

THE KERALA LAW DEPARTMENT MANUAL

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CHAPTER I

General

The business of the Law Department consists of the following.—

- (1) General Administration of the Department
- (2) Drafting—
 - (a) Legislative Project
 - (b) Legislation
 - (c) Unification of laws
- (3) Legal Advice—

Advice on legal matters referenced to this Department by the other departments of the Secretariat
- (4) Subsidiary Legislation
- (5) Publication
- (6) Conveyancing
- (7) Translation

2. The business of the Law Department is transacted by the Secretary to the Government and Legal Remembrancer assisted by other officers in the Department.

3. The Law Department is generally guided by the procedure laid down in the Secretariat Manual in the working of the Department. But, in view of the special nature of the work in the Department sometimes procedure slightly different is adopted in respect of certain items of work in the department.

CHAPTER II

General Administration of the Department

Since the Law Department is a separate unit within the Secretariat, matters relating to the establishment, staff, budget, contingencies, furniture, stationery and all other administrative matters of the Department are attended to in the Department itself. The administration of the Department of Law Officers including that of the Administrator General and Official Trustee is also attended to by the Law Department. The following Statutes are administered by the Law Department —

- (i) The Notaries Act
- (ii) The Ezhava Act
- (iii) The Nair Act
- (iv) The Kshatriya Act
- (v) The Nambudiri Act
- (vi) The Court Fees and Suits Valuation Act

CHAPTER III

Drafting of Legislation

1 Except as otherwise expressly provided in this Manual, the Law Department is not, in respect of legislation, an originating or initiating Department. The function of the Law Department with regard to the preparation of legislation is to put into technical shape the projects of legislation of which the policy has been approved.

2 Every proposal to initiate legislation shall be considered in the Department to which the subject-matter of the legislation relates. Once the policy is settled that Department shall consult the Law Department.

3. The Law Department shall consider the proposal and advise the Administrative Department as to—

(i) the need for the proposed legislation from a legal point of view;

(ii) the competence of the State Legislature to enact the measure proposed;

(iii) the requirements of the Constitution as to obtaining the previous sanction of the President thereto; and

(iv) the consistency of the proposed measure with the provisions of the constitution and in particular those relating to the Fundamental Rights

4. The advice tendered at this stage will be of a general character. The examination of the various provisions in detail will be done at the drafting stage. The advice shall be with particular reference to the following aspects:—

(1) whether the proposal relates to any of the matters enumerated in Lists II and III of the Seventh Schedule to the Constitution, in which case alone the State Legislature is competent to enact,

(2) whether there is any other law in force in the State which relates to the same subject and serves the same object or which can be made to serve the same object with suitable amendments;

(3) whether the proposed legislation will have the effect of imposing restrictions on the freedom of trade, commerce or intercourse with or within the State, and if so, whether it will be saved by clause (a) of Article 304 and if not whether the restrictions are reasonable and required in the public interest and whether the previous sanction of the President should be obtained in pursuance of the proviso to Article 304 (b) of the Constitution for the introduction of the Bill in the Legislative Assembly;

(4) whether the proposed measure will offend any of the provisions of the Constitution relating to Fundamental Rights.

5. When the Administrative Department comes to a decision as to whether the proposed legislation should be proceeded with and forwards the file to the Law Department with a memorandum, a Statement of Objects and Reasons and the Financial Memorandum (in cases where the legislation involves expenditure from the Consolidated Fund of the State) as required by rule 46 of the Rules of Business, the Law Department shall prepare a draft Bill and return the file to the Administrative Department with the draft.

6. If the approval of the Cabinet for the draft Bill is obtained and the Administrative Department forwards the file to the Law Department for preparing the final draft of the Bill under rule 50 of the Rules of Business, the Law Department shall finalise the Bill and return the file to the Administrative Department indicating the formalities required to be complied with under the Constitution. in respect of the Bill

7. In respect of certain types of Bills, the Constitution requires certain formalities to be complied with before their introduction in, or consideration by the State Legislature.

(1) Under Article 207 (1) of the Constitution, no Bill which makes provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of Article 199 shall be introduced in the State Legislature except on the recommendation of the Governor. These matters are—

- (a) the imposition, abolition, remission, alteration or regulation of any tax,
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into, or the withdrawal of moneys from, any such Fund,

- (d) the appropriation of moneys out of the Consolidated Fund of the State;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of (he Consolidated Fund of the State or the public account of the State or the custody or issue of such money

No recommendation is, however, necessary for the moving of an amendment making provision for the reduction or abolition of any tax Under Article 207 (2), a Bill shall not be deemed to make provision for any of the matters referred to in clauses (a) to (f) of Article 199 (1) by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licenses or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(2) Under Article 207 (3) of the Constitution, a Bill, which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State shall not be passed by the Legislative Assembly unless the Governor has recommended to the Assembly the consideration of the Bill.

(3) Under the proviso to Article 304 (b) of the Constitution, no Bill or amendment for the purpose of imposing reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest, shall be introduced or moved in the State Legislature without the previous sanction of the President.

8. When the Administrative Department returns the file after obtaining the recommendation of the Governor, previous sanction of the President, etc., wherever necessary, the Law Department shall send three copies of the draft Bill with the

Statement of Objects and Reasons and the Financial Memorandum (where necessary) appended thereto, to the Secretary, Legislative Assembly, for publication in the Gazette. The Law Department shall also communicate to the Secretary, Legislative Assembly the recommendation of the Governor, wherever it is necessary, for the introduction or consideration of the Bill and also inform him the nature of the motion which the Government propose to move with regard to the Bill. Ten copies of every Bill falling within the concurrent legislative field shall be sent by the Law Department to the Government of India, Ministry of Law.

9 If a Bill is referred to a Select Committee the Law Secretary or any other officer deputed by the Law Secretary in this behalf shall attend all meetings thereof and the Law Department shall assist the Legislature Secretariat in revising the Bill in the light of the decisions taken at the meetings of the Committee and in preparing the report of the Select Committee.

10 Whenever orders of the Minister are received from the Administrative Department concerned that an amendment should be moved to a Bill which has been introduced in the Legislative Assembly, the Law Department shall examine the proposed amendment and, if there is no legal objection, draft the amendment in the proper form and forward a copy of the draft amendment to the Secretary, Legislative Assembly. A copy of the amendment shall be forwarded to the Private Secretary to the Minister for the information of the Minister and another copy to the Administrative Department from which the proposed amendment was received. Regarding non-official amendments to Bills, the Law Department shall follow the procedure laid down in rule 56 of the Rules of Business.

11. (1) After a Bill is finally passed and the Legislature Secretariat sends a copy thereof as passed to the Law Department for formal scrutiny, it is open to the Law Department to point out mistakes in the Bill, if any, relating to printing, spelling, punctuation, numbering of sections or clauses, or cross-references and marginal headings, for correction by the Speaker under rule

91 of the Rules of Procedure and Conduct of Business in the Legislative Assembly. When fair copies of the Bill as passed by the Legislative Assembly with the superscription "This Bill was passed by the Legislative Assembly on *' and duly signed by the Speaker are obtained from the Secretary, Legislative Assembly, the Law Department shall take steps to obtain the assent of the Governor or the President, as the case may be, in accordance with the procedure hereinafter laid down.

(2) If the Bill does not require the assent of the President, the file with three copies of the Bill duly signed by the Speaker shall be submitted to the Governor along with a self contained note explaining the scope and object of the Bill for signifying his assent to the Bill

(3) If the Bill requires the assent of the President, the file with four copies of the Bill duly signed by the Speaker shall be submitted to the Governor along with a similar note for reserving the Bill for the consideration of the President. The Law Department shall thereafter forward three copies of the Bill as reserved by the Governor to the Government of India, Ministry of Home Affairs, together with six copies each of the following documents requesting them to obtain and communicate the assent of the President to the Bill—

- (a) Bill as introduced in the Legislative Assembly;
- (b) Bill as reported by the Select Committee together with the report of the Select Committee,
- (c) Bill as passed by the Legislative Assembly,
- (d) Explanatory notes on clauses of the Bill;
- (e) Extracts from the proceedings of the Legislative Assembly, and
- (f) Enactments sought to be amended or repealed

12. Bills falling under the following categories require the assent of the President under the provisions of the Constitution —

(1) Bills with respect to matters enumerated in List III of the Seventh Schedule to the Constitution, which contain any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter [Article 254(2)];

(2) Bills providing for matters specified in Articles 31 and 31A of the Constitution, and

(3) Bills which seek to impose or authorize the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river valley (Article 288)

13 (1) On receipt of the copy as assented to by the Governor or the President, as the case may be, the Law Department shall take steps to publish the Act in the Gazette after assigning a number to the same and requiring the Superintendent of Government Presses to furnish the required number of spare copies of the Act.

(2) On receiving the spare copies of the Act, the same shall be distributed to the Administrative Department concerned, the Translation Section for translating and publishing the same in the Gazette, and to the Secretary, Legislative Assembly Copies shall also be forwarded to the Ministry of Home Affairs and the Ministry of Law. After distribution of copies the whole file shall be retransferred to the Administrative Department

14 (1) The provisions contained in paragraphs 2 to 6 (both inclusive) shall, so far as may be, apply to ordinances to be promulgated by the Governor in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India. In the case of ordinances, which before promulgation by the Governor, require the instructions from the President, the instructions are to be obtained by the Administrative Department.

(2) Under the proviso to Article 213 (1) of the Constitution, the Governor shall not, without instructions from the President promulgate an Ordinance if,—

- (a) a Bill containing the same provisions would under the Constitution have required the previous sanction of the President for the introduction thereof into the Legislature, or
- (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
- (c) an act of the Legislature of the State containing the same provisions would under the Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President

(3) Where the Administrative Department forwards the file to the Law Department with the orders of the Council of Ministers approving a draft Ordinance and recommending its promulgation, the Law Department shall submit the file to the Governor with two sign manual copies of the draft Ordinance and a self-contained note explaining the circumstances which necessitated the promulgation of the Ordinance and the scope of the provisions contained therein.

(4) When the file is returned by the Governor after the promulgation of the Ordinance the Law Department shall assign a number to the Ordinance and direct the Superintendent of Government Presses to arrange for publishing it in the Gazette. Sufficient number of spare copies shall also be obtained and distributed to the Administrative Department concerned and the Translation Section for translating and publishing the translation in the Gazette. A copy of the Ordinance shall also be forwarded to the Secretary, Legislative Assembly for laying the same before the Legislative Assembly as required by clause (2) of Article 213 of the Constitution. Copies shall also be forwarded to the Ministry of Law and Ministry of Home Affairs

15 (1) Personal laws, measures designed solely to codify and consolidate existing enactments and legislations of a formal character such as Repealing and Amending Bills shall be initiated in the Law Department.

(2) In the case of codification and consolidation of existing enactments, where there are differences between existing provisions, the Law Department shall obtain the remarks of the Department to which the subject-matter of the enactments relates as to which provision would be suitable from an administrative point of view.

(3) After obtaining the remarks of the Administrative Department, the Law Department shall prepare a draft Bill and return the file to the Administrative Department for obtaining the orders of the Minister concerned

(4) The further procedure with Bills for codification shall be the same as those Bills initiated at the instance of the Administrative Department

16 (1) Non-official Bills received from the Secretary, Legislative Assembly, shall be considered by the Law Department in its technical aspects such as whether there is any other law in force in the State which relates to the same subject and serves the same object, the competence of the State Legislature to enact the measure, the need for the previous sanction of the President or the recommendation of the Governor, etc , and the file shall, with its opinion, be transferred to the Administrative Department concerned. The Law Department shall also submit a copy each of the Bill to the Chief Minister and the Governor

(2) After the receipt of the file from the Administrative Department fixing the position of Government with respect to the Bill, the Law Department shall follow the procedure herein before laid down for Official Bills.

17. As soon as copies of a Central Act or Ordinance are received from the Government of India, Ministry of Law, with directions to republish the same in the Gazette, the Law Department shall take steps to republish the Act or Ordinance in the Gazette

and to obtain the required number of spare copies from the Government Press. Copies shall be distributed to the Administrative Department, and the other Sections of the Law Department. In cases where it is considered necessary that translation of a Central Act or Ordinance has to be published in the Gazette, the Law Department shall send copies of the Act or Ordinance to the Translation Section for preparing the translation of the Act or Ordinance and for arranging its publication in the Gazette. As soon as a Central Act or Ordinance is republished in the State, the information shall be furnished to the Ministry of Home Affairs as to the number and date of Gazette in which the Central Act or Ordinance is republished.

18. The Law Department shall arrange for the exchange of copies of Acts and Ordinances and Bills of this State for copies of the Act, Ordinances and Bills of the other States. The receipt of the Acts, Ordinances and Bills of other States shall be entered in a register kept for the purpose. Steps shall also be taken to get such Acts, Ordinances and Bills bound annually, to be kept in the Law Department Library.

19 All papers relating to the commencement and prorogation of the Legislative Assembly and the transaction of legislative business in the Legislative Assembly shall be dealt with in the Law Department.

CHAPTER IV

Legal Advice

1. The advice of the Law Department may be sought on the following matters —

(a) interpretation of statutes, statutory rules, bye-laws, orders, deeds,

(b) cases in which disputes have arisen or are likely to arise between Government and other persons or action in a Court of Law is threatened against Government;

(c) defamatory attacks on Government servants;

(d) cases where sanction of Government has been sought for prosecuting Government servants,

(e) matters relating to disciplinary proceedings,

(f) appeals from acquittals and filing of appeals where interests of Government are involved;

2 The advice of Law Department may not be sought on the following matters:—

(a) hypothetical cases;

(b) ordinary departmental procedure of which the Administrative Department itself has special knowledge;

(c) points arising before a Government Officer acting as an arbitrator, or umpire in any dispute;

(d) cases where subordinates of Government are required by statutes to exercise judicial powers

(e) complaints, written statements, etc., prepared by Law Officers.

3. A reference to the Law Department for their opinion on any legal matter may be made by any Department of the Secretariat. The Heads of Departments should not directly refer any matter for the opinion of the Law Department. -They should address the Administrative Department concerned and the Administrative Department after examining the question shall forward the case with their remarks to the Law Department. If any reference is received direct from the Head of Department it shall be returned to him for forwarding it to the concerned Administrative Department.

4 (a) A consolidated statement of facts must be given while referring a case for advice Proper references should be made to all relevant materials within the knowledge of the Department making the reference.

(b) The points on which advice is sought should be stated clearly and categorically.

5. The opinion expressed by the Law Department shall not be quoted or referred to as an opinion by the Law Department, in any Government proceedings or communications.

6 Copies of the remarks offered by the Law Department to various Departments will be collected and bound month-wise in the Law Department

7 The indices will be prepared and arranged according to the alphabetical order of statutes and published monthly. The monthly collections are again re-arranged and digested in annual volumes

8 The opinion of the Advocate-General (if any, obtained), case laws referred to, followed, distinguished, etc., are invariably indicated in these indices

CHAPTER V

Subsidiary Legislation

Whenever it is proposed in a Secretariat Department to issue rules, bye-laws, notifications or orders under any statute, that Department shall carefully prepare a draft of the same in consultation with the concerned Head of the Department. This will ensure that the needs of the departmental head have been properly assessed and the requirements adequately met. The draft so got up, may usefully be compared with the corresponding rules or notifications framed by the Government of India or by other State Governments, on the same subject and necessary alterations made. The draft should then be fair typed in half margin with a preamble and referred to the Law Department with a detailed explanatory note. Precedents, if any, should also be put up invariably

2 The Law Department shall then examine the rules with reference to the vires and form of drafting.

3. The alterations, if any, in the draft forwarded by the Administrative Departments shall be first made in pencil. After approval of the alteration by the passing officer, they shall be made in red ink, the pencil corrections shall be erased off before the file is returned to the Administrative Department. If the corrections are numerous or when the draft has to be changed revised draft will be forwarded.

CHAPTER VI

Publication

1. The Department publishes annual volumes of the Acts and Ordinances passed each year. Annual volumes of the statutory rules and notifications issued by the State Government are also published. Similarly annual volumes are also published of the more important rules and notifications issued by the Central Government which are re-published in the State Gazette. Lists containing references to the enactments that are applicable to the State as on 1st January of every year are also published.

2. The reprinting of individual enactments with amendments incorporated is also undertaken by the Law Department whenever such reprinting becomes necessary.

3. The State Code containing the enactments in force in the State and the Rules Code containing the rules and notifications in force in the State are also published. The State Code and the Rules Code are periodically revised.

4. The Law Department also maintains folder volumes containing individual Acts and the rules and notifications issued there under as corrected up-to-date. These folder volumes will not be removed from the section on any account and will be available in the sections for reference purposes.

5. Registers containing details regarding the Acts passed, the amendments, if any, to the Acts, the date on which the Acts come into force, the rules and notifications issued under each Act, etc, will be maintained by the Law Department.

CHAPTER VII**Conveyancing**

1. The conveyancing work consists of—

- (i) the scrutiny of title deeds;
- (ii) drafting and scrutiny of the deeds of conveyance;
- (iii) offering legal advice to other Departments of the Secretariat on stamp duty, registration, etc

2 The title deeds are generally scrutinised with particular attention to encumbrances for a minimum period of 24 years and with reference to the personal law of the party. In scrutinising the title deeds, the original documents shall always be insisted on, the certified copies being accepted when the loss of the original has been properly explained away and the Administrative Department have recorded that they are satisfied that the original has been lost. In case the Administrative Department does not make such a record, their attention shall be specifically drawn to that matter and the remarks made only subject to their being satisfied about the loss of the originals.

3. The stamp duty payable shall be indicated in the remarks and where registration is necessary it must also be mentioned.

4. A stock file of model forms used in conveyancing shall be regularly maintained, and these forms shall be adhered to as far as possible.

CHAPTER VIII**Translation**

The State Acts and Ordinances are translated into Malayalam by the Translation Section of the Law Department. Acts and Ordinances are also translated into Tamil and Kannada when such translations are found necessary Translation of rules and notifications which have statutoonly to be translated into regional languages is also attended to by the Translation Section The

Translation Section also attends to translation of documents into English whenever such translation is found necessary. All other miscellaneous translation work at Government level is attended to by this Section.

CHAPTER IX

Library

1. The Library is mainly intended for the reference purposes of the Law Department

2. *Cataloguing of books*—The Librarian shall maintain an up-to-date copy of the catalogue of books in the Library' with sufficient space for inserting additions. The catalogue shall be in two parts, the first containing a list of the books arranged according to the subjects and the second part containing a list of the books arranged according to the names of the authors in the alphabetical order. The necessary additions to the lists will be made immediately after new books are received and entered in the stock register. Annual and other periodical publications, such as departmental administration reports are not numbered, the books being arranged in the Library almirahs in accordance with the dates of the publication.

3. *Issue of books*—Issue of books in the Library will be only on the presentation of a written requisition signed by the officer applying for the book.

(i) The Librarian shall supply the books promptly, without any delay. In case the book applied for is already with an officer, the Librarian shall approach the concerned officer and if the book can be spared by him, may take the same. The supply of books shall be entered by the Librarian in the register kept for the purpose.

(ii) Books shall ordinarily be supplied only to members of the staff of the Law Department. When an officer of a Department other than the Law Department requires a book for reference, a formal written request must be made for the purpose signed by an officer not below the rank of an Assistant Secretary

of the Department concerned and the book will be issued under the written order of an officer not below the rank of an Assistant Secretary of the Law Department. A separate register shall be maintained to record such issue of books. In all such cases, the requisition shall be countersigned by the officer of the Law Department who sanctions the issue of the book.

(iii) *Issue of Reminder Memo.*—If a book is kept by an officer for more than one month, the Librarian shall issue to that officer in the first week of every month a Reminder Memo showing particulars of the books outstanding from him. The officer shall return the books within three days from the receipt of the memo or obtain orders from his superiors for keeping the book further.

4 *Keeping books up-to-date*—The Librarian shall see that all the Statutes, Rules, etc, in the Library are kept up-to-date. As regards books with the officers, it is primarily the function of the Stenographers attached to the officers to keep the books up-to-date.

5 Gazettes of Kerala, Madras and Central Governments are bound into convenient volumes and kept year-wise. The Gazettes are not to be taken out of the Library. They will under no circumstance be allowed to be taken out of the Department for the reference of any other Department or officer.

Copies of all Bills published by the Secretary of the State Legislative Assembly and the Select Committee reports when published will be collected by the Librarian and arranged in the chronological order, contents prepared and bound into annual volumes and kept in the Library for reference purposes.
