

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR

Law, Justice, Parliamentary Affairs and Human Rights Department

“Muzaffarabad”

Dated 19.05.2016

NOTIFICATION:

No. LD/Legis/230/2016. In exercise of the powers conferred by Section 58 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President Azad Jammu & Kashmir is pleased to approve the following Manual to regulate working of the Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Government of the State of Jammu and Kashmir, namely:-

CHAPTER-I

[PRELIMINARY]

1. **Short title, Application and Commencement.**- (1) This Manual may be called the Azad Jammu and Kashmir Law Department Manual, 2016.
 (2) This shall apply to all cases of legal opinion and litigation conducted by or on behalf of Government or State.
 (3) It shall come into force at once.
2. **Definition.**- In the Azad Jammu and Kashmir Law Department Manual 2016, unless there is anything repugnant to the subject or context:-
 - (a) “Case” means all judicial or quasi judicial proceedings including civil and criminal proceedings before a court of competent jurisdiction;
 - (b) “Code” means the Code of Civil Procedure, 1908 (Act V of 1908);
 - (c) “Counsel of the Department” means the Law Officer, Legal Advisor, Standing Counsel or a private counsel duly engaged by Law Department in each case under rule 51 of the Manual;
 - (d) “Court” means Supreme Court, High Court, Shariat Court, Tribunals, Special Courts, Revenue Courts and includes all other courts established under law;
 - (e) “Departmental Representative” means the Departmental Representative appointed under rule 12 of the Manual;
 - (f) “Government” means Azad Government of the State of Jammu and Kashmir;
 - (g) “Law Department” means Law, Justice, Parliamentary Affairs and Human Rights Department of the Government;
 - (h) “Law Officers” means and includes Advocate General Azad Jammu and Kashmir, Additional Advocate General and Assistant Advocate General;
 - (i) “Legal Advisor” means Counsel appointed for conducting Government cases of a particular department in High Court and Supreme Court under rule 7 of the Manual;

- (j) "Legal Officer" means Legal Officer designated under rule 10 of the Manual;
- (k) "Manual" means Azad Jammu and Kashmir Law Department Manual, 2016;
- (l) "Minister In Charge" means In Charge Minister of Law, Justice, Parliamentary Affairs and Human Rights Department;
- (m) "PDSP" means Prosecuting Deputy Superintendent of Police;
- (n) "Prosecutor" means Public Prosecutor, or Additional Public Prosecutor or Special Prosecutor appointed under rule 5 of the Manual;
- (o) "Public officer" means and includes a member of civil services of Azad Jammu and Kashmir or any other service maintained under authority of Government;
- (p) "Secretary" means the Secretary or Acting Secretary to Government In-Charge of a department and include the Chief Secretary, Additional Chief Secretary, ex-Officio Secretary in charge of a department, Secretary to President and Principal Secretary to the Chief Executive/ Prime Minister;
- (q) "Standing Counsel" means Counsel/pleader appointed for conduct of Government cases in special courts, tribunals or subordinate courts, under rule 8 of the Manual; and
- (r) "State" means the State of Azad Jammu and Kashmir.

CHAPTER-II

INSTITUTIONAL MECHANISM FOR GOVERNMENT LITIGATION

- 3. Law Department.-** (1) The Law Department shall consist of a Secretary Law and such number of officers as may be fixed by the Government from time to time. The vacancies of the Officers in the Law Department shall be filled by initial recruitment or by promotion or by transfer of the officers under the Law Department (Officer) Service Rules, 1992.
- (2) Subject to the overall control of the Minister-In-Charge, the Secretary Law shall be the Chief Law Officer, who will control the entire business of the department.
- (3) Subject to the orders of the Minister-In-Charge, the Secretary Law shall have general charge of all the legal affairs of the Government and all legal proceedings of any kind, initiated by or against or affecting the State.
- (4) Advocate General shall be the executive officer of his office to supervise and manage all working of his office.
- (5) Law officers shall perform their duties in relation to litigation in the Supreme Court, High Court and/or Shariat Court, under the control of the Law Department.
- 4. Role of Law Department in relation to Litigation.-** The Law Department shall discharge its role in relation to its functions of litigation as provided in Schedule-II of the Azad Government of the State of Jammu and Kashmir Rules of Business, 1985.

5. **Prosecutor.-** (1) There shall be Public Prosecutor and Additional Public Prosecutor to be appointed by the Minister-In-Charge.
- (2) A person shall not be appointed as a Public Prosecutor or Additional Public Prosecutor unless he has for a period of, or for periods aggregating, not less than six years in case of Public Prosecutor and five years in case of Additional Public Prosecutor respectively been an Advocate of High Court.
- (3) A Prosecutor shall hold office during the pleasure of the Minister-In-Charge.
- (4) Subject to the provisions of the preceding sub-rules, the appointment of a Prosecutor shall, in the absence of any express condition to the contrary imposed in any particular case, be deemed to be for three years.
- (5) A Prosecutor shall not appear or advise against the Government or State in any civil or criminal proceeding.
- (6) Prosecutor shall be primarily responsible for the proper conduct of all criminal work pertaining to respective District Criminal Court/Session Judge and Additional District Criminal Court/Additional Session Judge.
- (7) Notwithstanding anything contained in this rule, the Minister In charge may engage a private legal practitioner as a special prosecutor, having qualification prescribed for public prosecutor to appear, conduct and plead in a class of cases.
- (8) Notwithstanding anything contained in this rule, the Secretary Law may instruct and authorize any officer in the service of the Government having legal background or an advocate having qualification of public prosecutor to appear, conduct and plead a particular Case as special prosecutor in any criminal court, under this rule.
6. **Ex-Officio Public Prosecutor.-** The following officers of the Government shall be ex-officio Public Prosecutor for the cases and courts mentioned against their names:-
- (a) PDSP shall be ex-officio Public Prosecutor in respect of Criminal cases in the court of Sessions and District Criminal Courts, Additional Sessions Court and Additional District Criminal Courts;
- (b) Prosecuting Inspector of Police shall be an ex-officio Public Prosecutor within the local area of his jurisdiction in the absence of Public Prosecutor or PDSP;
7. **Appointment of Legal Advisors.-** (1) The appointment of Legal Advisor shall be made by the Minister-In-Charge.
- (2) A person shall not be appointed as a Legal Advisor unless he is having license of legal practice as Advocate High Court preferably Advocate Supreme Court.
- (3) A Legal Advisor shall hold office during the pleasure of the Minister-In-Charge.

(4) Subject to the provisions of the preceding sub-rules, the appointment of Legal Advisor shall, in the absence of any express condition to the contrary imposed in any particular case, be deemed to be for a period of three years. The monthly retainership shall be paid by relevant department from its own budget subject to fixation of retainership by Secretary Law.

(5) The Legal Advisor shall be primarily responsible for the proper conduct of all civil cases of the department in Supreme Court and High Court subject to direction of Law Department.

(6) The monthly retainership shall be paid by relevant department from its own budget subject to fixation of retainership by Secretary Law.

(7) The Legal Advisors shall not be competent to concede, compromise, withdraw or admit an assertion in any Court unless written sanction of the Government to that effect has been conveyed by the Secretary of the concerned department through Law Department.

8. Appointment of Standing Counsel.- (1) The Standing Counsel shall be appointed by the Minister-In-Charge.

(2) A person shall not be appointed as a Standing Counsel unless he is having experience of five years as an advocate.

(3) A Standing Counsel may hold office for a period of three years subject to the discretion of the Minister-In-Charge.

(4) Subject to the provisions of the preceding sub-rules, the appointment of Standing Counsel shall, in the absence of any express condition to the contrary imposed in any particular case, be deemed to be for three years.

(6) The Standing Counsel shall be primarily responsible for the proper conduct of all Civil cases of the department in subordinate courts, special courts or tribunal, as the case may be, subject to direction of Law Department.

(7) The Standing Counsel shall not be competent to concede, withdraw or admit an assertion in any Court unless written sanction of the Government to that effect has been conveyed by the Secretary of the concerned department through Law Department.

9. Leave.- (1) The Secretary Law may grant leave to Public Prosecutors, Legal Advisors and Standing Counsels to the extent of one month annually subject to the following conditions,-

- (a) no leave may be granted unless suitable alternate arrangement has been made;
- (b) no extra expense to the State is to be caused by any leave granted to a Public Prosecutor, Legal Advisor or Standing Counsel;
- (c) the whole amount of the monthly retainer ship or fee due in respect of the period during which any Public Prosecutor, Legal Advisor or Standing Counsel is on leave, shall be paid to the acting incumbent, if any.

- (2) No leave shall be granted unless a suitable arrangement is conveniently made so that the official work may not suffer.
10. **Designation of Legal Officer.-** (1) All departments shall designate one or more Legal Officer, as per requirement, preferably a law graduate from amongst their officers.
- (2) The office of the Legal Officer shall be located at the headquarter Muzaffarabad however, keeping in view the quantum of litigation work, the departments may designate Legal Officers at other places as may be deemed necessary.
11. **Functions of Legal Officer.-** (1) The Legal Officer shall be responsible to conduct all litigation business of the department, coordinate with Law Department and Counsel of the Department and supervise the working of Departmental Representative.
- (2) The Legal Officer shall also be responsible to prepare comments on behalf of department in consultation with counsel, to provide relevant record to him and to record the progress of the cases on each appearance.
- (3) The comments shall be sent to the Counsel for preparation and submission of written statement or concise statement etc., and a copy for record thereof shall also be sent to Law Department.
- (4) The Legal Officer shall pursue the cases on behalf of the department and in case of any order, decree or judgment passed by the court against the Government, he shall immediately bring into the notice of Law Department as well as Secretary of the concerned department.
- (5) The Legal Officer shall submit the progress report to Law Department on monthly basis.
12. **Designation of Departmental Representatives.-** (1) All departments shall designate one or more Departmental Representative to attend proceedings of the Court on every fixed date and record progress/ proceedings of case in a diary specifically maintained for this purpose.
- (2) The Departmental Representative shall work under control of Legal Officers.
- (3) Secretary of concerned department may in any case designate or authorize any officer subordinate to him to appear, give statement and present the evidence on any point on his behalf.
13. **Communications for Law Officer to be addressed to the Law Department.-** Unless otherwise expressly permitted by any rule, all references to and communications with the Law Officers, shall be made through the Law Department.

CHAPTER-III

CRIMINAL BUSINESS

14. **Duties of Advocate General in Criminal cases.-** The duties of the Advocate General with regard to Criminal work shall be,-

- (a) to conduct by himself all cases before the Supreme Court, High Court and Shariat Court and to examine the record of any such case, if necessary, to supply omissions and to cure defects and irregularities found in the preliminary stages of case;
- (b) to conduct by himself of case for the State in reference and appeals relating to sentences of death or imprisonment for life or for a term not less than four years;
- (c) to conduct by himself before the Supreme Court, High Court and Shariat Court cases in which the interest of the State is directly involved or in cases of immense importance to make it desirable that the State should be represented by him;
- (d) to appear before the Supreme Court, High Court and Shariat Court on behalf of the State in appeals from orders of acquittal and of application by way of revision, reference or otherwise and to conduct by himself, of such appeals and applications; and
- (e) to conduct by himself before other Courts, in cases which he deems desirable that he should himself prosecute or which he may be directed to prosecute personally.

Provided that Advocate General may distribute criminal cases among Law Officers so as to conduct and appear before Supreme Court, High Court or Shariat Court, as he may deem fit.

15. Duties of Prosecutor in Criminal cases. It shall be the duty of Prosecutor to:-

- (a) conduct prosecution in all criminal trials in the Court of Sessions, Court of Additional Sessions Judge and District Criminal Courts and Additional District Criminal Courts;
- (b) conduct all cases in appeal or revision in the Court of Sessions, Court of Additional Sessions Judge, District Criminal Courts and Additional District Criminal Courts on receiving intimation to that effect from such courts and in the High Courts and Shariat Court in the absence of the Law Officers on receipt of direction to that effect from the Law Department; and
- (c) conduct all other cases on behalf of the State which are required to be conducted by him on receiving intimation to that effect from the District Magistrate.

16. Documents to accompany a Criminal case made over to Law Officer or a Public Prosecutor. If Law Officer or a Prosecutor is directed to undertake a criminal case, he shall be

supplied with following documents as soon as practicable:-

- (a) In original trials and inquires before a Magistrate,-
 - (i) Challan (police report)/complaint along with list of the witnesses and their statement, site plan, medical reports etc.; and
 - (ii) copies of any other document being material in the case.

- (b) In appeals before District Criminal Court, Additional District Criminal Court, Court of Sessions and Court of Additional Sessions Judge, complete certified copies of the judgment/ order and any other relevant record of the lower court as well as of the grounds of appeal;
- (c) In appeals before the High Court or Shariat Court, complete certified copies of the Judgment/order and other relevant record of trial court as well as first court of appeal (if any) along with the grounds of appeal;
- (d) Copies of the police record whenever required; and
- (e) In addition to above, any other record/papers which may be considered important and called for by the Law Officer or a Prosecutor or Law Department.

17. **Proposal for appeal or revision in criminal cases.-** A proposal for the institution of an appeal or revision in a criminal case should be made to the Law Department. It should be accompanied by a full statement of the reasons which support it together with connected judicial files and certified copy of the order which is sought to be set aside or modified etc., and a certified copy of the judgment/order of the appellate court. The Law Department shall, thereupon, submit the proposal to the Minister-In-charge, who shall either reject or approve to file appeal or revision, as the case may be:

Provided that in case of absence of Minister-In-Charge, who has been conferred powers of granting sanction for filing appeals and revisions, the Secretary Law shall have the same powers under this rule:

Provided further that where the Secretary Law is absent as well, the Law Department may, subject to approval of the Minister-In-charge file appeal or revision, as the case may be.

18. **Withdrawal of Criminal case or cancellation of notification of sanction.-** (1) The Law Department may, in public interest withdraw from Court any criminal case at any stage with the written consultation or on recommendation of the concerned District Magistrate with approval of the Government.

(2) Where a notification for filling appeal, review or revision etc., has been issued and appeal, review or revision etc., has not been instituted or filed in the Court of competent jurisdiction, the Minister-In-Charge may review his approval and cancel the notification after written consultation or on recommendations of the concerned District Magistrate.

19. **Private application for appeal or revision in cases of acquittal.-** Application for institution of appeal against order of acquittal submitted by private person shall be sent to the Law Department. This application should conform to rule 17 and shall be disposed off in the manner laid down therein.

20. **Principles to guide recommendation for filling appeal or revision.-** The District Magistrate shall not ordinarily recommend cases for the approval to file an appeal or revision in criminal case where,-
- (a) the Case is, in itself, not one of special importance;
 - (b) the record does not disclose that there has been a clear miscarriage of justice, or mistake on an important point of law; and
 - (c) there is no probability of success.
21. **Prosecution under Section 197 of the Code of Criminal Procedure.-** No criminal proceedings shall be initiated against any Public officer without the previous sanction of the Government under Section 197 of Criminal Procedure Code, 1898 (Act V of 1898).
22. **Prosecution in Criminal cases by or against Public Officers.-** The Law Department may direct a Law Officer or a Prosecutor to defend any Public officer who is charged or associated in any Criminal proceedings in respect of his official acts or to institute proceedings on behalf of a Public Officer to vindicate his official character.
23. **Engagement of a legal practitioner to do the work of Prosecutor.-** The engagement of private legal practitioner to do the work of Prosecutor should be resorted to very sparingly and only under the most exceptional circumstances and with the previous sanction of the Minister-In-Charge.

CHAPTER-IV

CIVIL AND OTHER CASES

24. **Suit on behalf of the Government shall be instituted only on failure of other means of satisfaction.-** (1) The Suit on behalf of the Government shall not be recommended to be instituted until the proposed defendant has had an ample opportunity of stating his views of the case and all efforts have been made for coming to some agreement/adjustment for the settlement of the State's claim out of Court.
- (2) The Law Department shall not be approached unless all efforts have been made to effect the amicable settlement and the case for the Government has been inquired into departmentally and evidence/proof has been secured on all points which are likely to be contested.
25. **Claim against State where possible to be adjusted amicably.-** (1) When any person informs to bring a suit against the Government, the Secretary of concerned department should satisfy himself without any delay of the whole and every part of the claim preferred by and make all reasonable efforts to bring about an amicable adjustment/settlement without any request to Law Department, so far as this can be done without effecting the just right of the Government.

(2) No person having a just claim against the Government shall be compelled to resort to litigation to enforce it.

26. **Communications to opposite party to be without prejudice.**- All communication made to the opposite party, on the subject matters in respect of which it is possible that a suit may be instituted, shall be marked as being made "without prejudice" and if made orally, shall be stated to be made "without prejudice."

27. **Prohibition against supply of copies or contents of documents.**- (1) The official notes and correspondence or copies thereof being not public documents, shall neither be issued nor admissible in any court.

(2) No person shall, regarding any Case pending in any court or likely to arise and no person acting for or concerned with any such person, be allowed access to or be supplied with copies of any document in the possession of the State in any way except with prior permission of head of department or incharge thereof .

(3) Where a court notice is addressed to a head of a department or the in-charge thereof or public officer for producing certain documents, he shall consider whether the requisite documents are made in official confidence and the production of such documents would not be in public interest, the production of such documents shall be objected to, through the officer-in-charge of the case.

(4) All correspondence, resolutions and orders, of the State are strictly confidential. No officer shall grant copies of any such document during the pendency of any dispute or suit to which they in any way relate to any person other than to a competent officer of the State or to the officer-in-charge of the case/Legal Officer and copies thereof shall be granted at any time after the final decision of suit without previous sanction of the department concerned.

(5) Where complying with the requirements of any of these rules, if it is deemed necessary to transmit any document in original to any officer of the Government or to the officer-in-charge of the Case/Legal Officer, a certificated copy thereof shall be retained in the office concerned and the original document shall be transmitted by registered post or through a special messenger.

28. **Officers authorized to sign and verify plaints and written statements.**- In any suit by or against the Government the plaint or written statement, as the case may be, shall be signed by the Secretary of concerned department or any other office authorized by him and shall be verified either by him or by any other officer, including Legal Officer of the department who is well acquainted with the facts of the case.

29. **Sanction in suits etc., by or on behalf of the Government and Public Officers.** No suit, appeal, review, revision, petition etc., on behalf of the Government or Public officer, as the case

may be, shall be instituted without the sanction of the Minister In charge and in case of his absence the Secretary Law:

Provided that in the case of absence of Minister In Charge, who has been conferred powers of granting sanction for filing suit, appeals, review or revisions etc., the Secretary Law shall have the same powers under this rule:

Provided further that where Secretary Law is absent as well, the Law Department may, subject to approval of the Minister-In-charge file suit, appeals, review or revisions etc.

30. Withdrawal of Civil Case or cancellation of notification to file appeal, review or revision

etc.- (1) The Law Department may in public interest withdraw any case from a Court, at any stage after written consultation with or on recommendation of the Secretary of concerned department and with prior approval of the Government.

(2) Where a notification for filling suit, appeal, application, review or revision etc., has been issued and such suit, appeal, application, review or revision etc., has not been filed in the Court of competent jurisdiction, Minister-In-Charge may review his approval and cancel the notification on the basis of reasons to be recorded.

31. Report when a suit on behalf of the Government is necessary.- (1) A Secretary of

concerned department when considers that a suit should be instituted on behalf of the Government, shall submit a detailed report, containing:-

- (a) the circumstances which in his opinion render the institution of the suit necessary and precisely when and where each of them occurred;
- (b) the subject of the claim and the relief sought;
- (c) the steps which has been taken to obtain satisfaction of the claim without bringing a suit;
- (d) the pleas or objection (if any) which have been urged by the proposed defendant against the claim;
- (e) the evidence both oral and documentary, which is believed to be obtainable and which is proposed to be adduced in support of the claim;
- (f) the evidence, both oral and documentary, which as far as is known that the proposed defendant will be able and is likely to adduce in his defense;
- (g) whether the document (if any) referred to in sub clauses (e) and (f) 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 of decree obtained against him would be successful;

- (i) any other fact which he 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 on its decision or the like.

(2) Copies of all documents referred to in sub-clause (g) of the preceding clause and of all correspondence and written proceedings whether in English or in the Urdu language connected with the proposed suit should accompany the report with a complete and accurate list of the same, wherever this is reasonably possible. If these copies cannot be supplied for any reason the originals should be submitted and the concerned department will thereupon consult the Law Department and decide upon the course to be adapted.

- 32. Government may sue or be sued through the Secretary of the concerned department.** (1) The Government may sue or be sued through the Secretary of concerned department and all suits, appeals, review or revision etc., on behalf of the Government shall be filed accordingly. All summons, notices, orders of the courts shall be served to the Government through the Secretary of concerned department.
- (2) Wakalat-namas/power of attorney on behalf of the Government shall be signed by the Secretary of concerned department and in case of his absence Additional Secretary of the Concerned department.

CHAPTER-V

PROCEDURE ON RECEIPT OF SUMMONS ETC.

- 33. Officers competent to receive service of processes.** The Secretary of Concerned department and in case of his absence Additional Secretary shall be the only officer to receive service of process/summons in suits against the Government.
- 34. Procedure on receipt of service of summons.** (1). When the service of process/summons has been duly served on the Secretary concerned department, a date has been fixed for the first hearing and if such date is less than two months, he shall at once apply to the Court under Rule 5 of Order XXVII (First Schedule) of the Code, for an extension of the time not less than two months. If the Court declines to grant an extension of time applied for, the Secretary concerned department shall forward the case, as soon as possible, to the Law Department in order that further steps may be taken to protect the interest of the State.
- (2) The Secretary concerned department shall in every case, through Legal Officer or Departmental Representative forthwith apply for certified copies of;-
- (a) the plaint, where only concise statement of it has been received with the summons;
 - (b) all documents filed with the plaint as well as of the list of the same prescribed by the High Court; and

- (c) any list filed with the plaint and further documents referred to in rule 14 of Order VII (First Schedule) of the Code.

35. Procedure consequent upon receipt of notice under Section 80, of the Code. (1) The Secretary and in case of his absence the Additional Secretary of concerned department shall be the only competent authority to receive a notice under the provisions of Section 80 of the Code.

(2) On receipt of such a notice the concerned officer/department shall forthwith endorse on it,-

- (i) the date of receipt;
- (ii) manner of delivery;
- (iii) the date of endorsement;
- (iv) signature of officer making the endorsement.

(3) The officer concerned shall immediately on receiving this notice, enquire into and consider the claim and decide or move to 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.

Note:- If the concerned department/officer is in doubt, at this stage as to any legal point, he shall submit the case in due course of time to the Law Department for opinion.

(4) When notice about the intention of any person to sue the Government or Public officer has been received under Section 80 of the Code, no communication should ordinarily be made to such person otherwise than on advice of the Law Department.

(5) When after receiving any such notice and inquiring into the matter, the Government proposes to,-

- (a) tender any amount admitted to be due to the claimant; or
- (b) offer terms of adjustment or suggest reference to arbitration.

the Law Department shall 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, without consulting the Law Department.

(6) When the departmental authority having power to deal with the Case is of opinion that the whole or any part of the claim put forward is justly due, he shall, if the Government has accorded sanction thereto, proceed to endeavor to effect a settlement thereof accordingly.

(7) Any amount held to be justly due to the claimant shall, before the suit is brought, be formally and unconditionally tendered to him without prejudice and without requiring him to provide receipt for the sum tendered. No tender of payment or payments should be made after the suit

has been brought without consultation with the Law Department, in making any tender the person to whom it is made shall be informed that if the tender be declined the fact of it having been made will be stated and if necessary established in court.

(8) No one shall take any action such as tendering money, agreeing to compromise the case or to submit it to arbitration which will involve financial liability unless he has funds allocated for the purpose:

Provided that if the case is of urgent nature and it appears that a loss would be involved by delay he may take such action subject to arrangement of funds in consultation with the Law Department.

(9) When the Government decides that the claim in whole is to be contested, no communication shall 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 be contested, the required action shall (after consulting the Law Department when that course appears to be desirable) be taken accordingly.

CHAPTER-VI

APPEALS, REVIEW, REVISION ETC., BY OR AGAINST THE STATE OR A PUBLIC OFFICER

36. Report as to whether appeal, review, revision etc., should be made.- When any Case has been decided wholly or partly against the Government or Public officer and such Officer , on perusal of the copies of the judgment and decree or other final order of the Court supplied to him as hereinbefore provided, is of the opinion that an appeal, revision or review etc., should be preferred against the judgment or order, as the case may be, then following steps shall be taken:-

- (i) The concerned department shall, as soon as possible, prepare a report to that effect, stating therein the grounds of its opinion and shall submit it to the Law Department together with the said copies and (if it is deemed necessary for a proper decision of the matter) with copies of the evidence, exhibits and other record not submitted earlier and also with a draft of the grounds on which it is considered appropriate that the appeal or application etc., should be based.
- (ii) If the copies of the evidence and exhibits cannot be procured without considerable delay the report should be submitted without them and these documents should be forwarded as soon as possible afterwards.
- (iii) If concerned department considers that no appeal or application should be made, it shall submit a report, accompanied as aforesaid to that effect and thereupon the Law Department shall, if it thinks that an appeal or application as aforementioned

should be made in the case, act accordingly with the sanction of the Minister In-charge and in case of his absence the Secretary Law Department.

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

37. **Procedure when intervention is deemed necessary.**- (1) If it comes in the notice of the head of the concerned Department that it is in the interest of State to become party in a suit or litigation, he shall bring it into the notice of the Law Department.
- (2) The Minister In charge and in case of his absence the Secretary Law shall decide whether the State shall intervene or not and shall take necessary steps as may be required.
- (3) If the Minister In charge and in case of his absence the Secretary Law decides that it is necessary to intervene and the State should be made a party to the suit, all the rules for conduct of State suits shall, so far as practicable, be deemed applicable to the Case.
38. **Appeal, application etc., by opposite party.**- (1) If an appeal, application, revision or review of judgment preferred by the opposite party in any suit, the officer receiving notice or legal opinion thereof shall at once forward the notice to the Law Department.
- (2) On receipt of notice as such, the Law Department shall take such measures as may be necessary for defending the Case.

CHAPTER-VII

GENERAL

39. **Engagement of Law Officers.**- (1) The Advocate General shall not ordinarily be engaged to conduct any criminal business of the State in any court other than the Supreme Court, High Court and Shariat Court except the special permission of the Minister-In-Charge.
- (2) The duties of Additional Advocate General with regard to criminal work shall be the same as are of the Advocate General, or as may be assigned to him by the Law Department from time to time.
42. **Control over the Prosecutor.**- All Prosecutors shall be subject to the supervision of the Law Department and reference in relation to their appointment, removal, transfer, leave, duties, conduct and any other matter affecting them shall be addressed to the Law Department.
43. **Law Officer and Prosecutor to appear in Civil Cases.**- It shall be the duty of Law Officers and Prosecutors to appear on behalf of the Government in civil cases on direction of the Law Department.
44. **Fixation of fee in criminal cases for private legal practitioners.**- Scale of fees in Criminal cases to private legal practitioners for appearance on behalf of the State, shall be fixed by the Law Department on case to case basis.

45. **Council fee in Civil cases.-** The fee payable to a counsel for conducting Government case other than criminal case shall be determined by the Law Department with due regard to interest of the Government and the State involved in the Case, hard work by the counsel and his standing at bar after approval of the Secretary Law.
46. **Fixation of fee in special cases.-** The Law Department shall determine the scale of fees admissible in special cases in which it is difficult to determine whether a particular case is civil or criminal.
47. **No monopoly on legal business.-** Law Officers, Prosecutors, Legal Advisors and Standing Counsels shall not be entitled to a monopoly on the legal business of the State or the Government. They shall appear when instructed to do so by the Law Department. The right to engage any other legal practitioner shall rest with the Law Department.
48. **Prohibition against Prosecutor to appear against the State.-** (1) The Prosecutor shall not, without the permission (to be previously obtained in each case) of the Law Department, appear or advise against the Government or the State in any civil or criminal proceeding:
(2) There shall be no objection to Prosecutor appearing for private complaints when his service is not required by the State.
(3) The permission referred to above shall ordinary be granted in civil case in which it is clear that the service of the applicant will not be needed by the State at any stage of the Case.
(4) In criminal cases permission shall only be granted for sufficient reasons in very special case such as prosecution for defamation or abduction and to the cases in which the State is not the real prosecutor.
49. **Cost of filling suit, appeal, review, revision etc.-** All cost, expenses and court fee etc., incurred on filling or defense of suit, appeal, review or revision shall be borne by the concerned department from its own budget including security fee, if any, to be deposited in courts.
50. **When should Prosecutor be called upon by District Magistrate to conduct a case.-** The Prosecutor shall be called upon to conduct case referred to in clause (c) of rule 15 only when the services of Police or other officers are not available or when on the representation of the Superintendent of Police, the District Magistrate considers that the State should not be represented by a legal practitioner.
51. **Assistance be rendered to the Law Officers and Prosecutor in Criminal cases by PDSP and other Officers.-** In all criminal cases which are conducted by the Prosecutor, the PDSP will consider himself to be immediate in charge of the case and shall endeavor to supply all information asked for during the preparation and progress of the prosecution. The same rule shall apply to the Departmental Representative when the prosecution is undertaken by a department.

52. **Law Department to be the only authority competent to engage, change or instruct Counsel on behalf of Government.-** The Law Department shall be the only authority competent to engage, change or instruct Counsel in all cases on behalf of the Government or the State.
53. **Suit by Public officers not to be instituted without sanction.-** (1) The written sanction of the Minister In-charge of the Law Department and in case of his absence, of the Secretary Law shall be obtained before any Public officer approaches to the courts for vindication of his public acts or of his character as a public functionary .
- (2) 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 to the Law Department through the Secretary of the concerned department.
- (3) The Law Department after framing its opinion shall decide whether the suit;
- (i) is or is not to be instituted; and
 - (ii) if instituted, is to be conducted at the public expense or that of the officer concerned.
54. **Interim injunction/ Stay Order against the Government.-** Where an interim injunction/stay order has been passed against the Government, the department concerned or public officer shall forthwith bring the Case into notice of the Law Department for vacation of such injunction/ order.
55. **Procedure in defense of suits against Public Officer.-** (1) When a suit is instituted against a public officer and he considers that the suit should be defended at the public expense, a report thereof shall be sent to the Law Department through the Secretary of the concerned department.
- (2) The Law Department shall decide 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.
- Note:-** It shall be the duty of the department concerned to satisfy the Law Department that they have used every effort to prevent litigation and that the acts complained of were dealt (if done at all) with due care and attention and under circumstances justifying the defense of the suit at the public expense.
56. **Copies of judgment and decree when passed to be submitted.-** Immediately on the disposal of any case a copy of the judgment and the decree or other final order of the Court shall be procured without delay by the Departmental Representative or Legal Officer, as the case may be.
57. **Status of suits and to whom reports to be submitted.-** Immediately on receipt of the copies specified in the preceding rule, the Departmental Representative or Legal Officer, as the case

may be, shall submit a report of the status of the suit for the information of the Law Department. The report shall be submitted through the Secretary of the concerned department.

CHAPTER-VIII

EXECUTION OF DECREES

- 58. Settlement or satisfaction of decree against to the Government.-** (1) Whenever it has been decided not to contest further or go into the appeal against a decision which is wholly or partly adverse to the interest of the Government, the Secretary of the concerned department or official respondents, as the case may be, shall at once arrange for the payment into the Court whose duty is to execute the decree of all money payable under the decree and are care shall be taken that the decree is fully satisfied within the time fixed for that purpose under Section 82 of the Code.
- (2) 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 fixed time.
- 59. Procedure in case of decrees in favour of the Government.-** Immediately on issuance of decree in favour of the Government or a public officer, when the suit has been brought or defended at the public expense, the Legal Officer, Departmental Representation or the Counsel of Department shall proceed to move the Secretary concerned department to take steps for execution of decree in the manners provided in Order XXI of the Code, unless for special reasons (which shall be reported for the order of the Government) it is deemed undesirable that any such steps should be taken.
- 60. Measures for proceeding against property of judgment debtor.-** (1) The Secretary and Legal Officer of concerned department are required to take all possible measures to ascertain what property or assets 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, 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.
- (2) The following instructions shall be observed in this connection;-
- (i) if an appeal is preferred and the execution of the decree is stayed off by order of the Court, the interval before the decision of the appeal should be used in making inquiries as to the property of the judgment debtor;
 - (ii) the provisions of Rules 5 Order XLI (First Schedule) of the Code are ordinarily sufficient to prevent any fraudulent disposal of property by the judgment debtor during the time gained by an appeal, but the Secretary concerned department or Legal Officer in consultation with him shall satisfy himself that the security taken by

the Court is sufficient and petition may be made in the Court to execute the decree at once, if he consider that the security offered is not good or sufficient;

- (iii) if such application is refused, the Secretary concerned department or other officers in consultation as aforesaid shall endeavor to keep a watch on the property of the judgment debtor, as to prevent any fraudulent alienation or concealment.

61. **Cost in pauper suits.-** (1) The amount of stamp duty and other costs due to the State in a pauper suits shall be recovered by proceedings in execution of decree.

Note. Pauper suits are instituted without payment of court fee and Rules 10 and 11, of Order XXXIV (First Schedule) of the Code provides for the recovery of the amount of the fee which should have been paid if the plaintiff had not been allowed to such as a pauper. In cases governed by Rule 10, it is not necessary for the State to bring a separate suit but the amount of the court fee can be realized from the property, the subject-matter of the suit, by proceedings in execution.

(2) Civil courts are required, whenever a decision is passed in a pauper suit, to inform the Government of the amount payable to the State as stamp duties with such other particulars as will enable it to recover the same.

62. **Responsibility of Law Officer and Counsels of the Department to recover moneys due to the State.-** The Law Officer, Counsel of the Department or Legal Officer shall be responsible to take proper action in order to recover all moneys due to the State under decrees and orders of Civil courts in all cases that have been conducted through them and they shall bring to the notice of the Secretary of the concerned department, any case in which they consider that the progress made in the recovery of moneys due to the State is unsatisfactory.

63. **Recovery outside Courts.-** Any sum due to the State under a decree may, if feasible, be recovered otherwise than through the agency of the Court, but the Secretary of the concerned department shall under Rule 2, Order XXI, (First Schedule) of the Code certify every such recovery to the Court.

64. **Prohibition against the Government servants to bid at auction.-** The Government employees shall not bid at court auctions with a view to purchasing the property of judgment debtors by whom money is due to the State, except with the special sanction of the Government.

CHAPTER-IX

MISCELLANEOUS

65. **Legal Opinion.-** (1) References to Law Department for opinion may be made by or through the Secretary of the concerned department:

(2) Where a reference is received for legal opinion from the Government, the Law Department shall refer the same to the concerned department for submission of comments along with record/proposals in order to acquaint itself of all aspects of case before giving legal opinion.

(3) In the following cases officers may refer direct to the Law Department:-

(i) when the matter is urgent and communication through the usual channel would be pre-judicial to the interest of the State; and

(ii) when the reference is in reply to a reference from the Law Department.

66. Monthly Report.- (1) The Law Officers and Prosecutors shall submit to the Law Department, the monthly reports, statements and such others information as may be required?

(2) Legal Advisors and Standing Counsels shall submit monthly returns or statements, as may be required by Law Department, to their Legal Officer who shall onward send the same to the Law Department.

(3) The reports, regarding the status of civil and criminal cases shall be filed as may be required by the Law Department from time to time.

(4) The performance of the Law Officers, Prosecutors, Standing Counsels and Legal Advisors shall, among other factors, be evaluated on the basis of aforementioned reports, returns and statements.

(5) Any Law Officer, Prosecutor, Standing Counsel or Legal Advisor, who failed to submit required monthly reports or statements or returns in due course of time shall be liable to be removed from his office.

(6) The reports, statements and returns shall be filed in accordance with forms given in the Schedule or as may be required by the Law Department.

67. Delegation of Power.- The Secretary Law may delegate any of his powers to any officer of his department.

68. Repeal.- The Azad Jammu and Kashmir Law Departmental Manual, 1984 is hereby repealed.

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President

Azad Jammu and Kashmir

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(Ch. Muhammad Nawaz)

Section Officer (Legislation)

