecution for Perjury:**

##### **7.11.1 Official Witnesses:**

Sometimes witnesses who are government servants, including police officials, resile from their previous statement recorded under 161 CrPC and give hostile deposition in the courts, which is contrary to the prosecution case. Sometimes government servants contrary to the office record, intentionally give false evidence in the court of law. Then there are cases where FIR is registered at the instance of a Government servant, or where he creates mischief by, firstly, deposing in favour of the prosecution in examination-in-chief and then shatters the same in cross-examination. In such circumstances the Prosecutor concerned shall take

necessary steps after seeking prior approval from the District Magistrate, for initiating proceedings to prosecute for perjury in accordance with the law.

*Action against a witness who departs from his original stand:* If a Government servant who had made a statement in the course of investigation changes his stand in his evidence during the trial, and if such action on his part is without justification or with the object of favouring the accused party, his conduct should be communicated by the Prosecutor in-charge of the case alongwith report and photocopies of such statements to the District Magistrate for further action.

*Displeasure of Government:* If during the trial a Government servant cited as prosecution witness is found to have committed an irregularity or lapse in deposing contrary to the office record or the factual position and the same is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it, the Prosecutor in-charge of the case shall communicate the matter enclosing photocopy of the statement of such Government servant appearing as prosecution witness alongwith his comments to the Administrative Department through District Magistrate for initiating departmental action.

**7.11.2** *Non-Official Witnesses:* There may also be cases where a non-official witness while appearing as prosecution witness intentionally gives false evidence in the court of law under the similar circumstances as mentioned in para supra. In such cases, the Prosecutor should first ensure whether the investigative record is sufficiently strong to be able to bring home a charge of perjury. If so the Prosecutor shall take the steps as stated in said para after seeking prior approval of District Magistrate, for initiating proceedings for perjury in accordance with law. In case the investigative record is inadequate he shall bring it to the notice of the District Attorney for remedial steps, either in terms of ensuring reliability of the witness or relying on scientific/forensic evidence to the extent possible.

**7.11.3** *Procedure for prosecution for perjury:* The Prosecutor in charge of the case shall take steps as per the instructions issued by Directorate of Prosecution vide letter No. DPr-Ins./cases/2006-11833-45 dt. 27.11.2006 which require the Public Prosecutor/Law Officer to move an application after approval of District Magistrate, in the concerned Court so that the requisite action is initiated by the Court in accordance with the provisions of section 195 Code of Criminal Procedure and the applicable offence mentioned in that section.

## **7.12. Withdrawal From Prosecution:**

**7.12.1** As provided in section 321 CrPC, the Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor incharge of the case, may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal:-

*“(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;*

*“(b) If it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:*

*Provided that when such offence –*

*(i) was against any law relating to a matter to which the executive power of the Union extends, or*

*(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or*

*(iii) Involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or*

*(iv) Was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor In-charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the court shall, before according consent, direct the Prosecution to produce before it the permission granted by the Central Government to withdraw from the prosecution.”*

**7.12.2** Once a case has been put in the court, it should normally be allowed to take its usual course. A proposal for withdrawal of prosecution may, however, be initiated on legal considerations either by the Prosecutor or the District Magistrate. In all such cases, the District Magistrate shall forward his recommendations to the Home Department alongwith the comments of the Prosecutor incharge of the case. The Home Department shall consult the Administrative Department concerned, by which Prosecution Sanction, if any, was accorded and the Law Department and will decide further course of action and issue suitable advice to the Prosecutor. The Prosecutor shall apply his

mind to the advice and reach a considered decision.

**7.12.3** A request for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained for obvious reasons, barring very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the whole aspect of the case. The District Magistrate/Administrative Department concerned should consult the Home Department in such cases.

**7.12.4** The paramount consideration for withdrawal should be the public interest and the interest of administration of justice. The Prosecutor has a sacrosanct duty to apply his mind to the circumstances of the case, and should not act in a mechanical or routine manner. The gravity of the offence, public interest, its implication for future law & order management and for the reputation of the criminal justice system, are to be kept as paramount considerations.

**7.12.5** It is clarified, that section 321 CrPC is a statutory power vested in the Prosecutor, and he has to apply his own mind while deciding whether or not to withdraw a case from Prosecution. Generally, withdrawal from Prosecution is resorted to when the case is so weak that it would be a waste of time and resources of the criminal justice system if the trial process continues. However, since the challan is filed in Court after it has been scrutinized by a Law Officer or the Prosecutor, it would generally require discovery of some new facts or a fatal weakening of the Prosecution case during the trial itself to necessitate an application for withdrawal and the Court while deciding on the matter may well seek to know the reasons why an application is made after the trial has commenced. The Prosecutor shall send a copy of the order to the District Magistrate and Director of Prosecution within a fortnight from the announcement of the order.

### **7.13. Compounding of offences:**

**7.13.1** The Prosecutor shall send a photocopy of judgment/orders in cases which are compounded to the District Magistrate and Director of Prosecution within fortnight from the announcement of the judgment/order.

**7.13.2** The Prosecutor shall compound the cases only as provided under section 320 CrPC with or without the permission of the court. Extra care shall be taken during compounding of cases

permissible under law regarding identification of the complainant and the accused so that impersonation of the parties is avoided.

**7.13.3** The Prosecutor shall constantly endeavour to compound the cases under Excise Act as per the instructions already issued vide office letter No. DPr-6365-76 dt. 23.6.2007, reproduced as under:

- (i) *“Consequent upon the submission of challan under Excise Act by SHO/IO, the concerned Prosecutor while scrutinizing the challan shall ensure whether the case falls within the purview of amended section 61-A. Secondly, the SHO/IO shall be directed to explore the possibility of compounding the excise cases before launching prosecution.*
- (ii) *SHO shall intimate the accused in such excise offences regarding his legal right to compound the offence without facing trial even during the investigation of the case and also after institution of the prosecution before the trial court.*
- (iii) *Where the accused persons volunteer to compound the offences during the investigation or prior to the launching of prosecution then SHO concerned shall communicate to the Asstt. Excise & Taxation Commissioner of the area having jurisdiction regarding such intention of the accused to compound the offence, if the offence relates to import/export/transport or possession involving quantity of lagan upto 60 litres or upto 18 bulk litres of liquor as the case may be.*
- (iv) *SHO shall make sustained efforts to explore the possibility of such composition prior to the launching of prosecution in such excise cases, and when cases in reasonable numbers are identified then Asstt. Excise & Taxation Commissioner concerned shall hold his camp at the time and place to be communicated in advance to the SHO and shall allow composition as per amended provision accordingly.*
- (v) *In other pending excise cases before the Trial court, the Prosecutor concerned shall make every endeavour through SHO/I.O to apprise the accused about his legal right to compound such excise offence in which he is facing trial, before the court of Judicial Magistrate Ist Class. Efforts can also be made to get the cases compounded through Lok Adalats.”*
  - i.

**7.14. Special Judge for CBI cases:** The Government of Himachal Pradesh vide notification No. Home-II(B)15-6/79 dt. 20.11.1999 has notified a Special Judge for the conduct of CBI cases as under:

*“In exercise of the powers vested in him under sub-section (1) section 3 of the Prevention of Corruption Act, 1988 (Act*

*No. 49 of 1988), the Governor of Himachal Pradesh, is pleased to appoint the District and Sessions Judge, Shimla as Special Judge for conducting trial of cases investigated by CBI for the entire State of Himachal Pradesh (as in the case of IPC Offences) under the Prevention of Corruption Act, 1988.*

*The Governor of Himachal Pradesh is further pleased to order that all the cases pending in various divisions be transferred to the Special Judge, Shimla”.*

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## CHAPTER VIII

### PROCEDURE IN APPEALS/REVISIONS AGAINST ACQUITTAL/ INADEQUACY OF SENTENCE ETC.

**8.1** On the receipt of the copy of the judgment etc. the Prosecutor concerned shall examine the feasibility of filing appeal/revision against discharge, acquittal or inadequacy of sentence as the case may be, without any delay and shall follow the Government instructions issued vide letter no. Home-E(5)-336/2004, dated 15.11.2006 and 24.1.2007 which are as under : -

*“(i) Under Section 377 (1) CrPC: -*

*The State Government may direct the Public Prosecutor to present an appeal where the appeal against the sentence on the ground of its inadequacy is to be filed in the High Court or the Sessions Court as the case may be.*

*(ii) Under Section 378(1)(b) CrPC:-*

*The State Government may direct the Public Prosecutor to present an appeal where the appeal is to be presented to the High Court from*

*(a) an original order of acquittal passed by a Magistrate other than in respect of a cognizable and non-bailable offence, or*

*(b) an original or appellate order/judgment of acquittal passed by a Court of Sessions or an order of acquittal passed by the Court of Sessions in revision. The phrase "appellate order of an acquittal passed by Court of Session" means an order of acquittal recorded by the Court of Session in an appeal against an order of conviction and not a judgement wherein it upholds the order of acquittal already recorded by the Magistrate (as per the judgement dated 22-8-2006 passed by the Hon'ble High court, HP in Cr.M.P. Nos. 443, 445, 446, 447, 508, 509 and 512 of 2006).*

*For the aforesaid cases, procedure given in para 8.2 shall be followed by the District Magistrate/ Public Prosecutor.*

*(iii) Under section 378 (1) (a) CrPC:- Final decision to file appeal/ revision or close the case shall be taken by the District Magistrate concerned, without referring the same to the State Government where the appeal is to be presented to the court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence.*

*It is further clarified that the appeal against the order of the Magistrate is required to be filed in the court of session where the accused is charged in the same case of having committed both cognizable and non-bailable offence(s) as well as offences which may be non-cognizable or bailable or where there are more than one accused and where some of the accused are charged of having committed cognizable and non-bailable offence(s) and some accused may be charged with having committed offences which are either non-cognizable, as per the judgment dt. 22.8.2006 passed by the Hon'ble High Court, HP in CrMP Nos. 443, 445, 446, 447, 508, 509 and 512 of 2006.*

*For the aforesaid cases the procedure given in para 8.3 shall be*

*followed by the District Magistrate / Public Prosecutor.*

## **8.2 Procedure in cases where appeals are filed with Government approval u/s 377(1) or 378(1) (b) Cr.P.C.:-**

The District Attorney shall, on receipt of any proposal/opinion, from any subordinate prosecutor for filing appeal/revision/enhancement application etc., examine and submit the same to the District Magistrate for seeking directions or onward transmission to the Home Department for filing appeal/revision etc. as per directions issued by the Government in Appendix I to the Government letter dt. 15.11.2006 reproduced below:

- “(i) The Office of the Public Prosecutor/Additional Public Prosecutor/Assistant Public Prosecutor shall intimate through Naib Court to Superintendent of Police/DSP of the District regarding acquittal/conviction in a particular decided case immediately so that the Superintendent of the Police or Deputy SP is in position to depute an official for procuring copy of judgment for examination and analysis.*
- (ii) Every proposal for filing appeal will be prepared in attached proforma given below, by the APP/ Public Prosecutor and forwarded to the Himachal Pradesh Government by the District Magistrate of the District.*
- (iii) The Proforma will be filled up in 5 copies, one copy will be retained by the Public Prosecutor, one copy will be forwarded to the SP for analysis/action at his end and three copies will be submitted to Home Department through District Magistrate.*
- (iv) Remedial action in such cases shall mainly be the responsibility of the concerned SP/ Public Prosecutor, as the case may be. These cases and remedial action in order to prevent a repeat of a similar investigative/prosecution failure will be specifically discussed in monthly/quarterly crime meetings by the SPs and DIGs. Copy of minutes of the aforesaid meetings will be forwarded to the Home Department and DGP. These cases will also be discussed in the Police-Prosecution meeting taken by the DMs, minutes of which will also be sent to the Home Department as per existent instructions.*
- (v) The Home Department while conveying the approval to appeal or otherwise to the District Magistrate shall fill up and return part-II of the proforma given below and shall simultaneously endorse the second copy to the DGP/Director of Prosecution, as the case may be, based upon the types of lapses noticed. Third copy of the proforma will be filed in district wise folders of Home Department..*
- (vi) The DM must hold monthly Police-Prosecution meetings. In addition the Director of Prosecution/Secretary (Home) will hold quarterly District level meetings with DM, SP and Public*

*Prosecutor of the district which will inter-alia discuss these cases in greater depth with special reference to Part II of Annexure –I.*

- (vii) *Based on the feedback from Director General of Police and Director of Prosecution, Policy and systemic issues will be raised in the State Security Advisory Board or State Forensic Science Development Board as the case may be.”*

Proforma.

PROPOSAL FOR CRIMINAL APPEAL IN HIGH COURT

PART –I PROPOSAL

1. Name of parties \_\_\_\_\_
2. FIR No. \_\_\_\_\_ Date \_\_\_\_\_
3. PS \_\_\_\_\_ State \_\_\_\_\_
4. Case No. \_\_\_\_\_ Court \_\_\_\_\_
5. Sections & Acts \_\_\_\_\_
6. Facts of crime (in brief) \_\_\_\_\_
7. Name of I.O.(s) with period \_\_\_\_\_
8. (a) Challan put up on (date) \_\_\_\_\_  
(b) Case decided on (date) \_\_\_\_\_
9. Evidence used in trial \_\_\_\_\_
  - i) Direct \_\_\_\_\_
  - ii) Circumstantial \_\_\_\_\_
  - iii) Medical/Forensic \_\_\_\_\_
10. final Verdict \_\_\_\_\_
11. Reasons given in judgement (in brief)  
\_\_\_\_\_
12. Whether recommended for appeal \_\_\_\_\_
13. Grounds of appeal (Attach sheet) \_\_\_\_\_
14. Whether any investigative/prosecution deficiency mentioned in judgement/order (mention in brief) \_\_\_\_\_
15. Remedial action being taken (on point 14)  
\_\_\_\_\_

Public Prosecutor/APP Distt.

Countersigned/recommended

District Magistrate.

PART II DECISION

1. Case No. \_\_\_\_\_ court \_\_\_\_\_
2. Decision of Govt. to file/not file appeal  
\_\_\_\_\_
3. Prosecution shortcoming requiring to be addressed \_\_\_\_\_
4. Investigation shortcoming requiring to be addressed \_\_\_\_\_

Under/Deputy/Joint  
Secretary (Home) to the Govt.  
of H.P. Shimla-2

### **8.3 Procedure in cases where appeals are filed with approval of District Magistrate under section 378 (1)(a):-**

The Prosecutor shall examine the feasibility of filing appeal in every case ending in acquittal and shall follow the procedure given below:

- “(i) The office of the Public Prosecutor/Additional Public Prosecutor/Assistant Public Prosecutor shall intimate through Naib Court to Superintendent of Police/DSP of the District regarding acquittal/conviction in a particular decided case immediately so that the Superintendent of the Police or Deputy SP is in position to depute an official for procuring copy of judgment for examination and analysis.*
- (ii) Every proposal for filing appeal or in the court of Session will be prepared in attached proforma (Annexure I) by the APP/ Public Prosecutor and the case file will be submitted to the concerned DM for his final decision.*
- (ii) The Proforma will be filled up in 3 copies, one copy will be retained by the APP/ Public Prosecutor, one copy will be forwarded to the SP for analysis/action at his end and one will be submitted alongwith case file to the concerned District Magistrate.*
- (iv) Remedial action in such cases shall mainly be the responsibility of the concerned APP/ Public Prosecutor, as the case may be. These cases and remedial action in order to prevent a repeat of a similar investigative/prosecution failure will be specifically discussed in monthly/quarterly crime meetings by the SPs and DIGs. Copy of minutes of the aforesaid meetings will be forwarded to the Home Department and DGP. These cases will also be discussed in the Police-Prosecution meeting taken by the DMs, minutes of which also will be sent to the Home Department as per existent instructions.*
- (v) The DM while conveying the approval to appeal or otherwise to the APP/ Public Prosecutor shall fill up and return part-II of the proforma (Annexure-I) accompanying this letter and shall simultaneously endorse the second copy of the proforma to the DGP/Director of Prosecution, as the case may be, based upon the types of lapses noticed. Third copy of the proforma will be filed in district folders maintained by the DM for the quarterly District level meetings.*
- (vi) The DM must hold monthly Police-Prosecution meetings. In addition the Prosecution/Secretary (Home) will hold quarterly District level meetings with DM, SP and Public Prosecutor of the district which will inter-alia discuss these cases with special reference to Part II of*

*Annexure –I for suggesting improvements for the future guidance of the prosecution and investigation wings of Home Department*

Proforma

PROPOSAL FOR CRIMINAL APPEAL IN SESSIONS COURT

PART –I PROPOSAL

1. Name of parties \_\_\_\_\_
2. FIR No. \_\_\_\_\_ Date \_\_\_\_\_
3. PS \_\_\_\_\_ District \_\_\_\_\_
4. Case No. \_\_\_\_\_ Court \_\_\_\_\_
5. Sections & Acts \_\_\_\_\_
6. Facts \_\_\_\_\_ of \_\_\_\_\_ crime \_\_\_\_\_ (in brief) \_\_\_\_\_
7. Name of I.O.(s) with period \_\_\_\_\_
8. (a) Challan put up on (date) \_\_\_\_\_  
(b) Case decided on (date) \_\_\_\_\_
9. Evidence used in trial \_\_\_\_\_
  - i) Direct \_\_\_\_\_
  - ii) Circumstantial \_\_\_\_\_
  - iii) Medical/Forensic \_\_\_\_\_
10. Final Verdict \_\_\_\_\_
11. Reasons given in judgement (in brief) \_\_\_\_\_
12. Whether recommended for appeal \_\_\_\_\_
13. Grounds of appeal (Attach sheet) \_\_\_\_\_
14. Whether any investigative/prosecution deficiency mentioned in judgement/order (mention in brief) \_\_\_\_\_

CONCERNED APP

Countersigned/recommended  
P.P. District

PART - II DECISION OF DISTRICT MAGISTRATE

1. Case No. \_\_\_\_\_ court \_\_\_\_\_
2. Decision to file/not file appeal \_\_\_\_\_
3. Prosecution shortcoming requiring to be addressed \_\_\_\_\_
4. Investigation shortcoming requiring to be addressed \_\_\_\_\_

District Magistrate

**8.4** In all criminal cases, complete record of the cases viz. Police file, Statements of Prosecution/defence witnesses and statement of the cases recorded under section 313 CRPC and copies of all exhibits be sent alongwith proposal of appeal by the Prosecutor.

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## **CHAPTER IX**

### **ACTION IN FAILED CASES**

#### **9.1 Acquittal report in failed criminal cases:**

- 9.1.1 Where on examination of the judgment of acquittal passed by the court, an appeal is not found feasible by the Assistant Public Prosecutor/Public Prosecutor on account of defective investigation or hostile deposition by the Government Officer/official who appeared as a Prosecution witness or some failure on part of the Prosecution or any other reason, the Prosecutor shall prepare a detailed acquittal report proposing action against the erring officers/officials and submit the same to the District Magistrate through the District Attorney.
- 9.1.2 A copy of such report shall also be endorsed to the Director of Prosecution by the District Attorney who may, and in case of serious crime shall, cause it to be examined independently for any possible prosecution failure.
- 9.1.3 In case the acquittal is on account of legal interpretation based upon divergent opinion given by different Courts, a special reference shall be made to the Director of Prosecution.
- 9.1.4 In case the acquittal is on account of a legal proposition settled by the Apex Court, then, the same procedure as in para above shall be followed and the Director of Prosecution shall forward the same with his proposal to the Home Department.
- 9.1.5 Where the Trial Court while deciding the case attributes failure of the case to negligence on part of any official, or passes any adverse remarks against an official prosecution witness, the acquittal report shall contain a specific reference to this effect.
- 9.1.6 While examining the judgment of acquittal, the Prosecutor shall form his independent opinion with supporting material and highlight the nature of contradictions/infirmities and its impact on the outcome of the prosecution. Provisions of section 167 of the Indian Evidence Act shall also be taken into consideration while processing such reports.

#### **9.2 Further action in cases of failure: -**

In respect of cases covered by Section 378(1)(a), i.e. acquittal by a Magistrate in respect of a cognizable non-bailable offence, the District Magistrate on the basis of the report of the Public Prosecutor shall take up the matter with the Superintendent of Police in case the acquittal is

the result of defective investigation, and with the Head of the Department concerned in case failure is attributable to any official of the Department.

In respect of matters which are within the province of the State Government, (in terms of decision making level to appeal or not) the Director of Prosecution, on the basis of the report of the Public Prosecutor (endorsed by the District Attorney) shall analyze the reasons for the failure and submit a report to Government in the Home Department in each case suggesting the action to be taken to prevent recurrence of such failures.

### **9.3 Civil cases:**

9.3.1 Where a civil case is decided against the State of Himachal Pradesh and on examination of the judgment/decreed passed by the Civil court, an appeal is not found feasible by the Govt. Pleader concerned on account of wrong facts incorporated in the written statement/reply or any revenue record or hostile deposition by the Government officer/official while appearing as witness in any civil matter, the Government Pleader shall prepare a detailed report proposing action against the erring officers/officials and submit the same to the Administrative Department concerned through the District Collector.

9.3.2 In all cases decreed against the State of H.P. in which huge Govt. property is the subject matter of the litigation (whether decreed on account of wrong facts/record submitted by the subordinate staff responsible for furnishing parawise comments or otherwise), a special reference shall be made to the District Collector with a copy to the Director of Prosecution. The District Collector shall, without delay, cause the matter to be brought to the special notice of the Secretary of the Administrative Department concerned.

### **9.4 Revenue Cases:**

A process similar to para 9.3 shall be followed in all the revenue cases which are decided against the State of H.P. by any revenue Courts.

### **9.5 Reference Cases:**

Whenever in any reference petition, the amount of reference is enhanced on account of any negligence attributed in the award the Govt. Pleader shall follow the same process as laid down in para 9.3. above.

**9.6 MACT cases:**

Whenever in any petition filed under the provision of Motor Vehicle Act, award is passed against State of H.P. or its any public office on account of any negligence attributed in the award the Government Pleader shall follow the same process as laid down in sub-head 9.3.

**9.7 Other cases.-**

In all other cases not covered under para 9.1 to 9.6, in which the interest of the State of Himachal Pradesh is directly or indirectly involved, the Law Officer shall bring the matter to the notice of District Attorney in case of an adverse decision and the latter shall communicate the matter with his comments to the District Collector/District Magistrate as the case may be.

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## CHAPTER X

### PROSECUTION OF SERIOUS OFFENCES

**10.1** The Indian Penal Code or Code of Criminal Procedure does not define 'serious offence' as such. However, offences triable by Court of Sessions or a Special Judge can generally be termed as 'Serious Offences'. The Himachal Pradesh Police Act, 2007, in section 78, states that "*there shall be a Criminal Investigation Unit (CIU) in every Police Station for the investigation of serious offences as may be specified by the Director-General of Police which shall include murder, kidnapping, sexual and unnatural offences, dacoity and dowry related offences.*"

**10.2** Prosecutors conducting trials of such cases shall take all the steps necessary for effective presentation and follow-up action as mentioned in Chapter-VI.

**10.3** Investigation of serious offences is subject to concurrent advice of the Law Officer of the office of Superintendent of Police. It is expected that the investigation of such offences is thoroughly professional and legally sustainable. The Prosecutor conducting the case must check the challan thoroughly to ensure that the investigation has adequately dealt with all the points made in the scrutiny memo of the Law Officer.

**10.4** The Prosecutor must prepare for the trial of serious cases with due care with respect to the points mentioned in the earlier Chapter, in particular:

- List and (order of presentation) of witnesses for examination in the Court.
- Refreshing memory of witnesses (from the record) before deposition.
- Associating the Challan In-charge and the complainant during the entire trial process.
- Completing the chain of events through direct and circumstantial evidence

Where necessary, the Prosecutor may visit the scene of the crime in order to understand the layout of the area for the purpose of better cross-examining witnesses.

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## CHAPTER XI

### WITNESS PROTECTION

#### 11.1 Protection to witnesses:

Whenever it comes to the notice of a Prosecutor incharge of a case that a prosecution witness has received a direct or indirect threat or inducement from the accused etc., he shall forthwith forward a request to the Superintendent of Police of District for providing adequate protection to the witness and take necessary steps for cancellation of the bail if the accused is already out on bail, and oppose application for bail in case it comes up for consideration of the Court.

**11.2** In case a witness makes a request that his/her identity be kept confidential, adequate measures should be taken to keep the address and identity of the said witness confidential and proper protection is required to be given to the witness.

**11.3** *Identity of the victim – In-camera Proceedings:* Relevant provisions as contained under Section 327 of the Code of Criminal Procedure are as under:

*“327. Court to be open. – [(1)] The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:*

*Provided that the presiding Judge or Magistrate may, if he things fit, order at any stage, or any particular person, shall not have access to, or be or remain in, the room or building used by the court.*

*[(2)] Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code (45 of 1860) shall be conducted in camera:*

*Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.*

*(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or public any matter in relation to any such proceedings, except with the previous permission of the Court.]”*

**11.4** It is the duty of the Investigation Officer and the Challan incharge to

inform the witness about the witness protection programme of the State Government. The Superintendent/Deputy Superintendent of Police shall take into account the nature of security risk which the witness apprehends from the accused while granting permission to protect the witness. The Police shall take effective steps for encouragement of the witness protection so that witnesses may depose fearlessly in the courts, reducing the effort required in investigation.

**11.5** The Himachal Pradesh Police Department has prepared a witness protection SOP, which is reproduced below:

*"Dispensing speedy criminal justice is the obligation of the State. Honest and independent public witnesses play the most important role in the criminal justice delivery system. They also play a crucial role during investigations, searches, seizures and trials for bringing out the truth. Many eye-witnesses display exemplary courage in helping victims, police and courts to come to just decision. However, many a times, honest witnesses desert the criminal justice system because of unnecessary harassment during police investigations and court trials. It is imperative for the police to take care of victims and witnesses and provide security cover to them where necessary. During Punjab terrorism, even the father could not dare to stand in the witness-box despite the fact that his son was murdered in front of his own eyes. In fact, the criminal justice system needs the witnesses more than they need the system. Victims and witnesses are sometimes not even provided a proper place to sit in police stations and courts. Some times they and their families are threatened by the accused and further victimized by the Police and legal system by repeated summons. So the need for their care and protection.*

2. Attention is invited to the following Government instructions/Police Rules and references relevant to the subject.

2.1 Standing order No. 1 of 2007 – Maitri Yojna-Scheme No. 4

...9.1 Maitri Yojna (Victim and witness care scheme): Under this scheme care and protection of the victims and witnesses will be ensured by devising suitable strategies and mechanisms. There is need to institutionalize the system keeping in view the need to enhance the conviction rate and generate more faith/respect for the criminal justice system in the minds of the general public and the

*Community, especially the poor and weaker sections of the Society.*

*...24 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and rules framed thereunder:*

***Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act:***

*Specific responsibility of the State Government: - The State Government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocity. It shall review at least twice in a calendar year, in the month of January and July the performance of the Special Public Prosecutor specified or appointed under section 15 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, various reports received, investigation made and preventive steps taken by the District Magistrate, Sub-divisional Magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers.*

*2.5 HP High Court Shimla notification No. HHC/Rules/R&D/MON-95-24510-23 dt. 21<sup>st</sup> Nov. 2005, HP High Court Shimla Hon'ble High Court.10(68)81-15745 dt. 23.7.2005.*

*2.6 Govt. of HP Finance Deptt. Office Memorandum No. Fin(C)-B(7)-14/98 dt. 13.7.2005 regarding payment of traveling allowances/daily allowance etc. to State Govt. Employees in HP*

*.3. Objectives of the program :*

- To sensitize the police offices to deal with the victims and witnesses with utmost respect, care and compassion*
- To provide immediate assistance, help, protection and guidance to the victims and witnesses.*
- To provide support, counseling and security to them*
- To provide traveling expenses/daily allowance to victims and witnesses whenever they are called to participate in investigation/trial*

*4. Action to be taken*

4.1 *Police shall examine the victims and witnesses preferably at the spot or at their places of stay/work*

4.2 *No male person below the age of 15 years and no woman shall be summoned to police station/post for recording their statements.*

4.3 *Aged, handicapped and ailing persons should also not be summoned to the police station of recording their statements.*

4.4 *The Investigation Officers, SHOs and SDPOs should identify the safety concerns of the victims and witnesses and their dependants family members in relation to the accused persons and take precautionary/preventive measures such as imposition of strict bail conditions/bound-down with heavy securities or provide immediate police security cover.*

4.5 *Beat patrolling police officers/active group of community policing and other police offices visiting area of residence of victims/witnesses should establish contact to know their welfare, security and concerns.*

4.6 *Victims/witnesses should be encouraged to contact toll free 100 phone number and phone numbers of "Police Sahayata Kaksh" /Police Stations/SDPOs/SP/DM etc. should be made available to them for speedy communication in case of need.*

4.7 *Every victim and witness should be paid 'to and fro' actual travel fare from place of stay/work to the place of investigation and daily expenses for the days he visited the Investigation Officer or for visiting the SHO/SDPO/SP/Court etc.*

4.8 *Every Woman witness or her dependant, a person above sixty years and a person having 40 percent or more disability is entitled to be accompanied by an attendant of choice, who shall also be paid traveling and daily expenses for the days they visit the IOs, SHOs, hospitals etc.*

4.9 *The SHOs shall intensify need based police patrolling in affected areas as a 'confidence building measures' and take effective and necessary steps to provide protection to the victims and witnesses.*

4.10 *The IOs and SHOs shall educate the victims and witnesses regarding their rights and the provisions of legal assistance, crisis support, counseling, advocacy and compensation/relief measures, immediately on the registration of the case and shall also help them in preferring such claims and follow up.*

4.11 *The Police shall keep informed the*

*victims/informants/complainants of the latest position of their cases periodically till these are finally decided in the courts (after appeals). They shall maintain proper records of such communications particularly of details of evidence collected and witnesses cited, filing of police final report in courts, charge-sheeting, police/judicial custody of accused and bails (their detention and release status in Police/Judicial custody) prosecution and defence stages and final orders etc.*

*4.12 The Prosecutors and Naib Courts posted with courts shall work as coordinators at the trial stage of cases of liaison work between police and Prosecution providing guidance, help and support to the victims/witnesses during trials. They shall also orient these victims/PWs to the 'Criminal Justice System' and helping arrange accommodation and transportation, when necessary, and shall ensure re-imburement of their traveling and maintenance for joining investigation/trial.*

*4.13 The MHCs/MCs/IOs and Naib courts shall ensure earliest possible return of case properties belonging to the victims/witnesses from police/judicial malkhanas.*

*4.14 They shall also provide information of Government organisations and Departments NGOs and other people of the area, who are helping, providing counseling, treatment and services to the crime victims.*

*4.15 There shall be proper 'Reception and Reporting Rooms' for visitors including victims and witnesses at all police stations in order to improve the service delivery. There is also a need of victims/witnesses rooms in the office/court complexes with toilet facilities because most of the PWs are to stay in PSs and courts for investigation and trial for longer periods and they feel humiliated and harassed, while unnecessarily facing the accused/offenders and their associates in the corridors of police court complexes.*

*4.16 The Police Officers shall immediately provide legible copies of FIRs/GD Reports/seizure memos/searches/statements etc. to the informants/victims/PWs free of cost under proper receipt.*

## *5. Responsibility of reader branch and Law Officer to SP*

*In order to implement this program and provide help/support to the victims and witnesses, the Law Officer and reader to the District SP will work under the direction, guidance and supervision of the Superintendent of Police of the District. They will regularly call*

*on the District Attorney and the other prosecutors in the District and get latest information from them about the progress of the criminal cases in the court. They will also regularly call on all the supervisory officers of the District and take guidance and instructions from them in respect of providing help and support to the witnesses and victims of the criminal cases. They will keep record of the victims and witnesses of the different cases in a register to be maintained in the Reader Branch."*

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## CHAPTER XII

### FORENSICS

#### 12.1. Expert Evidence:

12.1.1. Since offenders often use modern methods for committing various crimes, it has become imperative for the investigating/prosecution agency to arm itself with the latest techniques and to acquaint itself about the modus-operandi being adopted by the offenders. The importance of forensic science is self-explanatory and needs to be extensively used for detecting crimes, linking the offender to the crime and providing the evidence necessary for conviction in the court. Evidence Act, section 45 contains provisions regarding relevancy of opinions of experts and provisions contained under section 292 and 293 define the classes of experts and their reports which are admissible in the court of law without calling the experts. Sections 292 and 293 of the Code of Criminal Procedure are quoted hereunder:

*“292. Evidence of officers of the Mint.- (1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint (officer of any Mint of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Documents, as the case may be,) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.*

*(2) The court may, if it thinks fit, summon and examine any such officer as to the subject-matter of this report:*

*Provided that no such officer shall be summoned to produce any records on which the report is based.*

*(3) Without prejudice to the provisions of section 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) no such officer shall, (except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents, Organization or of the State Examiner of*



Questions Documents Organization, as the case may be,) or

(a) to give any evidence derived from any unpublished official records on which the report is based; or  
to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

**293. Reports of certain Government scientific experts:** (1) Any document purporting to be a report under the hand of a Government Scientific Expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceedings under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely: -

(a) any Chemical Examiner or Assistant Chemical Examiner to Government

(b) the Chief Controller of Explosives;

© the Director of the Finger Print Bureau;

(d) The Director, Haffkeine Institute, Bombay;

(e) the Director (Deputy Director or Assistant director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

[(g) any other Government Scientific Expert specified by notification by the Central Government for this purpose.]”

## **12.2. Link Evidence:**

12.2.1. Forensic and medical evidence is crucial in providing impartial and reliable evidence in Courts. Such evidence is particularly useful in providing links which cannot be provided by oral evidence, either because of non-availability or lack of reliability. Law Officers and Prosecutors must therefore do

everything possible to ensure that clinching forensic and medical evidence is procured during investigation and is presented in the Court in the best possible manner.

**12.2.2.** Prosecutors shall ensure that copy of road certificates and extracts from Malkhana register are invariably placed with chargesheet and details about date, particulars of case, seal etc. of samples/weapons transmitted to the analyst/expert reconciles with the statement recorded under 161 CrPC of the police official deputed for depositing the parcels etc.

**12.3. Scrutiny by Law Officer/Prosecutor:**

**12.3.1.** Forensic and medical evidence is not merely an aid to prosecutor but in fact to investigation. As such, particularly in serious crime, if on scrutiny of the challan the Law Officer/Prosecutor finds that forensic or medical results have been delayed he should bring the matter to the notice of the Superintendent of Police to take up with Director Forensic Science or Director Health Services, as the case may be.

**12.3.2.** It may also be that during scrutiny of the challan in serious cases, it comes to notice that the investigation did not adequately collect evidence for forensic analysis or did not seek the necessary medical opinion, all such instances must be reported to the Superintendent of Police by the Law Officer/Prosecutor through the District Attorney for remedial action for the future.

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## **CHAPTER-XIII**

### **PROSECUTION OF CRIMINAL CASES BEFORE THE HIGH COURT**

#### **13.1. Appointment of Public Prosecutor in the High Court: -**

13.1.1. As per the provision of section 24 of the Code of Criminal Procedure, the State Govt. shall, after consultation with High Court, appoint a Public Prosecutor and may appoint one or more Additional Public Prosecutors for conducting any prosecution, appeal or other proceedings on behalf of the State Government in the High Court.

13.1.2. A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub section 1 of section 24 CrPC only if he has been in practice as an advocate for not less than 7 years.

13.1.3. The State Government may also appoint for the purpose of a case and a class of cases, a person who has been in practice as an advocate for not less than 10 years as Special Public Prosecutor.

13.1.4. For the purpose of sub-section (7) and (8) of Section 24 of Code of Criminal Procedure, the period during which a person has been in practice as a Pleader or has rendered (whether before or after the commencement of the Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other prosecuting officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

13.1.5. As per section 25A of the Code of Criminal Procedure, all Prosecutors, Additional Public Prosecutors and Special Public Prosecutors appointed by the State Government under sub section (1) or as the case may be, sub section (8) of section 24 of Code of Criminal Procedure to conduct cases in the High Court be subordinate to the Director of Prosecution. However, the provision of this section shall not apply to the Advocate-General for the State while performing the functions of Public Prosecutor.

#### **13.2. Functions of Public Prosecutors appointed in the High Court: -**

Consequent upon the approval accorded by the State Government for filing criminal appeal/revision/miscellaneous application/reply etc. in the High Court, the complete record of the case i.e. copy of judgment, statement of PWs, DWs and statement of accused, all exhibits, proposal for filing an

appeal/revision and police file complete in all respects are to be sent by the Home Department within the prescribed period of limitation to the office of the Advocate-General.

### **13.3. Drafting of appeals/revisions/miscellaneous applications/replies etc.:**

13.3.1. After perusing the complete record of the case, the Public Prosecutor in the High Court drafts the grounds of appeal and take separate objection highlighting the irregularities/illegality committed by the trial court while appreciating the prosecution evidence. For the purpose he may require an officer of the office of Superintendent of Police to assist along with any supplementary record. The Law Officer of the SP office may also be associated.

13.3.2. If the occasion arises for seeking condonation of delay in filing the appeal before the Hon'ble High Court then such application shall be drafted explaining the day-to-day delay which occurred in filing the appeal with supporting affidavit.

### **13.4. Transfer of case:**

13.4.1. Any proposal of transfer of a pending case before any Court subordinate to the High Court to any other such criminal Court of equal or superior jurisdiction in the State of Himachal Pradesh shall be made by the Home Department to the Advocate-General, citing the reasons for the proposal.

### **13.5. Prayer for issuance of certificate for appeal:**

13.5.1. Whenever in a criminal proceeding the High Court in an appeal has passed any final order or sentence referred to in clause (1) of Article 133 or clause (1) of Article 134, the Prosecutor can make a submission for issuance of a certificate regarding the fitness of the case for appeal before the Hon'ble Supreme Court. Government in the Home Department after due consideration in consultation with Law Department may direct the Prosecutor to seek a certificate of appeal.

13.5.2. If the High Court refuses to certify a case Government in the Home Department after consulting the Law Department and/or the Advocate-General may decide to file a Special Leave Petition before the Supreme Court. (*See Appendix- 6*)

### **13.6. Limitation:**

13.6.1. In cases where leave to appeal is refused by the High Court, the Prosecutor shall move the matter alongwith certified copy of judgment/order and complete case file to the State Government

immediately as the criminal leave petition is required to be filed within 60 days computed from the date of refusal. In any other case which does not involve sentence of death, the period of limitation is 90 days from the date of judgment or order appealed.

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## CHAPTER XIV

### VIGILANCE CASES

**Prosecution of cases registered by State Vigilance & Anti Corruption Bureau, Himachal Pradesh:** Criminal cases registered by the Bureau against the public servants under Prevention of Corruption Act, 1988, Indian Penal Code and HP Prevention of Specific Corrupt Practices Act, 1983 are prosecuted in the Special Courts (which are generally either Sessions Judge or Additional Sessions Judge) by the Prosecutors posted from the Prosecution Department.

*Cadre strength:* At present there is one Joint Director (Economic offences) and one Joint Director (Anti Corruption) in the Bureau Headquarters, three District Attorneys and three Deputy District Attorneys one at each at Range level i.e. North, South and Central Ranges at Dharamshala, Shimla and Mandi, respectively who are posted from the Prosecution Department, Himachal Pradesh.

*Joint Directors:*

- i. The Joint Director (Economic offences) and the Joint Director (Anti-Corruption) tender their legal opinion in all the cases relating to the respective cases registered and investigated in the different Police Stations of the Bureau (located at District headquarters) in the State of Himachal Pradesh. On the conclusion of investigation in such cases, the chargesheets after scrutiny by the District Attorney of the respective Range are submitted to the Joint Director (EO/AC) as the case may be for further examination which are then submitted to Additional Director-General of the Bureau.
- ii. The Joint Directors also conduct important cases in the different Courts of Law designated for the purpose throughout the State as may be assigned by the State Government or the Additional Director-General of the Bureau.

*District Attorneys (Vigilance):*

- i. The District Attorneys (Vigilance) are posted in each Range i.e. North Range Dharamshala (Districts of Kangra, Chamba, Una), South Range Shimla (Districts of Shimla, Solan, Sirmaur and Kinnaur), and Central Range Mandi (Districts of Mandi, Kullu, Hamirpur, Bilaspur, Lahul & Spiti and Hamirpur), respectively who are designated as Public Prosecutors and prosecute cases instituted before the Special Judges notified under Prevention of Corruption Act, 1988 and

cases under Prevention of Specific Corrupt Practices Act before Sessions Court. The District Attorney (Vigilance) is incharge of his office and responsible for tendering legal opinion on preliminary enquiries, guides the Investigation Officer during the investigation by preparing an action plan and conducts scrutiny of chargesheets prepared by the Investigation Officers.

ii. *Deputy District Attorneys (Vigilance):*

The Deputy District Attorneys (Vigilance) are posted in each Range and work under the overall supervision and control of the District Attorney (Vigilance) of respective Range. The Deputy District Attorney (Vigilance) conducts cases before the Court of Special Judge as per distribution of work by the Bureau and tenders legal opinion in the cases assigned to them by the District Attorneys (Vigilance).

**Trap Cases-Precautions to be taken by the Prosecutor during scrutiny:**

*Trap cases:* Whenever a complaint alleging demand of bribe by a public servant is received by the Bureau, after the registration of FIR under section 7 & section 13 (2) of the Prevention of Corruption Act, 1988 in the respective Police Station, steps are taken for laying trap to apprehend the tainted public servant. The Prosecutor should take care while scrutinizing the chargesheets in Trap Cases, keeping in view the material procedural instructions of the Bureau with regard to:

- i. Pre-trap memo,
- ii. Independent witness,
- iii. Pre-trap demonstration,
- iv. Pre-trap preparation,
- v. Stringing of trap
- vi. Raiding party,
- vii. Post-trap action,
- viii. Recovery memo,
- ix. Site plan preparation,
- x. Photographic evidence,
- xi. Arrest memo and intimation of arrest,
- xii. Deposit of case property
- xiii. Recording of statement of witnesses etc.

**Link Evidence:** The Prosecutor needs to pay special attention to link evidence, including reports of the Forensic Science Laboratory and the Chemical Analyst Report.

### **Cases of disproportionate assets:**

*Preliminary enquiry:* On the receipt of 'source report' or written complaint against any public servant, a registered preliminary enquiry is ordered by competent authority and on its conclusion, it is further scrutinised by the Prosecutor. The Prosecutor is required to see whether on the basis of available material a prima-facie case under section 13(1)(e) of the Prevention of Corruption Act (Disproportionate Assets) is made out or not? In such cases, check period should be selected after due care and precaution.

*Order of Superintendent of Police to investigate:* Where preliminary enquiry is accepted by the competent authority and FIR is ordered to be registered under section 13(1)(e) of the Prevention of Corruption Act, 1988, the Prosecutor should check whether the necessary order to investigate an offence in Clause (e) of sub section (1) of section 13 has been made by a Police officer not below the rank of Superintendent of Police as provided under section 17 of the Act *ibid.* Such order would form the part of the chargesheet.

While doing scrutiny of the cases of disproportionate assets, the Prosecutor should take extra care while scanning the entire material on record and take into consideration:-

- (i) Evidence of income
- (ii) Income from other sources
- (iii) Income Tax Returns
- (iv) Electronic records
- (v) Investments
- (vi) Cash in hand
- (vii) Expenditure record
- (viii) Statements of accounts
- (ix) Percentage of disproportionate assets etc.

### **Opinion of GEQD:**

Where the case is also registered by the Bureau under section 420, 467, 468, 471, 477A IPC and prosecution intends to rely upon the documents purported to have been prepared and signed by the accused, the Investigation Officer will need to move an application under section 311A of the Code of Criminal Procedure for taking specimen handwriting/specimen of the accused or other person by seeking order of the Magistrate concerned, in accordance with the proviso to the Section.

In all such cases, the Investigation Officer should place entire relevant documents before the Prosecutor concerned and seek his guidance for selecting the questioned documents.

The Investigation Officer should take specimen handwriting in the light of questioned documents identified during the investigation with the guidance of



the Prosecutor and take all specimens in one go instead of taking the same at different intervals as it results in wastage of time and causes unnecessary delay in the investigation of such cases based on voluminous record.

All the questioned documents sent by the Investigation Officer through the Police official to the Government Examiner of Questioned Documents (GEQD) should properly be mentioned in the list of documents and statement of the Police official taking the documents to the expert for analysis should be cited as witness.

**Sanction to prosecute:**

In all the cases instituted under the provisions of the Prevention of Corruption Act, 1988, on the conclusion of investigations, sanction to prosecute the accused is required under section 19 of the Act *ibid*.

The material date for judging whether the sanction to prosecute for the offences under the Prevention of Corruption Act, 1988 is required or not, is the date when cognizance of the offence is taken by the Trial Court and if the accused ceases to be a public servant on that day then no such sanction under the said Act is required though the same is required under section 197 of the Code of Criminal Procedure relating to the offence under Indian Penal Code.

The Prosecutor shall ensure whether the sanction to prosecute accorded by the competent authority is based on the record and contains all the material facts. If any clerical mistake or other glaring error is noticed after the receipt of sanction order then before filing of the chargesheet this fact shall be brought to the notice of the sanctioning authority by the Prosecutor concerned through ADGP of the Bureau for its rectification so that the offence committed by the accused is not diluted on any technical ground during the trial.

Under the provisions of Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 the offences are exclusively triable by the Court of Sessions and need sanction to prosecute *vis-à-vis* a complaint in writing from the competent authority.

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**CHAPTER XV**

**MONITORING & CONTROL**

**15.1 Daily Diary- Compilation**

15.1.1. The Naib-Court attached with each Prosecutor in the respective court in the Districts shall fill up relevant information on the format as under:

**“Format for e-mail”**

Information regarding Criminal Cases conducted in the court of ----  
 \_\_\_\_\_, District /sub-division \_\_\_\_\_ on \_\_\_\_\_ day of  
 \_\_\_\_\_, 2007 \_\_\_\_\_ Name of Prosecutor \_\_\_\_\_  
 Name of Naib-Court \_\_\_\_\_

<b>1</b>	Date	
<b>2</b>	Name of the officer who conducted the cases	
<b>3</b>	Whether court functioned (yes/no)	
<b>4</b>	no. of cases in which charge framed	
<b>5</b>	no. of cases fixed for PWs	
<b>6</b>	No. of PWs examined	
<b>7</b>	No. of PWs given up	
<b>8</b>	No. of PWs discharged for want of case property	
<b>9</b>	No. of cases in which prosecution witnesses closed by the order of court.	
<b>10</b>	No. of cases in which statement of accused recorded	
<b>11</b>	No. of DWs cross-examined	
<b>12</b>	No. of Cases in which final arguments advanced by the prosecutor	
<b>13</b>	No. of cases decided	
<b>14</b>	Acquitted Compromised Discharged Proceedings dropped transferred	
<b>15</b>	Convicted	
<b>16</b>	No. Police Challan presented in the Court without scrutiny by the SHO/IO	
<b>17</b>	No. of Police Challan presented in the Court without removing objections by the SHO/IO	

Signature of Prosecutor with  
 Designation \_\_\_\_\_

Signature of Naib-Court \_\_\_\_\_

*Note:*

- (1) Naib Court shall make entry with red ink in case diary on the dates where court did not function on account of leave, court evidence etc.
- (2) Signatures of Prosecutor and Naib-Court shall be obtained on the office copy and retained in the office.”

15.1.2. The District Attorney on the receipt of such data/ information from all the Deputy District Attorney/ADAs, shall compile such information and make entry in the format as under and e-mail the same before 11 AM positively on the next working day to the Director of Prosecution

**“Format for e-mail”**

Information regarding Criminal Cases conducted in the District Headquarters \_\_\_\_\_, District \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, 2007

Sr. No.	Name of the officer who conducted the cases	Name of the court	Whether court functioned (write Y for yes N for No)	no. of cases in which charge framed	no. of cases fixed for PWs	No. of PWs examined	No. of PWs given up	No. of PWs discharged for want of case property	No. of cases in which prosecution witnesses closed by the order of court.
1	2	3	4	5	6	7	8	9	10

No. of cases in which statement of accused recorded	No. of DWs cross-examined	No. of Cases in which final arguments advanced by the prosecutor	No. of cases decided	Acquitted Compromised Discharged Proceedings dropped transferred	Convicted	No. Police Challan presented in the Court without scrutiny by the SHO/IO	No. Police Challan presented in the Court without removing objections by the SHO/IO
11	12	13	14	15	16	17	18

Signature of District Attorney \_\_\_\_\_ Signature of Office Steno/Clerk \_\_\_\_\_

*Note:*

- (1) Signatures of District Attorney shall be obtained on the office copy and retained in the office.

15.1.3. If internet connection is found inoperative or non-functional/not available in the office of the District Attorney/Deputy District Attorney the compiled data shall be transmitted through Fax on the next working day. In case Fax facility is not available then he shall cause the same to be transmitted through telephone to the Directorate.

15.1.4. If steno in DA office is not available on account of leave etc. then such data shall be filled up and compiled by the Senior Assistant/Junior Assistant and transmitted to the Directorate.

15.1.5. All the computers shall remain online during the office hours, where the broadband internet connections are available.

15.1.6. All Prosecution offices in H.P. shall use such e-mail ID for transmitting the information as provided by the Directorate.

**15.2 Monthly Diaries:**

15.2.1. Assistant District Attorneys at District Hqrs and those manning sub-division offices are required to submit monthly diary of decided cases conducted by them before the courts to the District Attorney concerned on prescribed proforma on or before 5th day of each month.

15.2.2. The District Attorney shall submit monthly diaries of civil,

criminal, revenue, MACT, reference and miscellaneous cases decided by the different courts in the District on prescribed proforma to the Directorate of Prosecution on or before 10th of each month.

**15.3 Annual Diary:** Annual Administration report regarding all the cases conducted during the financial year shall be submitted by the District Attorneys, in charge of district prosecution agency, in the first week of April to the Director of Prosecution for perusal and reconciliation.

**15.4 Periodical Inspections:**

15.4.1. *Quarterly inspections by District Attorneys:* District Attorney shall inspect the offices of the Prosecutors under his control in the District and hold meetings as per instructions issued by the Directorate, reproduced as under:

*“(i) For successful prosecution, sustained efforts are required to be made for monitoring the progress of pending cases with the prosecution agency from time to time. Therefore, District Attorneys are required to inspect each and every office of the Prosecutor in his district every quarter of the year.*

*(ii) District Attorneys shall prepare schedule in such a manner as to avoid any administrative inconvenience and copy of inspection dates shall be sent to the concerned Joint Director (Prosecution) concerned in advance for approval.*

*(iii). Efforts should be made in such meetings to develop and enhance personality, legal skill, acumen and effective presentation in the Courts by the Prosecutors. Each law officer should be called to join, deliberate and air his independent legal opinion and not be a mere spectator. While holding meetings emphasis should be to interact with the prosecutor and to apprise/guide them about the latest amendments/notifications/orders/laws/legal citations.*

*(iv) Register of such meeting shall be regularly maintained as per prescribed proforma attached herewith and minutes communicated to this office for perusal.”*

15.4.2. The District Attorney shall carry out the inspection as per

proforma for inspection (Appendix-3).

15.4.3. The District Attorney shall also hold meetings with the Prosecutors while conducting office inspection as per proforma (Appendix-3).

15.4.4. The District Attorney shall submit inspection report and minutes of such meetings to the Joint Director of Prosecution concerned alongwith remedial measures for strengthening the working of the Prosecution Department in the Districts with special measures required to be taken for avoiding such lapses/mistakes in the future.

15.4.5. *Half Yearly Inspections by the Joint Directors of Prosecution:* Joint Directors shall inspect office of the District Attorney twice a year and other Prosecutors once a year and hold meetings as per proforma, as under:

1	Joint Director of Prosecution, Himachal Pradesh, Hqrs-I	District Sirmaur, Solan, Shimla and Kinnaur
2	Joint Director of Prosecution, Himachal Pradesh, Hqrs-II	District Bilaspur, Mandi, Kullu, Lahaul & Spiti
3	Joint Director of Prosecution), NZ, Dharamshala	District Kangra, Chamba, Una and Hamirpur

1. *Inspection dates shall be finalized by Joint Directors (Prosecution), Hqrs-I & II in consultation with each other one month in advance, in such a manner that one officer remains present at a time in the Directorate Hqrs. to avoid any administrative inconvenience and Joint Director of Prosecution, NZ, Dharamshala shall also submit his proposed dates for inspection accordingly.*

15.4.6. The register of such meetings shall be regularly maintained as per prescribed proforma (Appendix-3) attached herewith and minutes communicated to this office for perusal.

15.4.7. The Joint Directors of Prosecution shall carry out the inspection as per proforma for inspection (Appendix-3).

15.4.8. The Joint Directors of Prosecution shall also hold meetings with the Prosecutors while conducting office inspection as per proforma (Appendix-3).

15.4.9. The Joint Directors of Prosecution shall submit inspection report and minutes of such meetings to the Director of Prosecution alongwith remedial measures for strengthening the working enhancement of the performance and efficiency

of each Prosecutor in their respective Districts.

15.4.10. *Monitoring / Inspections by the Director of Prosecution:*

- i)** Director of Prosecution may hold inspection of the offices of the District Attorneys/Assistant District Attorneys as per need, but he should regularly visit all District Headquarters and hold remedial discussion with the Prosecutors and special emphasis shall be laid on the detailed legal discussion regarding pending criminal cases of different nature with the Prosecutors concerned. In such meetings there shall be detailed deliberation touching various aspect of the cases namely scrutiny, objections raised and its compliance, proficiency in law, effective presentation in the court, knowledge of law, drafting skill and preparation etc. (See *Appendix-3*)
- ii)** The Director of Prosecution shall submit detailed reports to the Principal Secretary (Home) to the Government of Himachal Pradesh on each visit. The Director of Prosecution while submitting report shall suggest remedial measures for improving the working of the office and immediate steps required to be taken for removing difficulties or lacunae brought to notice. Special reference shall be made for proposed amendment in specific enactments /Rules/Notifications/Orders/directions etc. vis-à-vis conflicting and divergent opinion pronounced in the judgments having bearing on the prosecution cases.

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## CHAPTER XVI

### TRAINING AND REFRESHER COURSES

**16.1** On induction in service, the Assistant Public Prosecutors are required to undergo one month Induction Course which is organized in HP Institute of Public Administration (HIPA) or HP Judicial Academy, Shimla, in which they are given training on many practical aspects of civil and criminal cases. Mock Trials/ Moot Courts are also held for imparting legal knowledge to the trainees. Law officers are also attached with the courts to know the procedure of conducting of trial and other cases. Computer training is also given to these Law Officers by the said Institutes. Details of the course content in the training provided are given below:

- Functions of Government and its agencies.
- Duties and responsibilities of Prosecutors/Government Pleaders in civil and criminal courts.
- Police Organization and coordination between Police and Prosecution.
- Latest amendments in IPC, CrPC, Evidence Act and special laws.
- Latest amendments in Civil, Revenue and Special Laws.
- Common procedural defects pointed out by the Courts in investigation of cases under NDPS Act, Forest Act and Excise Act etc.
- Overview of Revenue Laws, Right to Information Act, Prevention of Corruption Act and Himachal Pradesh Specific Corrupt Practices Act, and
- Pleading and drafting of complaints/ applications/ replies/revisions/ appeals etc.
- Civil cases filed by and against the Government or its functionaries
- Drafting of complaints under special laws /applications/ replies/memorandum of appeal/revision etc. in criminal cases.
- Offence against women, SC/ST and other weaker sections, gender sensitization
- Scrutiny of Police challan as per approved format.
- Moot courts (practice and procedure) presentation of case, cross-examination of witnesses and arguments.
- Psychology of the witness/aggrieved and his/her rights.
- Different aspects of criminal investigation.
- e-governance, use of computers in drafting and maintaining legal databases.

**16.2** Prosecutors are also sent for courses in criminal justice system and other subjects in Lok Nayak Jai Prakash Narayan National Institute of Criminology & Forensic Science, Ministry of Home Affairs, (LNJN NICFS) Delhi, and Sardar Vallabhbhai Patel (SVP) National Police Academy, Hyderabad from time to time. The Forensic Science Laboratory, Junga also organizes refresher courses for the purpose of equipping them with the latest advances in the forensic science and the basic knowledge of forensic science evidence. Details of training provided is given hereunder:

- Management of anti-social and criminal behaviour
- Drug problem-criminological and forensic aspects.
- Latest techniques and advances in forensic investigation.
- Trafficking in Human Beings.
- Crime against women.
- Human Rights implementation system.
- Criminal Justice System, inter-segment Coordination.
- Stress, healthy coping and constructive empowerment for criminal justice functionaries.
- Juvenile delinquency.
- Inter-disciplinary seminar on the implementation of NDPS Act.
- Crime and Justice.
- Detection of counterfeit currency and travel documents.
- Orientation to document examination for criminal justice.
- Emerging challenges for criminal justice system.
- Seminars on organized crime.

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## CHAPTER-XVII

### THE STATE LEGAL SERVICES CELL

**17.1. State Legal Services Cell** – The State Government has created a Legal Services Cell in the Directorate of Prosecution with a view to strengthen the legal response of the Government at crucial points in the system. The intention is to create a pool of trained personnel who can be deployed as individuals in Departments or Directorates requiring special attention on account of large backlog of litigation or a generally high work load. This deployment may be short term or long term as per need. Individuals from the pool may also be collectively assigned special tasks which on account of its complexity or time-bound nature, may need concentrated attention.

**17.2. Functions and Control:** The Legal Services Cell shall consist of such number of District Attorneys/Deputy District Attorneys/Assistant District Attorneys as may be determined from time to time, who shall be called 'Law Officers'.

The duties of the Law Officers so deputed shall be as may be determined in each case, and they may be tasked to:

- i) effectively monitor all ongoing cases of the Department/Directorate by maintaining a register (with a separate page for each case) as per proforma given below, and ensure that replies or other action is taken well in time in each case: -

*Court of :* \_\_\_\_\_

*Case No. :* \_\_\_\_\_

*Parties :* \_\_\_\_\_

*Instituted on :* \_\_\_\_\_

Sr. No.	Date of hearing	Proceedings taken**	Action for next date	Date of next hearing*
	1	2	3	4

\* Where final orders have been passed, the next date will be the date by which the order is required/taken to be implemented.

\*\*In the column 'proceedings taken', the entry against the line giving date of final order will be recorded, the date of compliance, on the alternative date of appeal and obtaining of Stay against the order availed.

- ii) Vet draft replies prepared by the office staff on the basis of facts available,
- iii) help draft replies in complex cases hinging primarily on legal issues or where contempt notice is or is likely to be involved, and advise on filing of appeal/SLP/revision petition in case of adverse order,
- iv) provide concurrent legal advice to Directorate/Department functionaries on action being proposed so that decision making is legally sustainable and the potential for legal challenges is reduced, and
- v) bring to the attention of the Head of the Directorate or the Administrative Secretary any procedures or decisions coming to notice which have the potential for legal complications and suggest appropriate remedial action where required to do so.

**17.3. Special procedure in respect of cases before the HP Administrative Tribunal/Central Administrative Tribunal:-**

17.3.1. *Steps on receipt of notice:*

- (i) An Additional Advocate-General/Deputy Advocate-General (AAG/DAG) conducts all Government cases before the Administrative Tribunal and on the receipt of the notice, comments are called alongwith related record from the Department concerned. The concerned Department must contact the Additional Advocate-General/Assistant Advocate-General for opposing the interim orders, if any, prayed in the application giving specific grounds and the Additional Advocate-General/Deputy Advocate-General should seek time for filing reply when the case is listed for admission/order.
- (ii) The Additional Advocate-General/Deputy Advocate-General should not waive service of the notice on behalf of the Government in cases where copy of the application with connected documents has not been supplied and in case the service has to be accepted at the time of hearing, the Additional Advocate-General/Deputy Advocate-General should ask for time to get instructions from the Government to file reply and oppose any interim order in view of the provisions of section 24 of the Administrative Tribunal Act, 1985.
- (iii) The Additional Advocate-General/Deputy Advocate-General should take immediate steps in case the Administrative Tribunal has passed an interim order and move an application and shall get that order vacated or set aside. The Law Officer

posted in the Department/Directorate should bring to notice of the Administrative Secretary/Head of the Department any case where an adverse interim order has been passed but has not so far been effectively opposed, so that necessary instruction in the matter can be given to the Additional Advocate-General/Deputy Advocate-General to oppose the interim order/Stay.

17.3.2. *Drafting of replies:*

- (i) While preparing reply to the original application (OA), it should be ensured by the Law Officer that specific replies are given to all paras/pleadings, as vague replies or omissions on any particular point may result in drawing of adverse conclusion during the course of hearing. Reply should be filed within the time limit allowed by the Administrative Tribunal and Law Officer should bring it to the attention of the Administrative Secretary/Head of Department in working the case time limit is about to expire and the reply is not ready or not likely to be ready.
- (ii) The Law Officer should take extra precaution while preparing an affidavit which is required to be filed by the officer empowered to file affidavit on behalf of the Government and the affidavit should be filed by the same officer who has signed the reply etc. In all cases where prior approval of the Secretary or Minister in-charge is required under Standing Order, same should be obtained before filing the reply. The affidavit should clearly indicate as to which of the paras are based on personal knowledge and belief and which one are based on office record or information received and the same should be got vetted from the office of the Advocate-General.
- (iii) While drafting reply, the Law Officer should take specific objection of application becoming time-barred and where the reply is filed beyond time granted, the application with detailed justification for delay should be given with precise prayer for condonation of delay. Delay and laches should be properly highlighted as preliminary objection in the reply and properly contested.
- (iv) All legal objections regarding non-maintainability of the petition containing supporting points is to be made and where the applicant despite having efficacious remedy under law has not resorted to seek redressal from the competent authority, preliminary objections regarding such remedy vis-à-vis act and

conduct of the petitioner and non-serving of mandatory notice, (including where it is warranted under section 80 of the Code of Civil Procedure), should invariably be taken as preliminary objections.

17.3.3. *Contesting Interim Stay:* Section 24 of the Administrative Tribunals Act, 1985 provides that notwithstanding anything contained in any other provision of the said Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an application unless-

- (a) *Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and*
- (b) *Opportunity is given to such party to be heard in the manner.*

Law Officers must ensure that the Department/Directorate effectively uses the provision and the opportunity is not given to benefit because of inaction or ignorance of the Department/Directorate.

17.3.4. *Contempt proceedings:*

- (i) Since considerable delay in carrying out any order of the Administrative Tribunal may constitute contempt of court, orders of the Tribunal have therefore to be implemented with all possible promptitude and if necessary communicated to the Department concerned by special and speedy means and no case relating to orders/instructions of the Tribunal should be allowed to be processed in a routine manner at any level. The Law Officer shall advise the action to be taken to discharge the notice or to defend the case and liaises with the Administrative Secretary and the Head of Department in all cases of contempt.
- (ii) In implementing such orders/directions, it should be ensured that complete compliance of the orders/directions is made as partial compliance might be considered as incomplete compliance and while drafting reply to the contempt proceedings, these factors should be considered by the Law Officer and communicated to the Department concerned and complete reply should be filed in order to avoid any administrative inconvenience.
- (iii) Reply to the contempt petition should be got prepared and vetted well in time and filed in the Court accordingly.

17.3.5. *Action on final orders:* The Law Officer shall examine final

order/judgment/directions as soon as it is received and give his opinion on whether it needs to be assailed and if so on what grounds. He shall in other cases monitor compliance.

17.3.6. *Stay order:* Cases where an interim order is made against the State of Himachal Pradesh/Public Officer by the Hon'ble Service Tribunal/Central Administrative Tribunal, then Law Officer shall take the steps as per provisions of Article 226 (3) of the Constitution of India, reproduced as under:

*“ [(3) Where any party against whom an interim order whether by way of injunction or stay or in any other manner is made on, or in any proceedings relating to, a petition under clause I, without –*

*(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and*

*(b) giving such party an opportunity of being heard.*

*(c) Makes an application to the High court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period or, as the case may be, the expiry of the said next day, stand vacated.]*

17.3.7. Detailed procedure for institution and defence of cases filed by or against the State of Himachal Pradesh before the Courts and the Administrative Tribunal has been provided in Chapter XVI, 'Court Cases-Institution and Defence' of in the HP Government Office Manual.

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## CHAPTER-XVIII

### LEGAL CELL, NEW DELHI

**18.1. Functions of Legal Cell at New Delhi:** The State Government has created a Legal Cell, headed by a District Attorney at Delhi to keep liaison with the Senior Advocates and Advocates-on-Record to pursue and monitor the progress of cases of HP Government in the Supreme Court, CAT, High Court and National Consumer Commission at New Delhi vide letter No. LLR-B(1)2/89 dt. 27.5.1988. The Legal Cell is under the administrative control of Home Department. At present, the Legal Cell is housed in Himachal Bhawan, New Delhi and besides the post of District Attorney, there is one post each of Sr. Asstt. and Clerk, Junior Scale Stenographer and two posts of Peons. The District Attorney is also the Officer-In-Charge and functions as Drawing and Disbursing Officer. The District Attorney is responsible for conveying all directions and decisions in cases before the Supreme Court to the concerned Departments of the Government of Himachal Pradesh. Notices etc. received in respect of cases in the Supreme Court are received by the Advocate-on-record and the Legal Cell is expected to maintain adequate liaison with the Advocate-on record and communicate receipt of notices etc. to the concerned Department. All types of payments including the counsel fee bills are paid through him to the concerned Senior Counsel engaged by the State of HP for their appearance in the Hon'ble Supreme Court of India.

**18.2. Functions of Additional Advocate- General:** The State Government appoints a local advocate-on-record in the Supreme Court to receive notices. In 2003, Government decided to notify its Advocate-on-record in the Supreme Court as Additional Advocate-General(AAG) of the State with headquarters in New Delhi. The incumbent draws the fixed retainership of a tenure AAG and is eligible for fees as per table of fees determined by Law Department for each case that he appears as Advocate-on-record. In view of his designation as Additional Advocate-General for the State, the incumbent appears in the Supreme Court as Arguing Counsel for the State unless Government engages a separate Counsel as Arguing Counsel.

18.2.1. Thus the Additional Advocate-General is the Advocate-on-Record for the State of Himachal Pradesh in the Supreme Court and as such he receives notices on behalf of the State. These also include cases in which other Counsel may have been engaged as

Arguing Counsel by the Department/Government. A Senior Counsel is generally engaged in important cases, where his specialization etc. is of particular value. In cases where other Counsel have been engaged, the Additional Advocate-General is required to contact them and brief them if necessary. In case the Counsel engaged by the Department/Government has separately engaged an Advocate-on-Record, such Advocate-on-Record may also be briefed.

18.2.2. Where The Additional Advocate-General is himself the Arguing Counsel, he is required to ensure filing of replies and compliance of other directions. For this purpose, he may seek information/record from Departments and also hold conference with the officers of the Department.

18.2.3. Conferences will be arranged by the Additional Advocate-General (as Advocate-on-Record) with the litigating Department and the Arguing Counsel.

18.2.4. The Additional Advocate-General shall employ two Bar Clerks (*Munshis*), one to sit in the Legal Cell for monitoring and office work and the other to accompany him to the Court so as to effectively pursue the cases. The Additional Advocate-General will be reimbursed a fixed amount as may be determined from time to time by the Home Department.

18.2.5. The Addl. Advocate- General shall apprise the District Attorney, Legal Cell about the daily proceedings in the Court by or against the State of Himachal Pradesh in each case in the Supreme Court and further action to be taken in the matter. The Addl. Advocate General shall also keep the Chief Secretary/Administrative Secretary and the Resident Commissioner informed regarding the status of the important cases filed by or against State of Himachal Pradesh and shall take extra care where contempt notices are issued against important functionaries of the State Government.

18.2.6. The Additional Advocate-General shall bring to the notice of the Director(Prosecution) or Principal Secretary(Home) any case where instructions of the AAG in relation to a case in the Supreme Court remain un-complied by the Legal Cell.

### **18.3. Coordination between Additional Advocate-General and Legal Cell:**

18.3.1. The District Attorney and staff of Legal Cell will maintain day-to-day liaison with the Additional Advocate-General at Delhi.

They shall follow the instructions of Additional Advocate- General in all matters relating to Supreme Court cases and inform the Additional Advocate General of the action taken and the response if any from the Department concerned.

18.3.2. On being informed by the Additional Advocate-General about daily proceedings in the Supreme Court in the matters concerning the State of Himachal Pradesh, the District Attorney and the Legal Cell shall promptly inform the Department concerned and keep the Additional Advocate General informed of the response of the Department. Where necessary the District Attorney may seek the intervention of the Resident Commissioner to interact with the Administrative Secretary or Head of Department concerned in important cases, where there is delay or inadequate response.

18.3.3. The District Attorney shall maintain the complete and upto date record of the Civil Writ Petitions, Criminal Writ Petitions, Appeals (Civil/Criminal) Special Leave Petitions, Letters Patent Appeals etc. and other cases pending in the Hon'ble Supreme Court, Delhi High Court and Central Administrative Tribunal (CAT) including National Consumer Commission alongwith the status of pending litigation before the Hon'ble Supreme Court for this purpose, a Register will be maintained, and status of each case updated after each hearing. The Bar Clerk of the Additional Advocate-General will render all assistance in this regard.

18.3.4. The District Attorney shall check all the cause lists i.e. Advance list, Weekly list and Daily Lists and inform the Additional Advocate-General of the cases appearing in each list and shall on the basis of instructions of the AAG, liaise with Department concerned to ensure that all requisite action required to be taken is compiled with.

18.3.5. The District Attorney with the assistance of the Bar Clerk shall maintain effective liaison as per direction of the Additional Advocate-General from time to time with the Advocates-on-Record, panel advocates, Sr. Advocates conducting the litigation work of Himachal Pradesh in the Hon'ble Supreme Court of India, National Human Rights Commission, Delhi High Court, CAT other Tribunals and local Courts and Commissions in Delhi.

#### **18.4. Role and functions of Law Department and Home Department.**

18.4.1. The Home Department, in accordance with entries 16,51 and



52, of the Govt. of Himachal Pradesh Business (Allocation) Rules is responsible for filing of appeals, defence or institutions of Criminal cases and monitoring of all criminal cases and proceedings against or by the Govt. in the Supreme Court. Accordingly the District Attorney Legal Cell will keep Home Department informed on a weekly basis of the status and progress in all criminal case by or against the State of Himachal Pradesh in the Supreme Court. The Distt. Attorney Legal Cell and Additional Advocate General will brief the Chief Secretary and Secretary (Home)/Principal Secretary (Home) on all important developments in the criminal cases. Principal Secretary/Secretary (Home) while on tour to Delhi shall make it a point to hold discussion with the AAG and Distt. Attorney Legal Cell.

18.4.2. Law Department in accordance with entries 4 & 8 the Govt. of Himachal Pradesh Business(Allocation) Rules is responsible for defence or institutions of suits or proceedings filed by or against the Govt.(except criminal cases) , for entertainment of summons issued in Civil, criminal or writ cases against the Govt.(except criminal cases in the Supreme Court). Accordingly the Legal Cell will keep the Law Department informed on a weekly basis of status and progress in all cases by or against the State of Himachal Pradesh (other than Criminal Cases) pending in the Supreme Court. Distt. Attorney Legal Cell and Additional Advocate General shall brief the Chief Secretary and Secretary (Law) on all important developments in such cases. Secretary(Law)while on tour to Delhi shall make it a point to hold discussion with the Additional Advocate General and Distt. Attorney Legal Cell. Law Department will separately issue instructions with regard to processing.

### **18.5. Monitoring:-**

18.5.1. The District Attorney shall telephonically intimate the Secretary or Head of the Department concerned, as the case may be, regarding a case where response is overdue for taking effective steps, for taking action in the case by deputing, where necessary, a responsible Officer with the entire record of the case to apprise the Senior Counsel/Additional Advocate General well in advance.

18.5.2. The District Attorney shall see the website of Supreme Court

of India daily for monitoring the cases pertaining to the State of Himachal Pradesh and orders/judgments etc. requiring action by the Govt. and inform the Department concerned.

18.5.3. The District Attorney shall maintain (with the assistance of the Bar Clerk of the AAG) a Register of the pending litigation by or against the State of Himachal Pradesh containing detail of the cases decisions/direction of the Court, action required to be taken and the next date if any. When action has been taken, the same shall be recorded alongwith the date.

#### **18.6. Compliance:**

18.6.1. District Attorney shall convey time bound compliance reports of the different litigating Departments of the State to the Registry, Supreme Court of India on receipt through the Additional Advocate-General or the concerned Advocate-on-Record.

18.6.2. The District Attorney shall convey to the officer concerned any direction for personal appearance in proceedings in the Hon'ble Supreme Court and the dates of hearing from time to time.

18.6.3. The District Attorney shall move applications through the Additional Advocate-General or concerned Advocate-on-Record for withdrawal of the money lying in deposit in the Registry, Hon'ble Supreme Court of India and payable to the State in pursuance to the directions of Court for depositing the same with the Reserve Bank of India on behalf of the State of Himachal Pradesh.

#### **18.7. Payment of Advocate fees:**

18.7.1. The District Attorney shall conduct verification of all the bills of the Advocates-on-record (including of Additional Advocate General as Advocate-on-Record) and of Arguing Counsel (both of Additional Advocate-General, when he is the arguing Counsel, and Counsel appointed in other cases) on account of the conferences held by them and also appearances made in the Supreme Court, Delhi High Court and CAT including National Consumer commission etc. as per approved terms and conditions and other misc. bills.

18.7.2. The verified bills of Advocate-on-Record and Arguing Counsel (other than Additional Advocate-General), are sent to Director of Prosecution for according sanction. The payment is

drawn by District Attorney, Legal Cell at Delhi. The payment of retainer fee of Additional Advocate-General is made by the office of Advocate-General, HP.

18.7.3. The District Attorney shall ensure timely payments to all Advocates on receipt of the sanctions from the Government for such conferences, appearances etc. in the courts after effecting recovery at the rate applicable under the provisions of Income Tax Act.

**18.8. Conferencing:**

18.8.1. The District Attorney shall facilitate the holding of conferences between Administrative Department and the Arguing Counsel/Additional Advocate-General and shall facilitate Additional Advocate-General in holding conference with the Advocates if so required by the Administrative Department, as per the urgency of the matter.

**18.9. Periodical Diary:**

18.9.1. *Daily Diary:* The District Attorney Legal Cell shall inform the Director of Prosecution regarding the day-to-day proceedings in the pending cases through e-mail or fax either on the same day after the conclusion of the hearing or immediately on the next day, for record.

18.9.2. *Weekly Diary:* The District Attorney shall submit weekly diary of all the pending criminal cases by or against the State Government to the Director of Prosecution with a copy to the Principal Secretary (Home) and of all other cases to the Principal Secretary (Law) on each Saturday (or last working day of the week).

18.9.3. *Annual Diary:* The District Attorney shall also compile and submit an annual diary of all the litigation pending/instituted/decided during the year to the Director of Prosecution for inclusion in the Annual Report.

**18.10. Inspections:**

18.10.1. Half-yearly inspections by Director/Joint Director (Prosecution) shall be conducted and detailed inspection report shall be submitted to the State Government through Chief Secretary to the Govt. of Himachal Pradesh with a copy to the Principal Secretary (Home) to the Govt. of Himachal Pradesh.

## CHAPTER XIX

### CIVIL BUSINESS

- 19.1** *Government Pleaders:* The State Government has notified the Prosecutors of different categories as Government Pleaders to act and plead on behalf of the State of Himachal Pradesh within their respective jurisdiction as under:

*Shimla-4, 17th January, 1955*

**No. LR-107-420/54-1.-** *The Lieutenant Governor, Himachal Pradesh, is pleased to appoint under clause (a) of order 27 rule 8-B of the Code of Civil Procedure read with Government of India, Ministry of Law notification SRO 699 dt. 8<sup>th</sup> April, 1953, all the Government Advocates in Himachal Pradesh as Government Pleaders in relation to any suit by or against the Central Government or a Public Officer in the service of that Government.*

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*Shimla-4, the 21<sup>st</sup> April, 1961*

**No. LR-107-420/54.-** *In exercise of the powers vested in him under clause (a) of rule 8-B of Order XXVII, of the Civil Procedure Code read with the Government of India, Ministry of Law Not. No. S.R.O.282, dated the 21<sup>st</sup> January, 1958, and in supersession of all previous notifications on the subject, the L.G., H.P., is pleased to appoint all the Government Advocates in Himachal Pradesh, as Government Pleaders in relation to any suit by or against the Central Government, or against a public officer in the service of that Government. This notification will not effect any act already done on the basis of the previous notifications.*

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*Shimla-2, the 2<sup>nd</sup> June, 1975*

**No. LLRE(9)-55/74-** *In exercise of the powers, vested in him under sub section (7) of section 2 of Code of Civil Procedure, 1908, the Governor of Himachal Pradesh, is pleased to appoint all the Assistant District Attorneys-cum – Public Prosecutor and all the Assistant Public Prosecutors of the Directorate of Prosecution, Himachal Pradesh to be Government Pleaders within their respective jurisdiction and further authorize them to perform all/any of the functions expressly imposed by the said Code on Government Pleaders excepting the functions specified in Order XXVII Rule 4 in the first Schedule thereto, with immediate effect.*

*This supersedes the notification of even number, dated the 1<sup>st</sup> November, 1974.*

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*Shimla-2-2, the 28th November, 1975*

**No. LLRE(9)-55/74-** *In exercise of the powers, vested in him under sub section (7) of section 2 of Code of Civil Procedure, 1908, the Governor of Himachal Pradesh, is pleased to appoint Deputy Director of Prosecution, Himachal Pradesh to be Government Pleader for the State of Himachal Pradesh and further authorize him to perform all/any of the functions expressly imposed by the said code on the Government Pleaders excepting functions specified in Order XXVII, rule 4 in the First Schedule, with immediate effect.*

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- 19.2** *Conduct of cases on behalf of Union of India:* Government Pleaders shall also conduct cases on behalf of the Union of India as and when they are contacted by the official representatives. State Government has further issued instructions vide notification No. LLR-E(6)1/86-A dt. 30.4.1991.
- 19.3** *Nominated Officers U/S 80 CPC:* In view of the directions issued by the Hon'ble Apex Court in writ petition titled *Salem Bar Association versus State of Tamilnadu*, the State Government is required to submit reply to every notice served under Chapter XV CPC upon the State Government/its functionaries within the prescribed period. For this purpose, the Government Pleader (or Law Officer if there is one) concerned shall, after perusing the contents of the notice and the related documents, draft reply on behalf of the State of Himachal Pradesh/its functionary and submit the same to the District Attorney. The District Attorney shall further examine the record and send the papers along with his opinion to the Department which shall submit a reply to the notice server only through the nominated officer as notified by the Department concerned and shall be responsible for the legal consequences which may ensue for not sending reply to the applicant.
- 19.4** All the District Attorney/Dy.DA/ADAs shall be responsible for conduct of all civil cases on behalf of the Government within their respective jurisdictions except where an Administrative Department engages private counsel. The District Attorney shall be responsible to conduct or cause to conduct all the civil cases on behalf of the Government of his District.
- 19.5** As per notification No. LLRE(9)-55/74 dt. 2nd June, 1975 (supra) Government Pleaders are not authorised to receive summons. The

District Attorneys/Deputy District Attorneys/Assistant District Attorneys whenever he comes to know that a civil case against a Government Department is listed in the Court after service and instructions of the Collector/Department are not conveyed in time, he will put his appearance on behalf of the Government in order to avoid adverse/ex-parte order and will bring this fact to the notice of the Collector/Department through District Attorney and Director of Prosecution.

**19.6 Daily Diary- Compilation**

19.6.1 The Assistant attending civil work in the office of DA/ADA in the respective court in the Districts shall fill up relevant information on the format as under:

**“Format for e-mail”**

Information regarding Civil/Reference Cases conducted in the court of ----  
 \_\_\_\_\_, District /sub-division \_\_\_\_\_ on \_\_\_\_\_ day of  
 \_\_\_\_\_, 200\_ \_\_\_\_\_ Name of Government Pleader \_\_\_\_\_  
 Name of the Assistant \_\_\_\_\_

<b>1</b>	Date	
<b>2</b>	Name of the officer who conducted the cases	
<b>3</b>	Whether court functioned (yes/no)	
<b>4</b>	No. of cases in which written statement filed.	
<b>5</b>	No. of cases in which defence struck off.	
<b>6</b>	No. of cases in which State proceeded ex-parte.	
<b>7</b>	No. of cases fixed for PWs	
<b>8</b>	No. of DWs on behalf of the State examined.	
<b>9</b>	No. of cases in which evidence of respondent/State closed by order of the Court.	
<b>10</b>	No. of Cases in which final arguments advanced by the prosecutor	
<b>11</b>	No. of cases decided	
<b>12</b>	Dismissed ----- decreed ----- Compromised/reconciled ----- Withdrawn -----	
<b>13</b>	Whether applied for copies.	

Signature of Government Pleader with Designation\_\_\_\_\_

Signature of Assistant\_\_\_\_\_

*Note:*  
 (3) Assistant shall make entry with red ink in case diary on the dates where court did not function on account of leave, court evidence etc.  
 (4) Signatures of Government Pleader and Assistant shall be obtained on the office copy and retained in the office.”

19.6.2 The District Attorney on the receipt of such data/information from all the DDAs/ADAs, shall compile such information and make entry in the format as under and e-mail the same before 11 AM positively on the next working day to the Director of Prosecution.

**“Format for e-mail”**

Information regarding Civil/Reference Cases conducted in the District \_\_\_\_\_ -  
 \_\_\_\_\_, on \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_

Sr. No.	Name of the officer who conducted the cases	Name of the court	Whether court functioned (write Y for yes N for No)	No. of cases in which written statement filed.	No. of cases in which defence struck off.	No. of cases in which State proceeded ex-parte.	No. of cases fixed for PWs
1	2	3	4	5	6	7	8

No. of DWs on behalf of the State examined.	No. of cases in which evidence of respondent/State closed by order of the Court.	No. of Cases in which final arguments advanced by the prosecutor	No. of cases decided	Dismissed ---- ----- decreed --- ----- Compromised/ reconciled ---- ----- Withdrawn ---- -----	Whether applied for copies.
9	10	11	12	13	14

Signature of District Attorney \_\_\_\_\_ Signature of Office Assistant \_\_\_\_\_

Note:

(2) Signatures of District Attorney shall be obtained on the office copy and retained in the office.

**19.7 Civil Business:** Civil business shall be regulated/conducted on behalf of the State Government/functionaries and also on behalf of the Union of India/other States. Provisions of Law Department Manual are contained in Chapter IX to XVI (*see appendix-4*).

**19.8 Contempt Proceedings:** State Government has further authorized Government Pleaders to defend public servants in the civil suits in relation to contempt proceedings initiated against them in relation to acts done in the discharge of official duties vide letter No. LLR-E(9)5/90 dt. 2<sup>nd</sup> July, 1998 wherein it is stated that in view of the judgment dt. 9.12.97 delivered by the Hon'ble Supreme court of India AIR (Feb. 1998) S. C. 685 in case titled as *Commissioner, Agra & Ors. Vs. Rohtas Singh & Ors.* that the Advocate General, Himachal Pradesh or any other Government advocate is authorized to defend the officer(s)/official(s) where Contempt of Court notices are issued either by name or by designation, while discharging the official duties.

**19.9 Notifications/Instructions:** Provisions as contained under Order XXVII CPC and instructions issued for conducting civil cases from time to time by the Law Department and Directorate of Prosecution shall be adhered to by Government Pleaders and the important notifications/instructions which are relevant for civil litigations.

**19.10** *Guidelines for monitoring of civil litigation:* Government Pleaders shall follow the guidelines regarding monitoring of civil cases issued by vide letter No. DPr-Instructions/2005-2834-2848 Dated Shimla-2 22.3.2005 given as under:

*“Hon'ble High Court has taken a serious view of delay in filing application for supply of copies by law officers/department concerned. As such your attention is invited to following points, regarding pursuing of cases and applying for copies of judgment etc. You are requested to follow the instructions in letter and spirit, which are enumerated below:*

- 1. The In-charge of the prosecution agency in the District should watch the progress of the cases in which valuable property of the State is involved and cases of encroachment on Govt. land and the cases in which injunction have been granted against the State. Monthly review of such cases be made by him and compliance be reported to the Directorate by the 10<sup>th</sup> of each month.*
- 2. It has been observed that in land reference cases the certified copies of the award are applied for/obtained from the in-charge, copying agency after inordinate delay causing pecuniary loss to the state exchequer as the further appropriate action viz. Deposit of award amount or further appeal is not prepare within reasonable time an the amount of interest payable by the department keeps on increasing. In such cases prompt action is required to be taken for obtaining certified copies of the awards and sending the same with other relevant record to the concerned authorities, for taking further appropriate necessary action. Any laxity in this regard, will be viewed seriously and the officer in charge of the case will be personally answerable for such lapse.*
- 3. Where the number of cases of the department in the districts are more than 200, such departments should depute a nodal officer to monitor these cases and do all necessary pairvi with the advice of the concerned Law Officer/attorneys, conducting such cases, till their final disposal and onward transmission of the copies of orders to the concerned authorities for taking further appropriate action.*
- 4. Instructions were issued by the Public works Department to its executive engineers through out the State to deposit Rs. 500/- as impressed money enabling the concerned law officers to meet the incidental expenses like; procuring of certified copies of judgment/award. It has been observed that these instructions are not being complied with, thereby causing inconvenience to the concerned Law Officer and resultant delay in obtaining he certified copies of award/judgment. These instructions now be complied with in letter and spirit and amount spent in this regard be replenished as and when the same is spent.*
- 5. In civil cases judgment alongwith all complete relevant record viz. copy of plaint, written statement and evidence etc. and opinion in the matter be sent to the Administrative Department within 7 days from the receipt of the judgment, positively.*
- 6. It be also ensured that complete upto date record of the all the cases being handled by them be maintained and quarterly checkup in this regard be made at their end and compliance be reported periodically to this Directorate.*
- 7. Progress of the old cases be reviewed monthly by the in charge prosecution agency and compliance report be sent to the Directorate by the 10<sup>th</sup> of each month.*
- 8. Special report of cases in which defence of the State has been struck off be sent to this office within a week from the date of the orders and intimating the action taken in the matter.*



9. The cases in which the in charge prosecution agency is of the opinion that they are not fit for appeal, they should give brief supporting reasons for the same after appreciating the evidence and legal aspects of the cases.

10. It has been noticed that in most of the cases, LAO is the only party not the Executive Engineer and the State. In such cases as and when reference is made by LAO to the concerned District Court, intimation should be sent by the LAO to XEN concerned and the Concerned XEN should request District Attorney for making application for impleading XEN and State as parties in the cases because Department is Principal interested party. District Attorney should also ask concerned XEN to file application for impleading as parties.

11. On decision of the case by District Court the District Attorney or the Attorney handling the case will apply for copy of the order/judgment immediately. Copy so obtained will be sent by the concerned Attorney to Engineer-in-Chief HP PWD with attention to Law Officer, HP PWD directly and not to the LAO or XEN concerned.

12. The format of the Register of decided cases has been amended. The copy of the amended format is enclosed herewith for future strict compliance.”

**19.11 Conciliation in civil cases:** Instructions regarding conciliation of civil cases by or against State pending in the various courts in the State issued by the Law Department vide No. LLR-(lit)A(4)-1/92 Dated Shimla, the 26<sup>th</sup> April, 2006 are as under:

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

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

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

**FUNCTION AND POWERS OF THE DISTRICT LEVEL COMMITTEE:**

*This committee will identify the cases pending in any court in the District in which the State of HP or any Department of the State or any Public Officer of the Himachal Pradesh Government in his official capacity is a party to the proceedings. It will assess the feasibility of the cases or proceedings or matter for the purpose of conciliation. It shall be the duty of the District Level Officer of the concerned Department involved in such litigation to bring such matter to the notice of the Member Secretary who shall as soon as possible place the matter for consideration of the District Level Committee. The District Level Committee shall also consult the opposite party to ascertain his terms of settlement and if both the parties agree on a certain proposal then the same will be referred to the State Level Committee. In case the opposite party does not participate despite of notice District Committee will consider all aspects keeping in view the merits of the case and will consider the*

*proposal made either by the opposite party to the suit or proceeding or by the court where such suit or proceedings is pending and then shall frame its opinion on the proposal. It shall also keep in mind the law, equity and merits of the case or proceedings and submit its recommendations to the State Level Committee alongwith the relevant record for the decision of the case by way of conciliation or mutual settlement through its Member Secretary.*

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

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

**FUNCTION AND POWERS OF THE STATE LEVEL COMMITTEE:**

- (i) *The State Level Committee shall consider the proposal for settlement as recommended by the District Level Committee. Secretary of this Committee shall convene a meeting of the State Level Committee in consultation with the Chairman as soon as possible on receipt of the recommendations and record from the District Level Committee. Thereafter, the Committee will take decision on such recommendations and submit a clear cut recommendation for the final approval of Minister concerned. The decision so approved by the Minister concerned shall be communicated to the District Level Officer of the concerned Department, who shall then communicate the decision of the State Level Committee to the court concerned, either personally or through Advocate engaged by the Himachal Pradesh Government to defend its interest or through any other Prosecutor representing the State.*
- (ii) *The State Level Committee shall also look into the proposal either from the party or the court concerned for conciliation or settlement by mutual consent of the case or proceedings pending in the State High Court or FC (Appeals) or any State forum or Deputy The highest officers of the concerned department will bring such matter to the notice of Secretary, State Level Committee, who shall then convene meeting of the State Level Committee in consultation with Chairman to consider the proposal for the settlement and submit a clear cut recommendation for the final approval of the Minister concerned. The decision so approved by the Minister concerned shall be communicated to the Head of the concerned Department who shall then communicate the decision to the court concerned. The State Level Committee shall while taking its decision also be guided by the principles of equity, natural justice and merit of the case.*
- (iii) *The Decision(s) so taken by the State Level Committee with the final approval of the Minister concerned either on recommendation of the District Level Committee or on its motion shall be a decision of the the State Government and the Collector of the District, District Attorney, Deputy District Attorney and Assistant District Attorney shall be entitled to give statement on behalf of the State regarding the composition on such terms as may be conveyed to him and such statement shall be binding upon the State.*
- (iv) *These Committees shall consider the possibility of conciliation of civil and revenue cases in general though the priority shall be given to the civil suits/cases.*
- (v) *The above decision of the Himachal Pradesh Government has come into force at once and be strictly followed by all Departments/officers in future. It shall be the responsibility of*

*the concerned Secretary to ensure strict compliance of decision of the State Government."*

*The receipt of this communication be acknowledged."*

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**19.12 Courts orders without jurisdiction:** The Government Pleaders shall follow the instructions contained in letter No. DPr-Instructions/Cases/1997 dt. 25<sup>th</sup> November, 1997, for applying to set aside orders of interim stay against the Government passed by the Civil Courts without having jurisdiction, as given below:

*"It has been noticed in some cases in the past that the civil courts have issued stay orders against the Government without even having jurisdiction to entertain the case. Similarly, provisions of section 80(2) of the Civil Procedure Code are not being strictly adhered to. There have been some instances that the courts have issued injunction orders against the Government or a public officer without giving reasonable opportunity as stipulated in Section 80(2) of the Civil Procedure Code.*

*Therefore, this Department has issued detailed instruction to all the Law Officers in the State vide letter of even number dated 21.11.1997 (see para 19.11) so that recurrence of such instances is avoided. So in order to safeguard the interest of the State, you are requested to issue necessary directions to your subordinate officers to keep these legal aspects in mind. However, if a court still passes a legally impermissible order, the concerned Department should take suitable remedial action for vacation of the interim orders. This may be done by filing an appeal (Order XLIII, Rule 1 (r) or an application (Order XXXIX, Rule 4) for setting aside the interim stay. The earlier course of action may be adopted in case of an order passed without jurisdiction."*

**19.13 Objections regarding jurisdiction:** While raising preliminary objections

relating to jurisdiction/statutory notice and taking immediate steps for vacation of stay orders/filing of appeal in case of encroachment cases, the Government Pleader shall follow the instructions as contained in letter No. DPr-Ins/Cases/1997 dt. 21<sup>st</sup> November, 1997, which are as follows:

*“As you are aware that the jurisdiction of civil courts has been specifically barred under various laws enacted by Central and State Governments. In all such matters, the Govt. counsel must raise preliminary objection about jurisdiction. This point regarding jurisdiction has to be decided before the court passed any interim order. Similarly, even in cases where the court waives the mandatory notice required under section 80(1) of CPC the court has to give reasonable opportunity to the Government or the Public Officer before granting any interim relief. However, it has been noticed that some of the Law Officers do not vehemently raise this point-thereby resulting in issuance of temporary injunction and consequent miscarriage of justice as such stay orders are seldom revoked during the pendency of civil suits. Therefore, in order to safeguard the interest of the State Govt. the following points are reiterated:*

1. Bar on jurisdiction of civil courts:

A. State Acts:

Sr. No.	Name of the Act	Relevant section
	The HP Land Revenue Act	171(2) Clause (xxvii)
	The HP Public Premises and Land (Eviction and Rent Recovery) Act, 1974	10.15
	The HP Village Common Lands Vesting and Utilization Act, 1974	10
	The HP Ceiling on Land Holding Act, 1972	18
	The HP Tenancy and Land Reforms Act, 1972	101, 112, 115
	The HP road side Land Control Act, 1968	19
	The HP Cooperative Societies Act, 1968	92
	The HP Holding (Consolidation and Prevention of Fragmentation Act, 1971)	57
	Workmen's Compensation Act, 1923	19(2)

B. Central Acts:

Sr. No.	Name of the Act	Relevant section
	Payment of Wages Act	22
	Administration of Evacuee Property Act, 1950	46
	Displaced Person (Compensation and Rehabilitation Act, 1954)	36

*However there have been numerous instances where the Govt. Counsels have not raised this preliminary objection regarding jurisdiction during the initial hearing or at the time of filing the written statement. Consequently, the courts have issued interim injunctions without even having jurisdiction to try the suit. The Supreme Court has propounded that a court cannot issue such interim orders without first deciding the question of jurisdiction. For your ready reference, some important landmark judgments of the Supreme Court and Himachal Pradesh High Court have been listed in Annexure A to this letter. Therefore, all the Law Officers ought to raise this important objection when any party seeks stay against Govt. or a public officer. If still a court passes an interim order without having jurisdiction to try a suit, such an order must be assailed by filing an appeal under Order XLIII Rule 1(r) read with section 104 (i) of CPC as observed by the Delhi High Court (AIR 1994 (Delhi) 237, M/s. Supper Cassette Industries Ltd. V. M/s. Bathla Cassettes India (P) Ltd.)*

*2. Notice under Section 80 CPC:*

*Section 80(1) CPC provides for mandatory service of two months notice upon the State Government or a Public Officer before the filing of any suit against the State Government /Public officer. Therefore, this notice under section 80(1) CPC, is a condition precedent to institution of such a suit. Section 80(2) CPC provides that a suit to obtain an urgent or an immediate relief against the Government can be instituted with the leave of the court, without service any notice as required under Section 80(1) Civil Procedure Code However, this section also makes it amply clear that the court shall not grant any relief in the suit (whether interim or otherwise) without giving a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.*

*Government of Himachal Pradesh appointed all the Assistant District Attorneys –cum-Public Prosecutors and APPs(now DeputyDAs and ADAs respectively) as Govt. Pleaders under subsection (7) of section 2 of the Code of Civil Procedure vide notification No. LLR-E(9)55/74 dt. 2.6.1975. It had been clearly mentioned in this notification that the Govt. Pleaders will performs all/any of the function expressly imposed by the said code on the Govt. Pleaders except the function specified in Order XXVII Rule 4 of the Civil Procedure Code Therefore, even though an Assistant District Attorney/Deputy District Attorney/District Attorney can receive the processes issued by a court (if called upon by the court to do so), such a receipt of processes will not be tantamount to service on the Govt./Public Officer, as laid down in Section 80(2) of Civil Procedure Code The concerned Law Officer is certainly expected to inform the Govt./Public officer, so that the latter can put his viewpoint through the Govt. Pleader before the court. Hence, even in emergent cases, the Courts must be requested to give a reasonable opportunity to the Govt. or Public officers as the case may be, before granting any relief in the suit (interim or otherwise).*

*These legal provisions contained in the aforesaid instructions, should be meticulously adhered to. Any lapse in this regard will be viewed seriously.*

**ANNEXURE "A"**

**LIST OF IMPORTANT RULINGS ON THE POINT OF**

## **JURISDICTION/FRAMING OF PRELIMINARY ISSUE.**

1	AIR 1954 SC 340
2	AIR 1963 SC 1547
3	AIR 1965 SC 339
4	AIR 1966 SC 893-894
5	AIR 1969 SC 78
6	AIR 1978 HP 3
7	AIR 1979 SC 1320
8	AIR 1984 SC 1726
9	AIR 1988 SC 1085
10	INDIAN LAW REPORTS (HP SERIES) 1985 PAGE 969
11	Simla Law Cases 1993 (2) page 301
12	Simla Law Cases 1992 (1) page 320
13	Supreme court Cases 1997(3) page 443
14	Supreme court cases 1996 (7) page 676

*The Hon'ble Supreme Court, in its recent pronouncement in case titled State versus K. Narasimhachary (2006 Criminal Law Journal 518) has held:*

*“That the order of sanction for prosecution of public servant was issued under S. 19 of Prevention of Corruption Act(1988). The Secretary to the State Government merely authenticated the said order of sanction which was issued in the name of Governor of the State. The order of sanction was, thus, issued by the State in discharge of its statutory functions in terms of S. 19 of the Act. The order of sanction was authenticated. The said order of sanction was an executive action of a State having been issued in the name of the Governor. It was authenticated in the manner specified in the Rules of the Executive Business. The authenticity of the said order has not been questioned. It was, therefore, a public document within the meaning of S. 74 of the Evidence Act. A public document can be proved in terms of Ss. 76 to 78 of the Evidence Act.”*

*The Rules of Business of Government of HP provides that “All the orders and other instruments shall be made and executed in the name of the Governor, every such order or instrument shall be signed either by a Secretary, Joint Secretary, Under Secretary or such other officer as may be specifically empowered by the Governor, in that behalf and such signatures shall be deemed to be proper authentication*

of such order or instrument.”

*In view of the provisions of the Evidence Act, law laid down by the Apex Court and Rule of Business of Government of HP, the Prosecution Sanction can be proved by the official who has custody of the relevant record, unless the presumption available under section 79 of the Evidence Act regarding genuineness of certified copies is likely to be challenged, or issues of application of mind etc. are likely to arise during the trial. You are, therefore, requested to exercise your discretion carefully based on the individual circumstances of each case.*

**19.14:** In the pending civil matters where the civil suit is filed by or on behalf of the State of Himachal Pradesh, the plaint/written statements are required to be signed by the senior functionaries on behalf of the State of Himachal Pradesh. The State Government has authorized senior functionaries in the different Departments, to sign plaint/written statements on behalf of the State of Himachal Pradesh in civil matters vide various notifications issued under the Code of Civil Procedure, 1908 which are tabulated as under:

**NOTIFICATIONS**

Under

**THE CODE OF CIVIL PROCEDURE, 1908**

GOVERNMENT OF HIMACHAL PRADESH

LAW DEPARTMENT

NOTIFICATIONS

<b>Sr. No.</b>	<b>Notification No. &amp; Date</b>	<b>Powers conferred under Order/Rule</b>	<b>Office on whom conferred.</b>
1.	<b>No. LLR-E(9)-2/76</b> 14 <sup>th</sup> March, 2000.	<b>Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure:</b> authorize the State Geologist and the Geologists of the Industries Department of Himachal Pradesh to act for the State of Himachal Pradesh to sign and verify plaints and written statement/ replication/rejoinder etc. in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any Judicial proceedings especially when the Director of Industries, Himachal Pradesh is not respondent in cases pertaining to Geological Wing of the State.	State Geologist and the Geologists of the Industries Department of Himachal Pradesh

2.	No. LR-107-420/5425 <sup>th</sup> January, 1971	<b>rules 1 and 2 of the Order XXVII of the Code of Civil Procedure</b> to act for the State of Himachal Pradesh, to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings. This notification shall not effect any act already done on the basis of the previous notifications and all such acts done under previous notification shall be deemed to have been done under this notification.	all the Collectors of Districts in Himachal Pradesh, all Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries, heads of Departments of Himachal Pradesh and also the Conservators of Forests and Superintending Engineers in Himachal Pradesh
3.	No. LLR-E(9)2/76 7 <sup>th</sup> August, 1982	<b>clause (1) of Article 299 of the Constitution of India</b> Authorise to execute agreements/instruments relating to the Soil Conservation Schemes, with their respective jurisdiction, to be made in exercise of the executive powers of the State Government of Himachal Pradesh.  This supersedes the Himachal Pradesh Government Notifications Nos. LLR-E(9)2/76, dated 22nd September, 1976, LLR-E(9)2/76, dated 22nd January, 1977 and LLR-E(9)2/78, dated 4th February, 1981.	All Divisional Forest Officers, Soil Conservation Divisions/Assistant Soil Conservation Officers in the Department of Soil Conservation, Himachal Pradesh
4.	No. LR-107-420/54 27 <sup>th</sup> August, 1987	<b>under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure, 1908</b> To sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings.	the Additional Conservators, Himachal Pradesh
5.	No. LLR-E(9)-2/76 11th June, 1999	<b>under rules 1 and 2 of the Order XXVII of the Code of Civil Procedure</b> To act for the State of Himachal Pradesh, to sign and verify plaints and written statements in any suit by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceeding.	Chief Conservator of Forests (Project), Himachal Pradesh, Director, Indo-German Changar Project, Director, IWDP (Hills), Kandi and Director, H. P. State Land Use Board
6.	No. LLR-E(9)-2/76 14 <sup>th</sup> March, 2000	<b>rules 1 and 2 of the Order XXVII of the Code of Civil Procedure</b> To act for the State of Himachal Pradesh, to sign and verify plaints and written statements/replication/rejoinder etc. in suits by or against the State of Himachal Pradesh and also to act for the State of Himachal Pradesh in respect of any judicial proceedings especially when the Director of Industries, Himachal Pradesh is not a respondent in cases pertaining to Geological Wing of the State.	The State Geologist and the Geologists of the Industries Department of Himachal Pradesh



7.	No. LLR-E(9)-2/76 10th January, 2001	<b>Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure</b> To act for the State of Himachal Pradesh to sign and verify plaints and written statements in suits by or against the State of Himachal Pradesh in respect of any judicial proceedings in the courts up to the District level only.	Joint Directors and Deputy Directors of Animal Husbandry and [9][Technical Education, Vocational and Industrial Training Departments
8.	No. LLR-E(9)- 2/76 6th May, 2002	<b>Rules 1 and 2 of the Order XXVII of the Code of Civil Procedure</b> To act for the State of Himachal Pradesh and to sign and verify the plaint/written statement or reply in suits by or against the State of Himachal Pradesh before the law courts upto district level only in the cases relating to the Districts of their posting.	all the Chief Medical Officers in Himachal Pradesh
9.	No. LLR.B(1)1/74-III 28 Aug 1988	<b>Sub section (3) of section 24 of Code of Criminal Procedure, 1973(Act No. 2 of 1974)</b> appointed as Public Prosecutor for whole of the State of Himachal Pradesh, for conducting the Prosecution in the courts of Magistrates/Session Judges in the State of HP with immediate effect.	Joint Director of Prosecution HP
10.	No. LLR-B(1A)- 2/89 18 <sup>th</sup> February, 1994	<b>Code of Criminal Procedure, 1973 (Act No. 2 of 1974)</b> Notified all the Deputy District Attorneys of Prosecution Department to function as Public Prosecutors for conducting prosecution in the State of Himachal Pradesh under the provisions of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor, Himachal Pradesh is pleased to order that all the Deputy District Attorneys of Prosecution Department will also continue to function as Public Prosecutor for conducting prosecution in the State Himachal Pradesh under the provisions of aforesaid Code.	All the Deputy District Attorneys of Prosecution Department

**Appendix -1**

(See Chapter VII Point No. 7.2)

**Department of Prosecution  
Himachal Pradesh  
MEMORANDUM OF SCRUTINY OF CHALLAN  
IN IPC OFFENCES AFFECTING BODY  
IN CASE**

F.I.R. No. \_\_\_\_\_ dated \_\_\_\_\_ State Vs \_\_\_\_\_ Police  
Station \_\_\_\_\_ Section \_\_\_\_\_

1.		<b>PROS ECUT OR'S REMA RKS</b>	<b>COMP LIANC E BY INVES TIGAT ION OFFIC ER</b>
2.	Name of the Investigation Officer by whom the Challan prepared.		
3.	Date, time and place of occurrence.		
4.	Name of the accused persons challaned/not challaned. Reasons for not challaning the accused given or not?		
5.	Brief facts of the case (attach sheet), if needed.		
6.	Whether all the forms of integrated investigation have been included in the challan.		
7.	Whether the accused has been arrested, date of arrest and the date of enlarged on bail.		
8.	Whether all the persons who were accused of committing the offence in the FIR or First Case Diary have been sent up for trial? If there is some addition or deletion of accused then whether reasonable reasons are there or not on the record?		
9.	If any accused has been declared proclaimed offender, give details.		
10.	Whether the delay, if any, in lodging the FIR explained during the investigation?		
11.	Are all the eye witnesses or other necessary witnesses whose names were mentioned in the FIR are entered in the challan? If not, reasons be given.		
12.	Whether any evidence proving the guilty conduct of the accused, if relevant, has been collected or not?		
13.	Whether the circumstantial evidence has been collected. Whether the chain of events is complete or not?		
14.	Is the sketch map of the spot prepared according to the instructions i.e. whether the notes on it are entered by Investigating Office in red ink and are these notes correct?		
15.	Whether the case property has been disposed off by the order of the court?		
16.	Whether the photographs of the spot along-with negatives attached with the challan? Whether two set of copies of photographs are on the police file or not? If photographs not taken, whether reasons given are adequate or not?		
17.	Whether necessary ingredients of a particular offences are fulfilled or not? Prosecutor to specify.		
18.	Proof of the age of prosecutrix /juvenile accused.		
19.	Whether the weapon of offence has been shown to the doctor before obtaining his report?		
20.	Are the sketches of the weapons of offence attached to the challan? Do they bear the signatures of the preparing officer and the weight/description of the weapon? Whether the weapon of offence has been sealed.		
21.	Whether any forensic science clues were taken from the spot, sealed		

	and sent for testing?		
22.	Whether any MLC/Chemical examiner report or forensic evidence have been collected. If so details be given: i) MLC/Medical examination/Post Mortem report. ii) Report of the Govt. examiner of questioned documents. iii) Report of finger print expert. iv) Report of chemical examiner v) Report of Ballistic expert vi) Dog tracking evidence vii) DNA report. viii) Compliance of Section 164(a) CrPC ix) Report of any other expert in the field of science or art.		
23.	Identification parade report, if conducted.		
24.	Whether disclosure statements under section 27 of the Evidence Act recorded? Whether these are legal and proper?		
25.	Whether any Dying Declarations recorded and attached with the Challan? Whether these are legal and proper?		
26.	Whether calendar of evidence has been prepared?		
27.	Whether the name and latest addresses of all the witnesses alongwith the detail of record to be brought by them has been given in the list of witnesses?		
28.	Whether all the papers and documents entered in the list given with the challan are properly attached to the challan? If the original record has not been attached, whether certified photocopies attached. Whether there is mention in the list of PWs as to who will bring the original record.		
29.	In case of kidnapping, rape and abduction, note if the medical opinion (Medico Legal Certificate, DNA Reports etc.) and attested copies of birth register etc. regarding the accused or the victim attached with the challan.		
30.	Whether all the forms of NCPB integrated investigation are attached or not?		
31.	Whether the demarcation report of the place of occurrence attached, wherever required?		
32.	Whether case is required to be sent to the supervisory officer of the Police Station concerned. If sent, what are his orders/comments in special reported crimes/major/serious offences?		
33.	Are all the columns of challan form duly filled in? Note any mistake made in filling the form.		
34.	Whether the copies of the road certificate, extract of Malkhana Register etc. have been attached with the Challan?		
35.	Whether special report in murder and other heinous crimes sent to the jurisdictional Magistrate, during the investigation as required under section 157 Cr.P.C. and under the Police Rules?		
36.	Has any unnecessary delay been made in the course of investigation or in the preparation of the challan and in the filing of the challan in the court?		
37.	Whether the statements of important prosecution witnesses were separately recorded under section 164 of Cr.P.C.?		
38.	Are the identification certificates of the accused attached to the challan and duly filled, which of the accused are previous convicts?		
39.	By whom the challan has been forwarded to the Court for trial? Whether it is within limitation ?		
40.	Objections of the Prosecutor	Suggestions of the Prosecutor	Compliance by Investigation Officer.

**Signature of Investigation Officer.**

**Signature of  
Prosecutor.**

**After final decision of the case.**

- a) If the case ends in discharge or acquittal. Copy of judgment should be attached with brief facts/opinion as to whether or not the case is fit case for revision or an appeal.
- b) Whether one copy of judgment has been collected by the Police or not.

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Department of Prosecution

**Himachal Pradesh**

**MEMORANDUM OF SCRUTINY OF CHALLAN  
IN IPC OFFENCES AFFECTING PROPERTY, RELATING TO DOCUMENTS,  
CRIMINAL BREACH OF TRUST AND CHEATING.  
IN CASE**

F.I.R. No. \_\_\_\_\_ dated \_\_\_\_\_ State Vs \_\_\_\_\_ Police  
Station \_\_\_\_\_ Section \_\_\_\_\_

1.		<b>PROSECUTOR'S REMARKS</b>	<b>COMPLIANCE BY INVESTIGATION OFFICER</b>
2.	Name of the Investigation Officer by whom the Challan prepared.		
3.	Date, time and place of occurrence.		
4.	Name of the accused persons challaned/not challaned. Reasons for not challaning the accused given or not?		
5.	Brief facts of the case (attach sheet), if needed.		
6.	Whether all the forms of integrated investigation have been included in the challan.		
7.	Whether all the persons who were accused of committing the offence in the FIR or First Case Diary have been sent up for trial? Note if some of them are omitted or some new are added, also note if the officer sending the challan has noted any reasons for doing so in the case diary or in the brief.		
8.	Are all the eye witnesses or other necessary witnesses whose names were mentioned in the FIR are entered in the challan? If not, reasons be given. Whether the reasons are proper and adequate?		
9.	If any accused has been declared proclaimed offender, give details.		
10.	Whether the statement of such witnesses have been recorded who are well conversant with the handwriting of the accused?		
11.	Whether the delay, if any, in lodging the FIR explained during the investigation? Whether reasons are proper and adequate?		
12.	Whether any evidence proving the guilty conduct of the accused, if relevant, has been collected or not?		
13.	Whether all the papers and documents entered in the list given on the challan are properly attached to the challan? If original record not attached. Whether attested photocopies attached. Whether there is mention in the list of PWs as to who will bring the original record.		
14.	Is the sketch map of the spot prepared according to the instructions i.e. whether the notes on it are entered by Investigating Office in red ink and if these notes appear to be made correct?		
15.	Whether the case property has been disposed off by the order of the court?		

16.	Are all the columns of challan form duly filled in? Note any mistake made in filling the form.		
17.	Whether separate challans have been prepared on a year-wise basis, if required?		
18.	Whether necessary ingredients of a particular offences are fulfilled or not? Prosecutor to specify.		
19.	Does the list of property entered in the Challan tally with the list given in the road certificate.		
20.	Demarcation report of the place of occurrence/property belonging to the complainant.		
21.	Whether the photographs of the spot alongwith negatives attached with the challan and two copies of photographs are attached to the police file?		
22.	Whether the accused is released on bail, by the court or police? Date of arrest of accused.		
23.	Whether the list of properties etc. recovered produced or seized in the case are correctly prepared, dated and signed by the witnesses and officer preparing them? Also whether the signatures of the witnesses of recovery who are entered in the challan appear in the list?		
24.	Report of any expert. i) GEQD ii) Report of finger prints Bureau		
25.	Whether disclosure statement under section 27 of the Evidence Act has rightly been recorded and recovery made thereafter?		
26.	Whether calendar of evidence has been prepared?		
27.	Has any unnecessary delay been made in the course of investigation or in challaning the case? Give reasons.		
28.	Whether the statements of important prosecution witnesses have separately been recorded under section 164 of Cr.P.C.?		
29.	Are the identification certificates of the accused attached with the challan and duly filled, which of the accused are previous convicts?		
30.	By whom the challan has been forwarded to the Court for trial? Whether it is within limitation ?		
31.	Whether case is required to be sent to the supervisory officer of the Police Station concerned. If sent, what are his orders/comments in special reported crimes/major/serious offences?		
32.	Whether the mandatory procedural formalities have been fulfilled, specially with respect to search and seizure.		
33.	Whether in the similar offence, similar defects have already been pointed out in the investigation of the same Investigation Officer? If yes, whether repetition of defects/faults have been reported to the Supervisory Officer of the Police Station concerned and what action has been taken by the Supervisory Officer?		
34.	Objections of the Prosecutor	Suggestions of the Prosecutor	Compliance by Investigation Officer.

35. **Signature of Investigation Officer.**

**Signature of Prosecutor.**

**After final decision of the case.**

**If the case ends in discharge or acquittal. Copy of judgment should be attached with brief facts/opinion as to whether or not the case is a fit case for revision or an appeal.**

**Whether a copy of judgment has been collected by the SP office concerned or not?**

**Department of Prosecution  
Himachal Pradesh**

**MEMORANDUM OF SCRUTINY OF CHALLAN  
IN IPC OFFENCES PUBLIC TRANQUILITY, PUBLIC SERVANTS AND  
PREVENTION OF CORRUPTION ACT.**

**IN CASE**

F.I.R. No. \_\_\_\_\_ dated \_\_\_\_\_ State Vs \_\_\_\_\_ Police  
Station \_\_\_\_\_ Section \_\_\_\_\_

1.		<b>PROS ECUT OR'S REMA RKS</b>	<b>POLIC E COMP LIANC E</b>
2.	Name of the Investigation Officer by whom the Challan prepared.		
3.	Date, time and place of occurrence.		
4.	Name of the accused persons challaned/not challaned. Reasons for not challaning the accused given or not?		
5.	Brief facts of the case (attach sheet), if needed.		
6.	Whether all the forms of integrated investigation have been included in the challan.		
7.	Whether all the persons who were accused of committing the offence in the FIR or First Case Diary have been sent up for trial? If some of them are omitted or some new are added, then whether sufficient reasons have been given in the challan or in the case diary?		
8.	Whether the delay, if any, in lodging the FIR explained during the investigation? If so, are there sufficient reasons or not?		
9.	If any accused has been declared proclaimed offender, give details.		
10	Are all the eye witnesses or other necessary witnesses whose names were mentioned in the FIR are entered in the challan? If not, reasons be given. Whether the reasons are proper and adequate?		
11	Whether independent witness has been examined, if required?		
12	Whether any evidence proving the guilty conduct of the accused, if relevant, has been collected or not?		
13	Whether one copy of the photographs has been attached with the challan and two copies of the photographs have been attached to the police file?		
14	Is the sketch map of the spot prepared according to the instructions i.e. whether the notes on it are entered by Investigating Office in red ink and if these notes appear to be made correct?		
15	Whether the case property has been disposed off by the order of the court ?		
16	Report of any expert: 1. GEQD 2. Finger Prints expert. 3. Chemical Examiner Report.		
17	Whether the necessary ingredients of a particular offence are fulfilled or not?		
18	Whether all the papers and documents entered in the list given on the challan are properly attached to the challan?		
19	If the original record has not been taken in possession during investigation and only photocopies of the record have been taken in possession, then whether it has been mentioned in the list of PWs as to who is to bring the original record/documents.		
20	Are all the columns of challan form duly filled in? Note any mistake made in filling the form.		
21	Does the list of property entered in the Challan tally with the list given		

	in the road certificate.		
22	Whether the accused is released on bail, by the court or police? Date of arrest and date of being enlarged on bail.		
23	Whether the list of properties etc. recovered produced or seized in the case are correctly prepared, dated and signed by the witnesses and officer preparing them? Also whether the signatures of the witnesses of recovery who are entered in the challan appear in the list?		
24	Has any unnecessary delay been made in the course of investigation or in challaning the case? Give reasons.		
25	Whether the statements of important prosecution witnesses were separately recorded under section 164 of Cr.P.C.?		
26	Whether calendar of evidence has been prepared?		
27	Are the identification certificates of the accused attached to the challan and duly filled, which of the accused are previous convicts?		
28	By whom the challan has been forwarded to the Court for trial? Whether it is within limitation ?		
29	Whether legal and valid prosecution sanction has been obtained or not? If the Authority granting Prosecution sanction is not to be cited as a witness, then who would prove the same. Whether such competent witness has been cited with the record of grant of prosecution sanction or not?		
30	Whether case is required to be sent to the supervisory officer of the Police Station concerned. If sent, what are his orders/comments in special reported crimes/major/serious offences?		
31	Whether the mandatory procedural formalities as required under the law have been fulfilled or not?		
32	Whether in the similar offence, similar defects had already been pointed out in the investigation of the same Investigation Officer. If so, what action has been taken by the supervisory officer of the same Police Station in the present case?		
33	Objections of the Prosecutor.	Suggestions of Prosecutor	Compliance by the Investigation Officer.

**Signature of Investigation Officer.**

**Signature of Prosecutor.**

**27. After final decision of the case.**

**a) If the case ends in discharge or acquittal. Copy of judgment should be attached with brief facts/opinion as to whether or not the case is a fit case for revision or an appeal.**

**b) Whether a copy of judgment has been collected by the SP office concerned or not?**

Department of Prosecution  
**Himachal Pradesh**  
MEMORANDUM OF SCRUTINY OF CHALLAN  
**IN OFFENCES UNDER NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES  
ACT, 1985 & EXCISE ACT.**

**IN CASE**

F.I.R. No. \_\_\_\_\_ dated \_\_\_\_\_ State Vs \_\_\_\_\_ Police  
Station \_\_\_\_\_ Section \_\_\_\_\_

1.		<b>PROS ECUT OR'S REMA RKS</b>	<b>POLIC E COMP LIANC E</b>
2.	Name of the Investigation Officer by whom the Challan prepared.		
3.	Date, time and place of occurrence.		
4.	Name of the accused persons challaned/not challaned. Reasons for not challaning the accused given or not?		
5.	Brief facts of the case (attach sheet), if needed.		
6.	Whether all the forms of integrated investigation have been included in the challan.		
7.	Whether the compliance of mandatory/directory provisions of NDPS Act have been made? <b>MANDATORY:</b> ii) Requirement under section 42. iii) Requirement under section 50. <b>DIRECTIVE:</b> iv) Requirement under section 52. v) Requirement under section 57.		
8.	Whether all the persons who were accused of committing the offence in the FIR or First Case Diary have been sent up for trial? Note if some of them are omitted or some new are added, also note if the officer sending the challan has noted any reasons for doing so in the case diary or in the brief. Whether reasons are proper and adequate?		
9.	If any accused has been declared proclaimed offender, give details.		
10.	Are all the eye witnesses or other necessary witnesses whose names were mentioned in the FIR are entered in the challan? If not, reasons be given. Whether reasons are proper and adequate?		
11.	Whether any delay is there in the recording of the FIR, if so, are there sufficient reasons or not? Whether reasons are proper and adequate?		
12.	Whether any evidence proving the guilty conduct of the accused, if relevant, has been collected or not?		
13.	Whether independent witnesses have been examined, if required? If not examined, whether reasons shown?		
14.	Is the sketch map of the spot prepared according to the instructions i.e. whether the notes on it are entered by Investigating Office in red ink and if these notes appear to be made correct?		
15.	Whether the case property has been disposed off by the order of the court ?		
16.	Whether the affidavits of all forma witnesses have been obtained and attached with the challan?		
17.	Details of sealing of case property under section 55 i.e. sealing of bulk as well as sample.		
18.	Whether necessary ingredients of a particular offences are fulfilled or not? Prosecutor to specify.		
19.	Whether any Forensic evidence has been collected during investigation? If so, details be given. i) Chemical Examiner Report.		
20.	Whether the link evidence in NDPS/Excise cases has been collected during the evidence? Is it complete?		
21.	Whether all the papers and documents entered in the list given on the		



	challan are properly attached to the challan?		
22.	Are all the columns of challan form duly filled in? Note any mistake made in filling the form.		
23.	Does the list of property entered in the Challan tally with the list given in the road certificate.		
24.	Quantity of the contraband in NDPS cases.		
25.	Whether the copies of the road certificate, extract of Malkhana Register and NCB form etc. have been properly filled in?		
26.	Whether calendar of evidence has been prepared?		
27.	Whether the list of properties etc. recovered produced or seized in the case are correctly prepared, dated and signed by the witnesses and officer preparing them? Also whether the signatures of the witnesses of recovery who are entered in the challan appear in the list?		
28.	Whether the photographs of the spot alongwith negatives attached with the challan? Whether two copies of the photographs are attached to the police file?		
29.	Whether legal and valid disclosure statement under section 27 of Indian Evidence Act has been recorded and attached with the challan? If yes, whether proper recovery has been made in consequence of the above statement?		
30.	Has any unnecessary delay been made in the course of investigation or in challaning the case? Give reasons.		
31.	Whether case is required to be sent to the supervisory officer of the Police Station concerned. If sent, what are his orders/comments in special reported crimes/major/serious offences?		
32.	Whether the statements of important prosecution witnesses have separately been recorded under section 164 of Cr.P.C.?		
33.	Are the identification certificates of the accused attached to the challan and duly filled, which of the accused are previous convicts?		
34.	Whether the accused is released on bail, by the court or police? Date of arrest and being enlarged on bail?		
35.	By whom the challan has been forwarded to the Court for trial? Whether it is within limitation ?		
36.	Whether case is required to be sent to the supervisory officer of the Police Station concerned. If sent, what are his orders/comments.		
37.	Whether in the similar offence, similar defects had already been pointed out in the investigation of the same Investigation Officer. If yes, whether reported to the Supervisory Officer of Police Station concerned and action taken by the Supervisory Officer of the Police Station concerned in the present case.		
38.	Objections of the Prosecutor	Suggestions of the Prosecutor	Compliance by Investigation Officer.
	<b>Signature of the Investigation Officer.</b>	<b>Signature of the Prosecutor.</b>	

**After final decision of the case.**

**If the case ends in discharge or acquittal. Copy of judgment should be attached with brief facts/opinion as to whether or not the case is a fit case for revision or an appeal.**

**Whether one copy of judgment has been collected by the Police or not.**

- i)** Statement of criminal cases:
- ii)** Statement of civil cases
- iii)** Monthly criminal diary in respect of assistant district attorney /deputy district attorney/district attorney
- iv)** Monthly statement of forest cases
- v)** Monthly civil diary in respect of district attorney/deputy district attorney/assistant district attorney regarding civil/ other work handled by him.
- vi)** Monthly statement of cases under preventive sections of cr pc pending/disposed of during the month.
- vii)** Offense-wise breakup of criminal cases
- viii)** Age-wise breakup of criminal cases

**i) MONTHLY STATEMENT OF CRIMINAL CASES FOR THE MONTH OF \_\_\_\_\_ IN RESPECT OF THE OFFICE OF DISTRICT/ASSISTANT DISTRICT ATTORNEY \_\_\_\_\_**

Sr No	Name of the court	Name of the Law Officer	No. of cases pending at the beginning of month	Instituted during month	Convicted during month	Acquitted during month	Discharged during month	Compromised during month
1	2	3	4	5	6	7	8	9

Transferred during the month	Proceedings dropped	withdrawn	P O	Others.	Total disposal	Cases more than 2-3-5 years	Cases pending at the close of month	Rate of conviction
10	11	12	13	14	15	16 a b c	17	18

Signature of Law officer

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**ii) MONTHLY STATEMENT OF CIVIL CASES FOR THE MONTH OF \_\_\_\_\_ IN RESPECT OF THE OFFICE OF DISTRICT/ASSISTANT DISTRICT ATTORNEY \_\_\_\_\_**

Sr No	Name of the court	Name of the Law Officer	No. of cases pending at the beginning of month	Instituted during month	Decided in favour of the State	Decided against the State	Compromised during the year
1	2	3	4	5	6	7	8

Transferred during the month	Withdrawn	Others	Total disposal	Cases more than 2-3-5 years	Cases pending at the close of month	Percent age of success
9	10	11	12	13 a b c	14	15

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Signature of Law officer

**iii) MONTHLY CRIMINAL DIARY IN RESPECT OF \_\_\_\_\_  
DISTRICT ATTORNEY/DEPUTY DISTRICT ATTORNEY/ASSISTANT  
DISTRICT ATTORNEY FOR THE MONTH OF \_\_\_\_\_  
REGARDING CRIMINAL CASES/ WORK HANDLED BY HIM**

Sr No	No. of cases pending in the court giving name of the court	No. of cases instituted during the month	No. of cases acquitted during the month giving complete particulars of the case detail is to be separately attached. Showing the title of the case, offence/s/date of decision.	No. of criminal cases convicted during the month indicating complete particulars as mentioned at Sr. No. 2	No. of cases discharged indicating the complete particulars as mentioned at Sr. No. 4	No. of cases compounded giving full particulars as mentioned at Sr. No. 4	No. of cases withdrawn u/s 321 CrPC giving full particulars mentioned at Sr No. 4
1	2	3	4	5	6	7	8

No. of challans scrutinized	Whether application for copies made in the cases decided during the month.	How many copies of judgements received from the agency and action in the matter giving complete particulars indicating whether they were found fit for appeal or not.	No. of cases in which opinion were given.	No. of cases more than two years old	Remarks if any
9	10	11	12	13	14

Signature of Law officer

**iv) MONTHLY STATEMENT OF FOREST CASES FOR THE MONTH OF \_\_\_\_\_**

Sr No	No. of cases pending in	No. of cases instituted	No. of cases decided during the month.	No. of cases acquitted. Give full particulars	No. of cases scrutinized.	No. of cases convicted	No. of cases withdrawn

	the court giving name of the court		Give full particulars				
1	2	3	4	5	6	7	8

whether application for copy had been made	No. of cases in which proceedings were dropped.	No. of cases pending at the closing date	Remarks, if any
9	10	11	12

Signature of Law officer

v) **MONTHLY CIVIL DIARY IN RESPECT \_\_\_\_\_ DISTRICT ATTORNEY/DEPUTY DISTRICT ATTORNEY/ASSISTANT DISTRICT ATTORNEY FOR THE MONTH OF \_\_\_\_\_ R REGARDING CIVIL /OTHER WORK HANDLED BY HIM**

Sr No	No. of cases pending in the court giving name	No. of cases instituted	No. of cases decided in favour of State & full particulars viz. Title of the case, date of decision	No. of cases decided against the State giving full particulars of the case, viz. title and date of the decision, separate list be attached	No. of cases comprised during the month giving full particulars of the case as referred above	Whether application for copies had been made in the cases decided during the month, date of application be indicated /mentioned at sr. No. 4	No. of cases in which copies of judgment received from the CA & action in the matter taken, giving full particulars of the case whether they were found fit for appeal or not & proposed action taken at your end.
1	2	3	4	5	6	7	8

No. of cases in which defence of the State was struck off/ evidence closed by order of court giving full particulars of the cases and the action taken proposed.	No. of cases in which opinions were given.	No. of cases in which the appeal /revision was proposed, not recommended to be shown separately. List be attached	Remarks.
9	10	11	12

Signature of Law officer

**vi) MONTHLY STATEMENT OF CASES UNDER PREVENTIVE SECTIONS OF CrPC PENDING/DISPOSED OF DURING THE MONTH OF**

Sr. No.	Name of the court	No. of cases pending in the beginning of the month	No. of cases instituted during the month	Number of cases disposed of during the month					No. of cases pending at the close of month	remarks
				Bound	Discharged	Com promised	Transferred	Others		
1	2	3	4	5(a)	5(b)	5(c)	5(d)	5(e)	6	7

Signature of Law officer

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**vii) Offense-wise breakup of criminal cases pending in the court of \_\_\_\_\_ for the month of \_\_\_\_\_ 2007 being handled by Sh. \_\_\_\_\_ District/Deputy/Assistant District Attorney.**

Sr No	Category wise breakup of pending cases at the close of the month indicating nature of the offence (detail thereof be given in column)	Opening balance	Instituted	Convicted	Acquitted	Com promised	Transferred	Discharged	Other	Total decision	Pending at the close of the month
1	2	3	4	5	6	7	8	9	9	9	9
	Theft										
	Murder										
	Attempt to murder										
	Rape										
	Criminal mis-appropriation										
	Forgery										
	Hurt										
	Kidnapping										
	Rioting										
	Excise cases under Excise Act										
	Arms Act										
	NDPS Act										
	Gambling Act										
	PCR Act										
	SC/ST (PoA) Act										
	Other offences under section 309										
	498-A IPC										
	Accident										
	431 IPC										
	Immoral Traffic (Prevention) Act										
	Other cases (Please specify)										

Signature of Law officer

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**viii) Age-wise breakup of criminal cases pending in the court of \_\_\_\_\_ for the month of \_\_\_\_\_ 2007 being handled by Sh. \_\_\_\_\_ District/Deputy/Assistant District Attorney.**

<b>Sr No</b>	<b>Category wise breakup of pending cases at the close of the month indicating nature of the offence (detail thereof be given in column)</b>	<b>0-6 month</b>	<b>6-12 months</b>	<b>12-18 months</b>	<b>18-24 months</b>	<b>2 years</b>	<b>3 years</b>	<b>4 years</b>	<b>5 years</b>	<b>6-8 years</b>	<b>8-10 years</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>
1.	<b>Theft</b>										
2.	<b>Murder</b>										
3.	<b>Attempt to murder</b>										
4.	<b>Rape</b>										
5.	<b>Criminal mis-appropriation</b>										
6.	<b>Forgery</b>										
7.	<b>Hurt</b>										
8.	<b>Kidnapping</b>										
9.	<b>Rioting</b>										
10.	<b>Excise cases under Excise Act</b>										
11.	<b>Arms Act</b>										
12.	<b>NDPS Act</b>										
13.	<b>Gambling Act</b>										
14.	<b>PCR Act</b>										
15.	<b>SC/ST (PoA) Act</b>										
16.	<b>Other offences under section 309</b>										
17.	<b>498-A IPC</b>										
18.	<b>Accident</b>										
19.	<b>431 IPC</b>										
20.	<b>Immoral Traffic (Prevention) Act</b>										
21.	<b>Other cases (Please specify)</b>										

Signature of Law officer

**Format of criminal case examined by the Litigation Cell, Directorate of Prosecution, Himachal Pradesh, Shimla.**

**District Folder** \_\_\_\_\_.

<b>1.</b>	<b>Date of receipt of file from Home Department/diary number in Litigation Cell.</b>	
<b>2.</b>	<b>Case FIR No., Police Station, offence, date, title and brief facts of the case</b>	
<b>3.</b>	<b>Name of the court/ date of decision</b>	
<b>4.</b>	<b>No. of witnesses examined</b>	PWs
		DWs
<b>5.</b>	<b>No. of PWs given up</b>	
<b>6.</b>	<b>Name of the Prosecutor(s) who scrutinized the police challan</b>	
<b>7.</b>	<b>Name of the Prosecutor(s) who conducted the trial</b>	
<b>8.</b>	<b>Name of the Prosecutor(s) who prepared acquittal report/ grounds of appeal</b>	
<b>9.</b>	<b>Name of the Investigation Officer(s) who conducted the investigation</b>	
<b>10.</b>	<b>Name of the SHO</b>	
<b>11.</b>	<b>Defects noticed in Investigation /remedial measures suggested</b>	
<b>12.</b>	<b>Defect noticed in scrutiny memo and remedial measures suggested.</b>	
<b>13.</b>	<b>Defects noticed in the trial conducted and remedial measures suggested</b>	
<b>14.</b>	<b>Action proposed</b>	1. Against Prosecutor (by name) vide letter No. _____ dt. _____.
		2. Against Investigation Officer (by name) sent to SP District _____ vide letter No. _____ dt. _____.
<b>15.</b>	<b>Remedial measures suggested</b>	1. To DGP, Himachal Pradesh vide letter No. _____ dt. _____.
		2. To _____ SP, _____ District _____ vide letter No. _____ dt. _____.
		3. To _____ District _____ Attorney _____ vide letter No. _____ dt. _____.
<b>16.</b>	<b>Feed back</b>	Received from DGP/SP/DA/Dy.DA/ADA vide letter No. _____ dt. _____
<b>17.</b>	<b>Final action taken at the Directorate level.</b>	
<b>18.</b>	<b>Police file sent to</b>	Vide _____ letter _____ No. _____ dt. _____

*Proforma be pasted on the first page of the register maintained in Litigation Cell.*

(See Chapter XV)

PROFORMA FOR MEETING BY DISTRICT  
ATTORNEYS/JOINT DIRECTORS

(See point 15.4.3 & 15.4.6)

Meeting held on: \_\_\_\_\_ at \_\_\_\_\_  
in the office of \_\_\_\_\_ by the District  
Attorney/Joint Director Hqrs I/II/NZ Dharamshala (Shri  
\_\_\_\_\_)

(a) Name & designation of the Prosecutors present in the meeting.	1. _____ 2. _____ 3. _____ 5. _____ 6. _____	7. _____ 8. _____ 9. _____ 10. _____ 11. _____
(b) Items discussed i.e. latest amendments, notifications, orders, rules, citations and Acts passed during the inspection period.		
(c) Shortcomings in Drafting skill noticed and reasons thereof and remedial measures suggested.		
(d) Whether Data-base of legal citations is being maintained in the office computer.		
(e) Prosecutors having knowledge of computer.		

(f) Suggestions for effective prosecution.		
1. Suggestions given by prosecutors with name		
2. State amendments required in particular Act (give details)		
3. Dissenting judgments effecting the prosecution cases adversely (give citation)		
(g) Notifications / rules required to be made/ published under the particular Act. (give details)		
(h) Any deficiency noticed by the inspecting officer and suggestions thereof.		

- Note:
- (1) Inspecting officer can add any column which is relevant for effective inspection.
  - (2) Inspection proforma be pasted on the 1<sup>st</sup> page of register and data be entered in the register as per columns accordingly.

**Signature & designation  
of the Inspecting Officer.**



**PROFORMA FOR MEETING WITH THE DIRECTOR OF  
PROSECUTION**  
(See point 15.4.10.1)

Meeting held on: \_\_\_\_\_ at \_\_\_\_\_  
in the office of \_\_\_\_\_ by the Director of  
Prosecution, HP

(a) Name & designation of the Prosecutors present in the meeting.	1 _____ 2 _____ 3 _____	4 _____ 5 _____ 6 _____
(b) 1. Particulars of the Criminal cases discussed, oldest pending criminal trial under different laws, law point involved, preparation of the prosecutor/legal knowledge/scrutiny memo prepared, objections/compliance, steps taken for prosecution for perjury etc. 2. Memorandum of appeal/revision drafted by the Prosecutor. 3. Acquittal reports, reasoning etc.	1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____ 7. _____	
(b) Items discussed i.e. latest amendments, notifications, orders, rules, citations and Acts passed during the inspection period.		
(c) Shortcomings in Drafting skill of the Prosecutor noticed, reasons thereof and remedial measures suggested.		
(d) Whether Data-base of legal citations is being maintained in the office computer.		
(e) Names of the Prosecutors having knowledge of computer.		
(f) Suggestions for effective prosecution.		
1. Suggestions given by prosecutors with name		
2. State amendments required in particular Act (give details)		
3. Dissenting judgments effecting the prosecution cases adversely (give citation)		
(g) Notifications / rules required to be made/ published under the particular Act. (give details)		
(h) Any deficiency noticed by the Director of Prosecution.		

**Director of Prosecution,  
Himachal Pradesh.**

**PROFORMA FOR INSPECTIONS BY THE DISTRICT  
ATTORNEYS AND JOINT DIRECTORS**  
(See point 15.4.2 & 15.4.7))

**Inspection Proforma**

1. Name of the office/officers whose inspection conducted indicating the period, since when they are posted in the District Sub division.
2. Ministerial Staff giving full particulars of name, date of their appointment and work assigned to them and the work handled by each of them during eth period. \_\_\_\_\_

3. Period of inspection

4. Period of earned leave/casual leave/other leave the officers /officials availed during the period.

5. Data pertaining to the civil cases in respect of law officer(s) \_\_\_\_\_ showing the percentage of success to the State breakups of land references, MACT cases, Civil appeals execution be separately given.

Sr. no.	Name of the court	nature of the cases	Total no. of cases pending at the time of inspection	No. of cases decided w.e.f. ____	Total no. of cases disposed of during the period	No. of cases decided in favour of State	Against the State	Percentage of success to the State

6. Data pertaining to the criminal cases in respect of law Officers \_\_\_\_\_ showing the success to the State. Break ups session trials or appeals/criminal revisions be separately given in the column of total number of cases.

Sr. no.	Name of the court	nature of the cases	Total no. of cases pending at the time of inspection	No. of cases decided w.e.f. ____	Total no. of cases decided			%age of success to the State
					Convicted	Acquitted	Discharged	

7. Action taken by the Law Officers in respect of cases decided against the state, details be given in respect of both civil and criminal cases as referred herein after.

Total no. of cases in which appeals recommended	Total no. of cases in which appeals not recommended
List to be attached indicating the date on which application for copy of judgment was made, date of receipt of copy, date on which appeal was sent to the Dist. Magistrate/Home Department	2. List be attached, same particulars be given as mentioned at Sr. no. 1 and it be also shown in the separate column that in how many cases in which Dir(Pros) Jt. Dir(Prose) disagreed, complete date of cases in which appeals were admitted in the High Court/other courts, in which appeal was not recommended by the Law Officer.

8. Cases withdrawn compromised during the period by the Law Officers. List to be attached. Full particulars of cases and data of withdrawal may also be given.

No. of cases withdrawn	No. of cases compromised.

8. (A) Details of cases in which appeal against inadequacy of sentence was recommended:

9. Maintenance of files to be checked.

9(A) Whether the required diaries as per requirement are being sent in time.

10 Scrutiny note/appeal proposals/opinion, vetting of written statements on in ten cases to be checked of each Law Officer, 5 civil/criminal cases to be checked in order to check/performance of law officers which are at the advanced state viz. arguments etc. 10 judgments of civil/criminal cases conducted by the concerned law officer to be shown attach time of inspection compete data be given by each law officer regarding scrutiny of challans, preparation of written statements opinions etc. for the period under inspection upto date.

11. Cases in which more than two opportunities have been taken by the Law Officer (s) for filing written statements and production of evidence on behalf of the state, pending at the time of the inspection. No of cases in which defence of the sate had been struck off during the period under inspection. Complete history of individual cases be given and to be specified that it is due to the fact that the fault of Department of Law Officer.

12. Complete lists of Sessions trials cases/cases pertaining to the forest offences/ cases under sections 408/409 and 436 IPC. Cases of atrocities on Scheduled Castes/Tribes indicating the latest stage of the case and the dates since when they are pending.

13. complete list of cases in which stay/injunctions had been granted by the court indicating date of stay order and full particulars of the cases and their latest position.
14. Complete list of pending cases pertaining to encroachment on Government land and cases of important nature in which large scale Government land is involved/cases pertaining to water supply scheme/other cases of important nature.
15. List of old criminal/civil cases pending in the courts since more than two years, reasons for delay and latest stage of the cases to be given.
16. A detail of civil cases in which reconciliation recommended by the Law Officer.
17. Complete list of pendency of judgments under examination and reference for cases in which written statements to be preferred  
  
Cases pending scrutiny and any other pending reference at the date of inspection to be given by each law officer.
18. Complete list of cases conducted by the law officer during the year under inspection as per work distribution order etc. name of the court in which cases were conducted showing latest stage of cases and dates since when they are pending giving full particulars of the cases.
19. Complete details of cases, if any, in which copies of the judgments have not been received from copying agency and at the time of the inspection, giving date of submission of application to the Copying Agency.
20. Copy of complete data of latest three months pertaining to diary and dispatch pertaining to legal matters/other administrative matters.
21. Workload as per monthly diaries of the law offices, concerned for the last three months is to be assessed. In addition to this, law officers should also given date of judgments examined by him/written statements drafted/opinion tendered/cases scrutinized etc.
22. Punctuality
23. Disposal remarks
24. Performance in the court
25. Knowledge of criminal/civil/latest rulings to be assessed.
26. Maintenance of various registers, cash book etc. library stationery, diary/dispatch/postage stamps/service books.
27. Date of diary and dispatch viz. total number of reference received during the year/dispatched.
28. Cleanliness
29. Library
30. Quality of work
31. Uniform
32. Defect, if any, revealed.
33. Problems, if any, pointed out by the DA/DDA/ADA
34. Remarks.

*(See Chapter XIX Point No. 19.5)*

CHAPTER-9

**SUIT—GENERAL**

**9.1 Restrictions as to supply of copies and production of confidential papers and necessary sanction before access is allowed to documents in possession of the Government.**—No person with whom any suit is pending or there is any likelihood of any suit arising, and person acting for, or concerned with, any such person shall, without, the express sanction of the controlling authority, be allowed access to, or be supplied with , copies of any document in the possession of the Government in any way connected with, or relating to, matters out of which such suit may arise or has arisen.

When notice to produce documents which is in custody/charge of a Head of a Department or public officer is received by him, he shall consider whether they include communications made in official confidence, the production of which would be injurious to the public interest. To the production of such documents he shall make definite objection direct to the court or through the officer in charge of the case, by an affidavit from the Head of Department containing the grounds on which privilege is claimed.

All correspondence with, and resolutions and orders of the Government are strictly confidential. No officers shall grant copies of any such documents, during the pendency of any dispute or suit to which they in any way relate, to any person other than to a proper officer of the Government or to the officer in-charge of the case; and no such copies shall be granted at any time after the final decision of the suit without the previous sanction of the Head of Department concerned.

**9.2 Original document when sent or to be so sent by registered post and a certified copy to be retained.**—When in complying with the requirements of any of these rules, it is thought necessary to transmit any document, in original, to any officer of the Government or to the officer in charge of the case, a certified or an authenticated copy thereof is to be retained in the office of issue, and the original document is to be sent by registered acknowledgement due post or courier service, the proof of service to be retained on the concerned file.

**9.3 Communications to opposite party to be made without prejudice.**— All communications made to the opposite party, on the subject matters in respect of which it is possible that a suit may ensue, shall be headed "without prejudice" and if made orally, shall be stated to be made "without prejudice".

**9.4 By whom report to be submitted to controlling authority and opinion of reporting officer.**—(1) When the subject of the suit to be brought or defended is connected with district administration and belongs to no particular department, the report shall be prepared by the Deputy Commissioner and shall be submitted by him to the Financial Commissioner through the Divisional Commissioner of the Division concerned. When the suit is connected with any particular department, the report shall be prepared by the proper officer of such Department, and shall be submitted, through the Head of that Department, to the proper controlling authority.

(2) In each case the officer submitting the report to the controlling authority shall,—

- (a) satisfy himself, before forwarding it that these rules have been fully complied with, and
- (b) state his own opinion on the matter, with his reasons for that opinion.

**9.5 Documents to be supplied with reports, and precautions in regard thereto. -(1)** All copies or translations submitted should be absolutely accurate and complete, reproducing

every particular contained in the original, whether of a formal nature or not.

(2) When a map or plan would be calculated to elucidate any point reported on, it should be supplied.

(3) All the copies of maps or calculations should be duly authenticated by a competent officer.

*Note.*—In cases where the controlling authority or Head of Department, referred to in para 8.2 above may be called upon to act as Arbitrator, strict attention should be paid to Chapter 15 of this Manual.

**9.6 Orders to Controlling Authorities and instructions to Legal Remembrancer.—**

(1). Upon the reports so received, Controlling Authority will, after consulting the Legal Remembrancer when that course appears to be desirable, decide whether the particular suit is to be instituted or defended, and will instruct the Legal Remembrancer accordingly in all cases in which it is proposed to place the conduct of the proceedings in Court in the hands of the Law Department of the Government.

(2) In civil cases and proceedings affecting the Government, the Legal Remembrancer is the only authority competent to select and instruct counsel on behalf of the Government in each case.

(3) In cases of grave urgency, when there is no sufficient time to get instructions issued from the Law Department, the Deputy Commissioners shall be competent to instruct the District Attorneys/Assistant District Attorneys or the Assistant Public Prosecutors who are Government Pleaders to put in appearance on behalf of the State in the Courts and thereafter reference shall be made immediately to the Legal Remembrancer for obtaining *ex-post-facto* sanction.

(4) The procedure provided above for obtaining the advice of the Legal Remembrancer regarding the institution of suits by Government will apply *mutatis- mutandis* to proposals to refer disputes (between Government and its grantees, contractors, etc.) to arbitration vide Chapter-15 of this Manual.

**9.7 Land Acquisition Cases.**—Cases which are referred by Land Acquisition Officers to the District Court under Part III of the Land Acquisition Act, 1894, fall within the definition of "suit" and are subject to the provisions laid down in the Suit Rules. The Collector should proceed in such cases in the manner provided for the defence of civil suits and shall submit his report in accordance with the provisions of rule 9.4 to the proper controlling authority, Rule 13.1 and 13.2 shall apply to such cases.

The Land Acquisition Officers shall, forward all the references against the award to the District Court concerned within one month from its receipt with all documents as referred to under section 19(2) of the Land Acquisition Act, 1894 to avoid unnecessary burden of interest on the Government. Further, where only the Collector is a respondent, every endeavour shall be made to implead the acquiring department as the Co-respondent.

**9.8 Deputy Commissioners to provide necessary funds for suits instituted on behalf of the Government.**—(1) When sanction has been given to institute or defend a suit at the public expense the Deputy Commissioner concerned will provide the necessary funds for stamps and other expenses in the same way as the ordinary contingencies.

(2) Further items that may arise will be dealt within the same way and all expenditure in excess of Rs.5000/- in one suit will be referred to the Controlling Authority for sanction.

(3) In civil suits relating to the Government of India, the Government Pleader shall spend amount on account of court fee etc. and recover the expenses required for such litigation by the concerned department of the Government of India.

(4) All such items, whether sanctioned separately or included in contingent bills, will be

deemed as on account of 'legal charges' of the Department concerned.

**9.9 Recoveries to be credited to the concerned.**—All recoveries made, whether on account of the principal sum sued for or Departmental costs, will be credited to Department concerned.

**9.10 Earliest opportunity is to be taken to adjust advances.**—In urgent cases, where money may have been advanced from other source, the earliest opportunity should be taken for adjusting such advances in accordance with these rules.

*Note.*—All references relating to court cases including those made by the District Attorneys/Advocate General should be dealt with urgently by the concerned department of the Government. The concerned department should invariably depute a representative well conversant with the facts of the case to watch the progress of the litigation and to keep contact with the District Attorneys/Advocate General and also to provide him all assistance as and when required

## CHAPTER-10

### SUIT RULES—INSTITUTION OF SUITS

**10.1 Suits by the Government only to be brought in the last.**—No suit is to be brought on behalf of the Government except in the last resort, when all other means of obtaining satisfaction have failed. For filing the suit on behalf of the State Government, the provisions of Order XXVII of the Code of Civil Procedure be adhered to.

The institution of a suit on behalf of the Government is not to be recommended or authorized until the proposed defendant has been given an ample opportunity of stating his view of the case and conciliatory efforts to avoid litigation shall be made at the initial level it is also the duty of officers of the Government to enforce the just rights of the Government and to protect its interest.

**10.2 Sanction to bring a suit on behalf of the Government or a public officer.**—No suit on behalf of the Government or a public officer as such shall be instituted without the previous sanction of the proper controlling authority.

**10.3 Report to be submitted by officer who considers that suit should be instituted on behalf of Government.**—Any officer, who considers that a suit should be instituted on behalf of the Government shall submit a clear and detailed report, as provided in Rule 9.4 showing—

- (a) The circumstances which, in his opinion, render the institution of the suit necessary and precisely when and where they each occurred,
- (b) The subject of the claim and the relief sought,
- (c) whether any conciliatory effort has been made, if so its result,
- (d) The steps which have been taken to obtain satisfaction of the claim without bringing a suit,
- (e) The pleas or objections, if any, which have been urged by the proposed defendant against the claim,
- (f) The evidence, both oral and documentary, which is believed to be obtainable and which it is proposed to adduce in support of the claim,
- (g) Whether the documents, if any, referred to in sub-clause (e), are registered or not,
- (h) Whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him,
- (i) The evidence, both oral and documentary, which, so far as is known, the proposed defendant will be able and is likely to adduce in his defence,
- (j) Whether the documents, if any, referred to in sub-clause(h) are registered or not,
- (k) Any other facts which the officer considers material, *e.g.* whether there are any special reasons for the institution of the suit apart from the amount actually claimed; whether other similar claims will hinge upon its decision or the like,
- (l) The amount required for court fee stamps or other expenses, and
- (m) Opinion of the District Attorney or Advocate General, as the case may be.

Further, no suit shall be filed or brought by one department against the other department of the Government. Any dispute interse the departments shall be brought to the notice of the Chief Secretary by the Head of Department or the concerned department under the Rules of Business of the Government to resolve the same.

**10.4 Copies.**—Copies of all documents referred to in clauses (e) and (h) of the preceding rule, and of all correspondence and written proceedings, whether in English or in the vernacular(together in the latter case, with translations), connected with the proposed suit, should accompany the report, with an exact list of the same wherever this is reasonably possible. If these

copies cannot be supplied for any reasons the originals should be submitted. The controlling authority will, thereupon, consult the Legal Remembrancer and decide upon the course to be adopted. If legal action is decided on, the controlling authority will, ordinarily, instruct the Legal Remembrancer to proceed accordingly, and shall communicate his decision to the Deputy Commissioner or head of the Department concerned and further action will be in accordance with the procedure laid down in Rules 9.4 and 9.6.

**10.5 Procedure when intervention is deemed necessary.**—If it appears advisable to the Deputy Commissioner or to the Head of any department, on the representation of any subordinate officer or otherwise, to intervene in any suit to which the Government has not been made a party, an application for a postponement of the case shall, if necessary, be made to the court, by or through the Deputy Commissioner of the district in which the court has jurisdiction. The Deputy Commissioner or other officer concerned shall then submit a full report to the controlling authority, showing clearly his reasons for considering such intervention necessary, and, in particular, stating how the decision of the suit is likely in his opinion to affect the interests of Government.

The controlling authority will decide, whether the Government shall intervene or not, and, if so, will arrange as to the person by whom the necessary action shall be taken.

If the controlling authority decides that it is necessary to intervene and the Government be made a party to the suit, all the Rules for the conduct of Government suits shall, so far as may be, be deemed applicable to such suit.

## CHAPTER-11

### SUIT RULES-DEFENCE OF SUITS

**11.1 No person having a just claim against Government to be compelled to sue.**—No person having a just claim against the Government should be compelled to resort to litigation to enforce it.

When any person threatens to bring a suit against the Government it is incumbent on the proper departmental officers and controlling authorities to satisfy themselves without delay of the justice or otherwise of the whole and every part of the claim made, all reasonable efforts being made to bring about an amicable adjustment, without an appeal to the law, so far as this case be done without sacrificing the just.

The object of the notice provided by section 80 of the Code of Civil Procedure or under any other law which provide for such notice is to allow ample time to the Government to enquire into the justice or otherwise of all claims and to effect settlement of all just claims before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitable and amicably adjusting claims. Therefore, on the receipt of notice, the genuineness of the matter be examined by respective Department. According to the [instructions issued by the State Government vide letter No. LLR-E(9)-2/2004-Leg., dated 28<sup>th</sup> November, 2005]<sup>[1]</sup>

**11.2 Sanction for defence.**—The sanction of the authority empowered to sanction the institution of a suit of any kind shall be obtained for the defence of a suit of such kind.

**11.3 Procedure on receipt of Notice.**—(1) When notice of an intended suit is given, under the provisions of section 80 of the Code of Civil Procedure or under the provisions of any other law, the officer to whom it is delivered or the head of the office at which it is left shall forthwith endorse, or cause to be endorsed, on the notice—

- (a) the date of receipt,
- (b) the manner of delivery,
- (c) the date of endorsement, and
- (d) the signature of the officer making the endorsement, and shall thereupon proceed as



hereinafter provided.

(2) If the notice is served upon an officer other than an officer specified in section 80 of the Civil Procedure, that officer shall forthwith transmit it, in original, to the Deputy Commissioner or head of the Department concerned.

(3) If the notice is served on a Secretary to the Himachal Pradesh Government, that officer shall forward it to the Deputy Commissioner or head of the Department concerned, for his comments.

(4) If the notice is served on or forwarded to the Deputy Commissioner under the provisions of sub-para (2), that officer shall—

- (a) if the subject matter of the threatened suit is connected with district administration and within his control, or is unconnected with any particular department, proceed in the manner hereinafter in these rules provided; and
- (b) if the subject matter of the threatened suit is connected with a department not within his control, forward the notice in original, to the head of the Department concerned, in order that he may so proceed.

(5) In every case in which the officer on whom a notice is served, transmits it, in original to any other officer, he shall retain a certified copy of the notice and of the endorsement made thereon, and place the same on record.

**11.4 Departmental Officer to consider whether the claim is, in whole or in part, to be admitted and adjusted or contested.**—The District or departmental officer concerned shall, immediately on receiving any notice of an intended suit, proceed to enquire into the matter and to consider the claim put forward and to decide, or move the proper authority to decide, whether any and, if so what steps should be taken to adjust the claim (whether in whole or in part) or whether the claimant should be left to take such legal action as he may deem proper.

When the claim is in respect of property forfeited to Government, the officer should note whether it is made within one year from the date of the attachment or seizure (vide proviso to section 20 of the Forfeiture Act, 1859 (Act IX of 1859)).

If any officer is in doubt, at this stage, as to any legal point, he should submit the case, in due course, to the Legal Remembrancer, for opinion, through the Administrative Department concerned.

The procedure provided above for obtaining the Legal Remembrancer's advice regarding the defence of suits shall apply *mutatis-mutandis* to any application for stay of suit under the Arbitration and Conciliation Act, 1996, and to proposals to defend references to arbitration of disputes between Government and its grantees, contractors etc., vide Chapter 15 of this Manual.

**11.5 Communication to be made only under legal advice.**—When notice of the intention of any person to sue the Government or public officer has been given, under section 80 of the Code of Civil Procedure, or under the provisions of any other law having such provision, no communication should ordinarily be made to such person otherwise than under the advice of the Legal Remembrancer or other Law Officer of the Government.

**11.6 Action when claim should be adjusted.**—(1) When, after receiving any such notice and enquiring into the matter, the controlling authority proposes to,—

- (a) tender any amount admitted to be due to the claimant;
- (b) officer, terms of adjustment or suggest reference to arbitration, the Legal Remembrancer should ordinarily be consulted as to the form or terms of the proposed tender, adjustment or reference, as the case may be, before they are communicated to the opposite party, and when once a suit has been instituted, no sum should be tendered, terms of adjustment offered or reference to arbitration suggested, otherwise than through the officer- in-charge of the case.

(2) When the departmental authority, having power to deal with the case, is clearly of

opinion that the whole or any part of the claim put forward is justly due, he should (if the controlling authority has accorded sanction thereto ) proceed to endeavour to affect a settlement thereof accordingly.

(3) Any amount held to be justly due to the claimant should, before the suit is brought, be formally and unconditionally tendered to him, without prejudice and without requiring him to give an acquittance in full adjustment of his claim and upon a receipt for the sum tendered. No tender of payment or payments should be made, after the suit has been brought, otherwise than through the officer in charge of the case on behalf of the Government. In making any tender, the person to whom it is made should be informed that if the tender be declined the fact of its having been made will be stated and ,if necessary, established in Court.

(4) The controlling officer shall not take any action such as tendering money or agreeing to compromise the case or to admit it to arbitration which will involve financial liability unless he has funds appropriated for the purpose, provided that if the case is urgent and it appears that a loss would be involved by delay he may take such action but must report it immediately to Government so that funds may be appropriated for the purpose.

**11.7 Action when claim should be contested.**—When the controlling authority decides that the claim is in whole, to be contested, no communication should be made to the person by whom the notice of the intended suit was given. When the same authority decides that any part of the claim made should be admitted and the rest contested, action should (after consulting the Legal Remembrancer, when that course appears to be desirable) be taken accordingly.

**11.8 Action when "summons" served on an officer other than the Deputy Commissioner.**—When a suit against the Government has been instituted and the summons issued to or served on any officer of the Government other than the Deputy Commissioner of the district in which the suit is filed, such officer, whether he be the head of department concerned or not, shall—

- (a) endorse thereon the date of receipt, and sign and date the endorsement; and
- (b) return the summons to the Court from which it has been received with letter intimating that such officer is not empowered, under rule 4 of Order XXVII (First Schedule) of the Code of Civil Procedure, to receive service on behalf of the Government. He should in no way recognize the service as effectual, nor should he attend the Court on the date specified in the summons.

**11.9 Action when summons served on the Deputy Commissioner.**—When summons has been duly served on the Deputy Commissioner, and a date has been fixed for the first hearing of the suit, if such date is less than two months distant, he shall at once apply to the Court, under rule 5 of Order XXVII (First Schedule) of the Code of Civil Procedure, for an extension of the time to not less than two months, and in support of his application shall quote the instructions contained in Volume I, High Court Rules and Orders, Chapter 8,1965 edition.

If the Court declines to grant an extension of time applied for, the Deputy Commissioner shall forward, as soon as possible, a special report to the controlling authority or, in emergent cases, to the Legal Remembrancer direct in order that further steps may be taken to protect the interests of the Government.

The Deputy Commissioner shall in every case forthwith apply for certified copies.—

- (a) of the plaint (whether only a concise statement of it has been received with the summons),
- (b) of all documents filed with the plaint, as well as of the list of the same prescribed by the High Court, and
- (c) of any list of further documents relied on or referred to in rule 14 of Order VII (First Schedule) of the Code of Civil Procedure, filed with the plaint.

**11.10 Procedure of Deputy Commissioner when summons relate to a suit affecting a department not connected with district administration or within his control.**—If the suit

is one connected with any department not within his control, the Deputy Commissioner, shall, as soon as may be, obtain necessary copies, forward—

- (a) the summons, duly endorsed with the date of receipt thereof; and
- (b) copies of the plaint, documents (if any) of further documents relied on, to the head of the Department concerned.

The head of the department concerned shall thereupon proceed in the manner prescribed in rule next following.

In complying with the provisions of the preceding clause the Deputy Commissioner shall, if he has received no notice of the suit as required by section 80 of the Code of Civil Procedure, mention this fact.

**11.11 Report for defence of a suit on the ground that no valid notice has been given.**—If no such notice as required by section 80 of the Code of Civil Procedure has been received the Deputy Commissioner or the Head of the Department (not being a controlling authority) concerned, as the case may be, shall immediately on the receipt of the summons, copies, etc. as aforesaid, forward the same, with a brief report to that effect, to the controlling authority, by whom arrangements will be made for the defence of the suit upon the ground for want of notice.

**11.12 Collection of information to the facts of the case to be begun on receipt of suit.**—If notice of suit (whether it appears to be an adequate notice or not) has been received, the Deputy Commissioner or the Head of the Department concerned shall proceed to collect, with the least practicable delay, all the information regarding the facts of the case which are immediately available and shall, as soon as possible, send a summary thereof to the Legal Remembrancer, for his opinion—

**11.13 Report recommending the defence of a suit.**—(1) He shall then, as soon as possible, submit to the controlling authority the following documents together with an exact gist of the same :—

- (a) the notice of suit, the summons and a copy of the plaint;
- (b) a second copy of translation of the plaint written in English, on half margin, each statement therein being marked with a letter (A,B and C), and notes being added in the margin, stating whether each statement of fact made therein is correct or not, and if not, in what respect it is not so;

*Note.*—When the requisite explanation cannot be thus compressed reference should be made to a paragraph of an accompanying statement in which the matter should be fully discussed.

- (c) copies of documents and lists of documents, if any, filed with the plaint;
- (d) copies of all other documents procurable, which are believed to bear on the case, either for the plaintiff or the defendant, together with as accurate a description as may be of other documents (if any) which are believed to be relevant, but of which the contents cannot be precisely ascertained except through the Court;
- (e) all the correspondence and written proceedings, whether in English or in the vernacular, connected with the subject of the suit; and
- (f) These documents shall be accompanied by a clear and detailed report, stating—
  - (i) the circumstances which led to the suit, mentioning precisely when and where they each occurred; the course which it is proposed to adopt, namely, whether to admit, compromise or defend the suit, all the reasons for the same, and the steps (if any) which have already been taken to adjust the matter out of Court;
  - (ii) if it is proposed to defend the suit, the proposed defence, written on half margin, showing clearly and fully how each of the allegations in the plaint is to be met, and the evidence which it is proposed to adduce for that purpose;

- (iii) Whether the documents referred to in (c) and (d) are registered or not; and
- (iv) the date fixed by the Court for the first hearing.

(2) An English translation of every document, which is not in that language, shall be supplied with the report, wherever this is reasonably possible.

(3) Mostly the concerned Departments contact the Government pleader for preparing the reply and for appearance hardly two or three days before the date of filing reply or appearance with the result that the Government pleaders are facing difficulties in preparing the reply or protecting the interest of the State Government for want of sufficient time to study the facts of the case thoroughly. Whenever a court case is received in the Department, the Department should contract the Government pleader alongwith relevant record/documents/proposed reply immediately in order to brief him in the matter and to file the reply before the stipulated period.

Certified copies of the judgement/order are not supplied to the department concerned by Government Advocate immediately. As a result of this, in certain cases the period of limitation expired and the judgement/ orders of the court attain finality, which directly put the State Government in an awkward position and sometimes result in heavy financial losses. The incharge of the case shall apply for the copy of the judgment/order on the same day on which the judgment/order is delivered/passed by the court and as and when the copy of the judgment/order is supplied by the copying agency, the same must be sent to the concerned department for appropriate action at once.

Record of cases in which Special Leave Petitions are to be filed, are not being sent in time to the District Attorney, Legal Cell, New Delhi by the Department concerned with the result that for filing Special Leave Petition in the Hon'ble Supreme Court of India an application for condonation of delay has to be filed. The Hon'ble Supreme Court of India has taken serious note of this lapse and some time the delay is not condoned. While sending the record of case to the Legal Cell, New Delhi, the Administrative Departments should also send the comments/brief history of the case. In service matters, tax matters and other important cases in which Special Leave Petitions are to be filed, the Administrative Departments are required to send their senior officers well conversant with the facts of such cases and discuss with the District Attorney, Legal Cell/Advocate-on-Record or Advocate concerned.

Many times, due to default on the part of the Administrative Departments, the Government advocates have to cut a sorry figure in the Court, resulting in not only loss but unnecessary adverse orders against the State which can easily be avoided. The filing of pleadings on behalf of the State is invariably delayed for lack of proper co-operation and sometimes on account of this slackness on the part of the Administrative Departments the evidence on behalf of the State is not examined and in such circumstances the State is burdened with unnecessary costs. There are number of instances where defence has been struck off for not filling the written statement and reply or non production of the record and witnesses in time. Some times State cases are dismissed in default or *ex-parte* orders are passed for want of proper Co-operation by the concerned administrative department. All these shortcomings can easily be avoided in case the Administrative Department takes interest in rendering the necessary Co-operation to the Government Counsel. When even a notice is received by the Administrative Department from a Court of Law, Administrative Department have to move a Court of Law in any case, a responsible officer who is well conversant with the record and facts of the case should be made responsible and entrusted with the entire case who alone should contact the Government counsel and brief him not only at the very outset but on every hearing till final disposal of the case.

Some Departments not file replies despite several opportunities granted by the various courts and exemplary costs are awarded against the State. Such cases should be immediately brought to the notice of Law Department and action should at once be initiated against the concerned officer/official and he shall personally be liable for the negligence and the cost imposed by the court should be recovered from him.

Government Advocates, while accept the service of notice and receive the copy of application etc. waive of the service of notice. On the first date of hearing or at the time of receipt of notice, the Government. Advocates should not waive of the service of notice in the case and should invariably insist upon the courts by making a request to allow them some time

for consulting the Government Departments and for obtaining their version before hearing them. In case such time and opportunity is allowed by the Court before passing an interim order, the Government Advocates should invariably contact Administrative Secretary/Head of Department or any other responsible officer of the Department/ Boards/Corporations/ Universities concerned so as to obtain the reply/version of the Departments/Boards/ Corporation/Universities within limited time of adjournment before arguing the case in the concerned court. In the event of Court passing an interim injunction order on first date of hearing without waiting for Government reply as it can legitimately do in urgent cases, the Government Advocate should insist upon the concerned court to record its reasons for passing the interim injunction orders the requirement of the Law. In such cases the Government Advocate may also insist upon the Court to record in its order the request for grant of time and opportunity for obtaining the Government version.

In the event of court passing an injunction order with or without recording reasons on the first date of hearing, the Government Advocate should immediately convey such order to the concerned Departments/Boards/ Corporations etc. and should invariably advise the Department/Board/ Corporation if it is fit to file appeal/writ petition/Special Leave Petition before the concerned court for challenging the order of the lower court or should file the reply and request the concerned courts to finally dispose of injunction application within the stipulated period, for which the interim injunction order passed by the court may remain validly in force.

For the proper monitoring of progress of each court case, in various courts, the Administrative Departments/Head of Departments/ Boards/Corporations are required to maintain a register of court cases in the form as given in para 13.1.18 of the Office Manual. This register should always be kept updated by making an entry after each day of hearing. In this entry a brief description of the proceedings/order of the court is to be made, it should also be mentioned as to what is required to be done on the next date of hearing. Besides this, every Department should nominate one officer, not below the rank of Section Officer or Supdt. Grade-I, as officer-in-charge who shall be responsible for monitoring the court cases at all levels and at all stages, and he should apprise his Secretary/Head of Department/Managing Director etc. about the progress of the court cases after every date of hearings.]<sup>121</sup>

**11.14 Special instructions in cases of tort.**—Further action will be taken in accordance with the procedure laid down in Rules 9.4. and 11.5.

**11.15** A number of notices are received under section 80 of the Code of Civil Procedure on the ground that some officer of Government has wrongfully seized private property, or has wrongfully confined some person. The reports accompanying such notices, complete as they may be in other respects, seldom mention one of the points which Government have to take into consideration in deciding how the suit should be met, which is whether the officer in question was supposed to be acting under any statutory authority or not. When a report is supplied in future under rule 11.12 in respect of any action which is alleged to constitute a wrongful interference with private property or private liberty' it should invariably be stated whether the officer concerned believed himself to have any statutory or other authority for his action. The controlling authority should also state whether in his opinion the action was covered by such authority or not. For the purpose of such a report it is not sufficient merely to explain the motive of the action, or to say that the action was taken under the orders of a superior officer, unless the superior officer himself had the necessary authority.

## CHAPTER-12

### SUIT BY OR AGAINST THE PUBLIC OFFICERS

#### SUITS BY PUBLIC OFFICER

**12.1 No suit to be instituted by public officer without the sanction of the Government.**—The sanction of the Himachal Pradesh Government shall be obtained before any public officer has recourse to the Courts for the vindication of his public acts or of his character as a public functionary.

**12.2 Procedure in obtaining sanction report.**—When a public officer considers that a suit should be instituted for the vindication of his public acts or of his character as a public functionary, he shall submit a report of conforming to the directions contained in rule 10.3.

**12.3 Transmission of Report.**—The Head of the Department, after recording his opinion, will forward a report, together with his opinion thereon, to the Himachal Pradesh Government for orders as to whether the suit, (i) is or is not to be brought, and (ii) if brought is to be conducted at the public expense or at that of the officer concerned.

**12.4 Instructions.**—If sanction be given by the Himachal Pradesh Government to the conduct of the suit at the public expense, the controlling authority seek concurrence of the Finance Department after obtaining the opinion from the Law Department and also for engaging the counsel. If such sanction be not given, the officer concerned shall be informed accordingly, when, if the institution of the suit has been sanctioned by the Himachal Pradesh Government, he shall be at liberty to make his own arrangements in connection therewith subject to the above conditions..

#### SUIT AGAINST PUBLIC OFFICERS

**12.5 Procedure to be observed in regard to the defence of suits brought against public Officers.**—When any suit is threatened to be brought or is brought against a public officer, as such, or in regard to his acts as such, and such officer considers that the suit should be defended at the public expense, he shall submit a report conformable to the directions contained in Rules 9.4 and 11.13.

In the case of a suit intended to be brought against a public officer notice is required by section 80 of the Code of Civil Procedure and the Procedure on receipt of such notice, or summons, will be similar to that prescribed for suits against the Government, except that the officer concerned will himself receive the notice, take action on the summons (Rule 7, Order XXVII, First Schedule, of the Code of Civil Procedure) and submit the necessary report.

All officers are reminded that as they must, *prima-facie*, be prepared personally to defend themselves in respect of their acts, when such acts are alleged to be illegal, it rests with them to satisfy the Government that they have made every effort to prevent litigation; also that the acts complained of were done (if done at all) with due care and attention and under circumstances justifying the defence of the suit at the public expense. In their own interests, therefore, it is incumbent on them to observe the provisions of these rules, where applicable to their case, as accurately and promptly as possible.

**12.6 Transmission of report.**—The Head of the Department will forward the report, together with his opinion thereon, to the Himachal Pradesh Government for orders as to whether the suit is to be defended at the public expense or whether the officer concerned is to be left to take such measures in the case at his own expense as he thinks fit.

**12.7 Instructions.**—If the defence of the suit at the public expense is sanctioned by the Government, the controlling authority will get the concurrence of the Finance Department in consultation with the Law Department. If such sanction is not given, the officer concerned shall be informed accordingly, and will be at liberty to make his own arrangements in connection

therewith.

**12.8 Defence of suits brought against retired public officers.**—The provisions of Rules 12.5, 12.6 and 12.7 will apply, *mutatis -mutandis*, to a suit against a retired public officer, in regard to an official act performed by him during the period of his service. The benefit of section 80 and Order XXVII of the Code of Civil Procedure, 1908 is not available to officers who have retired from the service of the State.

*Note.*— Whenever sanction is accorded to the defence of an officer or official of the State at public expense, it shall be subject to the condition that in the event of such officer or official being found to have acted otherwise than in good faith, he shall be liable to refund to the Government, the amount spent by the State on his defence.

**12.9 Sanction where public officer not directly involved.**—If a public officer, who is concerned in a case not falling under the rules, which affects either directly or indirectly, his official character, wishes to retain the services of a legal practitioner, he should, in the first instance, apply to the Government for permission to do so, making a full report of the facts of the case, the Government will then determine whether the case is one in which permission should be given, and if so on what (if any) conditions. If permission to employ a legal practitioner at the public expense is refused, it is open to the officer concerned to obtain professional assistance at his expense; but no application to the Government for contribution towards meeting such expenditure will be entertained unless previous sanction has been obtained.

## SUIT RULES-ACTION ON THE TERMINATION OF A SUIT

**13.1 Copies to be obtained.**—Immediately on the termination of any suit, a copy of the Judgment and decree or other final order of the court shall be procured, without delay by the Officer in charge of the case.

**13.2 Results of suits etc. by and to whom the report to be submitted.**— Immediately on receipt of the copies of the Judgment and decree or other final order of the court specified in the last preceding rule, the officer in charge of the case shall submit a report (in duplicate) of the result of the suit for the information of the controlling authority with a copy to the Legal Remembrancer.

**13.3 Arrangements for payment of decretal amounts.**—When the result is adverse to the Government and involve disbursement of public money, the report should always state when the money will be required for payment. Immediately on receipt of the report from the Legal Remembrancer, the controlling officer of the Department to which the case relates should make arrangements, in consultation with the Deputy Commissioner of the district to deposit the decretal amount in Court within three months' at the most, of the order of the Court. While making the deposit the controlling officer should request the Deputy Commissioner to apply to the Court that the amount be not paid to the decree-holder pending the result of the appeal where an appeal is filed or proposed to be filed or only on such security as the Court may deem reasonable.

When an appeal has been filed before the money has been deposited in court, the order of the appellate court should be obtained to the effect that money may be paid into court, but should not be allowed to be taken by the decree holder without furnishing adequate security to the satisfaction of the court for refund in the event of the success the appeal.

**13.4 Report as to whether appeal should be made.**—When any suit instituted or defended through the Legal Remembrancer has been decided wholly or partially against the Government or the officer concerned, and such officer or the officer-in-charge of the case is of opinion on a perusal of the copies of the judgment and decree or other final order of the court supplied to him as hereinbefore provided, that an appeal (or in unappealable cases, an application for revision, should be preferred or that a review of judgement should be applied for, he shall, as soon as possible, prepare a report to that effect, stating the grounds of his opinion, and shall submit it to the Legal Remembrancer through the Secretary of the concerned department of the State Government, together with the said copies and (if he deems it necessary for proper decision of the matter) with copies of the evidence and of all exhibits not previously submitted at an earlier stage, and also with a draft, on half margin, of the grounds on which he considers that the appeal or application should be based for his opinion . If the copies of the evidence and exhibits cannot be procured without considerable delay, the report should be submitted without them and they should be forwarded as soon as possible afterwards; if the proper officer considers that no appeal or application should be made, he shall submit a report, accompanied as aforesaid to that effect. The last date of limitation for filing an appeal and the forum thereof should invariably be intimated.

As the period within which appeals and applications may be made is limited by law, there should be no delay in submitting reports and recommendations under this rule.

The Legal Remembrancer shall on receipt of these documents from the Administrative Department consider the desirability of filing an appeal or application for revision or review of judgement or otherwise and convey his views to the controlling authority. If it is decided to file an appeal or application for revision or review of judgement, the Legal Remembrancer may on his own authority issue instructions to the officer in charge(Law Officer) for doing the needful or to inform the controlling authority or the Administrative Department about the action taken. The controlling authority, if agrees with the views, of the Legal Remembrancer, shall accord sanction of the action taken. If the controlling authority, in cases, where the Legal



Remembrancer does no favour for filing of an appeal or application for revision or review of the judgment and the controlling authority still insists for obtaining the verdict of appellate/revisional court, as the case may be, the former will invariably act accordingly. Ordinarily, the officer in charge of the case shall not prefer an appeal or application for revision or review of judgment except under express instructions from the controlling authority based upon the opinion of the Legal Remembrancer to the Government.

**13.5 Report as to whether appeal should be made.**—If the original suit was not instituted or defended through the Legal Remembrancer the report required by the preceding rule should be submitted to the controlling authority.

**13.6 Appeal by opposite party.**—If an appeal or application for revision or for review of judgment is preferred by the opposite party in any suit, the officer receiving notice thereof shall, if the original suit was instituted or defended through the Legal Remembrancer, at once forward a copy of the notice to the controlling authority as well as to the Legal Remembrancer. The latter shall thereupon take such measures as may be necessary for defending the case in the appellate or other court. It shall not be necessary for the Legal Remembrancer to apply for fresh instructions, except in cases of doubt or difficulty, or unless it appears that for any reason the appeal or application ought not to be opposed, in which case he shall refer to the controlling authority for further instructions. If the original suit was not instituted or defended through the Legal Remembrancer, the notice shall be forwarded to the proper controlling authority, who will decide whether the appeal or application shall be opposed or not, and if it to be opposed, the person by whom it shall be undertaken.

**13.7 Rules applicable to appeals etc.**—The provisions of rules 13.1 to 13.5 shall be applicable to appeals, second appeals, applications for revision or review judgement and the officer in charge of the case will be required to submit his report to the Legal Remembrancer or the controlling authority, as the case may be, at the conclusion of each stage of suit, appeal, application for revision or review of judgement.

**13.8 Miscellaneous proceedings.** —The procedure laid down in rules 13.1 to 13.6 shall apply *mutatis mutandis* to all miscellaneous proceedings including arbitration proceedings to which Government is a party.

## CHAPTER-14

### EXECUTION OF DECREES

**14.1 Settlement of decrees adverse to Government.**—Whenever it has been determined not to contest further a decision which is either wholly or partly adverse to the Government, the officer concerned shall at once arrange with the Deputy Commissioner for the payment into the Court, whose duty it is to execute the decree, all moneys payable under the decree, care being taken that the decree is fully satisfied within a period of three months computed from the date of decree in terms of section 82 of the Civil Procedure Code.

**14.2 Decree against a public officer .**—Where the decree is against a public officer in respect of an act purporting to have been done by him in his official capacity, it will rest with him to satisfy the same within the time fixed.

**14.3 Procedure when decree is in favour of Government.**—Immediately on a decree being given in favour of the Government or a public officer, when the suit has been brought or defended at the public expense, the department concerned or other officer concerned shall proceed to move the Deputy Commissioner to take steps for the recovery of costs and of the amount, if any, decreed, unless for special reasons (which shall be reported for the orders of the controlling authority) it is deemed undesirable that any such steps should be taken or that they should be taken immediately.

**14.4 Measures to be taken to trace out property of judgment debtor action as to security.**—Deputy Commissioner and other officer concerned are required to take all possible measures to ascertain what property of the judgment debtor exists and is available for attachment and sale in execution of decree and that, where security is taken from the judgment debtor on stay of execution, under Rule 5. Order XLI, First Schedule of the Code of Civil Procedure, the security taken by the Court is substantial and sufficient, and that proper action for immediate execution is taken if the required security is not satisfactory.

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

When the officer concerned is not the Deputy Commissioner or a subordinate of the Deputy Commissioner, he may apply to the Deputy Commissioner to assist him in prosecuting the necessary inquiries as to the property of the judgment debtor.

**14.5 Prevention of fraudulent alienations.**—The provisions of rule 5 Order- XLI of the Code of Civil Procedure, are ordinarily sufficient to prevent any fraudulent disposal of property by the judgment debtor during the time gained by an appeal, but the Deputy Commissioner or other officer concerned in consultation with the Deputy Commissioner, should satisfy himself that the security taken by the Court is sufficient, petitioning the Court to be allowed to execute the decree at once if he considers that the security offered is not good or sufficient.

If such application be refused, the Deputy Commissioner or other officer in consultation as aforesaid, shall make every endeavour to keep a watch on the property of the judgement debtor, so as to prevent any fraudulent alienation or concealment of it.

**14.6 Cost in suits by indigent persons.**—Order XXXIII, Rule 14, directs that where an order is made under rules 10, 11, or 11-A of the Code of Civil Procedure, the Court shall forthwith forward a copy of the decree to the Collector. On receipt of this copy, it is for the Collector to take necessary action for the recovery of an amount which may be due. Full instructions regarding the method of recovery will be found in the Himachal Stamp Manual.

The Government Pleader or the Collector of the District shall recover the amount of stamp duty and other costs due to the Government in suits by indigent in proceedings in execution of decree as such suits are instituted without payment of court fees and rules 10 and 11, Order XXXIII, of the Code of the Civil Procedure, provide for the recovery of the amount of

the fees which should have been paid if the plaintiff had not been allowed to sue as an indigent person.

**14.7 Responsibility of Collector to recover moneys due to Government.**— The Collector of the District shall be responsible that proper action is taken to recover all moneys due to the Government under decrees and orders of the Civil Courts in all cases that have been conducted through him and he shall bring to the notice of the controlling authority, for orders, any case in which he considers that the progress made in the recovery of the moneys due to the Government is unsatisfactory.

**14.8 Recoveries made outside court to be certified.**—Any sum due to the Government under a decree, may, if the course is feasible, be recovered otherwise than through the agency of the Court; but the Deputy Commissioner is required, under Rule 2, Order XXI, First Schedule of the Code of Civil Procedure, to certify every such recovery to the Court.

**14.9 Government servants for bidden to bid at auctions.**—The practice of deputing Government servants to bid on behalf of Government at Court auctions, with a view to purchasing the property of judgment debtors by whom money is due to the Government, is, generally speaking, objectionable, as it is likely to involve the Government in much litigation of a doubtful character, and it should never be resorted to except with the special sanction of the controlling authority to be obtained through the Legal Remembrancer.

## CHAPTER-15

### ARBITRATION

**15.1 Resort to arbitration clause.**—Cases are not infrequently forwarded to the controlling authorities etc. in which notice of suit for breach of contract have been given, such contracts containing a clause that in the event of dispute, the matters in dispute shall be submitted for arbitration. Most Government contracts contain this stipulation, and there appears to be general impression prevailing that the mere existence of such a clause in a contract is a bar to a suit in court, and there is some danger that departments concerned, relying on this impression may leave disputes outstanding too long after receipt of notice of suit to allow to resort to arbitration.

**15.2 Only a valid award is a bar to a suit.**—Such a clause is no bar to a suit. Only a valid award, *i.e.* one granted as the result of proceedings legally conducted and completed prior to the institution of suit, before an Arbitrator with jurisdiction over the subject matter is duly stamped (under Section 12 of the Indian Stamp Act 1899) and where section 17(1)(b) of the Indian Registration Act, 1908, applies, provided such award has been registered; and the provisions of the Arbitration and Conciliation Act, 1996 have been complied with.

The existence, however, of such a clause as is mentioned in para 15.1 does ordinarily enable the defendant in the suit lodged in connection with such contract, to apply to the court (under the Arbitration and Conciliation Act, 1996) to exercise its discretion to stay the suit and to refer the parties to arbitration, in accordance with the agreement:

Provided that—

- (i) such defendant makes that application before filing written statement or taking any other steps in the court proceedings;
- (ii) such defendant is able to show that he was/is ready and willing to submit to arbitration; and
- (iii) the person referred to in such agreement as Arbitrator has not incapacitated himself.

It is, therefore, of primary importance that as soon as notice of suit is received, if Government desires to avail itself of the arbitration clause, reference should be made, or the other side should be called on to refer, to arbitration. In such cases when proper steps have been taken, if the other side refuses, Government can proceed to an *ex-parte* arbitration and the award given *ex-parte* will be upheld.

**15.3 Preparation of letters of reference.**—Whenever a dispute arises or suit is threatened, in respect of any grant or contract by Government, the Deputy Commissioner, Executive Engineer, or other officer immediately concerned, should promptly examine the grant or contract in order to ascertain whether it contains any clause whereby the parties have agreed to submit to arbitration. If so, prompt steps should be taken to obtain orders for the preparation of a letter of reference which should ordinarily be laid before the Government Pleader concerned before being addressed to the officer referred to in such clause as Arbitrator. The latter has to avoid expressing any opinion on the dispute save as Arbitrator after the receipt by him of formal letter of reference to arbitration, and after hearing the opposite party and then only in the form of an award. The ordinarily controlling authority will be the authority provided in Chapter 8, unless such authority is mentioned either personally or *ex-officio* as an Arbitrator in the contract or grant concerning which the dispute has arisen in which case the controlling authority will be Government in the department concerned. The report and statement or reasons referred to in rule 9.4(2) and the data necessary in order to draft the letter of reference to arbitration should be submitted promptly to the controlling authority so ascertained.

In those cases where a Financial Commissioner or Chief Engineer is referred to as Arbitrator, the Commissioner or Superintending Engineer, as the case may be, will, if he

considers it necessary to refer to Government, take steps to see that the file with the Deputy Commissioner's or Executive Engineer's noting or recommendation, if approved, is sent either to Government, with special reference to the fact that the Head of the Department is mentioned as Arbitrator, and is thus incapacitated from dealing with the file save in that capacity and after complying with Rule 15.8.

On receipt of the report from the local officers, it will be for the controlling authority ascertained as above, to decide and state whether Government will be represented before the Arbitrator by the local officer (Deputy Commissioner, Executive Engineer, etc. ) or whether in his opinion the case is of sufficient importance or complexity to warrant the appointment of counsel for the drafting of the letter of reference and representation of Government before the Arbitrator. As the letter of reference corresponds to the plaint in a suit it is not desirable for one person to draft the letter of reference and another to be brief for the proceedings.

When the appropriate controlling authority has decided that settlement of the dispute otherwise than by arbitration is impracticable, and that it is of sufficient importance or complexity, he will submit the case to the Legal Remembrancer with sufficient data to enable that office to appoint counsel for the drafting of Government's letter of reference to the Arbitrator and to appear before the Arbitrator on Government's behalf.

**15.4 Additional letters of reference.**—If the opposite party has already issued such letter of reference consideration should be given to the question whether that letter of reference sufficiently incorporated all points in dispute. If not, steps may be taken for an additional letter of reference completing or amplifying, the opponent's letter of reference to be drafted, and issued to the Arbitrator.

**15.5 Contents of the letters of reference.**—There is no form prescribed for letter of reference to arbitration. It may be stated broadly (and merely for general guidance) that the contents should be arranged as far as practicable in chronological order and that they will normally be as follows:—

- (a) date and general effect of the grant or contract out of which the dispute has arisen;
- (b) a verbatim copy or extract of the clause which Government alleges the opposite party has breached or failed to fulfil or on which the dispute has more particularly arisen;
- (c) statement of facts and dates arranged chronologically on the strength of which Government alleges breach of non fulfilment;
- (d) copy or verbatim extract of any clause, or an indication of the law or legal principle, under which Government may have exercised, or may claim any, specific remedy;
- (e) copy or summary of the clause of the grant or contract constituting the "submission" *i.e.* the agreement between the parties to refer disputes to the officer(to whom this letter of reference is addressed) as sole Arbitrator; and
- (f) a statement of the points or issues to be decided by the Arbitrator.

**15.6 Application for stay of suit.** - If, notwithstanding the agreement to submit to arbitration, suit is actually lodged against Government, then the officer submitting the report and opinion etc., in compliance with rule 9.4(2) should bring to the immediate notice of the Legal Remembrancer the agreement to refer to arbitration with a view to an application for stay of suit being made. Unless and until the court stays the suit, the reference to arbitration cannot be issued. If it has already been issued, the Arbitrator must postpone all further proceedings relating to the subject matter of that suit until the application for stay of suit has been accepted by the Court.

**15.7 Arbitrators to do justice to both the parties.**—It should be remembered that reference to arbitration is intended to be an expeditious, inexpensive and decisive method of

settling a dispute relating to a contract or grant without resort to the dilatoriness, intricacies and complications of civil litigation. The officer concerned when moved as Arbitrator should, keeping these principles in view do justice to the claims of both sides within the limitations imposed by the clause which empowers him to act.

**15.8 Points to be borne in mind.**—The points which the officer referred to as Arbitrator should bear in mind in that capacity, are as follows:—

- (a) on receipt of notice to arbitration, he should see that the letter of reference clearly state the points on which he is to arbitrate, and where Government is the party moving for arbitration that such letter of reference is signed by an officer competent to bind Government. He cannot, of course, refer the point for arbitration to himself. If satisfied that the points are clear and within his jurisdiction as Arbitrator, he should then issue to both parties concerned notice of date, place and time, fixed for the appearance of the parties, or their representatives, and for the production of witnesses and documentary evidence and restating precisely the points referred for arbitration, and that those matters will be finally determined by him as Arbitrator, and that if either party fails to attend, the matter may be decided *ex-parte*. In such notice it should be explained that if either party requires the other to produce any documents in the possession or power of the other he must inform the Arbitrator in good time (not less than seven days ) before the date fixed as above;
- (b) he should, before arriving at or, in any case, before recording any decision, give each side reasonable opportunity to adduce evidence, oral or documentary, which they may wish to bring (in the presence of the other) and he should listen (within reason) to any arguments which they may wish to present at the conclusion of the evidence. These proceedings should be conducted in the presence of both parties to the dispute, or their legal representatives. If, however, either of the parties is absent and not represented, at any hearing, of which he has had due notice, the Arbitrator may proceed *ex-parte* after recording a normal order to that effect. The Arbitrator should keep a note of the proceedings, recording the presence of the parties before him and the fact of his having conformed to the procedure herein suggested. He should also make a brief memorandum of the main points in the statement of each witness. Subject to these observations the proceedings may be conducted without any special formalities, and the taxing or settlement of costs and fees and charges payable in respect of the arbitration and award ;
- (c) the award should be decisive and vagueness which might render the award incapable of execution should be avoided ;
- (d) the law does not expressly require reasons in support of the award to be stated ; but it should be based on principles of justice, equity and good conscience. The Arbitrator should, as far as possible, abstain from deciding matters outside the scope of the reference;
- (e) if at any time prior to signing the award the Arbitrator receives notice that a suit has been lodged relating to matters referred to arbitration, the Arbitrator should postpone all further proceedings unless or until the suit is stayed and notify both parties that he has done so ;
- (f) if under Article 12 of the Stamp Act the decision of Arbitrator when recorded will require stamp, he should inform the parties of the amount (referring the question if in doubt to the local collector) and leave the award unsigned until one or other party provides the amount payable. It is for the party claiming under the award to ascertain whether it requires registration [*vide* section 17(1) (b) of the Indian Registration Act, 1908];
- (g) it is necessary for the award to be announced to the parties or their representatives. The most convenient course is for notice to be issued to each party of the date, time and place fixed for its completion and announcement.

**15.9 Submission of copies of awards.**— In all cases of arbitration in which the amount of the award exceed two thousand rupees a copy of the award be forwarded to the Government

for information. Intimation regarding awards should in all cases be sent to the Accountant General, Himachal Pradesh for audit purposes.

## CHAPTER-16

### FEES IN CIVIL CASES

**16.1 Fees in Supreme Court Cases.**—Fees admissible to advocates for different categories of work shall be as under :—

[(1) Sr. Advocate-on-Record (both for Civil and Criminal cases) :

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

(2) Advocates-on-Record (both for Civil & Criminal cases) :

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

(3) Panel Advocates ( both for Civil and Criminal cases) :

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

**16.2** Besides above the following conditions will be applicable for Advocate-on-Record and panel advocates :—

- (i) They will not be entitled to any fee for arranging the services of any senior counsel for obtaining advice in State cases and for acting as junior or senior counsel in tendering advice.
- (ii) Where applications, affidavits, replies etc. are to be drafted in a set of similar cases, the set would be considered as one case and they will be entitled to the fee for one case only.
- (iii) They will not appear/advise or would brief in any case against the State of Himachal Pradesh.
- (iv) They will not be entitled for any clerkage.
- (v) The Government has the right to appoint any other lawyer of repute in important cases as and when the occasion would arise.
- (vi) While forwarding the bills for payments, it may invariably be certified that the fees claimed, are in accordance with the scales of fees laid above and the bills must be verified by the District Attorney (Legal Cell), New Delhi.
- (vii) All the bills of the months should be submitted to the office of District Attorney (Legal Cell), New Delhi at the end or the first week of the succeeding month to avoid delay of payments.<sup>[1]</sup>

**16.3 Fees Payable to Private advocates in the High Court/Subordinate Courts.**— Ordinarily cases by or against the State Government are conducted/defended by the Advocate General in the High Court, and District Attorney/Assistant District Attorney in the Subordinate Courts. But in case of special importance where heavy amount is at stake, the Legal Remembrancer may appoint Private Advocates to conduct such cases and may determine the fee to be paid to the Advocate by the Government by negotiations.



## **CIVIL WRIT PETITIONS**

### **(A) Civil Writs and Public Interest Litigations:**

Law Officer in Departments, Directorate and in the office of the Deputy Commissions and Superintendent of Police have multifarious legal tasks to perform, and one of these is to deal with Civil Writs and Public Interest Litigations. Since the writ jurisdiction of the Hon'ble Court and Supreme court is now being invoked to a much greater degree, because of greater awareness of the public about their constitutional rights and also because the Court perceive a distinct role for themselves in the process of enforcing accountability of the executive, it is necessary to deal carefully with matters relating to writs and PILs. The following paragraphs are accordingly a guide for the purpose.

**(B) Civil Writ & its meaning:** Any provision in any Constitution for Fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. The Indian Constitution lays down certain provisions to ensure the enforcement of Fundamental Rights. These may be summed up as under:

- (i) The Fundamental Rights provided in the Indian Constitution are protected from executive and legislative action. Any law which infringes upon the Fundamental Rights of any person or any group of persons, is void as provided in clause (2) under Article 13 of the Constitution.
- (ii) The High Court and Supreme Court have the power to issue writs. These are the extra-ordinary remedies provided to the citizens to get their rights enforced. These writs are - Habeas corpus, Mandamus, Prohibition, Certiorari and Quo-warranto. The Supreme Court can be approached directly for a writ under Article 32 of the Constitution in case a Fundamental Right is breached. The High Courts can be approached under Article 226 of the Constitution in any matter where a right is breached.
- (iii) Writs can be issued to any authority or any Government.

**(C) Constitutional Remedy:** A Fundamental Right may also be enforced by way of normal legal procedures including a declaratory suit or by way of defence to legal proceedings. However, Article 32 is referred to as the "Constitutional Remedy" for enforcement of Fundamental Rights. This provision itself has been included in the Fundamental Rights and hence it cannot be denied to any person. By including Article 32 in the Fundamental Rights, the Supreme Court has been made the protector and guarantor of these Rights. An application made under Article 32 of the Constitution before the Supreme Court cannot be refused on technical grounds. In addition to the prescribed five types of writs, the Supreme Court may pass any other appropriate order. However, only the questions pertaining to the Fundamental Rights can be determined in proceedings under Article 32 of Constitution of India which reads as under:

*“Remedies for enforcement of rights conferred by this Part.-*

*(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*

*(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*

*(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause(2).*

*(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”*

**(D) Kinds of Writ:**

- (i) The Supreme Court cannot refuse relief on the ground that the aggrieved person may have remedy before some other court or under the ordinary law. The relief can also not be denied on the ground that the disputed facts have to be investigated or some evidence has to be collected. Even if an aggrieved person has not

asked for a particular writ, the Supreme Court, after considering the facts and circumstances, may grant the appropriate writ and may even modify it to suit the exigencies of the case. Normally, only the aggrieved person is allowed to move the Court. But it has been held by the Supreme Court that in social or public interest matters, any one may move the Court. Any piece of legislation or law, which tends to interfere with the power of Supreme Court under Article 32 shall be declared as void. Hence, there is no way that the legislative or the executive authorities can by-pass the power and responsibility entrusted to the Supreme Court by the Constitution.

- (ii) **Writ of Mandamus:** The writ of mandamus is issued to the Statutory authorities to compel the performance of public duties prescribed by the statute upon them. The word Mandamus is a Latin word, which means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.
- (iii) **Writ of Quo-Warranto:** The word Quo-Warranto literally means "*by what warrants*" It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, if a person of 62 years is appointed to fill a public office whereas the retirement age is 60 years, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.
- (iv) **Writ of Prohibition.** The Writ of prohibition means to forbid or to stop and it is popularly known as '*Stay Order*'. This writ is issued when a lower court set for it or a body tries to transgress the limits set for it or powers vested in it. It is a writ issued by a superior court to a lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ, proceedings in the lower court etc. come to a stop. Under Article 32, the Supreme Court may issue a writ against any person or Government within

the territory of India, where the infringement of a Fundamental Right has been established.

(v) **Writ of Habeas corpus:** It is the most valuable writ for personal liberty. Habeas Corpus means, "*Let us have the body.*" When a person is arrested or detained, any person having an interest can move the Court for the issue of Habeas Corpus. It is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained it can issue orders for his release.

(vi) **Writ of Certiorari:** Literally, Certiorari means '*to be certified*'. The writ of certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration. The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, while 'prohibition' is available at the earlier stage, certiorari is available on similar grounds at a later stage. It can also be said that the writ of prohibition is available during the pendency of proceedings before a sub-ordinate court, certiorari can be resorted to only after the order or decision has been announced. There are several conditions necessary for the issue of writ of certiorari, which are as under:

- (a) There should be court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially.
- (b) Such a court, tribunal or officer must have passed order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the facts of the case.

**(E) Power of High Court to issue certain writs:**

(i) The Hon'ble Court can issue writs in the nature of prerogative writs and also issue directions, orders or writs other than the prerogative writs. Article 226 enables the Hon'ble Courts to mould the reliefs to meet the peculiar and complicated circumstances of each case. However the High Court under Article 226 can not assume the role of rule making authority or of an appellate authority. These powers are purely discretionary and must be

exercised alongwith recognized lines and not arbitrarily. Article 226 of the Constitution of India is as under:

*“(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*

*(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—*

*(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*

*(b) giving such party an opportunity of being heard,*

*makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.*

*(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.”*

- (ii) *Limitation on jurisdiction of the Hon'ble High Court* There are two limitations placed upon the powers of the High Court under Art. 226. One is that the power is to be exercised throughout the territories in relation to which the Hon'ble Court exercises jurisdiction. The other limitation is that the person or authority, to whom the Hon'ble Court is empowered to issue the writ must be within the territories and this implies that they must be amenable to its jurisdiction either by residence or location within those territories, or the cause of action has arisen at least in part, within the High Court's jurisdiction.
- (iii) *Discretionary power and adequate alternate remedy:* It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the Hon'ble Court under Art. 226 to issue a prerogative writ. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the High Court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ and ordinarily the High Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies before the writ will be granted as a rule of policy, convenience and discretion rather than as a rule of law.
- (iv) *Cases covered by civil courts:* The court does not take action in cases covered by the ordinary jurisdiction of the civil courts, that is to say, it does not convert civil and criminal actions into proceedings for the obtainment of writs. The Supreme Court has always insisted upon recourse to ordinary remedies or the exhaustion of other remedies. It is in rare cases, where the ordinary process of law appears inefficacious that the Supreme Court interferes even where other remedies are available.

**(F) Public Interest Litigation (PIL) and its concept:**

- (i) Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any

constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons by reason of poverty, helplessness of disability or socially or economically disadvantageous position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution of India, and in case of any fundamental right of such persons or determinate class of person, in the Supreme Court under Article 32 seeking Judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

- (ii) Where the weaker sections of the community are concerned, the Supreme Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for that. The Supreme Court will readily respond even to a letter addressed by such individual acting *pro bono publico* (*SP Gupta vs Union of India, AIR 1982 S, 149*).
- (iii) Public Interest Litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and to the vulnerable sections of the community and to assure them social and economic justice which is the signal tune of the Constitution of India. (*Bandhua Mukti Morcha v Union of India, AIR 1984 SC 802*)

**(G) Misuse of PIL – Preventive Measures/Guidelines:** The Supreme Court of India has laid down guidelines to prevent misuse of PIL in two cases, namely Raunaq International Ltd. Vs. IVR Construction Ltd. and others (AIR 1999 SC 393) and Malik Brothers vs. Narendra Dadhich and others. These guidelines are:

- (i) The PIL should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition.
- (ii) The Court should examine the previous record of public service rendered by the organization bringing the PIL.

- (iii) Before entertaining a writ petition and passing any interim orders in such petition, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is overwhelming public interest in entertaining the petition, should the court intervene.
- (iv) Even when PIL is entertained, the court must be careful to weigh conflicting public interests before intervening.
- (v) The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. In appropriate cases, the petitioner asking for interim orders should be asked to provide security for any increase in costs as a result of delay or any damages suffered by the opposite party in consequence of any interim order. Stay orders or interim order if passed must be moulded to provide for restitution. If the PIL fails, the public must be compensated for the delay in implementation of the court not to entertain such petition.
- (vi) The court should restrict the flow of cases in the name of PIL, otherwise traditional litigation will suffer and courts of law, instead of dispensing justice will have to take upon themselves administrative and executive functions.

**(H) Judicial pronouncements:**

- (i) Hon'ble Supreme Court has held that "despite repeated observations of this Hon'ble Court, such petitions are being readily entertained by the Hon'ble Court without weighing the consequences. In the case of Fertilizer Corporation Kamgar Union (Registered) Sindhri v. Union of India (AIR 1981, SC, 344), this Court observed that if the Government act fairly, though falters in wisdom, the Court should not interfere.
- (ii) Apex Court in 1994, AIR SCW at page 3378 has concluded after examining a number of authorities as follows:
  - "(1) The modern trend points to judicial restraint in administration.*
  - (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.*
  - (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision*



*is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the “Wednesbury principle” of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

- (iii) In a case *Asia Foundation and Construction Ltd. v. Trafalgar House Construction (I) Ltd.*, (AIR 1997 SCC 738), it was held that “judicial review of contractual transactions by Government bodies is permissible to prevent arbitrariness, favouritism or use of power for collateral purposes. This court added a further dimension to the undesirability of intervention by pointing out that where the project is a high cost project for which loans from the World Bank or other international bodies have been obtained after following the specifications and procedure of such a body, it would be detrimental to interfere.” In *New Horizons Ltd. v. Union of India* (1995 AIR, SCW 275), Apex Court again emphasized the need “to allow for certain flexibility in administrative decision making observing that the decision can be challenged only on the *Wednesbury principle of unreasonableness i.e. unless the decision is so unreasonable that no sensible persons would have arrived at such a decision, it should not be upset.*”

**(I) Principles governing jurisdiction under Article 32:-** With respect to Court Jurisdiction under Article 32, the Supreme Court has given judicial pronouncements and held as under:

1. *Enforcement of the fundamental rights:* The jurisdiction vested in the Supreme Court is exercisable only for the enforcement of the fundamental rights conferred by Part III of the Constitution. Where

there is no question of the enforcement of a fundamental right, Article 32 has no application. Threat of infringement of fundamental right is enough to justify issue of writ. However, there must be a clear breach involved, not one where questions of fact are disputed. A directive principle can not be enforced under Article 32.

2. *Locus standi*:

- (i) *Aggrieved person*: Traditionally a petition could be filed by a person who has suffered infringement of his rights and is 'an aggrieved person'. Exception is made in case of a petition for habeas corpus where a relative or friend could file a petition on behalf of the person in detention.
- (ii) *PIL*: The emergence of pro bono publico litigation, that is litigation at the instance of a public spirited person espousing cause of others, known as public interest litigation or social action litigation, has relaxed the traditional rule considerably. Any member of the public having *sufficient interest* can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions.

3. *Delay and laches*: No period of limitation is prescribed for approaching the Apex Court for seeking relief under Article 32 of the Constitution of India. It has been held that a petition under Article 32 is not a suit and is also not a petition or an application to which the Limitation Act applies. However, the party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. The doctrine of laches has been applied by the Court in dismissing petitions on ground of unreasonable delay.

4. *Existence of alternative relief*: The existence of an alternative relief is no bar to the grant of remedy under Article 32. The Supreme Court ordinarily insist that the alternative remedy should be availed of unless the alternative remedy is of no avail to the petitioner as, for example, where the High Court has already laid down a legal proposition which goes against the petitioner. This attitude arises of ordinary remedies and also from the burden of increasing arrears with the Court.

5. *Territorial jurisdiction*: The powers of the Court under Article 32 are not circumscribed by any territorial limitation. It extends not merely over every authority within the territory of India but also those

functioning outside, provided such authorities are under the control of the Government of India.

6. *Quasi-judicial authorities*: An order made by quasi judicial authority with jurisdiction under an Act which is *intra vires* is not liable to be questioned on the sole ground that the provisions of the Act or the terms of the notifications issued thereunder have been misconstrued.
7. *Concurrent jurisdiction with High Courts*: Although both the Supreme Court and the High Courts possess concurrent power to issue orders and writs in the matter of enforcement of fundamental rights, it is no condition for the exercise of the jurisdiction by the Supreme court that petitioner must, in the first instance, approach the High court. In view of the enormous arrears before it, the Supreme Court, however, discourages petitions under Article 32 if equally effective remedy can be availed of before the High Court.
8. *Res Judicata*: Petitions to the Supreme Court under Article 32 are subject to the rule of *res judicata*. Therefore, if a question has been decided by the Supreme court under Article 32 between two parties, the same question can not be reopened between the same parties under that article. The same will be the position where the matter has been heard and decided by the High Court under Article 226 and a fresh petition is filed under Article 32. *Res judicata* applies in writ petitions though not in Public Interest Litigations (PIL).

*Exception*: However, there are exceptions to this doctrine. The writ of *habeas corpus* is an exception to the rule of *res judicata*. In other words *res judicata* is not applicable in the writ of *habeas corpus*. Accordingly, where a writ of *habeas corpus* has been refused by the High Court the petitioner may file an independent petition for the same writ under Article 32 of the Constitution. Not only that, repeated petitions can be filed under Article 32 itself. The rule of constructive *res judicata* also does not apply in such cases.

9. *Miscellaneous*:
  - (i) Judicial review is not concerned with economic policy or price fixation,
  - (ii) wilful non-compliance with a Court order under article 32 is Contempt of Court,
  - (iii) Court can interfere in implementation of Government policy. It can not enforce implementation of Government policy unless a fundamental right is involved.
  - (iv) If personal litigation is wrongly fought, in the shape of Public Interest Litigation, cost may be imposed.

**(J) Principles for exercise of jurisdiction under Article 226.**- The following are some of the principles culled out from judicial pronouncements which would regulate the exercise of jurisdiction under Article 226 of Constitution of India:

1. *Alternative remedy:* The remedy in Article 226 is a discretionary remedy and the High Court has always the discretion to refuse the grant of any writ if it is satisfied that the aggrieved party can have an adequate remedy elsewhere. The remedies made available by Articles 226 should not be permitted to be utilised as substitutes for ordinary remedies.
2. *Delay:* There is no prescribed period of limitation nor do the provisions of the Limitation Act apply to a petition under Article 226, but inordinate delay in invoking the jurisdiction of the High Court may be a good ground for declining to grant relief. If the delay could satisfactorily and properly be explained, the High Court would not refuse the remedy to the petitioner. If the wrong complained of is a continuing wrong, it has an important bearing in considering the question of delay.
3. *Suppression of facts:* If the applicant for a writ under Article 226 is guilty of the suppression of material facts in his application and of an attempt to mislead the court thereby, his petition will be rejected, and the court should refuse to consider it on merits. A mere mistake in the name of the petitioner by the person filing the petition does not, however, affect its maintainability.
4. *Futile writ.* – If the writ applied for is not likely to serve any useful purpose, the Court may in its discretion reject the application on this ground.
5. *Disputed questions of fact:* The proceedings under Article 226 are of a summary nature and are not suitable for agitation of disputed questions of fact. Where the rights claimed by the petitioner can not be conveniently determined in such summary proceedings, the High Court, in exercise of its discretion shall refuse to interfere by a writ under Article 226. The High Court can set aside or ignore the findings of fact only if there was no evidence justifying such a conclusion and if no reasonable person could possibly have come to the conclusion which the Courts below have come to or in other words a finding which was perverse in law.
6. *Perpetuation of illegality:* A writ under Article 226 will not be issued if the effect of doing so will be to perpetuate illegal orders.
7. *Dismissal in limine:* Under Article 226, the High Court may decline to entertain a writ petition if it is found to be making a claim on grounds

which are frivolous, reckless, vexatious, without substance or prima facie unjust. However, a writ petition should not be dismissed in limine if an action of public authority is questioned on grounds of its being unlawful, high-handed, arbitrary or unjust.

8. *Res Judicata*: The general principles of *res judicata* applied to writ petitions filed under Article 32 or 226 of the Constitution. Where the same question has been decided by the High Court in a petition under Article 226 and the Court comes to the conclusion that no relief can be granted to the petitioners, such a decision operates *res judicata*, in a subsequent petition for the same relief.
9. *Relief can not be barred by Statute*. – The powers conferred on the High Court under Article 226 cannot be taken away or abridged by any law other than an amendment of the Constitution. Even by an amendment power of judicial review can not be taken away because judicial review is a basic feature of the Constitution and basic features are unamendable.
10. *Relief against Government/Statutory Authority*:
  - (i) It is primarily for Government to strike a just balance between competing objectives. Court can only see if Government has taken into account all relevant aspects and can interfere only where Government has overlooked any material condition or is interfering by extraneous or immaterial consideration.
  - (ii) Court will not interfere with an order of a Government authority or the Government where the order rests on its statutory discretion unless the order is arbitrary or capricious or is ultra vires or mala-fide or an abuse of power.
  - (iii) No Court or Tribunal can compel the Government to change its policy involving expenditure. But under the doctrine of 'Legitimate Expectation' even a non-statutory policy or guideline is enforceable.
  - (iv) A writ may be issued against a non-statutory private body when it receives grant from Government and is subject to regulations made by the Government.
  - (v) Interference in the realm of contract through writ jurisdiction is not proper, unless there is some exercise by the State of its sovereign power.
  - (vi) A cooperative Society is subject to writ jurisdiction if it can be classified as a 'State' or if it has a statutory public duty towards the petitioner.

- (vii) Court can interfere where the statutory authority has failed to exercise its discretion.
- (viii) Except where the legislature has expressly or impliedly dispensed with the requirement to give reasons, every judicial and quasi-judicial authority must record reasons for its decisions, so as to ensure fair play and to exclude arbitrary action or capricious decision.
- (ix) Where an administrative action is prima facie unreasonable because there is no discernible principle to justify it, the burden is shifted to the State to show that the impugned action is an informed action, and in such a case if the reasons are not recorded, the decision can be struck down as violation of article 14 (Right to Equality)
- (x) Court may interfere where 'statutory authority' acts blindly in compliance with the directions or advice given by the Government.

11. *Miscellaneous.* –

- a. The Court should not normally interfere with criminal investigation.
- b. The Court can not direct any party to disobey a statute.

**(K) Steps required to be taken at administrative level:**

- (i) *Receipt of Notice:* Whenever any notice is received through the office of Advocate General regarding the notice of a Civil Writ Petition in the Hon'ble High Court of Himachal Pradesh or through the Legal Cell, Delhi of the State Law Department regarding a Civil Writ Petition in the Supreme Court then following steps are required:
  1. Whether complete copy of the WP alongwith all its enclosures has been received? If not then complete copy be called from the office of Advocate General/Legal Cell.
  2. It be seen as to what relief the petitioner has sought. Sometimes averments made in the writ petition and the relief sought do not reconcile.
  3. If writ petition is in the nature of Public Interest Litigation then it be ascertained as to what public interest is involved in the matter.
  4. Wherever possible photographs of ongoing projects/ construction/ digging and cutting operations/stacking of

material/ dismantling of structure/crops etc. be obtained to judge the exaggerated version of the petitioner.

5. Complete record be called from the field agency of the disputed land i.e. complete revenue record consisting of latest copy of *jamabandi*, *Khasra girdavari*, *Tatima Mauqa* etc.
6. Field report of the Junior Engineer, *Patwari Halqa*, Office *Kanungo* wherever relevant.
7. What could be the possible defence on behalf of the State of Himachal Pradesh in the writ petition.
8. Preliminary submissions required to be taken such as non-maintainability of the writ petition, lack of jurisdiction, delay and laches, act and conduct of the petitioner, *res judicata*, other efficacious remedy available but not exhausted, non-joining of necessary parties, mis-joinder of parties, no public interest involved, nature of relief as sought not within the jurisdiction of Hon'ble Court, policy matter not within the purview of the Hon'ble Court, facts not properly presented, non-possibility of complying with the directions/orders on account of vis major act, geographical conditions, inclement weather. Non-service of mandatory notice (including wherever it is warranted under section 80 of Code of Civil Procedure) etc.

**(L) Steps required to be taken by the Department and Law Officer of Advocate General:**

- (i) **Steps on receipt of notice:** An Advocate General/Additional Advocate General/Deputy Advocate General (AG/AAG/DAG) conducts all Government cases before the Hon'ble Court and on the receipt of the notice, comments are called alongwith related record from the Department concerned. The concerned Department must contact the Advocate General/Additional Advocate General/Deputy Advocate General for opposing the interim orders, if any, prayed in the application giving specific grounds and Advocate General/Additional Advocate General/Deputy Advocate General should seek time for filing reply when the case is listed for admission/order.

- (ii) The Department should not waive service of the notice in cases where copy of the application with connected documents has not been supplied and in case the service has to be accepted at the time of hearing, the Department should request AAG/DAG should ask for time to get instructions from the Government to file reply and oppose any interim order.
- (iii) The Department should take immediate steps in case the Hon'ble High Court has passed an interim order and move an application and shall get that order vacated or set aside. The Law Officer posted in the Department/Directorate should bring to the notice of the Administrative Secretary/Head of Department any case where any adverse interim order has been passed by, has not so far been effectively opposed, so that necessary instructions in the matter can be given to the AG/AAG/DAG to oppose the interim order/stay.
- (iv) While preparing reply to the writ petition, it should be ensured by the Law Officer that specific replies are given to all paras/pleadings, as vague replies or omissions on any particular point may result in drawing of adverse conclusion during the course of hearing. Reply should be filed within the time limit allowed by the Hon'ble High Court and Law Officer should bring it to the attention of the Administrative Secretary/Head of Department in looking the case time limit is about to expire and the reply is not ready or not likely to be ready.
- (v) The Law Officer should take extra precaution while preparing an affidavit which is required to be filed by the officer empowered to file affidavit on behalf of the Government and the affidavit should be filed by the same officer who has signed the reply etc. In all cases where prior approval of the Secretary or Minister in-charge is required under Standing Order, the same should be obtained before filing the reply. The affidavit should clearly indicate as to which of the paras are based on personal knowledge and belief and which one are based on office record or information received and the same should be got vetted from the office of Advocate General.



- (vi) While drafting reply the Law Officer should take specific objection of application becoming time-barred and where the reply is filed beyond time granted, the application with detailed justification for delay should be given with precise prayer for condonation of delay. Delay and laches should be properly highlighted as preliminary objection in the reply and properly contested.

**1. Contempt proceedings:**

- (i) Since considerable delay in carrying out any order of the Court after notice may constitute contempt of court, orders of the Tribunal have therefore to be implemented with all possible promptitude and if necessary communicated to the Department concerned by special and speedy means and no case relating to orders/instructions of the Tribunal should be allowed to be processed in a routine manner at any level. The AG/AAG/DAG shall advise the action to be taken to discharge the notice or to defend the case and liaises with the Administrative Secretary and the Head of the Departments in all cases of contempt.
- (ii) In implementing such orders/directions, it should be ensured that complete compliance of the orders/directions is made as partial compliance might be considered as incomplete compliance and while drafting reply to the contempt proceedings, these factors should be considered by the Law Officer and complete reply should be filed in order to avoid any administrative embarrassment.
- (iii) Reply to the contempt petition should be got prepared and vetted well in time and filed in the Court accordingly.

**2. Action on final order:** The Law Officer shall examine final order/judgment/directions as soon as it is received and give his opinion on whether it needs to be assailed and if so on what grounds. He shall in other cases monitor compliance.

**3. Interim/Stay order:** Cases where an interim order is made against the State of Himachal Pradesh/Public Officer by the Hon'ble Service Tribunal/Central Hon'ble High Court, then

AG/AAG/DAG shall take the steps as per provisions of Article 226 (3) of the Constitution of India, reproduced as under:

“ [(3) Where any party against whom an interim order whether by way of injunction or stay or in any other manner is made on, or in any proceedings relating to, a petition under clause I, without –

(d) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and

(e) giving such party an opportunity of being heard.

(f) Makes an application to the High court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period or, as the case may be, the expiry of the said next day, stand vacated.]

4. Dealing with interim orders, Apex Court observed in “Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd., (1985) SCR 190 at page 196: (AIR 1985 SC 330 at P. 333) that an interim order should not be granted without considering balance of convenience, the public interest involved and the financial impact of an interim order. Similarly, in *Ramniklal N. Bhutta v. State of Maharashtra* (1997) 1 SCC 134 : (1997 AIR SCW 1281), the Court said that while granting a Stay the Court should arrive at a proper balancing of competing interest and grant a Stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be cause by granting a Stay. Therefore, in granting an Injunction of Stay order against the award of a contract by the Government or a Government agency, the Court has to satisfy itself that the public interest in holding up the project far outweighs the public interest in carrying it out within a reasonable time. The Court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost.”

In all such cases where any order issued by the Government of Head of the Department is stayed the essential steps required to be taken have been incorporated in Office Manual under Chapter 16.4.10 under the Head 'Stay Orders', which should be followed by the authority concerned in letter and spirit.

**Meaning of sub judice:** "*sub judice*" is a Latin word, which means "before a judge or Court; pending decision of a competent court.". The matter being before a judge or a court or pending decision of a competent court does not by itself mean stay of further process or action by the competent authority. Further process of any matter in a sub-judice case is, therefore, not barred and the normal process should continue till orders to the contrary are passed by the Court/Hon'ble High Court. However, the point in issue which is sub-judice must not be decided by the administrative authorities till it is finally decided by the court. (*see Office Manual chapter 16.4.11*)

5. Detailed procedure for institution and defence of writ petitions filed by or against the State of Himachal Pradesh before the Hon'ble High Court has been provided in Chapter XVI (Court Cases-Institution and Defence, in the HP Government Office Manual)

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**SPECIAL LEAVE TO APPEAL AND OTHER ISSUES**

**1.1** The Supreme Court is mainly an appellate court and can entertain appeals both in the Civil and Criminal matters if certain specified requirements are met. The appeals may be filed against the judgment/order of the various High Courts and as well as the Subordinate Courts. Provisions regarding the appellate jurisdiction of the Supreme Court are contained in Articles 132 & and 133 of the Constitution of India, which are as under:

**“132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.** — (1) *An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.*

(2) *Omitted* x x x x x x x

(3) *Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.*

*Explanation.— For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.*

**133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.**— (1) *An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—*

(a) *that the case involves a substantial question of law of general importance; and*

(b) *that in the opinion of the High Court the said question needs to be decided by the Supreme Court.*

(2) *Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial*

*question of law as to the interpretation of this Constitution has been wrongly decided.*

*(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.”*

## **1.2 Certificate For Appeal by the High Court**

High Court certifies under Article 134 A of the Constitution of India regarding the fitness of the case for appeal to the Supreme Court. Relevant provisions are incorporated in Article 134 and 134A of the Constitution of India as under:

**“134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—***(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—*

*(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or*

*(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or*

*(c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:*

*Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.*

*(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.*

**134A. Certificate for appeal to the Supreme Court.—***Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,*

*(a) may, if it deems fit so to do, on its own motion; and*

*(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case”*

## **1.3 Certificate for Appeal by the Supreme Court:**

**1.3.1** If the High Court refuses to certify a case or if any of the aforesaid conditions are not fulfilled, aggrieved party can seek special leave to file appeal from the Supreme Court itself. The Supreme Court may grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed as made by any court as tribunal. However, special leave to appeal cannot be obtained to challenge any judgment, determination, sentence or order passed as made by any court as tribunal constituted by or under any law relating to the Armed Forces. The Supreme Court in its discretion may grant special leave to appeal under Art. 136 as under:

***Special Leave Petition***

**“136. Special leave to appeal by the Supreme Court.—(1)** *Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*

*(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces*

## **1.4 CIVIL SPECIAL LEAVE PETITION**

### **1.4.1 Procedure:**

- i) The party desirous of seeking special leave to appeal is required to file a special leave petition in a specified format.
- ii) A detailed description and address of the parties and their status in the High Court in the form of the memo of parties is to be mentioned in the very beginning of the petition , alongwith
  - a) Index containing detail of the papers annexed with the petition.
  - b) Chronological events and list of dates.
  - c) Details pertaining to the judgment / order challenged in the petition. This may also include non-appreciation of the facts.
  - d) Questions of law arising for consideration in the petition.
  - e) Declaration to the effect that no other petition seeking leave to appeal has been filed by the appellant against the same judgment / order.

- f) Declaration to the effect that the documents filed with the petition are true and form part of the record of the courts below.
  - g) Grounds for filing the appeal: All the material facts in support of the contention of the petitioner should be highlighted specifically.
  - h) Grounds for seeking interim reliefs (reliefs such as stay etc sought from the court pending disposal of the appeal by the court).
  - i) Lastly main prayer or relief sought in the petition and the interim prayer (reliefs such as stay etc pending disposal of the appeal by the court).
  - j) Place and date of preparing and filing the petition and as well as name of the advocate has to be mentioned. Alongwith the petition, a concise note regarding the relevant events and incidents and as well the proceedings in the subordinate courts and the High Court is to be submitted in a chronological order. This note is referred to as the list of dates.
- iii) Petition should be confined to the submissions relied on by the appellant in the courts below. But the appellant may with due notice to the opposite party and with leave of the court may submit additional grounds at the time of hearing.
  - iv) Every petition is required to be supported by the affidavit of the appellant or by any person authorised by the appellant.
  - v) The petitioner is required to file 4 sets of the petition and accompanying papers.

**1.4.2 Court Fee:** The person filing a special leave petition is required to pay court fee as per the scheduled table of court fees.

**1.4.3 Limitation:** The special leave petition has to be filed within 60 days in case the certificate of fitness to appeal to Supreme Court is refused by the High Court. The period of sixty days is calculated from the date of the order of refusal by the High Court.

In other cases, the period of limitation is 90 days from the date of judgement or order challenged in the special leave petition. However, while computing the period of limitation, the period of time spent in

making the application to seek certificate in the High Court till its rejection is to be excluded.

## **1.5 CRIMINAL SPECIAL LEAVE PETITION**

### **1.5.1 Procedure:**

- (i) The Special Leave Petition shall be in the specified format and shall include: -
- a) Index containing detail of the papers annexed with the petition.
  - b) Chronological events and dates.
  - c) The concise statement of all such facts as may be necessary to enable the court to determine whether the special leave should be granted.
  - d) Statement of the petitioner whether he had moved the High Court concerned for leave to appeal against its decision and the order of the High Court regarding the same.
  - e) Statement as to whether the petitioner had filed any petition for special leave to appeal against judgment / order under challenge. Earlier if such a special leave petition had been filed earlier, its result should also be mentioned duly supported by an affidavit of the or any other person duly authorised by the appellant.
- (ii) The submissions in the petition should be confirmed only to the pleadings already made before the court / tribunal whose order is challenged and the other documents relied upon in these proceedings. No additional facts, documents as ground can be stated as relied upon without permission of the court.
- (iii) The Petition is to be signed by the Advocate for the petitioner unless petitioner appears in person and should be accompanied by
- 1) A certified copy of the judgment or order appealed from and,
  - 2) An affidavit in support of the statement of facts contained in the petition.

In case the appellant has been sentenced to a term of imprisonment, the petition should mention clearly if the petitioner has surrendered. Where the petitioner has not surrendered to the sentence, the court cannot hear the petition unless the court exempts the petitioner from surrendering.

**1.5.2 Court Fee:** No court fee is payable for filing a criminal special leave petition.



**1.5.3 Limitation:** The criminal special leave petition has to be filed within 60 days if leave to appeal was refused by the High Court. The period of sixty days has to be computed from the date of refusal. The period of limitation in any other case not involving sentence of death is 90 days from the date of judgement or order appealed from and in case involving a sentence of death is 60 days. But while computing the period of limitation, the period of time spent in making application to High Court for seeking leave and its rejection there after, wherever applicable will be excluded.

#### **1.5.4 Review**

The Supreme Court is the highest court of land and no appeal lies from its judgment and order to any court or forum. But Supreme Court has power to review its own judgment. The petition for review has to be filed within 30 days from the date of judgment detailing the ground on which the review is sought. The review can be sought both in Civil and Criminal cases if there is any error apparent on the face of record or there is any miscarriage of justice.

- i. The prescribed court fees have to be paid with the review petition

**1.5.5 Dispute between Govt. of India and States:** The Hon'ble Supreme Court has got original jurisdiction to hear the dispute between the Government of India and one or more States, involving question of law or fact subject to the limitation contained in Article 131 of the Constitution of India as under:

***“131. Original jurisdiction of the Supreme Court.—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—***

*(a) between the Government of India and one or more States; or*

*(b) between the Government of India and any State or States on one side and one or more other States on the other; or*

*(c) between two or more States,*

*if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:*

*Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute”*

**1.5.6 Binding Effect:** Law declared by Supreme Court is binding on all the High Courts in India under Article 141 and its decrees and

orders are enforceable throughout the territory of India under Article 142 of Constitution of India. All the civil and judicial authorities are bound to assist the Supreme Court under Article 144 of Constitution of India, as follows:

**“141. Law declared by Supreme Court to be binding on all courts.—***The law declared by the Supreme Court shall be binding on all courts within the territory of India.*

**1.5.7 Enforcement of decrees and orders:** Decrees and orders of Supreme Court are enforceable under Article 142 of the Constitution of India as under:

**“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—***(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.*

*(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”*

**1.5.8** Provisions are contained under Article 144 of the Constitution of India which cast duty upon the civil and judicial authorities to act in aid of the Supreme Court as under: -

**“144. Civil and judicial authorities to act in aid of the Supreme Court.—***All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.”*

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