GOVERNMENT OF KERALA

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GOVERNMENT OF KERALA

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THE KERALA BUILDINGS AND APARTMENTS (LEASE, FAIR RENT AND OTHER FACILITIES) BILL

A

BILL

to regulate the leasing of buildings, to control the rent and protect the rights of the landlords and tenants of such buildings in the State of Kerala.

BE it enacted in the Fifty-ninth year of the Republic of India, as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called The Kerala Buildings and Apartments (Lease, Fair Rent and other Facilities) Act ___

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires.—(1) "Building" means any building, flat or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes

(a) The premises gardens, grounds, wells, tanks and structures, if any, appurtenant to such building, hut, or part of such building or hut, and let and to be let along with such building, flat or hut.

(b) Any furniture supplied by the landlord for use in such building, flat or hut and part of a building, flat or hut.

(c) Any fittings or machinery belonging to the landlord, affixed to or installed in such building, flat or part of such building or flat and intended to be used by the tenant for or in connection with the purpose for which such building or part of such building is let or to be let, but does not include a room in a hotel or boarding house.

(2) "Inspector" means any person appointed to perform the functions of inspector under the Act.

(3) "Landlord" means a person who, for the time being is receiving, or is entitled to receive the rent of any premises, whether on his own account or on account or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant.

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(4) "Prescribed" means prescribed by rules made under this Act.

(5) "Rent Control Court" means the court constituted under Section 32.

(6) "Standard rent" in relation to any premises means the rent fixed by the Rent Control Court under the provisions of the Act.

(7) "Tenant" means any person by whom or on whose account or on behalf the rent of any premises is or, but for a special contract, would be payable, and includes

(i) The heir or heirs of a deceased tenant and

(ii) Any person continuing in possession after the termination of his tenancy.

3. *Landlord and tenant to furnish particulars.*—(1) Every landlord and every tenant of a building shall be bound to furnish a statement in writing signed by both the landlord and tenant to the executive Authority of a Municipal Council or Township Committee or Panchayat or the Revenue Officer of a corporation or any other officer duly authorized in this behalf containing the details of tenancy arrangement in respect of the building within 15 days of the commencement of the tenancy arrangement in respect of that building along with a filing fee of Rs. 5.

(2) If one of the party alone signs and files the statement he or she shall forward a copy of the statement proposed to be filed before the filing Authority to the other party by Registered post acknowledgement due before filing the same.

(3) On receiving the statement the office who receives the same shall enter the details of the tenancy in a Register maintained for that purpose noting the names of the landlord and tenant and the terms and conditions of the tenancy and the date on which it was filed.

4. *Inheritability to tenancy.*—(1) In the event of death of a tenant, the right of tenancy shall devolve from the date of his death to his successors in the following order, namely,

(a) Spouse,

(b) Son or daughter or where there are son/sons and daughter/daughters on all of them.

(c) Parents

(d) Daughter-in-law, being the widow of his pre deceased son:

Provided that the successor has ordinarily been living in the premises with the deceased tenant as a member of his family upto the date of his death and was wholly dependent on the deceased tenant.

(2) If a person, being a successor mentioned in sub-section (1), was ordinarily living in the premises with the deceased tenant but was not dependent on him on the date of his death, or he or his spouse or any of his dependent son or daughter is owning or occupying a residential premises in the locality, such successor shall acquire a right to continue in possession as a tenant for a limited period of one year from the date of death of the tenant, and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession of the premises shall become extinguished.

Explanation.—For the removal of doubts, it is hereby declared that (a), where, by reason of sub-section (2) the right of any successor to continue in possession of the premises becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession of the premises but if there is no other successor of same category, the right to continue in possession of premises shall not, on such extinguishments, pass on to any other successor specified in any lower category or categories, as the case may be.

(b) the right of every successor, referred to in sub-section (1) to continue in possession of the premises as a tenant shall be strictly personal to him and shall not, on the death of such successor, devolve on any of his heirs.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to a non-residential premises and vacant possession of such premises shall be delivered to the landlord within one year

(i) Of the death of tenant

(ii) Of the dissolution of the firm, in case the tenant is a firm

(iii) Of the winding up of the company, in case the tenant is a company

(iv) Of the dissolution of the corporate body other than a company, in case the tenant is such a corporate body.

5. *Rent Payable*.—(a) The rent payable in relation to a premises shall be

(a) The rent agreed to between the landlord and the tenant or;

(b) The standard rent fixed by the Rent Control Court as per Section 9:

Provided that the rent payable may be increased by 10 percent in every three years; if the tenant wants to continue after the expiry of the 3 year period;

(c) The provision in the proviso to Clause (b) would apply to standard rent fixed by the Court as per Section 9.

6. *Other Charges Payable.*—(1) A tenant shall pay to the landlord, besides the rent, the following charges, namely

(a) charges not exceeding fifteen percent of the rent for the amenities as agreed to between the landlord and the tenant.

(b) Maintenance charges at the rate of ten percent of the rent.

(2) The landlord shall be unless otherwise agreed entitled to recover from the tenant the amount paid by him towards charges for electricity or water consumed or to the charges levied by a local or other Authority which is ordinarily payable by the tenant.

7. *Revision of rent in certain cases.*—(1) Where a landlord has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of the tenant incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the premises, the landlord may lawfully increase the rent per year by an amount not exceeding ten per cent of such cost.

(2) Whether, after the rent of a premises has been fixed under this Act, or agreed upon as the case may be, there has been a decrease, diminution of accommodation in such premises, the tenant may claim a reduction in the rent.

8. *Notice of increase of rent.*—(1) Where a landlord wishes to increase the rent of any premises under sub-section (1) of Section 7 he shall give the tenant a notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and shall be served in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).

9. *Rent Control Court to fix standard rent, etc.*—(1) The Rent Control Court shall on an application made to it in this behalf, in the prescribed manner, fix in respect of any building;

(i) The standard rent for such building after holding such enquiry as it thinks fit taking into consideration all evidentiary materials produced by both parties and also the report of the valuer. The report of the valuer shall contain the details of all the facts taken note of by the valuer while inspecting the building and his reasons for his conclusion regarding the reasonable amount of rent the building may fetch on the date of his visit. Such report can only be considered as one piece of evidence and not a conclusive one.

(ii) The other charges payable as per Section 6.

(iii) The revision in rent as per the provisions of Section 7.

(2) In fixing the standard rent of any premises part of which has been lawfully sublet, the Rent Control Court may also fix the standard rent of such part sublet.

(3) The standard rent shall in all cases be fixed for a tenancy of twelve months:

Provided that where any premises are let or re-let for a period of less than twelve months, the standard rent for such tenancy shall bear the same proportion to the annual rent as the period of tenancy bears to twelve months.

(4) In fixing the standard rent of any premises under this section, the Rent Control Court shall fix the standard rent thereof in an unfurnished state and may also determine an additional charge to be payable on account of any fittings or furniture supplied by the landlord and it shall be lawful for the landlord to recover such additional charge from the tenant.

(5) In fixing the standard rent or lawful increase or decrease of rent or determining the other charges payable in respect of any premises under this section, the Rent Control Court shall fix the date of filing of the petition or the date on which the order shall effect unless there are special reasons for fixing any other date.

(6) The Rent Control Court may, while fixing standard rent or lawful increase or decrease in rent or other charges payable, order for payment of the arrears of amount due by the tenant to the landlord in such number of installments within a time to be fixed by the Court.

10. *Fixation of interim rent.*—If an application for fixing the standard rent or for determining the lawful increase of such rent is made under Section 9, the Rent Control Court shall, as expeditiously as possible, make an order specifying the amount of the rent or the lawful increase to be paid by the tenant to the landlord pending final decision on the application and shall appoint the date from which the rent or lawful increase so specified shall be deemed to have effect.

11. *Receipt to be given for rent paid.*—(1) Every tenant shall pay rent and other charges payable within the time fixed by contract or in the absence of such stipulation, by the tenth day of the month next following the month for which it is payable and where any default occurs in the payment of rent or other charges, the tenant shall be liable to pay simple interest at the rate of fifteen per cent per annum from the date on which such payment of rent and other charges payable is due to the date on which it is paid.

(2) Every tenant who makes payment of rent or other charges payable or advance towards such rent or other charges to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount paid to him, signed by the landlord or his authorized agent:

Provided that it shall be open to the tenant to remit the rent to his landlord by postal money order.

(3) If the landlord or his authorised agent refuses or neglects to deliver to the tenants the receipt referred to in sub-section (2), the Rent Control Court may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent or other charges paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent or other charges paid.

(4) If the landlord or his authorised agent refuses to accept or evades acceptance or recipt or rent and other charges payable to him the tenant may, by notice in writing, ask the landlord to supply him the particulars of his bank account in a bank located in the locality into which the tenant may deposit the rent and the other charges payable to the credit of the landlord.

(5) If the landlord supplies the particulars of his bank account, the tenant shall deposit the rent and other charges payable in such bank account from time to time.

(6) If the landlord does not supply the particulars of bank account under sub-section (4), the tenant shall remit the rent and other charges payable to the landlord from time to time though postel money order after deducting the postal charges.

12. *Deposit of rent by the tenant.*—(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 11 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Rent Control Court in the prescribed manner:

Provided that in case where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Rent Control Court by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely :—

(a) The premises for which the rent and other charges payable are deposited with a description sufficient for identifying the premises.

(b) The period for which the rent and other charges payable are deposited.

(c) The name and address of the landlord or the person or persons claiming to be entitled to such rent and other charges payable.

(d) The reasons and circumstances for which the application for depositing the rent and other charges payable is made.

(e) Such other particulars as may be prescribed.

(3) On deposit of the rent and other charges payable being made, the Rent Control Court shall send in the prescribed manner a copy of the application to the landlord or the persons claiming to be entitled to the rent and other charges payable with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent and other charges payable the Rent Control Court shall, if satisfied that the applicant is the person entitled to receive the rent and other charges deposited, order the amount of the rent and other charges to be paid to him in the manner prescribed:

Provided that no order for payment of any deposit of rent and other charges payable shall be made by the Rent Control Court under this sub-section without giving all the persons named by the tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent and other charges payable an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent and other charges payable being decided by a court of competent jurisdiction.

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(5) If at the time of filing the application under sub-section (4) but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent and other charges payable complains or complain to the Rent Control Court that the statements in the tenant's application of the reasons and circumstances which led him to deposit the rent and other charges payable are untrue, the Rent Control Court after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months rent, if the Rent Control Court is satisfied that the said statements were materially untrue and shall order that the fine realized be paid to the landlord as compensation over and above arrears of rent and charges deposited.

(6) The Rent Control Court may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine which may extend to an amount equal to two months rent, if the Rent Control Court is satisfied that the landlord, without any reasonable cause, refused to accept rent and other charges payable though tendered to him within the time referred to in Section 15 and may further order that the sum of the fine realized be paid to the tenant as compensation.

13. *Time-limit of making deposit and consequences of incorrect particulars in application for deposit.*—(1) No rent deposited under section 12 shall be considered to have been validly deposited under that section, unless the deposit is made within twenty one days of the time referred to in Section 11 for payment of the rent.

(2) No such deposit shall be considered to have been validly made, if the tenant willfully makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of filing an application for the recovery of possession of the premises from the tenant.

(3) If the rent is deposited within the time mentioned in sub-section (1) and does not cease to be valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord, as if the amount deposited had been validly tendered.

14. *Saving as to acceptance of rent and other charges payable and forfeiture thereof in deposit.*—(1) The withdrawal of rent and other charges payable deposited under Section 12 in the manner provided therein shall not operate as an admission against the person withdrawing it of the correctness of the rate of rent and other charges payable during the period of default, the amount due, or of any other facts stated in the tenants application for depositing the rent and other charges payable under the said section.

(2) Any rent and other charges payable and deposited which are not withdrawn by the landlord or by the person or persons entitled to receive such rent and other charges payable shall be forfeited to Government by an order made by the Rent Control Court, if they are not withdrawn before the expiration of five years from the date of posting of the notice or deposit.

(3) Before passing an order of forfeiture, the Rent Control Court shall give notice to the landlord or the person or persons entitled to receive the rent and other charges in deposit by registered post at the last known address of such landlord or person or persons and shall also publish the notice in his office and in any local newspaper.

15. *Duties of landlord.*—(1) Subject to any contract in writing to the contrary, every landlord shall be bound to keep the premises in good and tenantable repairs.

Explanation.—'Good and tenantable repairs' under this section and Section 16 shall mean such repairs as shall keep the premises in the same condition in which it was let out except for the normal wear and tear.

(2) Where any repairs without which the premises are not habitable or usable except with inconvenience are to be made and if the landlord neglects or fails to make them within a period of three months after notice in writing, the tenant may apply to the Rent Control Court for permission to make such repairs himself and may submit to the Rent Control Court an estimate of the cost of such repairs, and, thereupon, the Rent Control Court may after giving the landlord an opportunity of being heard and after considering such estimate of the cost and making such inquiries as it may consider necessary, by an order in writing, permit the tenant to make such repairs at such cost as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs himself and to deduct the cost thereof which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord:

Provided that the amount so deducted or recoverable from rent in any year shall not exceed one-half of the rent payable by the tenant for that year and any amount remaining not recovered in that year shall be deducted or recovered from rent in the subsequent years at the rate of not more than twenty-five per cent of the rent for a month:

Provided further that where there are more than one premises owned by a landlord in a building, the tenants thereof may jointly carry out the repairs and share the expenses proportionately.

(3) Nothing in sub-section (2) shall apply to a premises which—

(a) At the time of letting out was not habitable or usable except with undue inconvenience and the tenant had agreed to take the same in that condition,

(b) After being let out was caused to be not habitable or usable except with undue inconvenience by the tenant.

(4) It shall be the duty of every landlord of a building let out to send a communication by registered post with acknowledgement due card to the nearest Police Station within whose jurisdiction the said building is situated furnishing the full name, age, fathers' name, the address of the tenant his employment, date of commencement of tenancy, the monthly rent, along with a photostat copy of the identity proof of the tenant.

(5) The said communication should be forwarded within one month from the date of commencement of the tenancy.

Explanation.—The identity proof means any document such as Ration Card, Income Tax Pan Card, Driving Licence, Employment Identity Card in case of Government Employees.

(6) Each police station shall keep a register of the buildings which are occupied by tenants in their area.

(7) Any landlord who refuses to furnish such information shall be liable for punishment which may extend to fine upto ten thousand rupees in the first instance and on subsequent instances the punishment shall be simple imprisonment upto three months or with a minimum fine of ten thousand rupees.

16. *Duties of tenant.*—(1) Every tenant shall be bound to keep the premises in good and tenantable repairs.

(2) The landlord or a person authorised by him shall have the right to enter and inspect the premises after notice to the tenant in the manner prescribed.

(3) The tenant shall make good all damages caused to the premises by his negligence within three months of being informed in writing to do so by the landlord failing which the landlord may apply to the Rent Control Court for permission to make good the said damages and the Rent Control Court shall decide the matter in the manner after giving the tenant an opportunity of being heard and after considering such estimate of the cost and making such inquiries as he may consider necessary, by an order in writing, permit the landlord to make such repairs at such cost as may be specified in the order, and it shall thereafter be lawful for the landlord to make such repairs and to recover the cost of such repairs, which shall in no case exceed the amount so specified, from the tenant.

(4) The tenant shall handover the possession of the premises on determination of tenancy in the same condition, except for the normal wear and tear, as it was in when it was handed over to him at the beginning of such tenancy and in a case where certain damages have been caused, not being damages caused by force majeure, the tenant shall make good the damages caused to the premises failing which the landlord may apply to the Rent Control Court and the Rent Control Court shall decide the matter in the manner provided in sub-section (3).

(5) The tenant shall not, whether during the subsistence of tenancy or thereafter, demolish any improvement or alteration other than any fixture of a removable nature, without the permission of the landlord failing which such demolition or alteration shall be deemed to be a damage caused by such tenant under sub-section (3) and shall be dealt with accordingly.

17. *Cutting of or withholding essential supply or service.*—(1) No landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) If a landlord contravenes the provisions of sub-section (1) the tenant may make an application to the Rent Control Court complaining of such contravention.

(3) If the Rent Control Court is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compel the tenant to vacate the premises or to pay an enhanced rent, the Rent Control Court may pass an order directing the landlord to restore the amenities immediately, pending enquiry referred to in sub-section (4).

Explanation.—An interim order may be passed under the sub-section without giving notice to the landlord.

(4) If the Rent Control Court in inquiry finds that the essential supply or service enjoyed by the tenant in respect of the premises was cut off or withheld by the landlord without just and sufficient cause, he shall make an order directing the landlord to restore such supply or service.

(5) The Rent Control Court may in its discretion direct compensation not exceeding one thousand rupees:

(a) Be paid to the landlord by the tenant, if the application under sub-section (2) was made frivolously or vexatiously.

(b) Be paid to the tenant by the landlord, if the landlord has cut off or withheld the supply or service without just and sufficient cause.

Explanation I.—In this section, "essential supply or service" includes supply of water, electricity, lights in passage and on staircases, conservancy and sanitary service.

Explanation II.—For the purpose of this section, withholding any essential supply or service shall include acts or omissions, attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.

18. *Protection of tenants against eviction.*—(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by the Rent Control Court in favour of the landlord against a tenant, save as provided in this Act.

(2) The Rent Control Court on an application made to it in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:—

(a) That the tenant has neither paid nor tendered the whole of the arrears of rent and other charges legally recoverable from him within one month from the date on which a notice of demand for payment of such amount has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (Act 4 of 1882).

(b) That the tenant has without the consent in writing of the landlord sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises.

(c) That the tenant has used the premises for a purpose other than that for which they were let without obtaining consent in writing of the landlord.

(d) That the premises were let for use as a residential or commercial one and the tenant has not been occupying therein, without a reasonable cause for a period of one year, immediately before the date of the filing of the application for the recovery of possession thereof.

(e) That the premises or any part thereof have become unsafe or unfit for human habitation.

(f) The landlords requires the premises for carrying out repairs or reconstruction which cannot be carried out without the premises being vacated:

Provided that no order for the recovery of possession under this clause, clause (g), clause (h) or clause (i) shall be made unless the Rent Control Court is satisfied that the plans and estimates of such repairs or re-construction, as the case may be, have been properly prepared and the landlord has the necessary means to carry out the said repairs or re-construction.

(g) That the premises or any part thereof are required by the landlord for the purpose of immediate demolition ordered by the Government or any local Authority or the premises are required by the landlord to carry out any building work at the instance of the Government or a local authority in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.

(h) That the premises or any part thereof are required by the landlord for carrying out any repairs which cannot be carried out without the premises being vacated.

(i) That the premises are required by the landlord for the purpose of building or re-building or make thereto any substantial addition or alteration including construction on the terrace or on the appurtenant land and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated.

(j) That the premises consist of not more than two floors and the same are required by the landlord for the purpose of immediate demolition with a view to re-build the same:

Provided that where the building for which such premise or premises, possession in respect of which has been recovered under clause (e), clause (f), clause (g) or clause (h) a tenant so dispossessed shall have a right of first option to get the re-constructed building or such portion of the reconstructed building equivalent in area to the original premises in which he was a tenant on new terms either agreed by the parties or fixed by the court after re-construction in appropriate proceedings.

(k) That the tenant, his spouse or a dependent son or daughter ordinarily living with him has, whether before or after the commencement of this Act, built or acquired vacant possession of, or been allotted a residence:

Provided that the Rent Control Court may in appropriate cases allow the tenant to vacate the premises within such period as he may permit but not exceeding one year from the date of passing of orders of eviction.

(l) That the premises were let to the tenant for use as a residence by reason of his being in the service of employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that no order for the recovery of possession of any premises shall be made on this ground if the Rent Control Court is of the opinion that there is any bona fide dispute as to whether the tenant has ceased to be in the service or employment of the landlord.

(m) That the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damages to or such alteration of the premises as has the effect of changing its identity or diminishing its value substantially.

(n) That the tenant or any person residing with the tenant has been convicted of causing nuisance or annoyance to a person living in the neighbourhood of the premises or has been convicted of using or allowing the use of the premises for an immoral or illegal purpose.

(o) That the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the local authority or the Municipal Corporation while giving him a lease of the land on which the premises are situate:

Provided that no order for the recovery of possession of any premises shall be made on this ground if the tenant, within such time as may be specified in this behalf by the Rent Control Court, complies with the condition imposed on the landlord by any of the authorities referred to in this clause or pays to the authority imposing such conditions the amount by way of compensation as the Rent Control Court may direct.

(p) That the tenant in his reply having denied the ownership of landlord, has failed to prove it or that such denial was not made in a bona fide manner.

(q) That the person in occupation of the premises has failed to prove that he is a bona fide tenant.

(r) That the premises let for residential or non residential purpose are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation:

Provided that where the landlord has acquired the premises by transfer, no application for the recovery of possession of such premises shall lie under this clause unless a period of one year has elapsed from the date of the acquisition:

Explanation I.—Premises let for a particular use may be required by the landlord for a different use if such use is permissible under law.

Explanation II.—For the purpose of this clause or Section 19, Section 20, Section 21 or Section 22, an occupation by the landlord of any part of a building of which any premises let out by him forms a part shall not disentitle him to recovery the possession of such premises.

(3) In any proceeding for eviction under clauses (f), (g), (h), (i) or of sub-section (2) or Section 20 or Section 21 or Section 22, the Rent Control Court may allow eviction from only a part of the premises if the landlord is agreeable to the same:

Provided that, in case of such part eviction, the rent and other charges payable by the tenant will be decreased in proportion to the part vacated.

19. *Restriction against eviction not applicable to certain tenants.*— Nothing contained in Section 18 shall be applicable to a tenant of a residential building if the monthly rent is above Rs. 10,000 and a tenant of a commercial building if the rent is above Rs.15, 000 per month. Eviction in such cases shall be governed strictly by the provisions of the agreement on the basis of which the building was let out and other provisions of land especially Transfer of Property Act.

20. *Right to recover immediate possession of premises to accrue to certain persons.*—(1) Where a person in occupation of any residential premises allotted to him by the Government or any local authority is required by, or in pursuance of, any general or special order made by that Government or authority to vacate such residential accommodation there shall accrue, on and from the date of such order, to such person, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediate possession of any premises let out by him, his spouse or his dependent son or daughter, as the case may be.

Explanation.—For the purpose of this sub-section, Section s 20, 21 and 22, immediate possession shall mean possession recoverable on the expiry of sixty days from the date of order of eviction.

(2) Where a landlord exercises the right of recovery conferred on him by sub-section (1) or Sections 18, 21 or 22 and he had received.

(a) Any rent in advance from the tenant, the Rent Control Court while allowing recovery order refund of such amount at the time of taking actual possession of the building.

(b) Any other payment, he shall, in a like manner refund to the tenant a sum which shall bear the same proportion to the total amount so received, as the unexpired portion of the contract agreement or lease bears to the total period of contract, agreement or lease:

Provided that, if any default is made in making any refund as aforesaid, the landlord shall be liable to pay simple interest at the rate of fifteen per cent, per annum on the amount which he has omitted or failed to refund:

Provided further that it shall be permissible for the landlord to set off any amount which he is lawfully entitled to recover from the tenant against the refund due to the tenant.

21. *Right to recover immediate possession of premises to accrue to members of the armed forces, etc.*—(1) Where a person—

(a) Is a released or retired person from any armed forces and the premises let out by him, his spouse or his dependent son or daughter, as the case may be, are required for his own residence, or

(b) Is a dependent of a member of any armed forces who has been killed in action and the premises let out by such members are required for the residence of the family of such member.

Such person, his spouse or his dependent son or daughter, as the case may be, may, within one year from the date of his release or retirement from such armed forces or, as the case may be, the date of death of such member, or within a period of one year from the date of commencement of this Act, whichever is later, apply to the Rent Control Court for recovery of immediate possession of such premises.

(2) Where a person is a member of any of the armed forces and has a period of less than one year preceding that date of his retirement and the premises let out by him, his spouse or his dependent son or daughter, as the case may be, are required for his own residence after his retirement, he, his spouse or his dependent son or daughter, as the case may be, may, at any time, within a period of one year before the date of his retirement, apply to the Rent Control Court for recovery of immediate possession of such premises.

(3) Where the person, his spouse or his dependent son or daughter referred to in sub-section (1) or sub-section (2) has let out more than one premises it shall be open to him, his spouse or his dependent son or daughter, as the case may be, to make an application under the sub-section in respect of only one of the premises chosen.

Explanation.—For the purposes of this section "armed forces" means an armed force of the Union constituted under an Act of Parliament and includes a member of the police force in the State.

22. *Right to recover immediate possession of premises to accrue to Central Government and State Government employees.*—(1) Where a person is a retired employee of the Central Government or of a State Government and the premises let out by him, he, his spouse or his dependent son or daughter are required for his own residence such employee, his spouse or his dependent son or daughter, as the case may be, within one year from the date of his retirement or within a period of one year from the date of commencement of this Act, whichever is later, apply to the Rent Control Court for recovery of immediate possession of such premises.

(2) Where a person is an employee of the Central Government or a State Government and has a period of less than one year preceding the date of his retirement and the premises let out by him or his spouse or dependent son or daughter are required by him for his own residence after his retirement, he, his spouse or his dependant son or daughter as the case may be, may, at any time within a period of one year before the date of retirement apply to the Rent Control Court for recovery of immediate possession of such premises.

(3) Where the person, his spouse or his dependent son or daughter referred to in sub-section (1) or in sub-section (2) has let out more than one premises, it shall be open to him to exercise the right under the sub-section in respect of only one of the premises chosen by him.

23. *Right to recover immediate possession of premises to accrue to widows, handicapped persons and old persons.*—(1) Where the landlord is—

(a) A widow and premises let out by her, or by her husband.

(b) A handicapped person and the premises let out by him.

(c) A person who is of the age of sixty five years or more and the premises let out by him, is required by her or him or for her or his family or for any one ordinarily living with her or him for residential or non-residential use, she or he may apply to the Rent Control Court for recovery of immediate possession of such premises.

(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of any one residential and one non-residential premises each chosen by him.

Explanation I.—For the purpose of this section, "handicapped person" shall mean a person who if he is an assessee under the Income Tax Act, 1961(43 of 1961) entitled for the time being to the benefit of deduction under section 80U of that Act.

Explanation II.—The right to recover possession under this section shall be exercisable only once in respect of residential and non-residential buildings.

24. *Payment of rent during eviction proceedings.*—(1) If, in any proceeding for the recovery of possession of any premises on any ground the tenant contests the claim for eviction, the landlord may, at any stage of the proceeding, make an application to the Rent Control Court for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Rent Control Court may, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Rent Control Court within one month of the date of the order, an amount calculated at the rate of rent at

which it was last paid for the period of which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto upto the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

(2) If, in any proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Rent Control Court shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-section (1) until the rent in relation there is determined having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the rent so determined shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Rent Control Court may allow in this behalf.

(3) If, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Rent Control Court may direct the tenant to deposit with the Rent Control Court the amount payable by him under sub-section (1) or sub-section (2), as the case may be, and in such a case, no person shall be entitled to withdraw the amount in deposit until the Rent Control Court decides the dispute and makes an order for payment of the same.

(4) If the Rent Control Court is satisfied that any dispute referred to in sub-section (3) has been raised by a tenant for reason which are false or frivolous, the Rent Control Court may order the defence against eviction to be struck out and proceed with the hearing of the application.

(5) If a tenant fails to make payment or deposit as required by this section, the Rent Control Court may order the defence against eviction to be struck out and proceed with the hearing of the application.

25. *Recovery of possession for occupation and re-entry*—(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (q) of sub-section (2) of Section 18 or under Section 21, 22 or 23, the landlord shall not, except with the permission of the Rent Control Court obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Rent Control Court may direct the landlord to put such evicted tenant in possession of the premises:

Provided that where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (q) of sub-section (2) of Section 18 for occupation after construction or rebuilding, the period of three years shall be reckoned from the date of completion of reconstruction or rebuilding, as the case may be.

(2) Where the landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than evicted tenant without obtaining the permission of the Rent Control Court under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Rent Control Court to be bona fide, the Rent Control Court may, direct the landlord to put the tenant in possession of the premises on the same terms and conditions of the premises are in the same form or on new terms and conditions if the premises have been reconstructed or rebuilt if he has not already built, acquired vacant possession of, or been allotted another premises or to pay him such compensation as the Rent Control Court thinks fit or both, as the facts and circumstances of the case may warrant.

26. *Recovery of possession for repairs and rebuilding and re-entry.*— (1) In making any order on the grounds specified in clause (e), (f), (g), (h), or (i) of sub-section (2) of Section 18 the Rent Control Court shall fix the new rent and ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or rebuilding, as the case may be and the date before which the landlord shall deliver the possession of the said premises.

(2) If the tenant delivers possession on or before the date specified in the order, the landlord shall, on the completion of the work of repairs or building or re-building, place the tenant in occupation of the premises or part thereof before the date specified in sub-section (1) or such extended date as may be specified by the Rent Control Court by an order.

(3) If after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work of repairs or building or re-building within three months of the specified date the Rent Control Court may, on an application made to if, in this behalf by the tenant, within such times as may be prescribed, order the landlord to place the tenant in occupation of the premises on the same terms and conditions and to pay to the tenant such compensation as the Rent Control Court thinks fit.

(4) If after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work of repairs or building or rebuilding, as the case may be, in accordance with sub-section (2), the Rent Control Court may, on an application made to him in this behalf by the tenant, within such time as may be prescribed, order the landlord to place the tenant in occupation of the premises on revised terms and conditions and to pay to the tenant such compensation as the Rent Control Court thinks fit.

27. *Recovery of possession in case of tenancies for limited period.*— (1) Where a landlord does not require the whole or any part of any premises for a particular period, and after obtaining the permission of the Rent Control Court in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period, not being more than five years, as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 18 or in any other law, the Rent Control Court may, on an application made to him in this behalf by the landlord within such times as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

(2) The Rent Control Court shall not—(i) Grant permission under sub-section (1) in relation to a premises consecutively more than two times except for good and sufficient reasons to be recorded in writing.

Explanation.—(i) A permission granted under sub-section (1) shall not be construed to be consecutive, if a period of five years or more has elapsed after the expiry of the last limited period of tenancy.

(ii) Entertain any application from the tenant calling in question the bona fides of the landlord in letting the premises under this section.

(3) All applications made before the Rent Control Court and appeals made before the Appellate Authority by the tenant shall abate on the expiry of period for which permission has been granted under sub-section (1).

(4) While making an order under sub-section (1), the Rent Control Court may award to the landlord damages for the use or occupation of the premises at double the last rent paid by the tenant together with interest at the rate of fifteen per cent per annum for the period from the date of such order till the date of actual vacation by the tenant.

28. *Special provision for recovery of possession in certain cases.*— Where the landlord in respect of any premises is any company or other body corporate or any public institution then, notwithstanding anything contained in Section 18 or in any other law, the Rent Control Court may, on an application made to it in this behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Rent Control Court is satisfied that—

(a) The tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment and the premises are required for the use of employees of such landlord, or

(b) The tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises, or

(c) Any other person is in unauthorized occupation of such premises, or

(d) The premises are required bona fide by the landlord for the use of employees of such landlord or, in the case of a public institution, for the furtherance of its activities.

Explanation.—For the purposes of this section, "public institution", includes any educational institution, library, hospital and charitable dispensary orphanage, homes for mentally retarded persons and such other charitable purposes but does not include any such institution set up by a private individual or group of individuals whether incorporated or not.

29. *Permission to construct additional structures.*—Where the landlord proposes to make any improvement in, or construct any additional structure on, any building which has been let to a tenant and the tenant refuses to allow the landlord to make such improvement or construct such additional structure and the Rent Control Court, on an application made to him in this behalf by the landlord, is satisfied that the landlord is ready and willing to commence the work and that such work will not cause any undue hardship to the tenant, the Rent Control Court may permit the landlord to do such work and may make such other order as he thinks fit in the circumstances of the case.

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30. *Special provision regarding vacant building sites.*—Notwithstanding anything contained in Section 18, where any premises which have been let comprise vacant land upon which it is permissible under the building regulations or municipal bye-laws, for the time being in force, to erect any building, whether for use as a residence or for any other purpose and the landlord proposing to erect such building is unable to obtain possession of the land from the tenant by agreement with him and the Rent Control Court, on an application made to him in this behalf by the landlord, is satisfied that the landlord is ready and willing to commence the work and that the severance of the vacant land from the rest of the premises will not cause undue hardship to the tenant, the Rent Control Court may—

(a) Direct such severance.

(b) Place the landlord in possession of the vacant land.

(c) Determine the rent payable by the tenant in respect of the rest of the premises, and

(d) Make such other order as it thinks fit in the circumstances of the case.

31. *Vacant possession to landlord.*—Notwithstanding anything contained in any other law, where the interest of a tenant in any premises is determined for any reason whatsoever and any order is made by the Rent Control Court under this Act for the recovery of possession of such premises, the order shall, subject to the provisions of Section 30, be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such premises.

32. *Constitution of Rent Control Court and Appointment of Inspecting Authority and Valuer.*—(1) The Government may, by notification in the Gazette, appoint a person who is or is qualified to be appointed a Munsiff to be the Rent Control Court for such local area as may be specified therein.

(2) The Government may, by notification in the Gazette—

(a) Appoint such officers as they think fit to be inspectors for the purpose of enforcing the penal provisions of this Act and may assign to them such local limits as they may think fit.

(b) For the purpose of any investigation or enquiry under the Act the inspector may enter any premises with such assistance as he thinks necessary.

(3) The Government may, by notification in the Gazette—

(a) Appoint qualified valuers for any area to which this Act applies.

(b) The valuer shall assist the Rent Control Court in fixing the standard rent of any building in respect of which an application for fixation of standard rent is pending before the Rent Control Court.

(c) The valuer shall, having regard to the situation, location and condition of the building, and the amenities provided therein, and where there are similar or nearly similar buildings in the locality, having regard to the rent payable in respect of such building and submit a report to the Rent Control Court indicating in detail the method of calculation of fair rent fixed by him and stating the reasons for its conclusion.

33. *Execution of orders.*—Every order made by the Rent Control Court and every order passed in an appeal shall after the expiry of the time allowed therein, be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff having original jurisdiction over the area in which the building is situated as if it were a decree passed by him:

Provided that an order passed in execution under this section shall not be subject to an appeal but shall be subject to revision by the court to which appeals ordinarily lie against the decision of the said Munsiff.

34. *Decision which have become final not to be reopened.*—The Rent Control Court shall summarily reject any application under Section 18 of the Act, which raises between the same parties or between parties under whom they or any of them claim substantially the same issues as have been finally decided in a former proceedings under this Act or under the corresponding provisions of any law in force prior to the commencement of this Act or the corresponding provisions of any law repealed or superceded by such law.

35. *Appeal.*—(1) (a) The Government may, by general or special order notified in the Gazette confer on such officers and authorities not below the rank of a District Judge the powers of appellate authorities for the purpose of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

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(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either direct or through the Rent Control Court, shall decide the appeal.

Explanation.—The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and not be liable to be called in question in any court of law.

36. *Costs.*—Subject to such conditions and limitations, if any, as may be prescribed, the costs of and incidental to all proceedings before the Rent Control Court or the appellate authority referred to in Section 35 shall be in the discretion of the Rent Control Court or the appellate authority which shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose.

Explanation.—The Appellate Authority may set aside or vary any order passed by the Rent Control Court in regard to the costs of and incidental to the proceeding before it.

37. *Power to remand.*—In disposing of an appeal under this Act, the appellate authority may remand the case for fresh disposal according to such directions as it may give.

38. *Order under the Act to be binding on sub-tenant.*—Any order for the eviction of a tenant passed under this Act shall be binding on all sub-tenants under such tenant, whether they were parties to the proceedings or not, provided that such order was not obtained by fraud or collusion. In cases where sub-tenancy is allowed under the original agreement of tenancy the sub-tenant shall be made a party to the proceedings if he had given notice of the sub-tenancy to the landlord.

39. *Proceedings by or against legal representative.*—The provisions of Section 146 and Order XXII of the Code of Civil Procedure 1908 (5 of 1908), shall, as far as possible, be applicable to the proceedings under this Act.

40. *Summons etc.*—(1) Subject to such conditions and limitations as may be prescribed, the Rent Control Court and the Appellate Authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act 5 of 1908) when trying a suit in respect of the following matter.

(a) Discovery and inspection;

(b) Enforcing the attendance of witnesses, and requiring the deposits of their expenses;

(c) Compelling the production of documents;

(d) Examining witnesses on oath;

(e) Granting adjournments;

(f) Reception of evidence taken on affidavit;

(g) Issuing commission for the examination of witnesses and for local inspection;

(h) Setting aside ex parte orders;

(i) Enlargement of time originally fixed or granted;

(j) Power to amend any defect or error in orders or proceedings; and

(k) Power to review its own order.

(2) The Rent Control Court or the appellate authority may summon and examine suo motu any person whose evidence appears to it to be material, and it shall be deemed to be a Civil Court within the meaning of Section 557 and 561A of the Code of Criminal Procedure, 1973 (Act 2 of 1973).

41. *Penalties.*—(1) If any tenant sub-lets, assigns or otherwise parts with the possession of the whole or part of any premises in contravention of the provisions of clause (b) of sub-section (2) of Section 18, he shall be punishable with fine which may extend to five thousand rupees, or double the rent received by the tenant for sub-letting for every month till such time the cause of compliant ceases, whichever is more or with imprisonment for a term of one month.

Explanation.—For the purposes of this sub-section in case where it is difficult to prove the rent which the landlord or the tenant, as the case may be, is receiving after re-letting or sub-letting, the fine may extend to five thousand rupees.

(2) If, after the tenant has delivered possession, the landlord fails to commence the work of repairs or building or re-building, as the case may be, within three months of the specified date under sub-section (3) of Section 25, he shall be punishable with fine equivalent to rent for three months or for imprisonment for not more than three months.

(3) If a landlord contravenes the provisions of sub-section (2) of Section 25, he shall be punishable with fine which may extend to six months' rent of the premises.

(4) If a tenant fails to make re-entry under sub-section (2) of Section 25 within three months from the date of the completion of repairs or re-building as the case may be, intimated in writing by the landlord, without reasonable excuse, he shall forfeit his right to re-entry and shall be punishable with fine equivalent to three month's rent of the premises.

42. *Time within which proceedings have to be disposed of.*—The Rent Control Court or the appellate authority shall, as far as may be practicable pass final orders in any proceedings before it within six months from the date of appearance of the parties thereto.

43. *Exemption.*—Notwithstanding anything contained in this Act, the Government may, in public interest or for any other sufficient cause, by notification in the Gazette, exempt any building or class of buildings from all or any of the provisions of this Act.

44. *Power to make rules.*—(1) The State Government may, by notification in the official Gazette, make rules for the purpose of carrying out the provisions of this Act.

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

(a) The manner of making application under sub-section (1) of Section 9.

(b) The manner of depositing rent or other charges under sub-section (5) of Section 12.

(c) The particulars under clause (2) of sub-section (2) of Section 12.

(d) The manner of sending copy of application to landlord under sub-section (3) of Section 12.

(e) The manner in which the rent or other charges to be paid to the applicant under sub-section (5) of Section 12.

(f) The manner of giving notice to the tenant under Section 18.

(g) The manner in which permission of the Rent Control Court shall be obtained by the landlord under Section 28.

(h) The time within which application to be made under sub-section (2) of Section 28 or sub-section (3) and sub-section (4) of Section 29.

(i) The manner in which the permission of the Rent Control Court shall be obtained by the landlord under Section 21.

(j) The time within the application shall be made to the Rent Control Court by the landlord under Section 26.

(3) Every rule under this Act shall be laid as soon as may be after it is made or issued before the Legislative Assembly for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decide that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

45. *Repeal, savings and special provision.*—(1) The Kerala Buildings (Lease and Rent Control) Act, 1965 (Act 2 of 1965) is hereby repealed.

(2) Notwithstanding the repeal of the Kerala Buildings (Lease and Rent Control) Act, 1965 (Act 2 of 1965) the provisions of Section 4 and 23 of the Interpretation and General Clauses Act, 1125 (Act VII of 1125) shall apply upon the repeal of the said Act.

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The Kerala Buildings and Apartments (Lease, Fair Rent and Other Facilities) Bill

Statement of Object and Reasons

More than 45 years have elapsed after the Kerala Buildings (Lease & Rent Control) Act 1965 was brought into force. During this fairly long period circumstances have changed so much that even the High Court in various decisions have pointed out the need to have a re-look at various provisions in the Act especially the provisions regarding fixation of fair rent, conditions on which buildings let out can be evicted. Due to drastic changes in the social set up and the economic conditions in the State several provisions act harshly on either the landlord or tenant and there is a public demand for a new legislation fair and just in the changed set up now existing in the State. It is after taking note of the above facts and circumstances the Commission is recommending a new enactment in the place of the existing Rent Control legislation

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THE KERALA CHILDREN'S CODE BILL

An Act to consolidate and codify all the existing provisions in India relating to protection of the rights of the child or juvenile applicable to the State of Kerala and to provide for new rights and obligations to promote the over all development of the child or juvenile in the State of Kerala.

1. Short title, extent and commencement.

(1) This Code shall be called the Kerala Children's Code, ——.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the State Government may, by notification, appoint, and different dates may be appointed for different Chapters of this Code.

2. Definitions.

(a) In this Code, unless the context otherwise requires—

(a) "appropriate provisions" includes legislative, administrative, social and educational measures;

(b) "board" means a Juvenile Justice Board constituted under Section 79.

(c) "begging" means

i. soliciting or receiving alms in public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under the pretence of singing, dancing, future telling, performing tricks or selling articles or otherwise;

ii. exposing or exhibiting with the object or obtaining or extorting alms, any sore, injury, deformity or disease, whether of himself or of any other person or of an animal;

iii. allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

(d) "Chairperson" means the Chairperson of the Kerala State Commission for Children,

(e) "child or juvenile" means a person who has not attained eighteen years of age;

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(f) "child abuse" includes child battering, extreme punishment, hard labour, emotional abuse, sexual abuse, including incest and exploitation and abandonment;

(g) "child in need of care and protection" means a child –

i. who is found without any home or settled place or abode and without any ostensible means of subsistence,

ii. who resides with a person (whether a guardian of the child or not) and such person – (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

iii. who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

iv. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

v. who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable enquiry,

vi. who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual gratification or illegal acts,

vii. who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

viii. who is being or is likely to be abused for unconscionable gains,

ix. who is victim of any armed conflict, civil commotion or natural calamity;

(h) "Committee' means unless otherwise stated the Child Welfare Committee constituted under section 43;

(i) "Commission" means the Kerala State Commission for Children constituted under Section 3;

(j) "Director General" means the Director General of Police appointed by the Commission under Section 11;

(k) "fund" means the Kerala State Children's Fund as constituted under Section 21;

(l) "Government" means the Government of Kerala;

(m) "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;

(n) "incest" means any sexual abuse of a child by members of family, close relations, neighbors or friends;

(o) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence;

(p) "Member" means a member of the Kerala State Commission for Children and includes the Chairperson;

(q) "recognized non-Government organization" means a voluntary organization registered under the Societies Registration Act, 1956 or under any other law for the time being in force and devoted to the work of "children's development and welfare";

(r) "notification" means a notification published in the Official Gazette;

(s) "prescribed" means prescribed by rules made under this Code;

(t) "rights of the child" means the rights recognized under various provisions of this Code and also included in other legislation;

(u) "Secretary-General" means the Secretary-General of the Commission appointed under Section 11;

(v) "sexual abuse' means commission of any sexual act by a person/adult on a child and includes child molestation, incest or rape, as defined in Section 375 of the Indian Penal Code.

(b) Any reference in this Code to a law, which is not in force in the Kerala State, shall be construed as a reference to the corresponding law, if any, in force in any other State.

CHAPTER I

THE KERALA STATE COMMISSION FOR CHILDREN

3. Constitution of the Kerala State Commission for Children.

(1) For the purpose of effectively implementing and safeguarding the rights of children throughout Kerala and to protect them from all forms of discrimination, cruelty and abuse, to provide them with necessary amenities and facilities so as to enable them to develop and grow in a healthy, conducive and pleasant surroundings free from all wants and generally to promote the welfare of children and their all round development, the State Government shall constitute a body to be known as the Kerala State Commission for Children.

(2) The Commission shall consist of—

(a) a Chairperson who has a distinguished and eminent record in promoting the welfare and development of children.

(b) four members to be appointed from amongst persons having knowledge of and practical experience of working in areas of law, child rights, health, child psychology, care, social sciences, nutrition or education out of whom two at least shall be women one member to be appointed from amongst persons with experience in the field of law relating to children's rights.

(c) Member, State Human Rights Commission nominated by that Commission; ex-officio.

(d) The Chairperson of the State Commission for Women, ex-officio.

(3) There shall be a Secretary General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as may be delegated to him by the Commission or the Chairperson either generally or specifically.

(4) The headquarters of the Commission shall be at such place as the State Government may, by notification, specify.

4. Appointment of Chairperson and other members.

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:

(i)	The Chief Minister	..	Chairperson
(ii)	Speaker of the Kerala Assembly	..	Member
(iii)	Minister-in-charge of the Dept. dealing with women and child development	..	Member
(iv)	Leader of the opposition in the State Assembly	..	Member

Provided that in the case of appointment of a Member, other than the Chairperson, the Chairperson shall be a member of the Committee:

Provided further that the procedure that shall be followed by the Committee for the preparation of the panel shall be such as may be prescribed and the suggestions of the Committee shall be in the form of a report which shall state its reasons for the inclusion of persons in the panel and the preference, if any, to be given to the Members included in such panel.

(2) No appointment of a Chairperson or a Member, shall be invalid merely by reason of any vacancy in the Committee referred to in sub-section (1) or any defect in the constitution of the said Committee.

5. Removal of a Member of the Commission.

(1) Subject to the provision of sub section (2), the Chairperson or any other Member of the Commission shall only be removed from office by an order of the Governor.

(2) Notwithstanding anything contained in sub section (1) the Governor may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be—

(a) is adjudged an insolvent ; or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is of unsound mind and stands so declared by a competent court; or

(d) is convicted and sentenced to imprisonment for an offence which in the opinion of the Governor involves moral turpitude.

(3) The Chairperson or any other Member may, notwithstanding anything contained in the foregoing provisions of this section, by writing under his hand addressed to the Governor, resign his office.

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6. Term of office of Members.

(1) A person appointed as Chairperson shall hold his office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that the Chairperson shall, notwithstanding his/her attaining the age of seventy years, continue to hold such office until the expiry of a term of three years from the date on which he enters upon his office.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for another term of five year and not for any further period:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of Kerala.

7. Member to act as Chairperson or to discharge his functions in certain circumstances.

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave for not less than six months, such one of the Members, as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members.

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies etc., not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission.

(1) The Commission shall meet at such times and place as the Chairperson may think fit.

(2) The Commission shall, by regulations determine its own procedure for the conduct of the meetings of the Commission and for any other matter.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

11. Officers and other Staff of the Commission.

(1) The State Government shall, after consultation with the Commission, make available to the Commission —

(a) an officer of the rank of a Secretary to the Government of Kerala who shall be appointed by the Commission as the Secretary General of the Commission;

(b) an officer of the rank of a Director General of Police who shall be appointed by the Commission as the Director General of the Commission;

(c) an officer of the rank of an Additional Secretary to the Government of Kerala who shall be a woman and shall be appointed by the Commission as the Commissioner for the welfare of the girl-child;

(d) such police and investigative staff, as the Commission may consider necessary from time to time who shall be appointed by the Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and other terms and conditions of service of the officers and staff, including the officers appointed under sub-section (1) shall be such as may be specified by regulations.

12. Committees of the Commission.

(1) The Commission may appoint such committee, including such standing or adhoc committees, as it may consider necessary for dealing with any issues which may be taken up by the Commission from time to time.

(2) The Commission shall have the power to co-opt as Members of any Committee appointed under sub-section (1) such number of persons, who are not members of the Commission, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the Committee and take part in its proceedings, but shall not have the right to vote.

(3) The persons so co-opted shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be specified by regulations.

13. Functions of the Commission.

(1) Subject to the provisions of this Code, the functions of the Commission shall be to serve as a focal point and forum for planning, review and proper co-ordination of the multiplicity of services in areas of child health care, nutrition, education and rehabilitation and to promote the fulfilment of the children's rights to survival, development, protection and the participation to ensure the full physical, mental, social development of the child in conditions of human dignity, equality, freedom and security.

(2) In particular, and without prejudice to the generality of the foregoing power, the Commission shall perform all or any of the following functions, namely:

(a) To develop a State Policy adequate to address the issues and problems relating to the effective realization and enjoyment of the rights of the child and to advice the State Government on the formulation of policies, programmes and principles, including legislation with respect to the best interest of the child.

(b) Monitor and evaluate the impact of policies and programmes designed for achieving the elimination of all discrimination against children;

(c) Investigate and examine all matters relating to the safeguards provided for children under the Constitution of India and other laws;

(d) Review, from time to time, the existing laws affecting children and recommend amendments thereto so as to bring about remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations;

(e) Take up cases of violation of the provisions of the Constitution and of all other laws relating to children;

(f) Inquire suo-motu, or on an application presented to it, complaints of –

a. deprivation of rights of the child;

b. molestation or attempt thereof on a child;

c. discrimination perpetrated on children;

d. cruelty on children either at home or at other places;

e. child abuse;

f. inhuman treatment of children;

g. child labour or exploitation of children in work places; non-implementation of laws enacted to provide protection to children and also to achieve the objective of equality and development;

h. non-compliance of policy decisions or instructions aimed at mitigating hardships and ensuring development and providing relief to children;

i. generally in all matters of discrimination, cruelty and abuse and take up the issues arising out of such matters with appropriate authorities.

(g) Intervene in any proceedings involving violation of the rights of the child pending before a Court with the approval of such court;

(h) Visit any jail or other institutions where under-trials or other children detained under any law for the time being in force are kept or where children are lodged for the purpose of treatment, reformation or protection, for the purpose of studying the living conditions of such under-trials or children and make recommendations thereof;

(i) Monitor the activities of other institutions and authorities functioning all over Kerala in the field of child welfare and development and issue of directions to such authorities;

(j) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities perpetrated on children and identify the pathology so as to recommend strategies for their removal;

(k) Undertake promotional and educational research so as to suggest ways of ensuring due representation of children in all spheres and identify factors responsible for impeding their advancement such as, lack of access to housing, adequate care and basic services;

(l) Shall be consulted on the planning process of socio-economic development of children;

(m) Study treaties and other international instruments on children and make recommendations for their effective implementation;

(n) Undertake and promote research in the field of rights of the child;

(o) Promote awareness of the safeguards available for the protection of the rights of child through publications, media, seminars and other available means;

(p) Encourage the efforts of non-governmental organizations and institutions working in the field of rights of the child;

(q) Assist Panchayats or Municipalities in their efforts to promote the welfare and development of children, especially in the fields of education, health, protection and care of children;

(r) Present to the State Government annually and at such other times as the State Government may require or the Commission may deem fit, reports upon the working of the safeguard provided for children under Constitution and other laws.

(s) Make in such reports recommendations for the effective implementation of the rights of child for improving the conditions of children;

(t) Make periodical reports to the State Government on any matter pertaining to children;

(u) Such other functions as the Commission may consider necessary for the protection, care and custody of children.

14. Powers of Commission relating to inquiries made by it.

(1) The Commission shall, while inquiring into the complaints under this Code or any other law for the time being in force relating to children have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908, including the power to implement or execute its own decisions, reports or orders.

(2) The Commission shall have power to require any person subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission may be useful for, or relevant to the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code.

(3) The Commission or any other officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as they may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission, shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

15. Investigation by the Commission.

(1) The Commission may for the purpose of conducting any inquiry relating to any complaints received by it or in respect of any matter which had been taken by it suo motu, direct the Director General or any of the officers subordinate to him or utilize the services of any officer or investigating agency of the State Government to make a preliminary investigation into the complaint or other matter, and

(2) For the purpose of investigating any matter under sub-section (1), the Director General or any police officer or any officer or agency whose services are utilized under that sub-section may, subject to the direction and control of the Commission.

(i) summon and enforce the attendance of any person and examine him on oath;

(ii) require the discovery and production of any document; and

(iii) requisition any public record or copy thereon from any office.

(3) The officer of the Commission or the officer or agency whose services are utilized under sub-section (1) shall investigate into any inquiry or matter thereof and submit report to the Commission within such period as may be specified by the Commission in this behalf.

(4) The Commission may, if it is satisfied about the correctness of the facts stated and conclusions, if any, arrived at in the report submitted to it under sub-section (3), pass appropriate orders on the basis of such report after issuing notice to the party or parties affected and after giving them an opportunity to be heard.

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(5) Notwithstanding anything contained in sub-section (4), the Commission may itself make such further inquiry including the examination of any persons who conducted or assisted the investigation as it thinks fit before passing final orders in the matter.

16. Power of Commission to call for information, etc.

The Commission, while inquiring into the complaints of violation of the rights of the child may, at any time—

(i) call for information or report from any authority or organization subordinate thereto within such time as may be specified by it:

Provided that if the Commission is satisfied, on receipt of such information or report, that no further inquiry is required or that the required action has been initiated or taken by authority, it shall not proceed with the complaint and inform the complainant accordingly.

(ii) if it considers necessary and without prejudice to any conclusions it may arrive at the conclusion of its inquiry, recommend to the State Government or authority, for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary pending the completion of its inquiry:

Provided that where any claim for interim relief granted is at any time found to be unjustifiable by the Commission, it may order the refund of the amount of interim relief so granted.

17. Persons likely to be prejudicially affected to be heard.

Where at any stage of the inquiry, the Commission considers that the interests of any person are likely to be prejudicially affected, it shall give to that person a reasonable opportunity of being heard in the inquiry and produce evidence in his defence.

18. Statement made by persons to the Commission or officer, etc.

(1) No statement made by a person in the course of giving evidence before the Commission or any officer or agency authorized by the Commission to investigate any matter on its behalf shall subject him to, or be used against him in, any civil or criminal proceedings except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to the question which he is required by the Commission, officer or agency to answer; or

(b) is relevant to the subject matter of the inquiry.

(2) Where, after the completion of the inquiry, the Commission finds that,

(a) there had been a violation of any of the rights of children or negligence in the protection of such rights by Government or a public servant or by any person or authority, either public or private, which had necessitated the filing of the complaint; or any injury, harm or grievance (other than a violation of a right) had been caused to a child or group of children; or

(b) any discriminatory treatment or injury had been perpetrated on a child; it may, by a report, direct the concerned person or authority—

(i) to pay compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(iii) subject to the provisions of sub-sections (2) and (3), provide a copy of the report to the complainant or his representative;

(iv) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary relating to the report or any matter thereof.

(3) Any person or authority, other than the Government to whom a report has been sent under sub-section (2) shall comply with the, direction contained in the report.

(4) The Commission shall also send a copy of its report together with its directions to the concerned authority and the concerned authority excepting the Government shall, within a period of one month or such extended period not exceeding three months, as the Commission may allow, communicate to the Commission the acceptance or otherwise of its recommendations and the reasons for non-acceptance of its recommendations and where the concerned authority is the Government it shall communicate to the Commission the acceptance or the recommendation, if any. The Commission shall publish its report indicating acceptance or otherwise of the recommendations of the Commission by the concerned authority;

(5) Subject to the above provisions, the recommendations of the Commission shall be binding on all authorities within Kerala and they shall be given effect to by the said authorities.

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19. Grants and loans by the State Government.

The State Government may after due appropriation made by Legislative Assembly by law in this behalf, provide to the Commission grants and loans of such sums of money as the Commission may consider necessary.

20. Levy and Collection of a cess.

(1) There shall be levied and collected by way of cess for the purpose of this Code, a cess on infant milk food, milk substitutes and teats at such rate not exceeding three per cent advalorem, as the State Government may, from time to time, by notification, fix.

Explanation.— In this sub-section, the expressions "infant milk foods", "milk substitutes" and "teats" shall have the same meaning as in the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production and Distribution) Act, 1992.

(2) The cess levied under sub-section (1) shall be in addition to any Value Added Tax leviable on the articles as per any law for the time being in force.

21. Constitution of Kerala State Children's Fund.

(1) There shall be constituted, for the purposes of this Code, a Fund to be called the Kerala State Children's Fund and there shall be credited thereto—

(a) such sums of money as the State Government may provide to the Commission as grants and loans besides grants and loans given under section 19;

(b) such sums of money as the State Government may, provide from and out of the proceeds of the cess levied under section 20;

(c) all fees and charges levied and collected in respect of registration of homes and other institutions under this Code or rules made thereunder;

(d) any fines or other amount that may be directed to be paid to the Fund by any court on the conviction of a person committing an offence under this code;

(e) any grants or loans that may be made by any person, voluntary organization or other institutions for the purposes of this Code;

(f) any donations or gifts made by any person, or company or any other institution charitably disposed of.

(2) The Fund shall be applied for—

(a) meeting the cost of measures referred to in section 13;

(b) meeting the other administrative expenses of the Commission and any other expenses authorized by it under this Code; and

(c) any other expenditure which the Commission may consider it to be paid from the Fund.

22. Borrowing powers of the Commission.

Subject to such rules as may be made in this behalf, the Commission shall have the power to borrow on the security of the State Children's Fund or any other asset for carrying out the purposes of this Code.

23. Accounts and Audit.

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the State Government in consultation with the Accountant and Auditor, General of Kerala.

(2) The accounts of the Commission shall be audited by the Accountant and Auditor General as per the Rules laid down in this regard.

24. Power to call reports and returns.

The Commission may require any manufacturer of infant foods, milk substitutes or teats to furnish for the purposes of this Code such statistical and other information in respect of the articles manufactured by him in such form and within such period as may be prescribed and every such manufacturer shall comply with such requirement.

25. Powers to submit reports and statements.

(1) The Commission shall furnish to the State Government at such time and in such form and manner as may be prescribed or as the State Government may direct such returns and statements and such particulars with regard to any proposed or existing programme for the promotion and development of the interests of children, the State Government may, from time to time require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, as soon as possible after the end of each financial year, submit to the State Government concerned a report in such form and before such date, as may be prescribed, give a true and full account of its activities, policies and programme during the previous financial year and may at any time submit special reports on a matter which in its opinion, is of such urgency or importance that it should not be deferred till the submission of the annual report.

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(3) State Government shall, soon as may be after the receipt of the annual report and special reports the Commission under sub-section (2), cause them to be placed before the State Legislature along with memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non acceptance of the recommendations if any.

CHAPTER II

PROVISIONS FOR FREE AND COMPULSORY EDUCATION UPTO HIGHER SECONDARY LEVEL

26. Definitions.

In this Chapter, unless the context otherwise requires,

(a) "attendance at an Higher Secondary School" means the presence of a child at school or schools upto I to X standards for such number of days, and on such days in a year and at such time or times on each day of attendance, as may be prescribed;

(b) "Director" means person appointed by the State Government under Section 29 to be in-charge of the administration of the Higher Secondary Schools in the State to exercise the powers conferred upon, and to perform the functions assigned to, a Director under this Chapter;

(c) "Higher Secondary Education" means education upto Higher Secondary level in such subjects and upto such standard as may be prescribed;

(d) "Higher Secondary School" means a School recognized as an Higher Secondary School by the Director and includes any Higher Secondary School in existence on the date of commencement of this Code which has been recognized as such by the Director or by any authority of the State Government;

(e) "free education" means the waiver of all kinds of fees, and includes the provision of text books, uniforms, transport and other related services or accoutrements;

(f) "parent" means the father or mother of a child and includes an adopted father or mother;

(g) "school going age" in relation to a child means the age when the child attains the age of five years and ends with the date of completion of fourteen years of age.

27. Education upto Higher Secondary level be free and compulsory.

(1) Subject to the provisions of this Chapter, education upto Higher Secondary level shall be compulsory and free for all the children residing within the State of Kerala until the completion of School going age.

(2) For the purpose of giving effect to the provisions of sub-section (1), the State Government shall take the following among other steps, namely;

(a) provide such number of primary, secondary and Higher Secondary schools within such area and in such manner that no child residing in such area shall be required to travel for more than one kilometer from his ordinary place of residence and every school so established shall contain a room for each grade or group of thirty or forty children;

(b) provide a trained teacher for each grade or group of thirty to forty children who is available for a minimum period of two hundred days in a year;

(c) provide a friendly and relevant curriculum learnable by the child;

(d) specify Malayalam as the medium of instruction so that the child learns by himself/herself at his own pace;

(e) provide a joyful and attractive atmosphere in the School;

(f) provide an usable black board and chalk for each grade or group;

(g) encouragement of the child to take to learning easily and comfortably;

(h) the teachers maintain a record to ensure that children attending the School have attained a minimum level of learning;

(i) provide that no punishment shall be administered to a child which has a tendency to affect the morale of the child or make the child to develop an aversion to attending school or to get educated;

(j) provide for non-formal and formal education or open school system in such a manner that the provision of non-formal education or open school education may enable the child to join at any stage of formal education commensurate with his age.

28. Duty of every parent or guardian of a child of school going age.

It shall be the duty of every parent or guardian of a child of school going age, irrespective of sex, to send the child to school upto the level of Higher Secondary Education, provided that nothing in this section shall apply—

(a) if there is no Higher Secondary School within three kilometers from the residence of the child;

(b) if the child is prevented from attending any Higher Secondary School by reason of sickness, infirmity or such other reasons as may be prescribed;

(c) if the child is attending any unrecognized school subject to the condition that the education imparted therein is declared to be satisfactory by the Director;

(d) if the child is imparted education in such other manner as may be declared to be satisfactory or equivalent to the Higher Secondary School Curriculum by the Director;

(e) if the child is exempt from attendance on any other ground as may be prescribed.

29. Director of Higher Secondary Education.

(1) The State Government may, by notification, appoint or designate an officer of the State Government to be the Director of Higher Secondary Education for the purpose of effectively carrying out the provisions of this Chapter and the rules made thereunder.

(2) The State Government shall appoint or designate such other officers for such area or areas within the territory of the State for assisting the Director in the implementation of the provisions of this Chapter.

(3) Subject to the provisions of this section, the Director and the other officers appointed or designated under sub-section (1) shall exercise such powers and perform such functions as may be prescribed by the State Government.

(4) The Director may, for the purpose of effectively implementing the provisions of this Chapter and for monitoring that the provisions of this Chapter are being complied with, appoint such Committees for such area or areas as may be specified by him to advise him on the implementation of the Higher Secondary Education Programme and to evaluate the action taken to implement the said programme.

(5) The Committee or Committees appointed under sub-section (4) may meet at such times and at such places in accordance with such procedure as may be prescribed by the State Government.

30. Duty of Municipalities, Panchayats etc.

(1) It shall be the duty of every Municipality, Panchayat or a local area in a State to see that all the children of school going age and residing within its jurisdiction attend schools upto the level of Higher Secondary Classes.

(2) For giving effect to the provisions of sub-section (1), the Director shall give such guidance and issue such guidelines as may be necessary to the Municipalities, Panchayats or other authorities and they shall be bound to comply with such guidance or guidelines.

(3) Without prejudice to sub-section (1), it shall be open to the Municipalities and Panchayats to obtain necessary advice and guidance from the Director and the Director shall be bound to give them.

(4) The Municipalities, Panchayats or other authority may, for the purpose of effectively carrying out the provisions of this Chapter appoint such officer or non-government organizations or institutions working in the field to make a periodic study or to conduct survey on the implementation of the provisions of this Chapter in the local area.

31. Levy of education cess

(1) Every Municipality, Panchayat or other authority entrusted with the municipal functions in a local area may, if it considers necessary to meet the expenses of providing free and compulsory Higher Secondary education, levy and collect a cess in the nature of a surcharge at such rate not exceeding three per centum on the property tax, profession tax or other tax payable to the Municipality, Panchayat or other authority as may be prescribed, apply to the levy and collection of the Cess under this section:

Provided that no cess under sub-section (1) shall be levied and collected from any person below the poverty line.

(2) The State Government may also, if it considers necessary provide such grants or other sums of money for being credited to the Fund constituted under this section.

(3) It shall be competent for the Municipality, Panchayat or to other authority to accept donations, gifts or grants in the form of money or otherwise for the purposes of the Fund.

32. Power to maintain regular accounts and submit statement of accounts.

(1) The Director shall maintain proper accounts of the income received by, and to expenditure incurred from, the Fund and prepare a balance sheet every year.

(2) The accounts prepared by the Director shall be subject to audit by the Accountant and Auditor-General and the procedure to be followed in the audit of accounts of the Commission under section 23 shall be followed in the audit of the accounts prepared under this section.

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33. Annual or special reports.

(1) The Director shall submit an original report to the State Government which shall, include among other things, the implementation of the Higher Secondary school programme, the number of children covered by it, the number of schools established and such other matters as are required for the implementation of the provisions in this Chapter.

(2). The Cess, if any, levied under sub-section (1) of Section 31 shall be credited to an Educational Development Fund maintained by the Municipality, Panchayat or other authority and the said Fund shall be utilized only for the purpose of incurring expenditure on providing Higher Secondary education by the Municipality, Panchayat or other authority without prejudice to the provisions of sub-section (1), the State Government may at any time call for any special report on the status of the Higher Secondary education in the State or part thereof and the Director shall comply with the same.

(3) The provisions of any law for the time being in force for the levy, assessment and collection of property tax, profession or other tax shall, apply as far as possible to the levy of such cess.

(4) The State Government shall cause every report furnished by the Director under sub-sections (1) and (2) to be laid before the State Legislature.

34. Power of State Government to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

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

(a) The preparation of a composite syllabus with special reference to the growth and development of the child;

(b) The incentives that may be provided in the school to make education upto Higher Secondary level more attractive to children to attend the school and for the parents to send the children to school without any failure;

(c) Provision of creches or day-time shelter for children so that girls of school going age are not detained in the house on the ground of looking after children. The grounds on which a child may be exempted from attending school;

(d) The powers and functions of the Director and other officers appointed under Section 29;

(e) The time and the place in which the Committees appointed under sub-section (4) of section 29 shall meet and the procedure to be followed by such Committees at their meetings;

(f) The rate at which education cess may be levied under section 20 and different rates may be specified for different Municipalities, Panchayats or other areas;

(g) An organised scheme for making the people living in a local area aware of the importance of Higher Secondary education being given to children;

(h) Specifying a procedure by which children of school going age and working in factories are taken out of the factories and given non-formal or open School education so as to integrate them into the regular Higher Secondary schools;

(i) Any scheme to provide, if necessary, such compensation in the form of money or otherwise to make up for the loss in the income of the family by sending the children to school;

(j) Such other matters which are required to be or may be prescribed.

CHAPTER III

PROVISIONS REGARDING HEALTH AND NUTRITION

35. Provision of Health Services.

(1) Every child has a right to health and nutrition as provided in this Chapter.

(2) The State Government shall provide adequate health services and facilities to children, both before and after their birth and through the period of growth, to ensure their full physical, mental, cultural, moral and social development and the scope of such services shall be progressively increased so that within a targeted period every child in the State is provided with and enjoys optimum conditions in health care for its balanced growth.

(3) For the purpose of increasing the rate of child survival in the State, especially the girl child and increasing child health, special emphasis and importance shall be given in the following areas, namely:—

(a) The prevention of child marriages;

(b) The age of the mother in relation to child birth, the spacing of pregnancies, the services to be provided and care to be received during pregnancy and child birth;

(c) Care of the new born;

(d) Time-bound immunization programme and properly spaced scheme till the child attains five years of age;

(e) Adequate nutrition and health care;

(f) Safe water supply and basic sanitation.

36. Safe Motherhood.

The State Government shall formulate suitable schemes to provide sufficient care to women during pregnancies which may include —

(i) early registration of pregnant women for anti-natal care, universal coverage,

(ii) tetanus injection supplemented with iron and folic acid,

(iii) timely identification and treatment of maternal complications,

(iv) promotion of clean deliveries by trained personnel, which may include imparting of training to the local mid-wives in modern methods of handling deliveries and recognising them as such,

(v) increasing the institutional delivery rates,

(vi) management of obstetric emergencies,

(vii) birth spacing, timing and limitation,

(viii) improvement of maternal care facilities, and

(ix) media efforts to promote the awareness of safe motherhood in the community.

37. Prevention of female foeticide and infanticide.

(1) The State Government shall take necessary steps to prevent the pre-natal sex determination conducted in any Genetic Counseling Centre, Genetic laboratory or clinic and diagnostic techniques including ultrasonography.

(2) For the purpose of preventing female foeticide and infanticide, the voluntary and non-governmental organizations working in the local area shall be authorized to disseminate the evil effects of this practice.

CHAPTER IV

RIGHT AGAINST ECONOMIC EXPLOITATION AND ABUSE

38. Prohibition of employment of children in certain establishments.

(1) Subject to the other provisions of this Chapter, and of any other law for the time being in force, no child who has not attained the age of fourteen years shall, after the commencement of this Code, be employed in any establishment.

(2) No child above the age of fourteen years shall be employed in a mine, plantation or in any establishment in which hazardous process is carried on.

Explanation.—"Hazardous process" has the same meaning as in clause (b) of section 2 of the Factories Act, 1948 (63 of 1948).

(3) Every owner or occupier in relation to an establishment (including a mine, plantation or establishment referred to in sub-section (2) or workshop and employing children on the commencement of this Code shall, before a period of three months from such commencement, furnish in such form, in such manner and to such authorities as may be prescribed, details relating to the number of children employed in the establishment or workshop, their age, conditions of service, amenities provided and such other details as may be prescribed for a licence under this Chapter to continue the employment of children after such commencement.

(4) No owner or occupier of any establishment or workshop in existence on the commencement of this Code or proposed to be established after such commencement shall, if he has employed children in establishment or workshop or if he intends to employ children in such establishment or workshop obtain a licence for employing such children from such authority as may be prescribed:

Provided that such authority shall issue such licence after inspection of the establishment or workshop and after satisfying itself about the conditions of service of children proposed to be employed, amenities proposed and other matters.

(5) The licence issued under sub-section (4) may provide for such conditions, including the payment of compensation either in lump sum or in installments, to the parent or guardian for loss of their earnings from out of that child or for providing education to such children as it may consider necessary.

(6) The authorities referred to in sub-section (3) and (4) shall send copies of the orders issued by it to the State Commission and such orders shall be treated as confidential.

(7) The officers appointed under this Code and the non-governmental or other organizations working in the field shall have power to inspect the establishments or workshop operating within their area of jurisdiction and make periodical reports about the conditions of children working in such establishment or workshop to the prescribed authority.

39. Provision for education to children.

(1) The owner or occupier of an establishment or workshop who had to discontinue the employment of children under the preceding section shall, in addition to the provision of compensation or damage, if any payable to the parents or guardians of the children, provide the children with such facilities for education as may be prescribed.

(2) The State Government shall at the same time provide adequate measures in the education system to admit such children who are withdrawn from employment into Higher Secondary schools established by it and if they are not fit to join the regular schools or the formal education provided by such schools, the owner or employer shall arrange for the imparting of non-formal education to such children so that they may be enabled to fit into the curricula of formal education adopted by the regular Higher Secondary schools.

(3) The State Government shall arrange periodically for meetings workshops or seminars to project the evils of child labour, particularly in respect of children of school going age, the importance of providing education to children, and create awareness among the people, especially the parents and guardians about the advantage of sending school going children to school.

(4) The non-governmental organizations and other institutions working in this field shall be directed by the State Commission to periodically visit the factories and schools within the area of their jurisdiction to see that the children are put in schools and ensure regular attendance and provision of essential facilities.

40. Power of State Government to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) The rules made under sub-section (1) may provide for all or any of the following matters, namely—

(a) the form and manner in which, and the authorities to whom information under sub-section (2), sub-section (3), sub-section (5) of Section 38 shall be furnished;

(b) the guidelines by which compensation, damage of other incentive shall be determined to be payable to the father or guardian of the children, who have to be withdrawn from employment;

(c) the conditions subject to which a licence may be granted under sub-section (3) or sub-section (4) of Section 38;

(d) the facilities for education that may be provided to the children by the owner or occupier of an establishment under sub-section (1) of Section 39;

(e) such other matters which are required to be, or may be prescribed.

CHAPTER V

CARE AND PROTECTION OF CHILDREN

41. Responsibility of Parents and Guardian to look after Children.

The parents and guardians shall provide all their children under their control with a comfortable home, healthy surroundings, providing affection and not be cruel to them, provide them with all their requirements, render them assistance necessary to bring them up in a healthy and safe surrounding so that they may not feel anything wanting and the children in turn would respect the feelings of their parents and guardians, satisfy them and live up to their expectations. To achieve this the parents and guardian shall ensure:—

(a) a child in the first years of the new born, necessary food complimentary to mother's milk and other things required to make the child grow without any infantile ailments;

(b) no discrimination in the matter of provision to the children, like food, medicine and other requirements between a male and a female child and it shall be the duty of the father to prevent such discrimination being perpetrated on the girl child;

(c) preventing female infanticide;

(d) periodical immunization till the fifth year of age and for registration of the child in the primary health centre;

(e) the child to be taken to the primary health centre for periodical check up and in case of any ailment, take the child to the hospital, if necessary and timely and immediate treatment to prevent any further deterioration in the health or any permanent damage to the child;

(f) affection, essential security and comfort to them by spending more time with the children, ascertaining their views, wants and requirements and their behaviour to the children shall be in such a manner as to create a feeling of safety, protection and care in the minds of the children that there is no place like home and the parents;

(g) that children do not fall into bad company or cultivate unhealthy and bad habits;

(h) them to acquire good qualities, compassion and friendliness to others, understanding people and be kind to every one without being harsh;

(i) sending children, boys and girls, without any discrimination to Higher Secondary schools during the school going age and provide them with all the necessities so as to enable them to devote their full energies to education and create a desire to pursue further higher education;

(j) periodical checking of the progress of the child in school by making visits to the school and seeing their teachers and participate in the school functions and activities;

(k) verifying of the behaviour of children inside and outside school, their attitude towards other children, the treatment of children by others, in that there is no teasing and beating by the teacher or others;

(l) encouraging and assisting the children to pursue further education and where it is not possible economically, to get assistance from Government institution or other persons and obtain financial assistance in the form of loans or grants;

(m) that the girl child is not compelled to do domestic chores and to mind the younger children and the girl child should be treated in the same manner as a male child and should not create any feeling in the mind of the girl child that she is being discriminated against;

(n) the girl child is not sent to work in other houses to do domestic work on the pretext of increasing the family income;

(o) protecting girls from incest by close relations;

(p) not be neglected in any manner;

(q) inculcate in children good behaviour and discipline so that they may grow morally strong and not expose them to actions that will cause them unnecessary mental or physical tension or suffering;

(r) the children should not be driven to begging or the parents also should not cause them to beg;

(s) the children should be prevented from taking any drug or intoxicants, liquor or get them into the habit of drinking, smoking or used to taking any narcotic drug or psychotropic substances;

(t) the child not to be exploited by anyone and prevent any child abuse;

(u) such other behaviour that may be necessary to make the children grow in a healthy and peaceful atmosphere so that they may achieve an all round development to become responsible citizens.

42. Duty of Government to assist families to provide better treatment to children.

(1) The State Government may, subject to the available means at its disposal, assist parents, guardians or other persons in-charge of children by providing financial or other assistance to enable them to perform their duties towards children under Section 41.

(2) For the purpose of fulfilling its obligations under sub-section (1), the State Government may formulate such scheme or schemes by which the families where children are not well treated or are subjected to cruelty are identified either by the appointment of suitable officers, authorizing non-governmental or other agencies working in the field of child welfare or by constituting Child Welfare Committee consisting of experts and activists in the field of child welfare or authorizing Panchayats or Municipalities to perform the aforesaid functions.

(3) The scheme or schemes formulated under sub-section (2) may include—

(a) providing financial or other assistance;

(b) sending children to schools;

(c) introducing boys and girls alike to domestic chores and encouraging education for girls;

(d) providing crèches or day care homes for children of primary level with all amenities;

(e) orienting parents on the importance of child care;

(f) in appropriate cases, provide for good adoption both within the country and abroad;

(g) making arrangements for the child to be shifted to Special Homes, Protective Homes, Observation Homes, after care organizations, other institutions, certified school of orphanages, depending on the condition of the children;

(h) such other measures or assistance to see that children are provided with healthy atmosphere and surroundings.

43. Child Welfare Committee.

(1) The State Government shall with in one year of commencement of this Code, by notification in Official Gazette, constitute for every district, specified in the notification, Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Code.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed and the salary and allowance payable to them shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if—

(i) he has been found guilty of misuse of power vested under this Code;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class.

44. Procedure, etc., in relation to Committee.

(1) The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

(3) In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail.

(4) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding.

45. Powers of Committee.

(1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Chapter, have the power to deal exclusively with all proceedings under this Chapter relating to children in need of care and protection.

46. Production before Committee.

(1) Any child in need of care and protection may be produced before the Committee by one of the following persons:—

(i) Any police officer or special juvenile police unit or a designated police officer;

(ii) Any public servant;

(iii) Childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;

(iv) Any social worker or a public spirited citizen; or

(v) By the child himself:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Chapter to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.

47. Inquiry.

(1) On receipt of a report under Section 46, the Committee shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 45, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

(2) The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee:

Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine.

(3) The State Government shall review the pendency of cases of the Committee at every six months, and shall direct the Committee to increase the frequency of its sittings or may cause the constitution of additional Committees.

(4) After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

48. Transfer.

(1) If during the inquiry it is found that the child hails from the place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child.

(2) Such juvenile or the child shall be escorted by the staff of the home in which he is lodged originally.

(3) The State Government may make rules to provide for the travelling allowance to be paid to the child.

49. Restoration.

(1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

Explanation.—For the purposes of this section "restoration of and protection of a child" means restoration to—

(a) parents;

(b) adopted parents;

(c) foster parents;

(d) guardian;

(e) fit person;

(f) fit institution.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO GIRL CHILD

50. Measures to prevent all forms of discrimination against girl child.

The State Government shall take necessary measures to prevent all forms of discrimination against girl child as given below:

(1) Elimination of all forms of discrimination against the girl child including:

(a) Ensuring that the girl child receives appropriate financial and other support and provide educational opportunities for girls;

(b) Enforcing strictly the provisions relating to the minimum age for marriage as provided in the Child Marriage Restraint Act, 1929, by providing employment opportunities for girls;

(c) Develop and implement comprehensive policies, plans of action and programmes for the survival, protection, development and advancement of the girl-child to promote and protect the full enjoyment of her human rights and to ensure equal opportunities for girls;

(d) Ensure the desegregation by sex and age of all data relating to children in health, education and other sections.

(2) Elimination of negative cultural attitudes and practices against girls including:—

(a) steps to remove traditional and customary practices that promote discrimination against girls;

(b) regulate unethical practices, such as pre-natal sex selection and female foeticide and infanticide;

(c) eliminate child pornography and degrading and violent portrayals of the girl-child;

(3) Elimination of discrimination against girls in education, skills, development and training including:

(a) Increasing the enrolment and improve the percentage of educated girls;

(b) Promoting the full and equal participation of girls in extracurricular activities such as sports, drama, social work and cultural activities.

(4) Elimination of discrimination against girls in health and nutrition including:

(a) Sensitize the girl-child, teachers and the civil society concerning the general health and nutrition and raise awareness of the health and other problems connected with early pregnancies;

(b) Strengthen and reorient health education and health services, particularly primary health care programmes, sexual and reproductive health, strengthening the individual and collective action to reduce the vulnerability of girls to HIV/AIDS and other sexually transmitted diseases;

(c) Ensure dissemination of information to girls, especially adolescent girls, regarding the physiology of reproduction, reproductive and sexual health.

(5) Elimination of girl child labour including:

(a) Protecting girl-child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development;

(b) Protecting girls at work conditions, application of social security coverage and establishment of continuous training and education;

(c) Strengthening the penalties or other sanctions provided in the legislations concerning girl-child to ensure their effective enforcement.

(6) Elimination of violence against the girl child including:

(a) Taking effective actions and measures, to protect the safety and security of girls from all forms of violence at work and prevention of incidents of sexual harassment of girls in educational and other institutions;

(b) Initiating and enforcing appropriate and effective measures to protect girls from all forms of violence;

(c) Providing safe and confidential programmes on medical, social and psychological support services to assist girls who are subjected to violence.

51. Powers to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

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

(a) Necessary syllabus or curricula for imparting sex education in Schools and Colleges, the age and the level at which such education shall be provided and the counseling that may be required in continuation of the syllabus or curricula;

(b) The manner in which periodical checks to find out children, and especially girl-children, are sent to Schools or are they being kept by parents to look after the household or younger children and requiring School authorities periodically to report about the dropouts of girl students from Schools;

(c) Formulation of scheme or schemes through which suitable incentives may be provided to parents to send their girl-children to School;

(d) Frame necessary guidelines by which the Panchayats or Municipalities are required to see—

a. that sufficient Schools are provided for the education of the children of the village, town or city;

b. that an efficient health care scheme is implemented in the village through which all the children are covered;

(e) Initiate necessary schemes to prevent sexual harassment including eve teasing and ragging in Schools and Colleges, buses, hotels or other public places and specify deterrent punishments for such behaviour;

(f) Provide for an efficient system by which organizations working in the field of child welfare in the village, town or city may be authorized to make periodic inspections in the locality and take necessary action to protect girls from cruelty, eve-teasing, ragging or other derogatory practices, including the filing of complaints of prosecutions relating to offences against girl-children;

(g) Domestic violence and cruelties perpetrated on girl-children;

(h) Cruelty in relation to any demand for dowry;

(i) Child marriages;

(j) Female foeticide and infanticide;

(k) Illegal or unnatural sexual offences, incest and other abuse of young children;

(l) Child abuse of any other form;

(m) Guidelines for the prevention of sexual abuse in work places;

(n) Any other matter which is required to be, or may be specified by rules.

52. Duty of Government to direct its policies to eliminate discrimination against girl child.

It shall be the duty and endeavor of all the authorities in Kerala to direct its policies or actions to prevent effectively all discrimination and atrocities against the girl child.

CHAPTER VII

SPECIAL PROVISION FOR DIFFERENTLY ABLED CHILDREN

53. Special provisions for differently-abled children.

(1) The State Government shall ensure taking of necessary steps for the prevention or occurrence of any mental or physical disabilities in children through adequate provision for immunization, nutrition, access to health implementation, safety regulations in establishments and workshops and prohibit the use and sale of dangerous drugs.

(2) The State Government shall formulate such scheme or schemes to provide assistance to differently-abled children in the following areas, namely:—

(a) create awareness in the State;

(b) care and maintenance;

(c) referring cases of disability for treatment at the earliest possible time;

(d) planning and providing applications and assistance in maintaining the otherwise abled;

(e) provide specifically services or rendering financial assistance to purchase special appliances;

(f) providing sufficient scholarships for the deserving differently-abled children; to continue their education;

(g) such other matters as may be necessary for the proper care and maintenance of differently-abled children.

54. Child affected by natural disaster or calamity.

The state shall ensure that adequate assistance is provided to children affected by natural disaster, violence or armed conflict in the form of meeting the children's requirements.

CHAPTER VII A

SPECIAL PROVISION FOR ABANDONED CHILD

54A. Care of abandoned or neglected child.

(1) Any person who finds a child abandoned in public places like bus stand, railway station etc., shall inform any of the officers or the person in charge of any of the institution specified in Chapter VIII of the Code or to the nearest police station.

(2) The authorities to whom an information is given under sub-section (1) shall immediately take custody of the child and hand over the child to any of the appropriate homes stated in sub-section (8) of Section 55 or to any of the registered Child Welfare Institution.

CHAPTER VIII

APPOINTMENT OF OFFICERS AND ESTABLISHMENT OF INSTITUTIONS

55. Appointment of Officers and Establishment of Institutions to implement the Code.

(1) The State Government, The State Commission, a Panchayat or a Municipality may appoint such number of officers, authorities and organizations to effectively implement the provisions of this Code and indicate their areas of jurisdiction within which they shall perform their functions and discharge their duties.

(2) The persons, officers and authorities appointed under sub-section (1) may include State level, District level, Municipal and Panchayat levels and may include Directors, inspectors, District Officers, non-governmental and other organizations who are authorized or registered under this Code to perform functions under it, constitution of Welfare Boards, Advisory Committees and Probation Officers and define their respective functions.

(3) The welfare institutions or homes for the protection and welfare of children, established or managed by the State Government or other organizations, by whatever name called, and in existence on the commencement of this Code shall, within a period of three months from such commencement, apply to the State Government for re-registration as such under this Code in such form and in such manner.

(4) The State Government shall appoint such others as may be necessary to scrutinize the applications under sub-section (3) and shall re-register them only if it is satisfied about the proper and efficient management of these institutions especially with regard to the treatment and care of children provided therein and considered necessary, after due inspection of the premises:

Provided that before refusing re-registration of any institution, it shall be given an opportunity of being heard.

(5) The State Government shall periodically appoint experts for inspection and furnish reports on the working of these institutions, requesting the institutions to furnish periodical reports with respect to the number of inmates, the training imparted to them or the work given to them, and if necessary, appoint its own officials to manage their institutions.

(6) If the State Government is of the opinion that the institution is not well managed or that the inmates are not well looked after, it may direct such concrete steps as it may consider, to be carried out, or may even cancel the registration:

Provided that no registration shall be cancelled under this sub-section unless the institution is given an opportunity of being heard.

(7) The State Government shall publish such periodical reports on the working of the institutions and the same shall be placed before the State Legislature.

(8) The State Government may establish and maintain either by itself or in association with voluntary organisations, the following institutions for the purpose of enforcing various provisions of this Code:

(a) After Care homes

(b) Children's Home

(c) Certified Schools

(d) Juvenile Homes

(e) Observation Home

(f) Shelter Homes

(g) Special Homes

(h) Protective Home

(i) Schools for differently abled children.

(9) Any other organization may also establish Child Welfare Institutions after the commencement of this Code subject to their registration under this Code and subject to such terms and conditions as may be provided.

56. Power of State Commission to make regulations.

(a) The State Commission may, by regulations made under this Code provide for the efficient management and administration of juvenile homes, special homes, observation homes, and other institutions referred to in section 55 and the supervision and control that may be exercised by it for effectively carrying out their functions under this Chapter, nothwithstanding anything contained in the law under which such institutions are established, managed or registered;

(b) specify the standards and nature of service to be maintained by such homes or institutions;

(c) provide for such other matters as may be necessary for the purpose of effectively carrying out the services to be provided to children.

57. Government to set up "Special Juvenile Police Units" in the police force.

(1) The State Government shall, as far as possible, organize and set up cells, to be known as "Special Juvenile Police Units" and such cells which shall exercise the powers conferred upon, and discharge the functions assigned to them, under this Code and which shall be under the charge of a police officer, not below the rank of a senior Superintendent of Police.

(2) The Cell may consist of such officers preferably women who shall be sensitive to the problems of children and committed to help children in need, receive complaints and take up investigation early.

(3) The officers of the Cell shall closely monitor the children's programmes within their jurisdiction and maintain a liaison with the officers of the State Government or the State Commission and the non-governmental organizations and assist them in the conduct of prosecutions and such other measures for the effective implementation of the provisions of this Code.

(4) The State Government may also register non-governmental organizations working in the field of child rights and confer on them such powers, including inspection of the institutions, counselling parents on the provisions of this Code, filing prosecutions and such other matters as may be prescribed.

CHAPTER IX

ADOPTION OF CHILDREN THROUGH CHILD WELFARE AGENCIES

58. Definitions.

In this Chapter, unless the context otherwise requires:

(a) "adoption order" means an order made by a Court for the adoption of a child to parents in India;

(b) "Kerala Adoption Agency" means the Kerala State Adoption Resource Agency established by the State Government under section 62.

(c) "Guardianship order" means an order made by a Court conferring guardianship on a prospective foreign adoptive father in respect of a child, pending his adoption in the country to which the adoptive father belongs;

(d) "in-country adoption" means adoption of Children by Indian parents in accordance with the provisions of this Chapter;

(e) "Child Welfare Agency" means a voluntary agency having under its control a child care centre, by whatever name called, and is primarily engaged in child welfare programmes for the growth and development of children;

(f) "inter-country adoption" means permitting Kerala children to be adopted by foreign parents in accordance with the provisions of this Chapter;

(g) "natural father" and "natural mother" in relation to an adopted child, means the biological parents of the child;

(h) "orphan and destitute child" means any child who has been abandoned by both his father and mother or by the guardian or by his father or mother, or whose parentage is not known, or whose father and mother are dead or have completely and finally renounced the world or have been declared by a court of competent jurisdiction to be of unsound mind;

(i) "parent" in relation to an adopted child means the adoptive parent;

(j) "recognized foreign agency" means an agency recognized by a foreign country for sending applications for adoptions outside that country and listed by the Kerala Adoption Agency;

(k) "recognized Voluntary Agency" means a Child Welfare Agency recognized by the Kerala Adoption Agency for processing applications for adoption received from foreign countries;

(l) "recognised Placement Agency" means a Child Welfare Agency recognized by the Kerala Adoption Agency for processing adoptions within the country.

59. Persons who may adopt.

(1) Any person who is married and has completed the age of twenty five years and is of sound mind may either solely or jointly with his or her spouse adopt a child under this Chapter.

Explanation.—In the case of adoption of a child by spouses, the requirement as to age under this sub-section shall be deemed to have been satisfied if either of the spouses has completed the age of twenty-five years.

(2) The person or each of the persons seeking to adopt a child shall be older than the child by at least twenty-five years:

Provided that the District Court may dispense with the requirements of this sub-section in any case if it is satisfied that there may be special circumstances which render it necessary to do so.

(3) For the removal of doubts, it is hereby declared that the existence of a child or children, whether female or male, to the person who intends to adopt shall not by virtue of such existence alone, be a disqualification for adoption under this Chapter.

60. Persons who may be adopted.

(1) Any child who is not already adopted, or if adopted, such adoption has duly been revoked under section 74, may be taken in adoption.

(2) No adoption order shall be made where the sole applicant for an adoption is a male and the child to be adopted is a female, unless the District Court is satisfied that there are other special circumstances which justify the making of an adoption order.

61. Adoptions to be regulated by this Chapter.

(1) Save as otherwise provided in any law for the time being in force, or in any custom, or usage having the force of law, no adoption of a child from the State of Kerala, made otherwise than by a natural father or mother or both, either within India or to any country outside, shall, after the commencement of this Chapter, be made except through a Child Welfare Agency in accordance with the provisions of this Chapter and any adoption made in contravention of such provisions shall be void and be of no effect.

(2) An adoption which is void shall not create any rights in the adoptive family in favour of the adopted person which he or she would not have acquired except by reason of the adoption nor destroy the rights of such person in the family of his or her birth.

(3) The paramount objective in all the adoptions under this Chapter shall be the best interest of the child given in adoption and by this process, the child is provided with a home, family atmosphere, affection, protection, care and basic necessities so as to enable him to grow up without economic wants and under circumstances most congenial for the proper and balanced development of the child.

62. Establishment of a Kerala State Adoption Agency for adoption, etc.

(1) The State Government shall establish a Kerala State Adoption Resource Agency (Kerala Adoption Agency) for the purpose of co-ordinating all matters concerning adoption within the State and in particular, to regulate inter-country adoption.

(2) The Kerala Adoption Agency shall consist of the following members;

(a) a non-official Chairman to be nominated by the State Government;

(b) one representative from the Indian Council of Child Welfare to be nominated by it;

(c) one representative from the State Council of Child Welfare to be nominated by it;

(d) five representatives of recognized Kerala Agencies, one from each of the five regions in Kerala to be nominated by the State Government;

(e) five representatives of recognized Placement Agencies, one from each of the five regions in Kerala to be nominated by the State Government;

(f) One representative each from the Department of Home, Department of Communication and the Department of Women and child Development of the Government of Kerala;

(g) An officer of the rank of a Deputy Secretary to the Government of Kerala who shall be the Secretary and the Executive Officer of the Agency.

(3) The term of office of the representatives of the recognized agencies shall be for a period of two years from the date of their nomination on a rotational basis in such manner as may be prescribed and shall not be eligible for re-nomination for the next succeeding period of two years.

(4) The appointment of the Chairman shall be in an honorary capacity for two years, but the Executive Officer shall be whole time and shall hold office for a tenure of five years from the date of his appointment.

(5) Subject to the above provisions, the terms and conditions of service of the Chairman, Members and Executive Officer shall be such as may be prescribed.

(6) The Kerala Adoption Agency shall constitute a Committee to exclusively look after the promotion of in-country adoption and advice the Kerala Adoption Agency on policies and programmes for this purpose.

(7) The Kerala Adoption Agency shall appoint such officers and other staff to carry out the functions conferred on it by this Chapter.

(8) The State Government shall pay to the Kerala Adoption Agency such sums of money as may be necessary for the administration of the agency and for the performance of its functions under this Chapter.

(9) The Kerala Adoption Agency shall maintain its accounts in the manner prescribed by the Accounts and Auditor-General and shall be audited in such manner as may be specified by him.

(10) The Kerala Adoption Agency shall, subject to the approval of the State Government, frame its own regulations and by-laws for the performance of its functions under this Chapter.

63. Functions of Kerala Adoption Agency.

The functions of the Kerala Adoption Agency shall be as follows:

(a) act as clearing house of information with regard to children in Kerala available for inter-country adoption and in-country adoption;

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(b) recognize and maintain a list of foreign and Voluntary Agencies for inter-country adoption operating in the State and publishing the same once in every year in three leading dailies circulating in the State; one in the English language, the other two in the Malayalam language and send this list to all the State Governments authorities, High Court, recognized foreign and Indian agencies, the Indian missions abroad and Passport Officers in India;

(c) recognize and maintain a list of Placement Agencies and send this list to the State Governments authorities, High Court, recognized foreign and Indian agencies;

(d) maintain a close liaison with Indian diplomatic missions abroad in order to safeguard the interests of children of Kerala origin adopted by foreign parents, against neglect, maltreatment, exploitation or abuse and to maintain unobtrusive watch over the welfare and progress of such children;

(e) monitor the adoption programme within the State and coordinate the activities of Placement Agencies and Voluntary Agencies;

(f) encourage and promote placement of eligible children for adoption to families within the country or guardianship with foreign families;

(g) formulate suitable rules, apart from the rules made under other Acts in order to maintain certain minimum standards for child care in child welfare institutions;

(h) form an advisory committee on adoption which shall have due representation to the Government, Placement Agencies, Voluntary Agencies and experts in the field of social and child welfare and specify their functions, periodicity of the meetings and other matters necessary for monitoring adoptions made within the State.

(i) to receive lists of all eligible children for adoption from all agencies within its jurisdiction;

(j) to maintain a register of all prospective adoptive parents;

(k) to coordinate the work of all the agencies within the State;

(l) to give clearance for inter-country adoption of children;

(m) such other functions as are required to be performed by Kerala Adoption Agency under the provisions of this Chapter, or may be prescribed.

64. Recognition of Placement Agencies and Voluntary Agencies.

(1) The Kerala Adoption Agency shall, after appropriate inspection and verification, recognize, register and maintain a list of all Placement Agencies operating in the State.

(2) Every recognized Placement Agency shall regularly maintain a list of all prospective adoptive parents in India containing their names, address and data for taking a child in adoption and other relevant details.

(3) The Kerala Adoption Agency shall separately after proper inspection and verification recognize, register and maintain a list of Voluntary Agencies operating in the State.

(4) The Kerala Adoption Agency shall identify those Child Welfare Agencies which have children who are legally available for adoption.

65. Formalities to be observed by the Child Welfare Agency receiving children.

(1) All children admitted to any Child Welfare Agency shall be entered in an admission register with all the information available in the form specified by the Kerala Adoption Agency.

(2) Every Child Welfare Agency receiving a child for care and maintenance shall try to locate the natural parents and restore the child to them.

(3) The Child Welfare Agency shall keep a separate file for each child received by it and prepare a child study report if the child is legally available for adoption as per the details prescribed.

(4) Where a child in need of care is received by the institution without a recommendation from the Child Welfare Board or through direct surrender by the natural parents, the institution shall file a First Information Report to the Police Station and to the Child Welfare Board operating within its jurisdiction within twenty four hours of the receipt of the child.

(5) The Child Welfare Board shall, within six weeks from the date of receipt of a report from the institution under sub-section (4), pass a release order directing the child free for adoption.

(6) The Child Welfare Agency shall also ensure that the child has been subject to medical examination and necessary treatment shall be given to him.

(7) If the Child Welfare Agency that received the child is not recognized as a Placement or Voluntary Agency it shall inform the availability of the child for adoption to the Kerala Adoption Agency or a recognized Placement or Voluntary Agency.

66. Surrender of a child.

(1) In the case of a surrender of a child by a natural parent, it should be evidenced by a properly stamped surrender document signed by the natural parent, and authenticated by two witnesses known to the Child Welfare Agency.

(2) Any preference given by the natural parent for upbringing the child on any religious persuasion, shall be respected and the parent has the right to redeem the child within ninety days from date of execution of the surrender deed.

(3) The Child Welfare Agency shall also try to convince the natural parent of the advantages of keeping the child in the family instead of surrendering it.

67. Procedure to be followed by institutions undertaking adoption.

(1) No Child Welfare Agency shall engage in the work of in-country adoptions unless it is recognized as a Placement Agency by the Kerala Adoption Agency under this Chapter.

(2) No Child Welfare Agency shall engage in the work of inter-country adoption unless it is recognized as a Voluntary Agency by the Kerala Adoption Agency.

(3) Every Child Welfare Agency referred to in sub-section (1) or (2) receiving a child for care and maintenance shall try to locate the natural parents and restore the child to them.

(4) Where it is not possible to locate the natural parent or to persuade such parents to take back the child under sub-section (3), the institution shall first try to place the children in adoption with any Indian family.

(5) Every Placement and Voluntary Agency shall inform the Kerala Adoption Agency the list of children available for adoption.

(6) For the purpose of giving the child in adoption to Indian parents, the institution shall send the full details of the children to prospective parents, except the names and addresses of the natural parent, and also inform the Kerala Adoption Agency about the availability of the child for adoption to an Indian family.

(7) Where it is not possible for the Kerala Adoption Agency to locate an Indian family for taking a child in adoption, within sixty days of the receipt of the information from the institution, it shall give a certificate of its inability to locate an Indian family and recommend that the child may be placed for consideration for inter-country adoption and issue a no objection certificate that the child may be considered for inter-country adoption.

(8) It shall be the endeavour of all the institutions to place at least fifty per cent of the children they receive for adoption with Indian families and the children available for inter-country adoption shall first be placed with the Indian families abroad and then to families consisting of one parent of Indian or in and lastly to foreign parents.

(9) Every institution shall keep a record of its efforts to place children in adoption with an Indian family and indicate the reasons for its failure to do so.

68. Procedure for in-country adoption.

(1) Any Indian eligible to make adoption under this Chapter may make a request to the Kerala Adoption Agency or Placement Agency for the adoption of a child from Kerala.

(2) Where the Kerala Adoption Agency receives an application referred to in sub-section (1) or that it had been sent directly to a recognized Placement Agency, it shall authorize any Placement Agency or as the case may be, the Placement Agency which receives the application directly to process the application.

(3) The Placement Agency receiving an application under sub-section (1) and authorized to process the application under sub-section (2) shall after registering the name of the prospective adoptive father in a register, conduct a Home Study or Family Assessment as prescribed and if it comes to a conclusion that the child could be placed with the Indian parent apply to the Kerala Adoption Agency for issue of no objection certificate.

(4) After receiving the no objection certificate from the Kerala Adoption Agency within six months, the Placement Agency shall forward all the documents along with a photograph of the child to the Indian parents for approval.

(5) After the receipt of the approval of the Indian parent to the adoption of the child identified by the Placement Agency under their custody, the Agency after informing the approval to the Kerala Adoption Agency proceed with the steps to obtain a guardianship order from the competent Court.

(6) All expenses of the Placement Agency relating to the adoption of the child shall be met by the Kerala Adoption Agency.

69. Procedure for inter-country adoption.

(1) Where a foreign family proposes to adopt a child from Kerala, it shall send an application through a recognized foreign agency in that country to the Kerala Adoption Agency along with such documents as may be prescribed, including the Home Study Report and notarized by a Notary Public whose signature shall be attested by such officers of the Indian Mission of that country in such manners as may be prescribed:

Provided that where there is no agency recognized by a country or there is no Indian Mission in any country, the application shall be forwarded through the Government of that country:

Provided further that it shall be open for the recognized foreign agency to send the application along with all the documents and duly notrazied directly to a recognized Voluntary Agency.

(2) Where the Kerala Adoption Agency receives an application referred to in sub-section (1) or that it had been sent directly to a recognized Voluntary Agency, it shall authorize any Voluntary Agency or as the case may be, the Voluntary Agency which receives the application directly to process the application.

(3) The Voluntary Agency receiving an application under sub-section (1) and authorized to process the application under sub-section (2) shall after registering the name of the prospective adoptive father in a register, examine the Home Study Report of the prospective foreign adoptive parents with a child study report it has, and if it comes to a conclusion that the child could be placed with the foreign parents apply to the Kerala Adoption Agency for issue of no-objection certificate:

Provided that no such clearance is needed to a child for whom a no objection certificate has already been issued under sub-section (8) of Section 69 and it is sufficient to inform the decision:

Provided further that in the case of a differently abled child or a child which needs immediate medical treatment, a medical certificate from the hospital giving the treatment alone would be sufficient and it shall not be necessary either to wait for the clearance from the Kerala Adoption Agency.

(4) The Kerala Adoption Agency on receipt of a request as per sub-section (3) shall issue a no objection certificate recommending the child for inter-country adoption within sixty days, if it fails to locate an Indian family for taking the child in adoption.

(5) After receiving the no-objection certificate from the Kerala Adoption Agency, the Voluntary Agency shall forward all the documents along with a photograph of the child to the foreign parents for approval.

(6) After the receipt of the approval of the foreign parent to the adoption of the child identified by the Voluntary Agency under their custody, the Agency after informing the approval to the Kerala Adoption Agency proceed with the steps to obtain a guardianship order from the competent Court.

(7) All expenses of the Voluntary Agency relating to the adoption of the child shall be met by the Kerala Adoption Agency.

70. Power to make orders.

(1) The District Court exercising jurisdiction over the place where the child proposed to be adopted resides or kept in a children's home shall be the competent court to pass orders under this Chapter.

(2) The proposed adoptive father in India or the recognized Voluntary Agency in the case of inter-country adoption may make an application to the competent court for an adoption order, or as the case may be, a guardianship order, along with the necessary documents, including the no-objection certificate granted by the Kerala Adoption Agency, the approval of the prospective adoptive father in India or from abroad, the home study report and such other documents as may be prescribed:

Provided that if the no-objection certificate is not received within the specified period, the concerned agency shall furnish an affidavit to the effect that necessary application had been sent to the Kerala Adoption Agency in accordance with the procedure specified in this Chapter, and in such a case the Court shall proceed as if such certificate had been received.

(3) The District Court may, after such enquiry as it may deem fit, and after examining the persons concerned, if it is satisfied that the adoption will be in the best interest of the child and considering all the circumstances of the case, including the status of the adoptive father and other matters, pass an adoption order or a guardianship order, as the case may be, and issue a certificate in the prescribed form:

Provided that the Court may, before passing any such order, under this sub-section—

(a) be satisfied that every person or any institution whose consent is required under this Code, has consented to and understood the nature and effect of adoption or guardianship order;

(b) satisfy itself when the child is in the care and custody of a Child Welfare Agency, that the child is free for adoption, and for that purpose, the Court shall ensure that the Child Welfare Agency had taken proper consent of child's natural father or mother, or both, or of the guardian, as the case may be and they had understood that the effect of such consent shall be permanently to deprive them of their rights as parents;

(c) be satisfied that the child is properly committed to the Child Welfare Agency as per the provisions of this Code;

(d) satisfy itself that the order, if made will be in the best interest of the child;

(e) shall satisfy itself that the applicant has been properly evaluated by the institution or by way of interview and home visit through a process called "Home Study" or "Family Assessment";

(f) may recommend a suitable period for foster care, depending upon the circumstances of the case;

(g) may impose such terms and conditions like submission of follow up reports or otherwise as it may think fit and in particular may require the adopter by bond or otherwise to make such provision, if any for the child, as in the opinion of the Court is just and proper for the proper care and financial security of the child.

(4) In determining whether an order, if made will be in the best interest of the child, the District Court shall have regard, among other things, to the health and the financial condition of the applicant as evidenced, in such cases as may be prescribed, by the certificate of a registered medical practitioner or from a bank of financial institution, as the case may be.

(5) The District Court may where it considers it necessary, either on its own or on the application of any of the parties, by order, provide for the residence, care maintenance or any other provision of the child from the date of application till the child is taken with the adoptive family by the adoptive father or other person depending on the circumstances of each case.

(6) All the proceedings under this section before a District Court shall be in camera and every application shall, be disposed off within three months from the date of application.

71. Appeals.

(1) Any person aggrieved by an order of the District Court allowing or dismissing an application for an adoption or guardianship order may, within thirty days from the date of such order, prefer an appeal to the High Court.

(2) The High Court shall, subject to the provisions of this Code, have the same powers, jurisdiction and authority and follow the same procedure with respect to an appeal under this section as if the appeal were an appeal from an original decree passed by the District Court.

72. Effect of adoption order.

(1) An adoption order or guardianship order shall take effect on and from such date as may be specified therein by it or where an appeal has been preferred against such order, on such date as may be specified in the appellate order.

(2) When adoption order is made the child shall be deemed to be the child of the adopter or adopters and the adopter or adopters shall be deemed to be the parent or parents of the child as if the child had been born to that adopter or adopters in lawful wedlock for all purposes; provided that,

(a) it shall not be competent for the adopted child to marry any person whom the child could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child immediately before the date of adoption shall be subject to the obligations, if any, attaching to the ownership of such property including the obligation, if any, to maintain the relatives in the family of his or her birth;

(c) adopted children shall not be counted for any family planning measure.

(3) Notwithstanding anything contained in any other law, where the particulars relating to the birth of a child in respect of which an adoption order is made have been registered under any law relating to registration of births, the officer or authority for the time being empowered to give certified extracts of such particulars shall, upon an application made by or on behalf of the child and upon being satisfied that the adoption order in respect of the child has taken effect, issue or cause to be issued a certificate of such particulars setting out the names of the adoptive parents in place of the names of the natural parents of the child.

73. Follow up action on adoptions.

(1) The following actions shall be taken by the agency which processed an adoption under this Chapter, namely:—

(a) where any pre-placement foster care is needed, the foster care shall be regularly monitored and evaluated and a professionally trained social worker shall visit the family;

(b) six monthly reports in the prescribed forms by the Voluntary Agency concerned to Kerala Adoption Agency regarding the status of the child with regard to protection and care by the foreign family and his adoption in that country;

(c) the Voluntary Agency which processed the inter-country adoption shall see that the legal adoption in the foreign country is effected at the earliest for safeguarding the best interest of the child;

(d) the Voluntary Agency referred in clause (c) shall keep in touch with the foreign family for a period or three years even after the legal adoption and send yearly reports about the condition of the child to the Kerala Adoption Agency;

(e) the adoptive parents shall be provided with counseling by the said agency;

(f) where the agency referred to in clause (c) is not satisfied with the treatment meted out to the child by the foreign adoptive parents, it shall after counseling the Kerala Adoption Agency take steps to cancel the adoption order and place them with another family either in India or abroad.

74. Special provision for protection of adopted children.

(1) The District Court –

(i) upon receiving from any person an application in the prescribed form in this behalf, or

(ii) upon a report by any officer authorized in this behalf by the State Government, or

(iii) upon its own knowledge or information, may, by notice, require the parent of a child adopted under this Code to produce such child if the Court has reason to believe that the Child—

(a) is habitually neglected or subject to cruelty, or

(b) lives or is made to live by begging; or lives or is made to live in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child, or is sexually abused; or

(c) frequents or is allowed to frequent the company of any prostitute, or of any smuggler, thief or other criminal; or

(d) has been or is being or is likely to be taken out of India for any immoral purpose or for any purpose detrimental to his welfare and interests; or

(e) has taken to criminal activities, indulges in drugs or alcoholic abuse; or

(f) in the event of the death of both the adoptive father and mother or of a single parent who is the sole adopter; and may if it is satisfied that the revocation of the adoption is in the best interest of the child revoke such adoption.

Explanation.—For the purpose of clause (a), cruelty in relation to an adopted child includes any undue discrimination between him and his brothers or sisters in the adoptive family in the matter of care, maintenance, training, education, provision on money or property or in any matter connected with the physical, emotional or moral well-being of the child.

(2) Where the revocation of an adoption is made under sub-section (1), the Court shall either recommit the child to the concerned placement agency or declare the child to be a ward of the Court.

(3) In the event of the death of both the adoptive mother and father, or of a single parent who is the sole adopter, the Court shall consider the Will, if any, made or wishes expressed by the parent or parents and take such measures, including the appointment of a guardian to the child, to ensure the lawful inheritance of the child.

75. Payment of costs.

(1) No payment shall be made to any Agency under this Code for the services rendered by it towards adoption, but reimbursement of the expenses specified in sub-sections (2) and (3) is allowed subject to the maximum fixed by the Court.

(2) The following expenses incurred by the concerned Placement Agency for in-country adoption shall be reimbursed, namely:—

(a) maintenance cost fixed by the Court from the date of approval of the child for adoption till the date of departure of the child from the institution;

(b) out of pocket expenses, administrative cost and service charges for preparation of child study reports, medical reports, legal expenses and conveyance charge as may be fixed by the court;

(3) The following expenses may be recovered by the recognized Voluntary Agency from the foreign adoptive patents, namely:—

(a) cost of surgical and medical treatment of the child against production of bills and vouchers duly certified;

(b) all the expenses incurred by the Agency in processing the adoption;

(c) cost of travel of the child from India to the receiving country and the cost of escort, if the foreign agency is not able to provide the escort;

(d) the cost of repatriating the child to India, if there is any failure of adoption and if no alternative arrangements are made by the recognized foreign Agency with the concurrence of the Indian Agency.

76. Consent.

An adoption order in respect of a child shall not be made:—

(a) in any case, except with the consent of the person who is his parent or guardian; or

(b) where the child is in the care of an institution, except with the consent of the institution:

Provided that the District Court may dispense with the guardian's consent, if it is satisfied that the guardian—

(i) has abandoned, neglected or persistently ill-treated the child or has persistently failed, without reasonable cause, to discharge the obligations of a guardian of the child; or

(ii) cannot be found.

(c) Any consent to an adoption of a child given under this section shall not be withdrawn except with the permission of the District Court.

77. Penalties.

Any person who contravenes any of the provisions of this Chapter or any of the rules made thereunder relating to the processing of application for adoption or contravene any of the requirements specified in this Chapter the person committing such contravention shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both and where such contravention or failure is by the willful default of any Agency, the Court may, in addition to the awarding of punishment to the officers of the Agency responsible for the contravention, order the cancellation of the recognition given to the Agency under this Chapter.

78. Power of State Government to make rules.

(1) The State Government may by notification make rules to carry out the provisions of this Chapter.

(2) The rules made under sub-section (1) may provide for—

(a) the recognition of Placement Agencies for processing in-country adoption, and forwarding of applications for inter-country adoption to the Voluntary Agency, period of its validity, the reasons on the happening of which such recognitions shall be cancelled, the renewal of such recognition and other matters;

(b) such other matters which are required to be, or may be, prescribed.

CHAPTER X
JUVENILE IN CONFLICT WITH LAW

79. Juvenile Justice Board.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall with in one year of the commencement of this Code, by notification in the Official Gazette, constitute for a district specified in the notification, a Juvenile Justice Board for exercising the powers and discharging the duties conferred or imposed on such Board in relation to juveniles in conflict with law under this Chapter.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if—

(i) he has been found guilty of misuse of power vested under this act,

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,

(iii) he fails to attend the proceedings of the Board consecutively for three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

80. Procedure, etc. in relation to Board.

(1) The Board shall meet at such times and shall, observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A juvenile in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate, shall prevail.

81. Powers of Juvenile Justice Board.

(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Code, have power to deal exclusively with all proceedings under this Chapter, relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Code may also be exercised by the High Court and the Court of Session, when the proceedings comes before them in appeal, revision or otherwise.

82. Procedure to be followed by a Magistrate not empowered under this Chapter.

(1) When any Magistrate not empowered to exercise the powers of a Board under this Chapter is of the opinion that a person brought before him under any of the provisions of this Code (other than for the purpose of giving evidence), is a juvenile or a child, he shall without any delay record such opinion and forward the juvenile or the child, and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

83. Procedure to be followed when claim of juvenility is raised before any court.

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence; the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Chapter and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Chapter.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

84. Apprehension of juvenile in conflict with law.

(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government may make rules consistent with this Chapter to provide,—

(i) for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) the manner in which such juvenile may be sent to an observation home.

85. Control of custodian over juvenile.

Any person in whose charge a juvenile is placed in pursuance of this Chapter shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.

86. Bail of juvenile.

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

87. Information to parent, guardian or probation officer.

Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform—

(a) the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

88. Inquiry by Board regarding juvenile.

(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Chapter and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

89. Order that may be passed regarding juvenile.

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,—

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counseling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law :

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

90. Order that may not be passed against juvenile.

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period of imprisonment to which the Juvenile Court has been sentenced for the offence committed.

91. Proceeding under Chapter VIII of the Code of Criminal Procedure not applicable against juvenile.

Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code.

92. No joint proceeding of juvenile and person not a juvenile.

(1) Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

(2) If a juvenile is accused of an offence for which under Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

93. Removal of disqualification attaching to conviction.

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Code shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

94. Special provision in respect of pending cases.

Notwithstanding anything contained in this Chapter, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Chapter comes into force in that area, shall be continued in that court as if this Code had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Code as if it had been satisfied on inquiry under this Code that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of Section 88, even if the juvenile ceases to be so on or before the date of commencement of this Code and the provisions of this Chapter shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

95. Prohibition of publication of name, etc., of juvenile involved in any proceeding under the Code.

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Code shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

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(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.

96. Provision in respect of escaped juvenile.

Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed under this Code, and shall be sent back to the special home or the observation home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary under the provisions of this Code.

CHAPTER XI
OFFENCES AND PENALTIES

97. Penalty for child battering at school.

Whoever gives the punishment of child battering at School shall be punishable with fine which may extend to one hundred rupees.

98. Penalty for servant of municipality etc. for not doing certain things.

Whoever, being an officer of a Municipality or a Panchayat duly authorized in this behalf, or a member of a registered non-governmental organization, fails without reason or cause, to persuade persons living within his jurisdiction to send children of school going age to a Higher Secondary school shall be subjected to disciplinary action by the concerned authority and if the offence is directly attributable to a member of the said organization, the registration of the organization shall also be liable to be cancelled.

99. Penalty for failure to keep record of attendance at Schools or about dropouts.

Whoever fails to keep a record of the attendance at school or dropouts from the school especially girl children shall be punishable with fine which may extend to one thousand rupees.

100. Punishment for female foeticide.

Whoever commits female foeticide shall be punishable with imprisonment for a term which may extend to ten years or with fine which may extend to ten thousand rupees or with both.

101. Penalty for not equipping primary health centres with medicines or medical personnel.

Where any primary health centre is not equipped with necessary medicines or the medical personnel to attend patients, the officers responsible for such omission shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

102. Punishment for cruelty to children.

Whoever, having the actual charge of, or control over, a child assaults, abandons, exposes or willfully neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both.

103. Employment of children for begging.

(1) Whoever employs or use any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, control over, a child abets the commission of the offence punishable under sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

104. Employment of Children below the age of fourteen.

Whoever employs any child below the age of fourteen of any work shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

105. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance etc., to a child.

Whoever gives, or cause to be given, to any child any intoxicating liquor or any substance for smoking in a public place or any narcotic drug or psychotropic substance except upon the order of a duly qualified medical practitioner in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

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106. Exploitation of juvenile or child employees.

Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.

107. Alternative punishments.

Where an act or omission constitutes an offence punishable under this Code and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provide for a punishment which is greater in degree.

108. General provision for disobedience of orders.

Whoever contravenes any provision of this Code or of any rule, regulation or scheme or of any order made thereunder for the contravention of which no penalty is provided hereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

109. Enhanced penalty after previous conviction.

If any person who has been convicted of an offence punishable under any of the foregoing provisions is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be liable for each subsequent conviction with double the punishment to which he would have been liable for the first conviction of such provision.

110. Power to compound offences under the Code

(1) Any officer of the State Commission or of a Municipality or Panchayat duly authorized by it by general or special order in this behalf, may either before or after the institution of any proceedings, compound any offence made punishable by or under this Code.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

111. Cognizance of offences.

The offences punishable under Sections 93, 94 and 96 shall be cognizable.

CHAPTER XII
THE CHILDREN'S COURT

112. Constitution of Children's Court.

For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court for each district, a Court of Session to be a Children's Court to try the said offences.

113. Appointment of Public Prosecutors etc.

For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER XIII
MISCELLANEOUS

114. Code in substitution of the provisions in other Acts.

(1) The provisions of this Code shall replace all the existing provisions of any law relating to juvenile or child for the time being in force in the State of Kerala.

(2) In case any of the provision of any existing law or rules conflict with the provisions of this Code, the provisions of this Code shall have predominance over the existing laws as far as the State of Kerala is concerned.

115. Protection of action taken in good faith.

No suit or other legal proceedings shall lie against the State Commission, or State Government, Municipality or Panchayat or any probation officer or other officers appointed under this Code or a member or a representative of a registered non-governmental organization in respect of anything which is in good faith done or intended to be done in pursuance of this Code or of any rules or regulations or orders or schemes made thereunder.

116. Power to delegate.

The State Government or the State Commission may, by general or special order direct that any power exercisable by it under this Code (other than the power to make rules or regulations) shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to that Government or Commission.

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117. Officers deemed to be public servants.

Every member of the State Commission, officer or other persons authorized by the State Commission, any officer of the State Government, Municipality or Panchayats or officer of such Government, Municipality or Panchayat, authorized to perform any functions under this Code shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

118. General power of the State Government to make rules.

(1) The State Government shall, by notification, make rules to carry out the provisions of this Code.

(2) In particular and without prejudice to the generality of the foregoing power, such rules or regulations shall provide for or any of the following matters, namely,

(a) the procedure to be followed by the Committee appointed by the State Government under sub-section (1) of section 4 for the preparation of a panel for the posts of Chairperson and members of the commission under sub-section (2) of section 3;

(b) the salaries and allowances and the other terms and conditions of service of the Member under section 8;

(c) the condition subject to which other administrative, technical and scientific staff may be appointed by the State Commission under sub-section (2) of section 11;

(d) the conditions subject to which the State Commission may borrow on the security of the Fund or any other asset under section 22;

(e) the form in which the annual statement of accounts is to be prepared by the State Commission under sub-section (1) of section 23;

(f) the form in which, and the period within which manufacturers of infant food, milk substitutes and teats are required to furnish statistical and other information under section 24;

(g) the form in which and the manner in which returns; statements and other particular with regard to proposed and existing programmes for the promotion and development of the interests of children under sub-section (1) of section 25;

(h) the form in which and the date before which, the State Commission shall give a true and full account of its activities, policies and programmes during the previous financial year;

(i) such other matters which are required to be, or may be, prescribed.

119. Power of State Commission to make regulations.

The State Commission, may, by notification, and subject to the rules made by the State Government and with the approval of that Government, make regulations to provide for all or any of the following matters, namely,

(a) the procedure to be followed for the conduct of meeting of the State Commission under sub-section (2) of section 10;

(b) the salaries, allowances and other terms and conditions of service of the officers and staff of the State Commission under sub-section (3) of section 11;

(c) the fees and the allowances payable to persons co-opted as members of the committee appointed by the State Commission under sub-section (1) of section 12 for attending the meetings of the Committee or any other work connected with the committee under sub-section (3) of the said section;

(d) such other matters which the State Commission may require to be specified by regulations.

120. Rules and regulations to be laid before the State Legislatures.

Every rule or regulation made by the State Government or the State Commission shall be laid as soon as may be after it is made, before the State Legislature.

121. Repeals and savings.

If there is in existence immediately before the date on which this Code comes into force in the State, any law corresponding to this Code that law shall stand repealed on that date:

Provided that the repeal shall not affect —

(i) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

The Kerala Children's Code Bill

Statement of Objects and Reasons

As the title of the Bill itself indicates, the Bill has been prepared with the avowed object of consolidating and codifying all the existing provisions in India relating to protection of the rights of the child of any category juvenile, differently abled and children either abandoned or neglected, applicable to the State of Kerala and to provide new rights and obligations to various functionaries constituted or working under the existing enactments in force for the over all development of all kinds of children in the State of Kerala. The reason for attempting a complete code is that if every relevant provision dealing with a particular subject is made available in one and the same statute it can be implemented more effectively and with ease.

Another important object and reason for recommending the Bill is the need felt by the commission for incorporating stringent provisions to prevent the sex abuses and all other kinds of serious abuses and atrocities perpetrated on children of both sexes especially girl child. In the changed social set up there is need for having strict provisions to prevent such immoral and obnoxious practices and to deal with the offenders in an exemplanary manner. With this object in mind special provisions have been incorporated in the Bill.

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THE KERALA ENVIRONMENTAL COURTS BILL

A

BILL

for the establishment of Environmental Courts for effective and expeditions disposal of cases on environmental matters;

Preamble.—WHEREAS it is considered necessary to establish Environmental courts for the effective and expeditious disposal of cases on environmental matters;

Be it enacted in the Fifty ninth year of the Republic of India as follows:

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Environmental Courts Act ____

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into force on such date as may be notified by the Government.

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

(a) "Environmental Court" means the Court constituted under Section 3.

(b) "Environmental Expert" means a person having knowledge and experience in any of the matters affecting environment.

(c) "Prescribed" means prescribed by rules made under this Act.

3. *Constitution of Environmental Court.*—(1) the Government shall, in consultation with the High Court of Kerala constitute environmental courts in each of the revenue districts.

(2) The Environmental Court shall consist of the following members, namely,

(a) A Judicial Magistrate not below the rank of a Chief Judicial Magistrate who shall be the Presiding Officer.

(b) Such number of environmentalists as may be decided by the Presiding Officer, from the panel of environmentalists prepared under Section 4, who shall be members of the Court.

4. *Preparation of panel of Environmentalist.*—(1) Government shall constitute a Committee consisting of the following members, for the selection and preparation of a panel of environmentalists, namely:

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(a) A sitting judge of the High Court, nominated by the Chief Justice,

(b) Chief Secretary to the Government of Kerala,

(c) An expert in environmental matters.

(2) The Committee constituted under sub-section (1) may decide the procedure and the method of selection of environmentalists for the preparation of the panel.

(3) The Committee shall prepare the panel of environmentalists taking into consideration of the number of Courts to be constituted and the number of experts in different fields of environment necessary to be included in the panel.

5. *Jurisdiction of Environmental Courts.* — (1) Notwithstanding anything contained in any other law for the time being in force, the environmental courts shall have jurisdiction to try all the offences under the Acts specified in the Schedule to this Act.

(2) The Environmental Court shall have jurisdiction to make conciliatory efforts to settle environmental matters.

(3) While trying the cases under the provisions of this Act, the Environmental Court shall be guided generally by the procedural provisions contained in the code of Criminal ProcedureAct,1973 (Central Act 2 of 1974); but shall not be strictly bound by it. The Court may adopt such procedure in keeping with the principles of natural justice and fair play with a view to avoid procedural delays.

(4) No conviction shall be interfered with solely for violation of any of the procedural provisions in the code of Criminal Procedure Act, 1973 (Central Act 2 of 1974) unless it is shown that such violation has resulted in gross injustice to any of the affected parties.

(5) The decision of the court may either be a unanimous decision or a majority decision.

(6) In cases where the court is not in a position to reach either unanimous or majority decision, the decision taken by the presiding judge shall be treated as the decision of the court. Members may record their views independently if found necessary.

(7) On pronouncing its decision, a copy of the judgment shall be supplied to the parties free of cost.

(8) The aggrieved party may prefer an appeal to the High Court against any final decision of the environmental court within 30 days from the date of order.

(9) The decision of the High Court shall be final.

6. *Service Conditions of Presiding Officers and Members.*— The service conditions of the Presiding Officer shall be that of a Chief Judicial Magistrate in the service and that of the Members shall be as may be prescribed by Government.

7. *Power to make rules.*—(1) The Government may by notification in the Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this section, shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

SCHEDULE

Central Acts

1. The Mines Act, 1952 (35 of 1952)
2. The Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).
3. Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).
4. Forest (Conservation) Act, 1980 (69 of 1980).
5. Environment (Protection) Act, 1986 (29 of 1986).
6. Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).
7. Public Liability Insurance Act, 1991 (6 of 1991).
8. Biological Diversity Act, 2002 (Act 18 of 2003).
9. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade, Commerce, Production, Supply and Distribution) Act, 2003(34 of 2003).

State Act

1. Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (18 of 2001).

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The Kerala Environmental Courts Bill

Statement of Objects and Reasons

The object for which and the reasons for recommending the new legislation is to materialize the judicial suggestion made in a judgement of the Supreme Court reported in **M.C. Mehta** vs. **Union of India and others** [1986(2) SCC 175]. To ensure peaceful and healthy life to the people it is essential that environment is protected to the maximum extent possible. Though there are laws both Central and State to protect environment from undue exploitation, more legal controls are essential for the proper preservation of environment. The Bill recommends the Constitution of a special court for entertaining and conducting prosecutions against persons who commits offences under the various Acts both Central and State included in the schedule to the Bill in a speedy and effective manner avoiding undue procedural delays.

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THE RIGHT TO JUSTICE FOR VICTIMS OF CRIMINAL INJURIES BILL

A

BILL

to provide assistance to victims of criminal injuries and crime and for that purpose to constitute Criminal Victim Assistance Authorities and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by its Resolution No.40/34 dated 29th November, 1985, adopted a Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, which among other things, provided as Basic Principles that criminal offenders should make fair restitution to Victims or their families and the State should provide monetary compensation to victims who suffer serious mental or physical injury for which a State fund should be set up in cases where compensation is not fully available from the offenders.

And WHEREAS Article 41 of the Constitution of India, which is included in Part- IV—Directive Principles of State Policy, enjoins that the State shall make effective provision for securing, among other things, the right to public assistance in cases of undeserved want;

And WHEREAS the existing laws do not adequately provide for assistance to victims of crimes;

BE it enacted in the fifty ninth year of the Republic of India.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called The Right to Justice for Victims of Criminal Injuries Act, ——.

(2) It extends to the whole of the State.

(3) it shall come into force on such date as the State Government, may, by notification, appoint.

2. *Definitions and Interpretation.*—(1) In this Act, unless the context otherwise requires—

(a) "Assistance" means the amount determined to be payable to a claimant by any of the Authorities under this Act, either in the form of financial assistance or by way of legal or medical aid, or in any other manner;

(b) "Authority" means any authority constituted under this Act to receive any claims for assistance under this Act;

(c) "Claimant" means any crime victim or a dependent thereof who applies for assistance under this Act;

(d) "Crime victims" means persons who, individually or collectively, have suffered personal injury or death as a result of:—

(i) crimes of violence such as culpable homicide, grievous hurt, assault, rape, robbery, dacoity, rioting, wrongful confinement, kidnapping, arson, terrorist attacks, dowry related crimes including offences committed by public servants;

(ii) a good faith effort by the victim to prevent the commission of the crime; and

(iii) a good faith effort by the person to apprehend another, suspected of being engaged in committing a crime.

(e) "Dependent" means any individual who is, or had been, dependent, solely or otherwise on the crime victim for care, support and sustenance, and includes a spouse, the children or the parents of the crime victim;

(f) "District Authority" means a District Crime Victim Assistance Authority designated under Section 6;

(g) "Notification" means a notification published in the Official Gazette;

(h) "Person" means and includes an individual, group of individuals whether incorporated or not any institution, or organisation, or any other entity by whatever name called;

(i) "Prescribed" means prescribed by rules made under this Act;

(j) "Regulation" means a regulation made under this Act;

(k) "Scheme" means any scheme framed by the State, or district Authority for the purpose of giving effect to the provisions of this Act;

(l) "State Authority" means a State Crime Victim Assistance Authority designated under Section 3;

(2) Any reference in this Act to any other enactment or any provision thereof in relation to an area in which such enactment or provision is not in force shall be constructed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

(3) Where any question arises as to the interpretation of any of the provisions of this Act, it shall be construed liberally and in favour of the crime victim or his dependent.

CHAPTER II

STATE CRIME VICTIMS ASSISTANCE AUTHORITY

3. *Designation of State Legal Services Authority to be State Authorities.*— State Government shall designate the State Legal Services Authority constituted under the Kerala State Legal Service Authorities Act, 1987 in this State also to be the State Crime Victims Assistance Authority under this Act to exercise the powers and perform the functions conferred on a State Authority under this Act.

4. *Functions of the State Authority.*—The State Authority shall perform all or any of the following functions, namely –

(a) give assistance to crime victims or their dependents who satisfy the criteria laid down under this Act;

(b) frame scheme or schemes for the effective rendering of assistance under this Act;

(c) conduct such research or other special studies as it may consider necessary in the field of victim assistance generally;

(d) perform such other functions as the State Government may confer by notification or regulation to it from time to time.

5. *State Authority to act in coordination with other agencies and be subject to the directions given by the Government etc.*—In the discharge of its functions under this Act, the State Authority shall, wherever appropriate, act in coordination with other Governmental agencies, and non-Governmental voluntary social welfare institutions, agencies and other persons engaged in rendering assistance to crime victims and be guided by such directions as the State government may give to it in writing.

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6. *Designation of District Authorities.*—State Government shall designate the District Legal Services Authority constituted under the 1987 Act for a District to be the District Crime Victim Assistance Authority for that District to exercise the powers and perform the functions conferred on a District Authority under this Act.

7. *Functions of the District Authority.*—(1) It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.

(2) Without prejudice to the generality of the functions referred to in sub-section (1), the District Authority may perform all or any of the following functions, namely,

(a) Co-ordinate the activities of crime victim assistance in the District;

(b) Implement the scheme or schemes framed by the State Authority under this Act;

(c) Perform such other functions as the State Authority may in consultation with the State Government, fix by regulations.

8. *District Authority to act in coordination with other agencies and be subject to directions given by the State Authority.*—In the discharge of its functions under this Act, a District Authority, shall wherever appropriate, act in coordination with other Governmental and non-Governmental institutions, Universities and others engaged in the work of rendering assistance to crime victims and shall also be guided by such directions as the State Authority may give to it in writing.

CHAPTER III

QUALIFICATIONS FOR ASSISTANCE

9. *Eligibility for Assistance.*—(1) Every crime victim or his dependent shall be qualified to receive such assistance, either in the form of financial assistance or by way of legal or medical aid or both, or in any other manner as may be determined by the Authority, after satisfying itself that the death occurred or injury suffered by a crime victim is a direct consequence of crime irrespective of whether a conviction has been recorded by a court, in accordance with the principles specified in the schedule and after taking into account the matters specified in sub-section (2).

(2) The Authority shall, while determining the assistance to be paid under this Act, take into account the following matters, namely:—

(a) the financial status of the crime victim or the dependent;

(b) any compensation received or receivable under any other law in respect of the same offence;

(c) the age of the crime victim or the dependent;

(d) the assistance rendered by the crime victim or the dependent in the filing of a complaint to the police or the investigation or trial of any proceedings in relation to the crime;

(e) any other act which, in the opinion of the Authority, makes it fair or unfair to order any assistance.

(3) Nothing in the foregoing provisions of this section shall prevent any Authority from exercising its inherent power to render any assistance in a fit case or order any interim assistance if it considers it necessary or expedient to do so.

10. *Details of application.*—(1) An application for getting assistance under this Act to the concerned Authority shall be made by the crime victim or dependent or any police investigating the case or any agency interested or doing voluntary service in rendering assistance to criminal victims in the prescribed form along with an affidavit made by him indicating such particulars as may be prescribed.

(2) The Authority shall in the determination of assistance take into account the matters specified in the affidavit unless it has reason to disbelieve such affidavit.

(3) Where an Authority decides to render assistance under this Act, it shall also decide the source which may also include the offender from which such assistance is to be given.

CHAPTER IV

FINANCE ACCOUNTS AND AUDIT

11. *State Fund for Crime Victim Assistance.*—(1) The State Authority shall establish a fund to be called the State Fund for Crime Victim Assistance and there shall be credited thereto:

(a) any grants or donations that may be made to the State Authority by the State Government or by any person for the purpose of this Act;

(b) any other amount received by the State Authority under the orders of any court or from any other source.

(2) The State Fund for Crime Victim Assistance shall be applied for meeting—

(a) the assistance payable under the provisions of this Act;

(b) any other expenses which are required to be met by the State Authority.

12. *District Fund for Crime Victim Assistance.*—(1) Every District Authority shall establish a fund to be called a District Fund for Crime Victim Assistance and there shall be credited thereto –

(a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;

(b) any grants or donations that may be made to the District Authority by any person for the purposes of this Act;

(c) any other amount received by the District Authority under the orders of any court or from any other source.

(2) The District Fund for Crime Victim Assistance shall be applied for meeting—

(a) the assistance payable under this Act;

(b) any other expense which is required to be made by the District Authority.

13. *Accounts and Audit.*—(1) The State Authority or the District Authority, as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance sheet in such form and in such manner as may be prescribed by the State Government in consultation with the Accountant General of the State.

(2) The accounts of the Authorities shall be audited by the Accountant General of State at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Accountant General of State.

(3) The Accountant General of State and any other person appointed by him in connection with the auditing of the accounts of an authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Auditor General of State has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authorities under this Act.

(4) The accounts of the authorities, as certified by the Accountant General of State or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually by the Authorities to the State Government.

CHAPTER V

MISCELLANEOUS

14. *Members and Staff of Authorities to be public servant.*—The Members of the State Authorities and the District Authorities, and officers and other employees provided to such Authorities shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

15. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or against the Chairman or any other member of any State or District Authority or any other person authorized by such Chairman or other member for anything which is in good faith done or intended to be done under the provisions of this Act or any rule, regulation or order made thereunder.

16. *Act to have overriding effect.*—Subject to the provisions of Section 17, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

17. *Act not to affect right conferred under other acts.*—Nothing in this Act shall be construed to preclude the right of the crime victim to apply for assistance under any law for the time being in force.

18. *Power of the State Government to make rules.*—A State Government may, by notification, make rules to provide for any matter, not being matter specified in Section 17, in respect of which rules are required to be made by the Central Government under this Act.

19. *Power to make regulations.*—The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters in respect of which regulations are required to be made by the State Authority under this Act.

20. *Power to make schemes.*—The State Authority may make one or more schemes in respect of matters for subsidy if schemes are required to be made under this Act and the rules made thereunder, to provide for all matters in respect of which regulations are required to be made by the State Authority under this Act.

21. *Laying of rules and regulations.*—(1) Every rule made under this Act by a State Government and every regulation made by a State Authority thereunder shall be laid as soon as may be after it is made, before the State Legislature.

22. *Power to conduct independent investigation.*—Nothing in this Act shall prevent any authority to make an independent investigation or inquiry by the members of the Authority or by any outside person to ascertain or verify the truth of any particular allegation in an application by a claimant.

23. *Consequential amendment to Act 2 of 1974.*—In Section 357 of the Code of Criminal Procedure, 1973:

(a) In sub-section (1)—

(i) In clause (b), for the words "recoverable by such person in a Civil Court", the words "required to be paid to such person" shall be substituted;

(ii) in clause (c), for the words and figures "who are, under the Fatal Accidents Act, 1855, entitled to recover damages", the words "who are, in the opinion of the Court, required to be paid compensation" shall be substituted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely :—

"(3) when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to any person, if it is of the opinion that such person has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(3A) Where an order for compensation has been made under this Section, the Court may direct the whole or any part of the compensation to be paid to any Crime Victim Assistance Authority established under the Right to Justice for Victims of Criminal Injuries Act, 2008.

THE SCHEDULE

[See Section 9 (1)]

1. Where a simple lump sum amount is payable to the eligible claimants as financial assistance; this amount is computed as per the following guidelines:

2. In cases of injury, the following guidelines are applicable:

(i) In Table A below, various injuries are listed out showing the percentage of disability caused by each injury. There are some injuries (Sl. Nos. 1 to 8 in the table), which are deemed to result in permanent total disability, that is 100% disability. There are many other injuries (Sl. Nos.9 to 65), which are deemed to result only in permanent partial disability for which different disability percentages are indicated.

(ii) The amount of compensation payable towards financial assistance payable to any person for each percentage point of disability is Rs. 5,000 (Five thousand rupees). In other words, the compensation payable under this head for 100% disability would be Rs. 5,00,000.

(iii) The maximum amount of financial assistance payable to an injured victim towards non-pecuniary losses shall be Rs. 5,00,000.

(iv) If a person suffers more than one listed injury in the same crime, then the disability percentages for all such injuries shall be aggregated for arriving at the total disability percentage, subject to a ceiling of 100%.

(v) The amount of financial assistance payable for an injury not specified in Table A, but which, in the opinion of the Authority, is such as to deprive a person of all capacity to do any work, shall be the maximum amount of Rs. 5,00,000 (Five lakhs rupees).

(vi) The amount of financial assistance in respect of any injury not specified in Table A, but which, in the opinion of the Authority, has resulted in any physical disability or pain and suffering or loss of amenities shall be such as the Authority may, after taking into consideration medical evidence and other circumstances of the case, determine to be just and reasonable.

(vii) If subsequent to the date of the award, the condition of the victim aggravates and he suffers new disabilities arising out of the original injuries, then he is entitled to claim the difference in financial assistance, subject to the condition that the total amount shall not exceed the maximum amount payable.

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(viii) Complete and permanent loss of the use of any limb or member referred to in Table A shall be deemed to the equivalent of the loss of that limb or member.

3. Death is deemed to be an injury that has caused 100% disability to the victim. So, in cases of death, a flat sum of Rs. 5,00,000 (Five lakhs rupees) is payable towards all injuries together as financial assistance.

TABLE A

PART I—Injuries Deemed to Result in Permanent Total Disability

Sl. No.	Description of Injury	Percentage of disability
1	Loss of both hands or amputation at higher sites	100
2	Loss of a hand and a foot	100
3	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4	Loss of sight to such an extent as to render the victim unable to perform any work for which eye sight is essential	100
5	Very severe facial disfigurement	100
6	Absolute deafness	100
7	Rape	100
8	Child Abuse	100

PART II – Injuries Deemed to Result in Permanent Partial Disability

AMPUTATION – UPPER LIMBS (Either Arm)

9	Amputation through shoulder joint	90
10	Amputation below shoulder with stump less than 20·32 cm. from tip of acromion	80
11	Amputation from 20·32 cm. from tip of acromion to less than 11·43 cm. below tip of olecranon	70
12	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11·43 cm. below tip of the olecranon	60

Sl. No.	Description of Injury	Percentage of disability
13	Loss of thumb	30
14	Loss of thumb and its metacarpal bone	40
15	Loss of four fingers of one hand	50
16	Loss of three fingers of one hand	30
17	Loss of two fingers of one hand	20

FRACTURES

18	Amputation of both feet resulting in end-bearing stumps	90
19	Amputation through both feet proximal to the metatarso-phalangeal joint	80
20	Loss of all toes of both feet through the metatarso-phalangeal joint	40
21	Loss of all toes of both feet proximal to the proximal interphalangeal joint	30
22	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
23	Amputation at hip	90
24	Amputation below hip with stump not exceeding 12·70 cm. in length measured from tip of great trenchanter	80
25	Amputation below hip with stump exceeding 12·70 cm. in length measured from tip of great trenchanter but not middle thigh	80
26	Amputation below middle thigh to 8·89 cm. below knee	60
27	Amputation below knee with stump exceeding12·70 cm. but not exceeding 12·70 cm.	50
28	Amputation below knee with stump exceeding12·70 cm.	50
29	Amputation of one foot resulting in end-bearing	50
30	Amputation through one foot proximal to the metatarso-phalangeal joint	50

Sl. No.	Description of Injury	Percentage of disability
31	Loss of all toes of one foot though the metatarso-phalangeal joint	20
32	Fracture of spine with paraplegia	50
33	Fracture of spine without paraplegia	30
34	Fracture of hip-joint	20
35	Fracture of pelvis not involving joint	10

LOSS OF TOES EITHER FOOT

36	Fracture of major bone-femur / tibia (both limbs)	20
37	Fracture of major bone-femur / tibia (one limb)	10
38	Fracture of major bone-humerus/radius / ulna (both limbs)	15
39	Fracture of major bone-humerus / radius / ulna (one limb)	8

OTHER INJURIES

40	Loss of one eye, without complications, the other being normal	40
41	Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal	30

LOSS OF FINGERS OF EITHER HAND

42	Thumb-Loss of terminal phalanx	20
43	Thumb-Guillotine amputation of the tip of the thumb without loss of bone	10
44	Index Finger - whole	14
45	Index Finger – Two phalanges	11
46	Index Finger – One Phalanx	9
47	Index Finger – Guillotine amputation of tip without loss of bone	4
48	Middle Finger—whole	12

Sl. No.	Description of Injury	Percentage of disability
49	Middle Finger – Two phalanges	9
50	Middle Finger – One phalanx	7
51	Middle Finger – Guillotine amputation of tip without loss of bone	4
52	Ring or little finger—Whole	7
53	Ring or little finger—Two phalanx	6
54	Ring or little finger—One phalanx	5
55	Ring or little finger–Guillotine amputation of tip without loss of bone	2
56	Great toe-through metatarso-phalangeal joint	14
57	Great toe – part, with some loss of bone	3
58	Any other toe – through metatarso-phalalgeal joint	3
59	Any other toe – Part, with some loss of bone	1
60	Any other two toes – through metatarso-phalangeal Joint	5
61	Any other two toes – Part, with some loss of bone	2
62	Any other three toes – through metatarso-phalangeal joint	6
63	Any other three toes – Part, with some loss of bone	3
64	Other four toes–through metatarso–phalangeal joint	9
65	Other four toes – Part, with some loss of bone	3

Statement of Objects and Reasons

Article 41 of the Constitution of India enjoins that the State shall make effective provision for learning, among other things, the right to public assistance in cases of underserved want. The existing laws do not adequately provide for assistance to victims of crimes. The innocent are made to suffer due to the Commission of a crime that deprives their means of livelihood once for all. Of course, the offenders may get

punished but the sufferings of the victims continue. It is to meet such extraordinary situations brought about due to no fault of the victims that the above Bill is proposed. The U.N. General Assembly has adopted a resolution to make offenders liable to restitution to the victims who suffer mental or physical injury and to compel the State to make effective provisions in this regard. Hence the Bill.

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THE KERALA INLAND FISHERIES AND AQUACULTURE BILL

A

BILL

To consolidate and amend the laws relating to Inland Fisheries in the State of Kerala and to provide for the sustainable development, management, conservation, regulation, protection, exploitation and disposal of Inland fish and fisheries and for the promotion and regulation of aquaculture in the State and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS it is expedient to consolidate and amend the laws relating to Inland Fisheries and aquaculture in the State of Kerala and to provide for the development, management, conservation, regulation, protection, exploitation and disposal of Inland fish and fisheries and for sustainable development of aquaculture in the State and for matters connected therewith or incidental thereto;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Inland Fisheries and Aquaculture Act, 2008.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

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

(1) "Adjudicator" means an officer not below the rank of Assistant Director of Fisheries Department as empowered and nominated by the State Government or any other officer nominated by name in all matters of disputes as per the provisions made under this Act;

(2) "aquaculture" means growing fishes by stocking them either naturally or artificially in any private or public water body or in any other aquatic environment;

(3) "aquaculture area" means an area notified under sub-section (1) of Section 4;

(4) "Aquaculture Seed Inspector" means Aquaculture Seed Inspector of the Fisheries Department appointed under sub-section (6) of Section 30;

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(5) "Aqua farm" means a place with water body used for aquaculture owned by a person or a group or an association or company in public or private sector;

(6) "authorised officer" means such officer of the Fisheries Department, not below the rank of an Assistant Director of Fisheries as the Government may by notification in the Gazette, authorise in respect of the matter to which reference is made in the Act;

(7) "capture fisheries" means harvesting or removal of fish from natural or enhanced inland waters incorporates on the resources of the commons open to all unless otherwise restricted by the government;

(8) "co-operatives" means a group of people who have agreed voluntarily to work together for achieving a specific objective, through a variety of increasingly more formalizes structures to one, which is legally constituted according to the co-operative laws;

(9) "crafts & gear" means the devices such as boats, nets, traps etc. used for catching or harvesting of fish;

(10) "estuary" means a semi-enclosed coastal body of water, which has a free connection with the river and the open sea and within which seawater is measurably diluted with fresh water, derived from land drainage;

(11) "exotic species" means any species, a fauna or a flora, which is non-native to the country;

(12) "filtration" means a practice of trapping and holding natural stock of fish in any stage of its life cycle in the natural or artificial impoundments from the natural resources of sea, backwaters or rivers;

(13) "fisheries officer" means a person whom the Fisheries Department authorizes on its behalf, from time to time, to carry out or execute all or any specific provision of this Act;

(14) "fisherman" means any person engaged mainly in fishing operations for his livelihood;

(15) "fish" means finfish/shellfish, turtles, dolphins, all kinds of useful aquatic plants, amphibians, other animals and crustaceans besides their young ones and eggs;

(16) "fishing craft" means any vessel or boat engaged in fishing operations and includes a craft, country craft, canoe or any other device for moving in water for fishing operations;

(17) "fish seed" means stocking materials comprising various live stages of finfish, such as spawn, fry, fingerlings, juveniles and larval and post-larval stages of shell fish;

(18) "fishing operation" means catching fish by any means, mechanical or otherwise, and includes the collection of lime shell, shell fish or shanks and includes any type of filtration or aquaculture;

(19) "fishery" means any activity or occupation connected with conservation, development, regulation, protection, or exploitation of fish and fish products and includes the place or water area where such activity or occupation is carried on;

(20) "fish harvest" means removal of fish by any means from the aquaculture area for sale or for marketing;

(21) "fish sanctuary" means any area declared by notification under section 26 of this Act as a fish sanctuary;

(22) "natural lakes" means either a continuation of a river system or a depressed land mass located in flood plains of various river systems;

(23) "fixed engine" means any net, cage fishing fence, pen, anchor, tray or other contrivance fixed in the soil or made stationary in any other way in land or water for catching fish;

(24) "free net" means any net, cage, hook and line or other contrivance used for fishing other than a fixed engine;

(25) "inland fishery" means any fishery in public or private water body related to fresh and brackish water fishes or other fresh and brackish water resources of fishery value;

(26) "inland water" means any private or public water body or reclaimable area utilised or utilisable for any fishery activity within the State;

(27) "lake" means a large body of fresh water surrounded by landmass;

(28) "lessee" means the person or the body to whom a water body has been allotted;

(29) "licence" means granting permission to a person or a group of persons for carrying out specific job after charging an amount as fee;

(30) "open water ecosystem" means natural or man-made aquatic ecosystems, such as rivers, streams, canals, estuaries, lagoons, backwaters, mangroves, wetlands, reservoirs, lakes, etc.;

(31) "person" means a company, firm, institution, co-operative society or any association of individual;

(32) "prescribed" means prescribed by rules made under this Act;

(33) "private water body" means any water body or reclaimable area which is the exclusive property of any person or persons in which the person or persons have for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity;

(34) "ponds and tanks" means water body excavated or created to arrest the surface runoff through the raising of embankments for social or aquaculture or irrigation purposes. May be sunken or elevated or formed as barrages with high water turnover;

(35) "public water body" means any water body or reclaimable area including backwaters, rivers, lakes, ponds, tanks, canals including irrigation canals, reservoirs or streams owned by Government, local bodies, Boards or any other Government or quasi-Government institutions or organisations and includes territorial waters of the State;

(36) "reclaimable area" means any land, or swamp that can be developed or converted into a public or private water body by reclamation, renovation or construction;

(37) "reservoir" means an impoundment created on account of the damming across a river or a stream or such surface runoffs;

(38) "river" means a large stream of water flowing over the lad, draining water from the catchments to discharge into a large water body like sea or lake or lagoon;

(39) "State" means the State of Kerala and includes the territorial waters along the entire coast line of that State.

CHAPTER II

DEVELOPMENT, REGULATION AND PROTECTION

3. *Fishery or allied activity in the Government fishery waters.*—(1) The development and management of fishery or any other allied activity in the Government fishery waters shall be vested in the Department of Fisheries:

Provided that no fishery or other allied activity under this sub-section shall be conducted in a Government fishery waters used for drinking purposes, except and in accordance with the previous permission in writing of such officer of the Irrigation Department as may be specially authorised by the Government in that behalf.

Explanation.—For the purpose of this section all public water bodies including rivers, streams and associated waters, floodplain lakes, wetlands, reservoirs, canals, estuaries and lagoons, mangrove wetlands, backwaters, natural and manmade lakes (reservoirs) and their variants other than private water bodies and the water bodies owned by educational institutions affiliated to any university in the State shall be deemed to be the Government fishery waters.

(2) No person shall reclaim or convert or modify or develop any public water body for any purpose except with the permission in writing of such officer as may be determined by the Government in this behalf.

4. *Fishing activities in aquaculture areas.*—(1) The Government may, for the purpose of developing fisheries activities or for the general interests of fisheries sector, by notification in the Gazette, declare any public water body or other suitable areas as aquaculture area for exclusive fisheries activities.

(2) The Government may make rules for the utilisation, restriction, regulation and control of the fisheries activities in the aquacultural areas and for the protection of such areas from being used for any purpose other than that specified in sub-section (1).

5. *Control, regulation and ban on destructive crafts and gear.*—(1) The State shall not allow the use of non-prescribed gear of any kind for catching fingerlings, juveniles or larvae of fish, which affect the stock of species or are against the prescribed norms of responsible fishery, including minimum legal size of capture.

(2) Fishing crafts fitted with out-board motors affecting the ecosystem or fish biodiversity in any form shall be regulated or banned.

(3) Cross nets, such as stake-nets, etc., which encroach or affect the migratory pathways of fish and other organisms, shall be regulated to facilitate conservation of brood stock and auto-stocking.

(4) The authorized Fishery officer shall have the authority to monitor and check the type of crafts and gear that are used in open-water ecosystem for catching fish and imposing suitable penalty for violating the normal prescribed types, as mentioned under sub-sections (1), (2) and (3) above.

6. *Conservation of stock and resources.*—(1) The State shall notify closed season or fishing holidays in open-waters like rivers/ reservoirs/wetlands for a minimum of 60 days during breeding season of commercially important species such as Indian major carps to augment auto-stocking and wanton killing of fish juveniles as well as fish brooder stock.

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(2) The State shall prepare inventory of deep pools in various riverine stretches and ensure their protection and maintenance. These may be declared as protected areas and the active participation of fishermen, co-operatives, local panchayats and NGOs to conserve fish and other important biodiversity in such deep pools shall be encouraged.

(3) To protect the physical entity of wetlands/floodplain lakes, no person or body shall be allowed to obstruct the lateral connectivity of wetlands with rivers, especially during flooding, as it acts as the passage for the migration of fish brooders to wetlands for breeding and in turn the wetlands act as the natural nursery and feeding grounds for many important riverine fish species. Contravention of this provision shall be deemed to be a punishable offence.

(4) Encroachment or reclamation of rivers, lakes and wetlands, either for arable land or human habitation or any other purposes, which leads to colossal loss of aquatic resource and associated utility functions, shall be deemed as a punishable offence.

(5) The State shall ensure the protection of the interest of traditional fisherman using traditional crafts and gear.

7. *Untenable fishing practices in inland waters.*—(1) Wanton killing of fish juveniles, fish brooders and other organisms, which otherwise have economic, aesthetic or biodiversity significance, and affects the fishery, shall be treated as cognizable offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees or with both.

(2) Wanton killing of fish and associated fauna using poison of plant origin or synthetic dynamite, electric fishing and any other destructive method in open waters shall be treated as a cognizable act and shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

(3) Establishment of compartments or structures of any form, such as earthen embankments, bamboo screens, etc. which obstruct or restrict the movement of fish in any form within the lake/wetland/estuary/lagoon, shall be deemed as a cognizable offence except otherwise done in public interest.

CHAPTER III

REGISTRATION AND GRANT OF LICENCE

8. *Using of fishing craft, free net or fixed engine without registration.*— (1) No person shall use or cause or permit to be used any fishing craft or free net or fixed engine for the purpose of fishing operations unless he has a valid certificate of registration obtained in accordance with the provisions of this Act and rules made thereunder.

(2) No person shall undertake aquaculture or filtration in the inland water without a valid certificate of registration obtained under the provisions of this Act and the rules made thereunder.

9. *Registration of fishing craft, fixed engine, free net, aquaculture or filtration.*—(1) Subject to the provisions of this Act and the rules made thereunder, every owner of a fishing craft or fixed engine or free net and every person intending to undertake aquaculture or filtration shall apply for registration to the authorized officer under whose jurisdiction the fishing craft or free net or fixed engine is to be used or the aquaculture or filtration is to be undertaken.

(2) Every application for registration shall be in such form, and shall contain such particulars and accompanied by such fees as may be prescribed.

(3) Every application for registration of a fishing craft or fixed engine or free net shall be made to the authorised officer before the expiry of three months from the date on which the person becomes the owner or before the expiry of six months from the commencement of this Act, whichever is later:

Provided that the authorised officer may, for sufficient reasons to be recorded in writing and on realising such additional fees, as may be prescribed for the purpose, extend the time limit for registration for such period not exceeding three months as he deems fit.

(4) The authorised officer may, after making such enquiry as he deems fit, either grant or refuse to grant registration assigning reasons thereof.

(5) The authorized officer may refuse to grant registration if he is satisfied, that,

(a) such registration will be inconsistent with any law in force; or

(b) the fishing craft or fixed engine or free net or aquaculture or filtration is defective or does not satisfy the standard or quality as prescribed by rules made under this Act; or

(c) such registration will adversely affect public interest; or

(d) the applicant has not furnished such details prescribed for registration:

Provided that the reason for the refusal to grant registration shall be recorded by the authorised officer.

(6) A registration granted under this section shall be in such form and subject to such terms and conditions as may be prescribed and the particulars thereof shall be entered in a register to be kept by the authorised officer in such form as may be prescribed.

(7) The authorized officer shall assign such distinguishing mark as may be prescribed as registration mark which shall be displayed at a conspicuous place of the fishing craft or fixed engine or free net or aquaculture or filtration, as the case may be.

(8) The registration once made shall continue to be in force until it is suspended or cancelled by the authorized officer under this Act or the rules made thereunder.

10. *Duty to furnish returns.*—(1) Every person who holds a registration certificate shall furnish to the authorised officer at the prescribed time and in the prescribed manner such returns as may be prescribed.

(2) The authorized officer may inspect any fishing craft or fixed engine or free net or aquaculture or filtration or any book of accounts or other documents connected therewith at any time to verify the accuracy of any return made under sub-section (1).

11. *Transfer of ownership.*—(1) Where the ownership of any fishing craft, or fixed engine or free net or aquaculture area or filtration area is transferred the transferors shall, within such time as may be prescribed, report the transfer to the authorised officer within whose jurisdiction the transfer is effected and shall simultaneously send a copy of the said report to the transferee.

(2) The transferee shall, within such time as may be prescribed, report the transfer to the authorised officer and shall along with the report forward the certificate of registration to that authorised officer together with such fee as may be prescribed and the authorised officer shall on receiving the same enter the particulars of the transfer of ownership in the certificate of registration and in the register kept in his office.

12. *Power to suspend or cancel registration.*—The authorised officer may, if he has sufficient reason to believe that the registration has been used in contravention of any of the provisions of this Act or of the rules made thereunder, by order, suspend the registration for such period as he may think fit or cancel the registration:

Provided that no order suspending or canceling the registration shall be made without giving the person affected thereby, an opportunity of being heard.

13. *Appeal against orders refusing grant of registration or suspending or canceling registration.*—(1) Any person aggrieved by an order of an authorised officer refusing to grant registration or suspending or canceling registration may, within thirty days from the date of receipt of the order prefer an appeal to the Joint Director of Fisheries having jurisdiction over the area (hereinafter in this section referred to as the appellate authority).

(2) On receipt of an appeal under sub-section (1) the appellate authority shall, after holding such enquiry as he deems fit and after giving the appellant a reasonable opportunity of being heard, pass such orders thereon as he deems fit.

14. *Grant of licence.*—(1) No licence shall be granted by the authorized officer for fishing operations or fisheries activities to any person unless he holds a registration certificate under this Act.

(2) Every application for a licence shall be, in such form, containing such particulars accompanied by such fees, as may be prescribed.

(3) The manner in which, the period for which, and the terms and conditions subject to which any licence may be granted shall be such as may be prescribed.

(4) The licensee shall not conduct fishing operations or fisheries activities in any area other than the area specified in the licence.

(5) No licence granted under this Act shall be transferable.

(6) The Government or any officer empowered by Government in this behalf may, either in the interest of scientific research or for any other reason, exempt any person or institution recognized by the Government from taking out a licence under this Act.

15. *Renewal of licence.*—(1) Every licence granted under this Act shall, subject to the rules made thereunder, be renewed on payment of such fees and subject to such conditions as may be prescribed.

(2) Any licence not renewed within one month after the date of its expiry shall be renewed only on payment of such additional fees as may be prescribed.

16. *Duty of licence holders to produce such licence.*—Every holder of licence granted under this Act shall be bound to produce such licence for inspection at any time on being required to do so, by any Police Officer not below the rank of Sub Inspector of Police or by any Officer of the Fisheries Department not below the rank of Sub Inspector of Fisheries or any public servant authorized by the department.

17. *Cancellation or suspension of licence.*—Subject to the rules made by the Government in this behalf any licence granted under this Act may be cancelled or suspended by the authorized officer, —

(a) When the holder of the licence has used the licence in contravention of any of the provisions of this Act or the rules made thereunder or any of the terms and conditions of the licence; or

(b) When the holder of the licence has been convicted for an offence under the provisions of this Act or the rules made thereunder; or

(c) When a licence granted under this Act has been obtained by misrepresentation or suppression of facts:

Provided that no order canceling or suspending a licence shall be passed without giving the licensee an opportunity of being heard.

18. *Licence granted by other agencies before the commencement of the Act cease to operate.*—Except to the extent provided in sub-section (2) of Section 15, any licence granted or permission given by any person, agency or body before the commencement of this Act for fishing operations or for fisheries activities shall cease to operate at the commencement of this Act.

19. *Duty of court as regards cancellation of licence.*—When the holder of a licence granted under this Act has been convicted of an offence thereunder, the convicting court shall send a copy of its judgment together with the licence (if before the court) to the nearest authority empowered to cancel the licence under this Act, for such action as such authority may deem fit.

20. *Power of Government to restrict or regulate the number of fishing implements in public water.*—The Government may, by notification in the Gazette, prohibit, restrict or regulate the number and size of fishing craft, fixed engine, free net or any other implements in use in any public water body either temporarily or permanently.

21. *Appeal against orders refusing grant of licence or suspending or canceling of licence.*—(1) Any person aggrieved by an order of the authorized officer refusing to grant a licence or suspending or canceling a licence may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the Joint Director of Fisheries (hereinafter in this section referred to as the additional appellate authority).

(2) On receipt of an appeal under sub-section (1), the additional appellate authority shall, after holding such enquiry as he deems fit and after giving the appellant a reasonable opportunity of being heard, pass such order thereon, as he deems fit.

22. *Powers of appellate authority and additional appellate authority in relation to holding of enquiry under this Act.*—(1) The appellate authority and the additional appellate authority shall, while holding an enquiry, have all the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) The appellate authority and the additional appellate authority shall, while exercising any powers under this Act, be deemed to be a civil court for the purpose of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

23. *Revision.*—The Government or the Director of Fisheries, as the case may be, either *suo-motu* or on application made, within thirty days of the order of the appellate authority or the additional appellate authority, by any person aggrieved by that order, may call for the records of any orders passed in appeal and pass such orders with respect thereto, as he may think fit:

Provided that no order under this section shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

CHAPTER IV
FISH SANCTUARIES

24. *Declaration of Fish sanctuary.*—(1) The Government may, by notification in the Gazette, declare any area to be a fish sanctuary if it considers that such area is of adequate fisheries, zoological, natural or ecological significance for protecting or propagating fish or its environment.

(2) Where any area is so declared, as fish sanctuary, the authorized officer shall enquire into and determine the existence, nature and extent of the rights of any person in or over the area comprised within the limits of the sanctuary after verifying the revenue records.

(3) After the issue of a notification under sub-section (1) no right shall be acquired in, or over, the areas comprised within the limits of the area specified in the notification under sub-section (1) except by succession, testamentary or intestate.

(4) When a notification has been issued under sub-section (1), the authorised officer shall publish in the regional language in every town and village in or in the neighborhood of the area comprised therein, a proclamation,—

(a) specifying the situation and limits of the fish sanctuary; and

(b) requiring any person claiming any right mentioned in sub-section (3) to prefer before the authorized officer within three months from the date of such proclamation, a written claim in the prescribed form specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.

(5) The authorized officer shall after the service of the prescribed notice upon the claimant enquire into the claim preferred before him under clause (b) of sub-section (4), so far as the same may be ascertainable from the records of the State Government and the evidence of any person acquainted with the same.

25. *Powers of authorized officer for the purpose of enquiry.*—For the purpose of enquiry under sub-section (5) of Section 24, the authorized officer may exercise the following powers, namely:—

(a) Power to enter in or upon any area and to survey, demarcate and make a map of the same or to authorize any other officer to do so; and

(b) The same power as are vested in a civil court for the trial of suits.

26. *Restriction on entry in fish sanctuary.*—(1) No person other than—

(a) public servant on duty;

(b) a person who has been permitted by the authorized officer to reside within the limits of the fish sanctuary;

(c) a person who has any right over immovable property within the limits of the fish sanctuary;

(d) a person passing through the fish sanctuary along a public highway; and

(e) the dependents of the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1) shall enter or reside in the fish sanctuary, except under and in accordance with the conditions of a permit granted under Section 28;

(2) Every person who resides in the fish sanctuary, shall,—

(a) prevent the commission, of an offence in the fish sanctuary, under this Act;

(b) help in discovering and arresting the offenders;

(c) report mortality of any fish and to prevent pollution or damage to such sanctuary;

(d) assist any authorized officer or the officer of the Fisheries Department or Police Officer demanding his aid for preventing the commission of any offence under this Act or in the investigation of any such offence.

(3) No person shall enter a fish sanctuary with or without any vehicle, fishing craft, free net or weapon or other contrivance for fishing except with the previous permission in writing of the authorized officer. Violation of this provision shall be deemed to be a cognizable offence.

27. *Ban on use of injurious substances.*—No person shall use in a fish sanctuary, chemicals, explosives or any other substance which may cause injury or endanger the fish or fishery in such sanctuary. Violation of this provision shall be deemed to be a cognizable offence.

28. *Grant of permit.*—(1) The authorised officer may, on application, grant to any person a permit to enter or reside in a fish sanctuary for all or any of the following purposes, namely:—

(a) investigation or study of fish and fishery and purposes ancillary or incidental thereto;

(b) photography;

(c) scientific research;

(d) tourism; and

(e) transaction of lawful business with any person residing in the sanctuary.

(2) A permit to enter or reside in a fish sanctuary shall be issued subject to such condition and on payment of such fees as may be prescribed.

(3) The authorised officer may, for good and sufficient reason to be recorded in writing, cancel any permit granted under sub-section (1):

Provided that no such cancellation shall be made except after giving the holder of the permit a reasonable opportunity of being heard.

(4) Any person aggrieved by the cancellation of a permit under sub-section (3) may, within fifteen days from the date of such cancellation, appeal to the Director of Fisheries, whose decision thereon shall be final.

29. *Management and maintenance of fish sanctuary.*—The Director of Fisheries or any other officer authorized by him shall be the authority who shall control, manage and maintain the fish sanctuary, and for that purpose may take the following steps within the limits of the sanctuary,—

(a) may construct such roads, bridges, buildings, fences or barrio gates and carry out such other works as he may consider necessary for the purposes of such sanctuary;

(b) shall take such steps as will ensure the security of fish and fisheries in such sanctuary and preservation of the sanctuary and fish therein;

(c) may take such measures in the interest of fish and fishery as he may consider necessary for the improvement of the habitat;

(d) may regulate, control, or prohibit the fishing operations or aquaculture or filtration.

CHAPTER V

AQUACULTURE

30. *Fish Seed certification and inter-state movement of fish seed.*— (1) The State Government may, by notification in the official Gazette, establish a Registration & Certification agency for the State to carry out the functions entrusted to the Registration and Certification agency by or under this Act.

(2) The State Government shall, by notification in the official Gazette, establish a Fish Seed Committee to advice the State Government on all matters relating to Registration and Certification and to co-ordinate the functioning of the agencies established under sub-section (1).

(3) If the State Government, after consultation with the Committee is of opinion that it is necessary or expedient to regulate the quality of Aquaculture seed of any kind or variety to be sold for purposes of aquaculture, it may, by notification in the Official Gazette, declare such kind or variety to be a notified kind or variety for the purposes of this Act and different kinds or varieties may be notified for different districts or for different areas thereof.

(4) The State Government may, after consultation with the Committee and by notification in the official Gazette, specify,—

(a) the minimum limits of size, weight, purity and health conditions with respect to any aquaculture seed of any notified kind or variety;

(b) the mark or label to indicate that such aquaculture seed confirms to the minimum limits of size, weight, purity and free from disease infections specified under clause (a) and the particulars which such mark of label may contain.

(5) No person shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any aquaculture seed of any notified kind or variety unless,—

(a) such aquaculture seed is identifiable as to its kind or variety;

(b) such aquaculture seed conforms to the minimum limits of size, weight and purity specified under clause (a) of sub-section 4;

(c) The container of such aquaculture seed bears in the prescribed manner, the mark of label containing the correct particulars thereof, specified under clause (b) of sub-section 4; and

(d) He complies with such other requirements as may be prescribed.

(6) The State Government may, by notification in the official Gazette appoint such persons as it thinks fit, having the prescribed qualifications, to be Aquaculture Seed Inspectors and define the areas within which they shall exercise jurisdiction.

Every Aquaculture Seed Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the State Government may specify in this behalf.

(7) Aquaculture Seed Inspector shall have the right/power to enter any hatchery for ensuring the quality of fish seed produced and to examine the condition of the available brood stock.

(8) Setting up of farms and hatcheries for banned fish species, especially species of exotic origin and which have been introduced in an unauthorized manner, shall be a cognizable offence.

31. *Inter State Movement of Fish Seed.*—(1) Each consignment of fish seed transported from one place to another or from outside states to the State of Kerala shall indicate the 'source of the seed i.e. name and location of the hatchery', 'type of seed', 'size of seed', 'supplied by' and 'supplied to'.

(2) The State shall have the power to check/confiscate/destroy any consignment, which violates the provisions of the Act.

(3) In the event of any dispute, especially of scientific details, the matter can be referred to any designated referral Laboratory (such as the Central Institute of Fisheries Technology (CIFT), Cochin, Central Marine Fisheries Research Institute (CMFRI), Cochin for arbitration.

(4) If any person,—

(a) contravenes any provision of this Act or any rule made there-under; or

(b) prevents an Aquaculture Seed Inspector from taking sample under this Act; or

(c) prevents Aquaculture Seed Inspector from exercising any other power conferred on him by or under this Act, shall, on conviction, be punishable—

(i) for the first offence with fine which may extend to five hundred rupees, and

(ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or both.

(5) When any person has been convicted under this Act for the contravention of any of the provisions of this Act or the rules made there under, the seed in respect of which the contravention has been committed may be destroyed.

(6) Any person aggrieved by a decision of a Registration & Certification agency established under Section 9 may, within three days on payment of such fees as may be prescribed, prefer an appeal to such authority as may be specified by the State Government in this behalf:

Provided that the appellate authority may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(7) On receipt of an appeal under sub-section (6) the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible. Every order of the appellate authority under this section shall be final.

32. *Powers of Aquaculture Seed Inspector.*—(1) The aquaculture Seed Inspector may,—

(a) take a sample of any aquaculture seed of any notified kind or variety from—

(i) any hatchery or fish-seed farm or any person selling or offering to sell such aquaculture seed; or

(ii) any person who is in the course of conveying or delivering or preparing to deliver such aquaculture seed to a purchaser or consignee; or

(iii) a purchaser or consignee after delivery of such aquaculture seed to him;

(b) send such sample for analysis to the aquaculture laboratory for the area within which such sample has been taken;

(c) enter and search at all reasonable times, with such assistance, if any as he considers necessary any place in which he has reason to believe that an offence under this Act has been committed and order in writing, the person in possession of any seed in respect of which the offence has been or is being committed, not to dispose of any stock of such aquaculture seed for a specific period not exceeding thirty days or unless the alleged offence is such that the defect may be removed by the possessor of the aquaculture seed, seize the stock of such aquaculture seed;

(d) examine any record, register or document or any other material object found in any place mentioned in clause (c) and seize the same if he has reason to believe that it may furnish the evidence of the commission of an offence punishable under this Act and;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Act or any rule made thereunder.

(2) Where any sample of any aquaculture seed of any notified kind or variety is taken under clause (a) of sub-section (1) its cost calculated at the rate at which such aquaculture seed is usually sold to the public, shall be paid on demand to the person from whom it is taken.

(3) The power conferred by this section includes power to break open any container in which any aquaculture seed of any notified kind or variety may be contained or to collect the aquaculture seed from hatchery or pond where any such aquaculture seed may be kept for sale:

Provided that the power to collect aquaculture seed from hatchery or fish seed farm or pond shall be exercised only after the owner or any other person in occupation of the premises, if he is present there in, refuses to collect the aquaculture seed from hatchery or pond on being called upon to do so.

(4) Where the Aquaculture Seed Inspector takes any action under clause (a) of sub-section (1) he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures on a memorandum to be prepared in the prescribed form and manner.

(5) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, applied to any search or seizure under the section as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said code.

33. *Feed Quality Control and Certification.*—(1) Each fish feed manufacturing unit shall be registered with the Department of Fisheries.

(2) Feed meant for aquaculture shall be certified by the competent authority (or the designated National Institute/Laboratory).

(3) Fish feed bags shall be labeled indicating the ingredients used, date of manufacture, date of expiry, etc.

34. *Use of chemicals, antibiotics etc.*—No banned chemicals or antibiotics shall be allowed to be used in aquaculture, which have the potential to affect the environment or human health, unless otherwise essential and have been ascertained as eco-friendly or harmless by the Government.

35. *Health monitoring and disease reporting/control.*—Disease diagnostic and reporting procedures shall be maintained by the Department of Fisheries to monitor the occurrence of diseases in fin and shellfishes and their containment.

CHAPTER VI
COLD WATER FISHERIES

36. *Control and regulation of cold water fisheries.*—(1) Removal of sand pebbles and stones from streams, rivulets and riverbeds, especially from the water courses, which are used as breeding grounds by the fishes shall be considered as cognizable offence.

(2) Destructive fishing practices or use of dynamite/poison for the purpose of fishing in the streams/lakes shall be a cognizable offence.

(3) Encroachment of cold water wetlands in any form shall be a cognizable offence.

(4) Construction of any form, permanent or temporary, of weirs, dams and bunds and killing of fish by diversion of natural waters shall be treated as cognizable offence.

(5) Pollution of stream, rivulet or river water from factory effluents shall be a cognizable offence.

(6) Fishing or killing or sale of target fish species during the closed seasons shall be a cognizable offence

(7) Catching or sale of target fish species below the prescribed size or weight shall be a cognizable offence.

CHAPTER VII
ENVIRONMENTAL AND HUMAN HEALTH ISSUES

37. *Environmental Impact Assessment.*—(1) Systematic Environment Impact Assessments (EIA) shall be made mandatory for all projects including anticipated or proposed land use patterns, deforestation or any other such development, which have the potential to affect the aquatics regimes including the fisheries adversely. Similarly, detailed EIA shall be undertaken for larger aquaculture projects (total water spread area exceeding 40 hectares) to ensure that such projects do not have any adverse impact on the environment.

(2) Quality of fish reared in municipal sewage or wastewater shall be assessed to ensure that such fish do not pose any health hazard.

38. *Exotic Species.*—(1) The State shall not permit the culture or breeding of prohibited exotic species and any contravention of this provision shall be treated as a cognizable offence.

(2) The State shall ensure that no exotic species enter the open-waters, such as rivers and their continuation so as to protect the endemic fish germplasm.

(3) The State shall strictly enforce the quarantine norms to control spread of disease from one region to another or from outside State of Kerala.

(4) The Government may, by notification in the Gazette, control, prohibit or regulate the introduction of any exotic variety of live fish or fish seeds suspected to cause any damage to the existing fishery wealth or to cause any epidemic disease to the existing species of fish.

CHAPTER VIII

SEIZURE, ARREST, PENALTIES AND COMPOUNDING

39 *Fish to be Government property.*—(1) Any fish caught or collected or harvested, or cultured or harvested by filtration in contravention of any of the provisions of this Act or any rule or order made thereunder, whether the fish be living or dead shall be deemed to be the property of the Government.

(2) No person shall without the permission in writing of the authorised officer, acquire or receive or keep in his possession, custody or control or transfer to any person or destroy or damage the property mentioned in sub-section (1).

(3) Any person, who obtained by any means the possession of such property shall, make a report to the nearest police station or to the Authorized Officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such Authorised Officer, as the case may be.

40. *Power of seizure or arrest.*—(1) Notwithstanding anything contained in any other law for the time being in force, the Authorised Officer or any officer superior to him or any police officer not below the rank of Sub-Inspector of Fisheries, may, if he has sufficient grounds to believe that any person has committed an offence under this Act or the rules made thereunder,—

(a) require any such person to produce for inspection any fish caught, shell or meat collected or any other fishery product in his control or custody or possession or any licence or permit or registration certificate or other document granted to him or required to be kept by him under this Act; or

(b) stop any vehicle or fishing craft or vessel in order to conduct search or enquiry or enter upon and search any premises, land, vehicle or fishing craft or vessel in the possession of such person and open and search any baggage or any other thing in his possession; or

(c) seize any fish, shell or meat or any other fishery product in the possession of such person together with any free net, fishing craft or any other contrivance, vehicle or weapon used for committing any such offence and may arrest him without warrant.

(2) Any Officer referred to in sub-section (1), who seized any free net, fishing craft or any other contrivance, vehicle or weapon under clause (c) of sub-section (1) shall produce the same before the authorised officer and the authorized officer may release the same on execution by the owner thereof or a bond for the production of the property so released if and when required.

(3) It shall be lawful for any of the officer referred to in sub-section (1) to stop and require any person, whom he seems doing any act for which a licence or permit is required under the provisions of this Act, to produce the licence or permit and if he fails to produce the same the officer may arrest him without warrant.

(4) Any person arrested under any of the foregoing sub-sections shall be taken before a Magistrate having jurisdiction, within a reasonable time, but not exceeding twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate, to be dealt with according to law.

(5) Where any fish, shell or meat is seized under the provisions of this Act, the Assistant Director of Fisheries or any Officer of the Fisheries Department not below the rank of Assistant Director may arrange for the sale of the same and deal with the proceeds of such sale in such manner as may be prescribed.

(6) Where it is proved that the fish or shell or meat seized under the provisions of this Act is not Government property the proceeds of the same shall be returned to the owner.

(7) Where any of the Officers referred to in sub-section (1) require the assistance of any person for the prevention or detection of an offence against this Act or the rules made thereunder or for apprehending a person charged with the violation of this Act or the rules made thereunder or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person to render such assistance.

41. *Penalties.*—(1) Any person who contravenes any prohibition, restriction or regulation imposed by any of the provisions of this Act or commits any act considered as cognizable offence under the provisions of this Act or the rules made thereunder or commits a breach of any of the terms or conditions of any licence or permit granted to him under this Act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees:

Provided that in the case of a second or subsequent offence he shall be punished with imprisonment for a term which shall not be less than three months and with fine which shall not be less than ten thousand rupees.

(2) Where any person is convicted of an offence under this Act or the rules made thereunder the Court trying the offence may order that any fish caught, collected, harvested or filtered and any tool, fixed engine, free net, fishing craft, vehicle or weapon used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of the Act, be cancelled.

42. *Presumption of commission of offence.*—Where any person is found carrying any fish recently captured or killed, together with any fishing implements with which such fish could be so captured or killed, it shall be presumed that he has captured or killed such fish with such implement until the contrary is proved.

43. *Attempts and Abetments.*—Whoever attempts to contravene or abets the contravention of any prohibition, restriction or regulation imposed by any of the provisions of this Act or any rule made or notification issued thereunder, shall be deemed to have contravened that provision.

44. *Power to compound offences.*—(1) The Government may, by notification in the Gazette, empower any officer of the Fisheries Department not below the rank of Assistant Director of Fisheries,—

(a) to accept payment of a sum of money by way of composition of the offence from any person suspected to have committed an offence under this Act, and;

(b) to release any property which has been seized and liable to be forfeited, on payment of the value thereof.

(2) The officer compounding an offence may, if he thinks fit, under the cancellation of any licence or permit granted under this Act to the offender after giving him an opportunity of being heard.

(3) The sum of money accepted or agreed to be accepted as composition shall in no case exceed three thousand rupees.

45. *Cognizance of offences.*—No court shall take cognizance of any offence against this Act or the rules made thereunder except on a complaint in writing made by the Authorised Officer.

CHAPTER IX

GENERAL GUIDELINES AND SUPPORTIVE STEPS

46. *Recovery of money due to Government.*—Any sum due to the Government under this Act or the rules made thereunder, if in arrears shall, without prejudice to any other mode of recovery, be recoverable as if it were an arrears of public revenue due on land.

47. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority for anything which is in good faith done or intended to be done in pursuance of any provision of this Act or any rule made thereunder.

(2) No suit or other legal proceedings shall lie against the Government or any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

48. *Responsible fisheries and aquaculture.*—The State shall ensure that the provisions of the 'Code of Conduct for Responsible Fisheries of the Food and Agriculture Organization' of the United Nations are implemented with suitable adaptations, wherever necessary.

49. *Domestic marketing of fish.*—The State shall ensure hygienic handling, transportation and storage of fish and fish products for domestic marketing.

50. *Institutional support.*—State shall consider creating facilities and other market/non-market based incentives for fishing, aquaculture, marketing, processing and exports in the light of WTO regime.

51. *Inter-departmental co-ordination.*—State shall have an inter-departmental (irrigation, agriculture, fisheries, forest, power and others) co-ordination committees at various stages starting from sharing of resources, production and marketing of fish.

52. *Stake-holder participation.*—Comprehensive and enforceable rules and regulations shall be developed through participation of stake-holders, NGOs, Self-Help groups and consumers.

53. *Conservation and stock enhancement.*—(1) The State shall prepare inventories of fishing crafts and gear and adopt precautionary approach for fisheries management.

(2) The State shall initiate necessary steps for mass awareness programmes among the locals-general and fisherman in particular towards the importance of conservation of aquatic habitats and biodiversity.

(3) The State shall monitor and keep a strict watch on the point sources of pollution in rivers which affect the ecosystem quality and biodiversity, and enforce the polluter-pays principle.

(4) The State shall liaison with concerned Departments to ensure minimum water flow down-stream of any dam, barrage, check-dams or such structures across rivers and streams.

(5) The State shall ensure minimum required level of water in reservoirs, especially during lean season for the safe maintenance of biotic communities including fish and fisheries besides the water quality.

(6) The riparian States shall adopt a co-ordinated approach for management of river systems.

(7) The State shall ensure maintenance of rich aquatic biodiversity status of wetlands by enacting suitable laws to punish the violators.

(8) The State shall ensure the protection of ecologically fragile and sensitive areas declared by the Central or the State Governments.

(9) The State shall not allow indiscriminate use of ground water for aquaculture.

(10) The State shall popularize integrated farming practices with agriculture, animal husbandry and horticulture to allow optimization of per hectare yield besides gainful utilization of wastes from one or the other source.

54. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out all or any of the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

55. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, make such provision not inconsistent with the provisions of this Act, which appear to them to be necessary or expedient for the purpose of removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly.

56. *Repeal and saving.*—(1) The Indian Fisheries Act, 1897 (Central Act 4 of 1897) as in force in the Malabar District referred to in sub-section (2) of Section 5 of the States Reorganization Act, 1956 (Central Act 37 of 1956), shall cease to apply to the said District and the Travancore-Cochin Fisheries Act,1950 (34 of 1950) is hereby repealed.

(2) Notwithstanding such repeal, any licence granted or notification issued or rule made under any of the repealed enactments shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force unless and until it is superseded by any licence granted or notification issued or rule made, as the case may be, under this Act.

The Kerala Inland Fisheries and Aquaculture Bill

Statement of Objects and Reasons

This Bill is intended to consolidate the law relating to Inland Fisheries in the State of Kerala and to provide for sustainable development, management, conservation, regulation, protection, exploitation and disposal of inland fish and fisheries and for matters connected therewith. Fishing is a source of livelihood for a large number of people in this State. The development and management of fishery and other allied activities need to be regulated in public interest so that the trade in fish can be carried on smoothly and without hazards. Fish is national wealth and earns considerable foreign exchange besides providing employment to a large number of people. Protection of the young ones or larvae of fish from being destroyed has to be carefully monitored and such devices which might affect the eco-system or fish biodiversity will have to be regulated and banned, if found necessary. Licensing provisions have been made in the Bill for those possessing Registration Certificates as a regulatory measure. Offences for violating provisions have also been made in the larger interests of the fishing industry and trade. The Department of Fisheries has been entrusted with the duty to manage and control inland fishery and allied activities in the Government Fishery waters. The Bill seeks to achieve the above-said purposes.

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THE KERALA LAND (FIXATION OF MAXIMUM VALUE) BILL

A
BILL

to fix the maximum value of lands in Kerala and to make any transaction entered into not in accordance with the maximum value so fixed, as an offence;

Preamble —WHEREAS the value of land in Kerala is increasing day by day without any proportion;

AND WHEREAS even the members of the middleclass in Kerala are unable to purchase land for any purpose, leave above the needy and the poor.

AND WHEREAS lands in Kerala are purchased by a particular group of persons in large scale;

AND WHEREAS real estate owners are gambling in land prices,

AND WHEREAS it is expedient to discourage and to prevent to the extent possible such purchases and sale of land by fixing the maximum value of lands in Kerala,

BE it enacted in the Fifty Ninth year of the Republic of India as follows:—

1. *Short title extent and commencement.*—(1) This Act may be called the Kerala Land (Fixation of Maximum Value) Act, 2008.

(2) It shall extent to the whole of the State of Kerala.

(3) It shall come into force on such date as may be notified by the Government.

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

(a) "Board" means the Board constituted under Section 4.

(b) "Committee" means the committee constituted under Section 3.

(c) "Local Authority" means Block Panchayats constituted at block level under clause (b) of sub-section (1) of Section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) and a Municipality constituted under Section 4 of the Kerala Municipality Act, 1994 (20 of 1994) and such other authorities notified by the Government under the Act for the purpose of this section.

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3. *Local Authority to recommend the maximum value.*—(1) Every local authority in the State shall recommend to the Board constituted under Section 4, the maximum value of the land within their respective area of jurisdiction

(2) For the purpose of recommending the maximum value of the land, every local authority may constitute a committee consisting of the following members, namely:—

(a) One officer of the Revenue Department in the cadre of Tahsildar who shall be the Chairperson of the Committee.

(b) One valuer recognized by the Government.

(c) Chairman of the finance committee of the local body concerned.

(3) For fixing the maximum value, the committee may divide the entire area within the local authority into different zones taking into consideration of the importance of each area based on facilities like road, drainage, water supply, nearness to public institutions, schools, colleges or similar other factors. Each zone may, if necessary, be divided into sub zones based on different factors.

(4) Local authority may publish the draft maximum value of the land fixed by the committee in such manner as may be prescribed inviting objections and suggestions to the maximum value proposed.

(5) Local authority shall refer every objection and suggestion received by it from any person to the committee for consideration.

(6) The committee after consideration of the objections and suggestions recommend the maximum value of the land as assessed by them to the Board.

4. *Constitution of Board.*—(1) Government may by notification, constitute a Board consisting of the following members nominated by the Government namely: —

(a) One expert in the engineering field

(b) One expert in the field of auditing

(c) One retired District Judge who shall be the Chairperson of the Board

(d) An officer of the Revenue Department in the rank of Land Revenue Commissioner and

(e) Either a Member of Parliament or Member of Legislative Assembly.

(2) The Board constituted under sub-section (1) shall recommend to the Government the maximum value of land in different parts of the State.

(3) The maximum value of the land recommended by the local authority shall be the basis for the Board to fix maximum value for the land. While fixing the maximum value of land the Board may divide the area within the Municipal Corporation, Municipality or Panchayats into different zones and sub zones depending upon the commercial and other importance of the areas.

(4) The Board may publish a draft of the maximum value of the land in each zone or sub zone in such manner as may be prescribed calling upon the general public to file their objections or suggestions to the maximum value proposed:

Provided that such draft need not be published in cases where the difference between the maximum land value fixed by the local authority in a particular area and that fixed by the Board ultimately is negligible.

(5) The Board, after considering the objections and suggestions may take appropriate decisions on the maximum value and recommend it to the Government.

(6) Government shall, on receipt of the recommendation of the maximum value of the land, notify it in the Gazette as well as in the offices of the Sub Registrar.

(7) Government shall not modify the maximum value recommended by the Board except for reasons to be recorded in writing.

(8) Maximum value of land once fixed shall be valid for a period of five years and is liable to be modified by the Government on the basis of the recommendations of the Board in that behalf after the period of 5 years.

5. *Any sale and/or purchase of land in excess of the maximum value is an offence.*—(1) After the maximum value of the land is notified by the Government, any person who sells land or purchases land for a value in excess of the value so notified shall be punishable with imprisonment for a term which may extend to two years and a fine of rupees fifty thousand.

(2) If any person intends to sell or purchase land for a value in excess of the maximum value notified by the Government, he may apply to the Collector of the District for permission stating the reason for variation of the maximum value of the land.

(3) The District Collector after conducting such enquiry as he deems fit grant permission or refuse permission.

(4) Any person aggrieved by the decision of the District Collector may file appeal before the Land Revenue Commissioner within 30 days from the date of the order of the District Collector.

(5) The Land Revenue Commissioner may, after hearing the parties decide the appeal. The decision of the Land Revenue Commissioner shall be final.

6. *Suo Motu action by District Collector.*—The District Collector, may, suo motu take action against any person who has sold or purchased land for a value in excess of the maximum value notified by the Government.

7. *Petition by Strangers* —(1) Any person who has with him sufficient evidence to prove that any person has sold and/or purchased land for a value in excess of the maximum value notified by the Government, may file a petition before the District Collector.

(2) The District Collector, after conducting such enquiry as he deems fit take a decision in the petition.

(3) If, after enquiry, the Collector finds that the land has been sold or purchased for value in excess of the maximum value notified by the Government, he may initiate prosecution proceedings against either or both of the parties to the transaction depending upon the guilt of the parties.

(4) If on enquiry, it is found that the petition is trivial and was intended only to harass the other party, the District Collector may impose a fine of rupees ten thousand on the petitioner.

(5) The petitioner may file an appeal to the Land Revenue Commissioner against the decision of the District Collector within 30 days from the order.

(6) The Land Revenue Commissioner may deal with and dispose of the appeal after hearing the parties affected.

(7) The decision of the Land Revenue Commissioner shall be final.

8. *Executive no to interfere with orders passed under the Act* —No officer of the executive shall issue any directive or order which will affect or is likely to affect the decision of any of the authorities functioning under this Act.

9. *Registration of Documents.*—(1) No Sub Registrar or any other officer of the department of registration shall register a document in which the consideration is shown as higher than the maximum value of the land notified by the Government except in the case of documents permitted by the District Collector under Sec. 5(3) of the Act.

(2) Any Sub Registrar who registers a document in contravention of sub-section (1) shall be liable for fine of rupees five thousand.

10. *Power to make rules.*—(1) The Government may by notification in the Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this section, shall be laid as soon as may be after its is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Object and Reasons

The object of the bill is to recommend the enactment of a new law which is considered to be an urgent need to control the sky rocketing price of land in Kerala and to penalize the persons who are responsible for the above social evil.

It has now become practically impossible for the needy and the poor to acquire land at reasonable prices even for putting a small house for their occupation. This is the result of allowing real estate owners to dabble in the purchase of land at a throw away price and sale of it for an unreasonably high price. This is an evil to be prevented at the earliest.

As per the Bill Government is given power to fix a reasonable and fair value as maximum value of land in the State grouping the lands in Kerala into various zones and sub zones with reference to the various amenities available in each zones or sub zones. Initially local authorities like block panchayats, municipalities and municipal

corporations are given powers to determine the maximum value of lands under their respective jurisdictions. The value so determined shall be treated as draft value liable to be published for inviting objections from the public. On receipt of objections the local authority has to examine all the objections and take a decision to fix the land value. Thereafter the local authority has to recommend the value so fixed to a board to be constituted under the Act by the Government. The board after hearing the affected parties if any may finalise the maximum price and recommend the same to the Government for final acceptance. The board to be constituted shall have five members, an MP or MLA, a retired District Judge, one officer of the Revenue Department and two experts one an engineer and another an auditor. Any party who sells or purchases any land in excess of the maximum value can be prosecuted and punished by the District Collector after going into the guilt of each party. On conviction the offender can be punished with imprisonment for two years or fine of Rs.50,000.

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KERALA REPEALING AND SAVING BILL

Whereas it is expedient that the enactments specified in the Schedules I & II having become either obsolete or no longer required since they have served its purpose; be expressly and specifically repealed;

BE it enacted in the 59th year of the Republic of India as follows:—

1. *Short title extent and commentcement of the Act.*—(1) This Act may be called the Kerala Repealing and saving Act——

(2) It shall extent to the whole State of Kerala.

(3) It shall come into force at once.

2. The enactments specified in the Schedules I and II are hereby repealed.

3. *Savings* —The repeal by this Act of enactments included in Schedules I and II shall not affect any other enactments in which the repealed enactment has been applied, incorporated or referred to, and this Act shall not affect the validity, invalidity effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceedings in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted or the proof of any past act or thing; nor shall this Act affect any principle or rule of law, or established jurisdiction form or course of pleading, practice, procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized or derived by, in or from any enactment thereby repealed.

Nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

SCHEDULE I

1. The Gandhiji University (Dissolution of Senate and Syndicate) Act,1988 (Act 13 of 1988)

2. The Madras General Clauses Act 1867

3. The Madras General Clauses Act 1891

4. The Madras Estates, Commercial Forest and Private Lands(Prohibition of Alienation) Act,1947

5. Enfranchisement of Sirkar Pattam Land Proclamation 1040

6. Cochin Amending Act (1 of 1109)

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7. The Kerala Agricultural Debtors (Temporary Relief) Act, 2001 (Act 19 of 2001)

8. The Kerala Automobiles Limited (Validation of Appointment of Personal) Act 2004 (Act 3 of 2004)

9. The Madras Administration of Estates Regulation 3 of 1802

10. Amending Proclamation of 1118 (Cochin)

11. The Calicut Municipal Corporation (Extension of Time for Reconstitution) Act, 1976 (Act 3 of 1977)

12. The Kerala Debtors (Temporary Relief) Act, 1975 (Act 30 of 1975)

13. The Madras Devadasis Prevention of Dedication Act 1947 (Act 31/47)

14. The Madras Decentralization Act, 1914 (Act 8 of 1914)

15. Cochin Debt Conciliation Act, 1112

16. The Essential Articles Control and Requisitioning (Temporary Powers) Act 1949

17. The Travancore Cochin Entertainment Tax (Validation of Levy and Collection Act 1955 (Act 26/55)

18. The Madras Enfranchised Inam Act, 1862

19. Madras Electricity supply Undertakings (Acquisition) Act (Act 29/54)

20. The Madras Estates, Communal, Forest and Private Lands (Prohibition of Alienation) Act 1947 (Act 14/47)

21. The Kanam Tenancy abolition Act, 1970 (Act 16/70)

22. The Kerala Municipal Councils (Extension of the Term of Office of Councillors) Act, 1976 (Act 9/76)

23. The pattazhi Devaswom Lands (Vesting and Enfranchisement) Act 1961 (Act 21 of 1961)

24. Proclamation extending the period of management over Paliam estate 1 of 1123 – Cochin

25. Pallipurathu Pazhur Illom Assumption of Management proclamation (Cochin)

26. Prevention of Dedication Act 1111 (Act 26/1111)

27. Paliam Proclamation (Cochin only)

28. Paliam Proclamation VIII of 1124

29. Prevention of Cruelty to Animals Act 1095 – Cochin (18 of 1095)

30. Revenue settlement proclamation of 1061 (Travancore)

31. The Madras re-enacting and repealing (No.I) Act 1948

32. The Madras re-enacting (No.II) Act 1948

33. The Madras re-enacting (No.III) Act 1948

34. The Madras re-enacting Act 1949, (Act 10/49)

35. The Madras re-enacting Act 1950, (Act 3/50)

36. The Madras repealing and Amending Act 14 of 1951

37. The Madras repealing and amending Act 1952, (Act 11/52)

38. The Madras repealing and amending Act 1955, (Act 36/55)

39. The supply of paddy and rice to Travancore Palace (Extinguishment of rights and liabilities) Act 1976 (Act 31 of 1976)

40. The Suits for possession and injunction (Re-transfer) Act 1963, (Act 9/63)

41. The Thiruppuram Payment (Abolition) Act 1969 (Act 19 of 1969)

SCHEDULE II

1. The Kerala Co-Operative Societies (Amendment) Act 2002 (Act 3/2002)

2. The Kerala General Sales Tax (Amendment) Act 2002 (Act 4/2002)

3. The Kerala Infrastructure Investment Fund (Amendment) Act 2002 (Act 5/2002)

4. The Kerala Women's Commission (Amendment) Act 2002 (Act 6/2002)

5. The Abkari (Amendment) Act 2003 Act 1/2003

6. The Kerala Court Fees and Suits Valuation (Amendment) Act 2003 (Act 2/2003)

7. The Kerala General Sales Tax Act (Amendment) Act 2003 (Act 3/2003)

8. The Kerala General Sales Tax Act (Second Amendment) Act 2003 (Act 11/2003)

9. The Kerala General Sales Tax Act (Third Amendment) Act 2003 (Act 7/2003)

10. The Kerala Municipality (Amendment) Act 2003 (Act 10/2003)

11. The Kerala Panchayat Raj (Amendment) Act 2003 (Act 9/2003)

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12. The Kerala Payment of Pension to Members of Legislature (Amendment) Act 2003 (Act 14/2003)

13. The Payment of Salaries and Allowances (Amendment) Act 2003 (Act 13/2003)

14. The Kerala Preservation of Trees (Amendment) Act 2003 (Act 28/2003)

15. The Kerala Stay of Eviction Proceedings (Amendment) Act 2003 (Act 8/2003)

16 The Kerala Co-Operative Laws (Amendment) Act 2004, Kerala, (Act 16/2004)

17. The Kerala Stamp (Amendment) Act 2004 (Act 1/2004)

18. The Kerala Tolls (Amendment) Act 2004 (Act 4/2004)

19. The Kerala Municipality (Amendment) Act 2005 (Act 4/2005)

20. The Kerala Panchayat Raj (Amendment) Act 2005 (Act 3/2005)

21. The Kerala Panchayat Raj (Second Amendment) Act 2005 (Act 5/2005)

22. The University Laws (Amendment) Act 2005 (Act 2/2005)

23. The Kerala Gaming (Amendment) Act 2005 (Act 19/2005)

24. The Kerala General Sales Tax (Amendment) Act 2005 (Act 40/2005)

25. Local Authorities Entertainments Tax (Amendment) Act 2005 (Act 26/2005)

26. Motor Vehicles Taxation (Amendment) Act 2005 (Act 24/2005)

27. The Kerala Municipality (Third Amendment) Act 2005 (Act 33/2005)

28. The Kerala Municipality (Fourth Amendment) Act 2005 (Act 34/2005)

29. The Kerala Municipality (Sixth Amendment) Act 2005 (Act 35/2005)

30. The Kerala Municipality (Seventh Amendment) Act 2005 (Act 37/2005)

31. The Kerala Panchayat-Raj (Fifth Amendment) Act 2005 (Act 30/2005)

32. The Kerala Panchayat Raj (Third Amendment) Act 2005 (Act 31/2005)

33. The Kerala Self Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Amendment Act 2005 (Act 28/2005)

34. The Kerala Tax on Luxuries (Amendment) Act 2005 (Act 41/2005)

35. The University Laws (Amendment) Amending Act 2005 (Act 29/2005)

36. The Kerala Agricultural Income Tax (Amendment) Act 2005 (Act 43/2005)

37. The Kerala Ground Water (Control and Regulation) Amendment Act 2005 (Act 22/2005)

38. The Kerala Payment of Pension to Members of Legislature (Amendment) Act 2005 (Act 44/2005)

39. The Kerala Water Supply and Sewerage (Amendment) Act 2005 (Act 45/2005)

40. The Kerala Land Reforms (Third Amendment) Act 2005 (Act 1/2006)

41. Kerala Land Reforms (Amendment) Act 2005 (Act 21/2006)

42. Kerala Panchayat Raj (Amendment) Act 2007 (Act 11/2007)

43. The Kerala Survey and Boundaries (Amendment) Act 2007 (Act 29/2007)

44. The Sree Sankaracharya University of Sanskrit (Amendment) Act 2003 (Act 4/2003)

45. The Kerala Cashew Workers Relief and Welfare Fund (Amendment) Act 2003 (Act 16/2003)

46. The Sree Sankaracharya University of Sanskrit (Amendment) Act 2005 (Act 1/2005)

47. The Kerala Municipality (Second Amendment) Act 2005 (Act 6/2005)

48. The Kerala Contingency Fund (Amendment) Act 2005 (Act 7/2005)

49. The Kerala Tourism (Conservation and Preservation of Areas) Act 2005 (Act 8/2005)

50. The Kerala Motor Transport Workers Welfare Fund (Amendment) Act 2005 (Act 23/2005)

51. The Kerala Tax on Entry of goods into local areas (Amendment) Act 2005 (Act 42/2005)

52. The Kerala Irrigation and Water Conservation (Amendment) Act 2006 (Act 4/2006)

53. The Travancore-Cochin Hindu Religious Institutions (Amendment) Act 2007 (Act 5/2007)

54. The Kerala Public Accountants (Amendment) Act 2007 (Act 6/2007)

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55. The University Laws (Amendment) Act 2007 (Act 24/2007)

56. The Kerala Municipality (Amendment) Act 2007 (Act 12/2007)

57. The Kerala promotion of Tree Growth in Non Forest Areas (Amendment) Act 2007 (Act 19/2007)

58. The Kerala Police (Amendment) Act 2007 (Act 21/2007)

59. The Mahatma Gandhi University (Amendment) Act 2007 (Act 23/2007)

60. The Cochin University of Science and Technology (Amendment) Act 2007 (Act 25/2007)

61. The Kerala Sports (Amendment) Act 2007 (Act 26/2007)

62. The Kerala Women's Commission (Amendment) Act 2007 (Act 27 of 2007)

63. The Kerala Revenue Recovery (Amendment) Act 2007 (Act 31/2007)

64. The Edavagai Rights Acquisition (Amendment) Act 2007 (Act 32/2007)

65. The Kerala professional colleges or institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Amendment Act 2007 (Act 33/2007)

66. The Kerala Anti-social Activities (prevention) Act 2007 (Act 34/2007)

Statement of Object and Reasons

On scrutiny it is found that there are number of enactments which have become either obsolete or are no longer necessary since they have served their purpose. Object and reasons for the Bill is to repeal all such enactments.

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THE KERALA ACCESS TO JUSTICE BILL

A

BILL

Preamble.—Public duties, fundamental in importance, is articulated by Article 51A of the Constitution. Humanism and compassion for living creatures, preservation of environment and ecology and a host of strategies for promotion of public good and living conditions of have not humans and access to justice, social, economic and justice with facilities within everyone's reach, need activised implementation. Plural instrumentalities, with popular participation and dynamic in operation, are necessary if what is mere Constitutional thunder is to become social justice lightning. The State is currently somnolescent in these matters, the ruling class being lost in chase of power and Lucre and insatiable, acquisitive, affluenza through globalization, liberalization, pluralization and five-star glamorization. Our culture, which makes every person his/her brother's or sister's keeper, is the quintessence of the finest values of our heritage happily expressed in the supremalex. There are no means for the poor and the disabled, the marginalized and the forsaken to claim what belongs to them under the Constitution. Human rights, including the right to live in dignity, with a fair measure of education and good health, reasonably rewarded employment and other matters of social and economic justice are de facto denied to million of Indians. The masses of Kerala, including those who belong to the 'Anthyodaya' sector, are hungry and homeless and have social and economic privations and grievances. Their voices cannot have access to the judicial process in the present adversarial system. Free legal services and public interest litigation are part of poverty jurisprudence. But they have no instrumentality to approach or other means to agitate legally for redressal of legitimate disablements. Their religious autonomy and cultural development claims are in jeopardy because they have no pragmatic process, functional or financial. Here again, the need for a people-oriented organ which can reach the court or the executive is a felt necessity.

WHEREAS it is expedient and necessary to confer a right to have access to Courts and Tribunals for getting appropriate relief where anything done or omitted to be done goes or likely to go against the interest of the public or any section or group of persons especially the interests covered by Part III, Part IV, Part IV A of the Constitution of India;

The Kerala Access to Justice Bill

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Access to Justice Act, —

(2) It shall extent to the whole of State of Kerala,

(3) It shall come into force on such date as may be notified by the Government.

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

(a) "Court" means all District Courts and High Court.

(b) "Matters affecting public interest" means,—

(i) Any administrative action or inaction or legislative measure, which is contrary to the socialist objectives or contrary to any provision of the constitution of the law or inconsistent with the interest of the weaker sections or working class, agrarian or industrial.

(ii) Any environmental and ecological issues.

(iii) Any executive act or legislative measure which is likely to promote the interests of a section or a class of people but to the prejudice of the interest and welfare of the people generally or which acts against the interest of the minorities, or handicapped categories or the poorer sections of the people.

(c) "Public interest litigation" means the proceedings initiated under Section 3.

(d) "Prescribed" means prescribed by rules made under this Act.

(e) "Tribunal" means any instrumentality which exercises judicial or quasi-judicial function presided over by a Judicial Officer not below the rank of a District Judge.

3. *Initiation of Proceedings under the Act.*—The following person shall be entitled to initiate proceedings under this Act in regard to matters affecting public interest, namely:—

Any individual or group of individuals having concern in legitimate public issue in question.

4. *Proceedings in Court or Tribunal.*—(1) On receipt of a petition under this Act, the Court or Tribunal may reject the application summarily if the Court or Tribunal considers it as frivolous, or against public interest, or motivated by personal or private interest or hostile intent or as an abuse of the process of the court.

(2) The Court or Tribunal may, if considers necessary, make an enquiry for ascertaining the correctness or otherwise of the facts stated in the petition through any recognized or approved body or through any public authority or through any other appropriate responsible Non-Governmental Organization or public officials, and obtain a report containing their findings.

(3) In cases where the Court or Tribunal decides to proceed with the case on examining the enquiry report and where the Court decides to proceed without a preliminary enquiry, notice may be issued to the parties whom the Court or Tribunal considers necessary to be heard to decide the case and to grant relief, if any.

(4) The Court or Tribunal shall give a copy of the inquiry report where an enquiry has been held under Sub-section (2), to the parties and invite the parties to make their submission, if any, in relation to the inquiry report.

(5) The Court or Tribunal may after hearing the parties, proceed to deliver its judgment or order disposing of the application by making any suitable direction or order.

(6) The Court or Tribunal may exercise all powers and procedures as in an ordinary litigation following the rules of natural justice and established principles of fair play.

(7) A court fee of Rs. 25 shall be payable on any petition filed under this Act.

(8) The costs, charges and expenses in respect of the proceedings under the Act shall be borne by the State or from any fund constituted by any social organization for public interest, except in so far as it may otherwise be directed by the Court or Tribunal in appropriate cases.

(9) All the petitions under this Act shall be disposed of by the Court or Tribunal as expeditiously as possible but not later than six months from the date of filing of such petition.

(10) While disposing of the proceedings finally, the Court or Tribunal may pass such orders regarding costs and expenses as it considers just and proper in the circumstances after giving due opportunity to the parties to be heard.

5. *Appeal.*—(1) There shall a right of appeal against the decisions of the Court or Tribunal to the High Court, unless the original decision is by the High Court.

(2) No appeal or revision shall lie before any court against any interim order or direction issued in any proceedings under the Act.

6. Any failure to implement or disobedience of the order or directions issued in public interest litigation shall be deemed to be contempt of court under the Contempt of Courts Act and shall be dealt with accordingly.

7. *Power to make rules.*—(1) The Government may by notification in the Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this section, shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Object and Reasons

One facet on which there is virtual unanimity on Public Interest Litigation (PIL) cases is that the rule of locus standi needs to be regularized. It has become necessary that any member of the public having sufficient interest could maintain an action for judicial redress of a public injury suffered by an indeterminate class of persons provided the petitioner acts bona fides and is not moved by oblique motivation.

It has also become necessary to invest Courts and tribunals not below the rank of a District Judge to consider cases involving public interest to dispense with the need to move the High Court in such cases. The present Bill seeks to achieve the above purposes.

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THE KERALA ALTERNATIVE ENERGY SOURCES BILL

A

BILL

to make it obligatory for the State to utilize on a systematic and regular basis the alternative energy sources available in the State to increase substantially the quantum of energy generated in the State and distribute the same in a satisfactory manner to the public at reasonable cost.

Be it enacted in the Fifty-ninth Year of the Republic of India.

1. *Short title, extent and commencement of the Act.*—(a) This Act may be called The Kerala Alternative Energy Sources Act____

(b) It extends to the whole of the State

(c) It shall come into force on such date as the Government may notify in the Gazette.

2. *Unless the context requires otherwise, the words.*—

(a) "Alternative energy sources" mean and include among others sun shine, waves, wind and bio waste, geo thermal etc., among others.

(b) "Board" means the Kerala Electricity Board constituted under Electricity Supply Act, 1948.

(c) "Agency" means the autonomous body constituted by the Government with the name, Agency for Non-Conventional Energy and Rural Technology (ANERT).

(d) "Advisory Committee" means the Committee constituted by the Government at State level to advise the Agency on policy matters under Clause (b) of Section 4.

(e) "Supervisory Committee" means the Committee constituted by the Government at District levels to supervise the implementation of the various provisions in the Act and projects set up in accordance with the provisions of this Act under clause (e) of Section 4.

(f) "Government" means Government of Kerala.

(g) "Person" means and includes individual or individuals whether incorporated or not, firms and other institutions Governmental or private.

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The Kerala Alternative Energy Sources Bill

3. *Duty of the State to utilize alternative sources of energy.*—(1) The Government shall as early as possible at any rate on or before six months from the date this Act comes into force, commence and continue production of energy from 'Alternative sources of energy' as defined in clause (a) of Section 2 of the Act and supply such energy to the consumers at a no-profit and no-loss price to be fixed by the Government.

(2) The State shall also encourage any person interested in utilizing the Alternative energy sources for producing energy and using it for himself and supplying to other consumers if there is excess by granting attractive financial assistance in the form of subsidies or otherwise, for buying necessary equipments for production of energy from such sources.

(3) The State shall also take necessary steps to get financial assistance from the Union Government for granting subsidies for establishing more and more projects for producing energy from alternative sources.

4. *The Agency to have the power of management and control of production and distribution of energy produced from alternative energy sources in accordance with the Rules framed in this behalf under the Act.*

(a) The Government may confer on the "Agency" the authority for establishing necessary and sufficient projects / systems to produce energy from alternative sources at Panchayat, Municipal and State levels and distribute justly the same to consumers fixing a rate as prescribed in the Rules framed under the Act using the supply system established by the Board to the extent possible. For the purpose of effectively carrying out the obligations under the Act, the Agency may appoint necessary officers and staff from time to time.

(b) The Government shall constitute an Advisory Committee at State level, consisting of engineers either in service or retired and one or more persons known to have rendered social service and given expert public advice with commitment to social welfare, who are experts in the field of exploitation of alternative energy sources and its preservation, distribution and user to advise the Agency on all policy matters relating to production and distribution of energy. The Head of the Agency shall be the Chairperson of the Advisory Committee.

(c) The terms and conditions of service of the members of the Committee shall be as prescribed by the Government as per Rules.

(d) In the matter of establishing projects and systems to produce energy from alternative sources and its supply to the consumers the Agency shall be guided by the advice tendered by the Committee constituted by the Government as per Clause (b) above.

(e) The Agency may also constitute District level supervisory committees in the manner specified in the Rules to supervise the steps taken to implement the provisions of this Act and to perform the duties assigned to it by the Agency

5 *Steps to be taken to propagate production and use of energy from alternative sources* —For propagating the production and use of energy produced from alternative energy sources, the Government shall:—

(1) Through the Agency put up installations for producing solar energy at suitable places for providing home lighting systems, street lighting systems and solar lanterns

(2) Encourage the use of solar water heaters, bio-gas generators both domestic and industrial and solar cookers especially in temples, wedding halls and all other places where cooking takes place on a large scale

(3) Establish wind farms, bio-gas plants and wave energy conversion plants where ever found feasible on a large scale so that alternative energy sources like wind, bio waste and waves are not left unexploited to the detriment of the people.

6. *Rule making power of the State.*—(1) The Government may by notification in the Gazette, make rules to carryout the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing power such rules may be made with respect to the following:

(a) The powers and duties to be exercised and performed by the Board in the matter of implementing the provisions in this Act.

(b) The manner of constitution of the Advisory Committee and conferment of powers on it

(c) Constitution of District level supervisory committees and their rights and duties.

(d) The terms and conditions of service of the Advisory Board and supervisory committees.

(e) Eligibility conditions to be satisfied for getting subsidies.

(f) The authorities to fix the price of energy and its revision from time to time.

The Kerala Alternative Energy Sources Bill

Statement of Objects and Reasons

Kerala is mainly dependent on Hydro-electric power for the energy needs of the people. Hydro-electric power is generated by water collection in reservoirs during the rainy season. When monsoon fails and rainfall is insufficient to fill the reservoirs, generation of electric power comes to a grinding halt with disastrous consequences. No State can prosper if the industries are left without power. It is, therefore, necessary to explore alternate sources of energy from wind, waves and solar. To educate people on the need to use alternate sources of energy is a must. Also it is necessary to create a body—'Agency for Non-conventional Energy and Rural Technology' (ANERT) to manage and control the production of alternate energy and distribution thereof. This Bill seeks to achieve the said purpose.

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THE KERALA PUBLIC CHARITABLE SOCIETIES BILL

An Act to define the concept of 'Public Charitable Societies' in a more comprehensive manner and to provide for the regulation and registration of all public charitable societies formed and functioning in the State of Kerala.

BE it enacted as follows:

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Public Charitable Societies Act, ——.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date which the Government of Kerala fixes.

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

(a) 'Governing body' means the President, Chairman/Chairperson, Directors, committee members, trustee or other body to whom, by the rules and regulations of the society, the management of its affairs is entrusted.

(b) 'Member' means a person who, having been admitted in a society according to the rules and regulations thereof, and shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned or removed in accordance with the rules and regulations of the society.

(c) 'Public Charitable Society' means any society formed for the purpose of promoting any literature, science, education, arts, music, culture, diffusion of knowledge, relief of the poor, medical relief or furthering process for public causes, advancement of other object of general public utility and includes a church, wakf, kshethra samrakshana samithi and such other organizations formed by other religious denominations by whatever name they may be called.

(d) 'Charity Commissioner' means any Government Officer preferably working in the Co-operative Department nominated by the Government who is competent to discharge powers and duties assigned to Charitable Commissioner under this Act.

(e) 'Society' means a society registered under this Act and deemed to be registered as per Section 28 of this Act.

3. *Societies to be formed by memorandum of association and registration.*—(1) Any seven or more persons associated for any public charitable purpose may by subscribing their names to a memorandum of association and filing the same with the Charity Commissioner, form themselves into a society under this Act:

Provided that not more than two members of a family can be a member of society at a time.

(2) No Government Servant can become a member of such a society.

(3) The application for registration shall be in such form as the State Government may prescribe in this regard.

(4) The application must contain the following particulars :—

(i) The approximate value of the movable and immovable property of the society along with a list of the said items.

(ii) The gross average income and expenses of the society estimated.

(iii) The names and addresses of the society and the manager.

(5) On receipt of the application the Charity Commissioner shall make an enquiry regarding the following matters:

(i) whether the society exists as a matter of fact and whether it has been constituted for a public charitable purpose as contemplated by this Act;

(ii) whether the particulars of the property if any given are true and correct and whether such property is owned and possessed by the said society;

(iii) whether the whole or any substantial portion of the subject-matter of the society is situated within his jurisdiction;

(iv) the names and addresses of the members;

(v) the origin, nature and object of the society;

(vi) any other matters necessary to ensure that such society is validly in existence and is not a fictitious one.

4. *Memorandum of association.*—(1) The memorandum of association shall contain the following particulars, namely:—

(1) The name of the society; the objects of the Society; the address of its registered office; the names, addresses and occupations of the President/Chairman/ Chairperson councils, directors, committee or other governing body to whom, by the rules of the society the management of its affairs is entrusted.

(2) A copy of the rules and regulations of the Society certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association before the Charity Commissioner at the time of registration

(3) Along with the memorandum of association, a declaration shall be filed with a statement showing the assets of the society, and full name and address of the person contributing the same.

(4) On furnishing the said details the Charity Commissioner shall consider and register the society and issue a certificate to the society.

5. *Registered Office of Society.*—(1) A society shall, have a registered office at the time of its registration itself to which all communications and notices shall be addressed.

(2) Notice of any change of registered office shall be given by the governing body of the society, within 14 days from the date of the change to the Charity Commissioner who shall record the same.

(3) A society, already registered and in existence at the commencement of this Act, shall, give notice of any change of it's registered office within 14 days of the change, to the Charity Commissioner who shall record the same.

(4) If the governing body of a society fails to comply with the requirements of this section every member of the governing body shall unless, the Charity Commissioner for reasons to be recorded in writing condones the delay, be liable to a fine not exceeding five rupees for every day during which the non-compliance continues.

6. *General meetings and minutes of proceedings of such meetings.*— (1) It shall be the duty of the governing body of a society to convene the first general meeting of the society within 6 months from the date of its registration and thereafter once at least in every calendar year and not more than 15 months after the holding of the last preceding meeting.

(2) At the annual general meeting so held, election of members to the governing body shall be made as provided for in the rules and regulations of the society, provided the minimum number of persons in the governing body shall be three.

(3) A list of members of the first governing body of a society shall be filed with the Charity Commissioner within fourteen days from the date of registration of the society and thereafter the list of the governing body shall be filed with the Charity Commissioner within fourteen days after the date of every annual general meeting.

(4) Every society shall cause minutes of all proceedings of general meetings to be entered in books kept for that purpose. Such minutes shall be written in the handwriting of the secretary or other person authorized in that behalf and signed by the chairman of the meeting and members present at which the proceedings were held as early as possible at any rate within 3 days from the date of the meeting.

(5) If default is made in holding the annual general meeting, filing the list of governing body or recording the minutes of proceedings of general meetings as laid down in this section, the society and every member of its governing body who is willfully in default, shall be liable to a fine not exceeding one hundred rupees per day till the default continues.

(6) One third of the member of the Governing body shall retire by rotation on every year and new members shall be nominated in their places. For first and second years, the one third persons who has to be retired shall be determined by the General body.

(7) No President/Chairman/Chairperson has got a right to continue as such continuously for more than a period of two years.

7. *Property of society how vested.*—The property movable and immovable, belonging to a society, if not vested in an individual whether a member or not as trustee, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

8. *Regulation on acquisition and transfer of property, donations, funds etc.*—(1) No sale, mortgage, exchange or gift or purchase of any immovable property the value of which is more than Rs. 50,000 (fifty thousand) and no lease for a period exceeding ten years in the case of agricultural land and three years in the case of non-agricultural land or building belonging to a society shall be valid unless prior intimation is given to the Charity Commissioner notified or appointed under this Act.

(2) The power to take a decision to transfer property as contemplated under Sec.8 vests with the general body and can be exercised by simple majority.

(3) If the society wants to transfer, any movable or immovable property as referred to in sub-section (1) it shall make an application to the Charity Commissioner. The application shall be accompanied by a report of a Chartered Accountant stating the present financial position of the society.

(4) On receipt of application the Charity Commissioner shall consider as to whether such transfer of the movable or immovable property is necessary in the interest of the society and pass appropriate orders.

(5) An appeal shall lie to the Government against any order passed by the Charity Commissioner.

(6) Such an appeal shall be filed within ninety days of the passing of the order.

9. *Suits by and against societies.*—(1) Every society may sue or be sued in the name of the President, Chairman, or Principal, Secretary, or Trustees, as shall be determined by the rules and regulations of the society and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

(2) If along with the suit any application is filed for interim orders, the Civil Court shall consider the same and pass appropriate orders ex parte or otherwise as found necessary.

(3) After passing interim orders under sub-section (2) the court shall in all cases immediately refer the dispute between the parties to the "Conciliation and Mediation Authority" constituted by the governing body as per rules to see whether an amicable settlement of the dispute is possible or note.

(4) On such reference being received by the Conciliation and Meditation Authority, the authority shall direct the parties to appear before them and shall try to settle the dispute by conciliation and/or mediation as early as possible at any rate within 3 months from the date of receipt of the file. If a settlement is reached, the terms of settlement shall be forwarded to the Civil Court for recording the same and disposing the suit as settled outside court by mediation. If no settlement is reached the authority may send back the file with a certificate stating that the attempt to settle the matter amicably has failed and directing the parties to appear before the Civil Court on a date to be fixed in the order itself.

(5) On receipt of such failure report, the Civil Court shall take back the suit on file and dispose of the same in accordance with law.

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10. *Suits not to abate.*—No suit or proceedings by or against a society in any civil court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued dying or ceasing to fill the character in the name whereof he shall have sued, or been sued but the same suit or proceeding shall be continued in the name of or against the successors of such person.

11. *Enforcement of decree against society.*—(1) If a decree is against the person or officer named on behalf of the society such decree shall not be executed against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

(2) If there is any negligence or deliberate default on the part of any of the members of the society as a result of which the decree has been passed, such person is personally liable for the said amount decreed.

(3) For the purpose of determining there is any such negligence or deliberate default the corporate veil of the society can be lifted by the executing court or tribunal.

12. *Books of accounts to be kept by society.*—(1) The governing body of a society shall cause to be kept proper books of accounts with respect to—

i. all sums of money received and expended for and on behalf of the society and the matters in respect of which the receipt and expenditure take place; and

ii. the assets and liabilities of the society;

iii. the minutes of all the meetings.

(2) The said accounts have to be audited by a Chartered Accountant and he shall furnish a detailed report on a number of points such as whether accounts are maintained according to law and regularly, whether an inventory has been maintained of the movables of the society, whether any property or funds of the society have been applied on an object or purpose not authorized by the society, whether the funds of the society have been invested or immovable property alienated contrary to the provisions of the memorandum of association or without obtaining the necessary sanction as contemplated under Section 8 of this Act.

(3) If default is made in complying with the requirements of this section, every member of the governing body who has knowingly by his act or omission, caused such default, shall be liable to a fine not exceeding one hundred rupees for the first offence. In case of continuous offence he is liable to be imprisoned for not more than one year with fine not exceed fifty thousand rupees.

13. *Annual Balance Sheet.*—(1) The governing body of every society shall at some date not later than six months from the date of registration of the society and subsequently once at least in every calendar year lay before the society in general meeting a Balance sheet and Income and Expenditure Account for the period, in the case of first account since the registration of the society and in any other case since the preceding account made up to a date not earlier than six months from the date of such meeting.

(2) The Balance sheet and Income and Expenditure Account shall be audited as contemplated under Section 12 (2) of this Act.

(3) The Balance Sheet and Income and Expenditure Account shall be signed by at least three members of the governing body when the number of the governing body exceeds three and by all the members when the number is only three.

(4) After the Balance Sheet, Income and Expenditure Account and the report of the Chartered Accountant have been laid before the general body meeting of the society, a copy of the balance sheet certified by at least three members of the governing body shall be filed with the Charity Commissioner within 14 days from the date of the general meeting.

(5) If the requirements of this section are not complied with, every member of its governing body, who knowingly and willfully authorizes or permits the default, shall be liable to a fine not exceeding five hundred rupees for every month of delay and in case of the offence being continued for more than twelve months, then the every person in the governing body shall be liable for imprisonment upto six months.

14. *Recovery of penalty accruing under bye-law.*—Whenever by any bye-law duly made in accordance with the rules and regulations of the Society, or, if the rules do not provide for the making of bye-laws by any bye-law made at a special meeting of the members of the society convened for the purpose (for the making of which the votes of three-fifths of the members present at such meeting shall be necessary) any pecuniary penalty is imposed for the breach of any rule or bye-law of the Society, such penalty, when accrued may be recovered through any court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

15. *Society to keep a register of members.*—(1) Every Society shall have a register of its members wherein the following particulars are to be entered:—

i. the names and addresses and the occupation, if any, of the members;

ii. the date on which each person became a member;

iii. the date on which any person ceased to be a member;

iv. the number of shares held by them.

(2) If default is made in complying with the requirements of this section, every member of the governing body, who knowingly and willfully authorizes or permits the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

16. *Members liable to be sued as strangers.*—Any members who may be in arrear of subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of, or detain, any property of the society, in a manner, or for a time, contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear, or for the damage accruing from such detention, injury or destruction of property in the manner herein before provided.

17 *Members guilty of offence punishable as strangers.*—(1) Any member of the society who commit theft or misappropriation of any money or other property or willfully and maliciously destroys or injures any property of such society or forges any deed, bond, security for money receipt or other instrument, whereby the funds of the society may be exposed to loss, shall be liable to be punished proceeded against and furnished in accordance with the provisions in the Indian Penal Code and Criminal Procedure Code.

(2) If such person is proceeded against and punished for any of the above offences by a court of law, and when that conviction become final, he shall be immediately removed from the membership of the society and shall not be admitted in it for 5 years from the date of such removal.

(3) If default is committed in implementing the provisions in sub-section (2) the Charity Commissioner may initiate proceedings against the governing body for imposition of appropriate punishment including its removal.

18. *Societies enabled to alter, extent or abridge their purposes.*—Whenever it shall appear to the governing body of any society, which has been established for any particular purpose, or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially with any other society, such governing body may submit such proposal to the members of the society in a written report and shall convene a special meeting for the consideration thereof according to the rules and regulations of the society.

But no such proposal shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body, for the consideration thereof, nor unless such proposition shall have been confirmed by the votes of three-fifths of the members present at the special meeting.

19. *Power to call for accounts and inspection of books, etc.*—(1) The Charity Commissioner or the State Government may at any time call upon the governing body of any society to submit periodically; accounts of income and expenditure and of the assets and liabilities of the society. The Charity Commissioner or any other officer authorized by the State Government shall by giving at least 7 day's notice periodically examine the accounts and other books of the society and submit to the Government a report on the result of such inspection. For the above purpose the inspecting officer may enter the premises of the society and the governing body and the servants of the society shall furnish him with all information he may call for and shall also render him all the assistance necessary to enable him to conduct the examination and make the report. It shall be the duty of the governing body and of all persons who are or have been servants of the society to produce before the officer so deputed all books and documents in their custody or power relating to the society and to answer any question relating to the affairs of the society.

(2) Whenever the Inspecting Officer, has reason to believe that the accounts or other books and documents of the society are withheld without sufficient excuse, he may after recording the reasons and grounds of his belief, enter and search or cause to be searched any place or may seize such account books or documents.

(3) The State Government may, for the efficient and better management of the society, review the report submitted under sub-section (1) and pass such orders as they deem fit other than those referred to in clause (i) to (iii) of sub-section (1) of Section 25 and place such review reports before the assembly from time to time.

20. *Power to fine any member of the governing body or servant of the society and dismiss him for disobedience.*—(1) The State Government may fine any member of the governing body or servant of the society who willfully disobeys any order passed by them under Section 19; an amount not exceeding five hundred rupees for each act of disobedience. If the said member or servant fails to carry out the said order within one week from the date of receipt by him of the order imposing the fine, the State Government may dismiss him from the membership of the society. The governing body of the society shall be bound to give effect to the order passed by the State Government under this section and any failure on their part to give effect to such order shall be deemed to be disobedience within the meaning of this section.

(2) A person dismissed under sub-section (1) shall be disqualified to be a member of the society for a period of 5 years from the date of such removal unless the disqualification is removed by the State Government.

21. *Vacancy to be filled up in accordance with the rules and regulations of the Society*.—In cases in which a member is of the governing body, the vacancy shall be filled up in accordance with the rules and regulations of the society.

22. *Amendments to memorandum or the rules and regulations of a society.*—(1) When any amendment is made in the provisions of the memorandum or the rules and regulations of a society, a copy of the resolution effecting the amendment, certified to be a correct copy by not less than three members of the governing body shall be filed with the Charity Commissioner within fourteen days from the date of the general meeting at which the resolution was passed.

(2) If delay is made in so filing with the Charity Commissioner a copy of the resolution mentioned in sub-section (1) of this section, the society and every member of its governing body shall be liable to a fine not exceeding ten rupees for every day during which the default continues.

23. *Provision for dissolution of societies and adjustment of their affairs.*—Any number not less than three-fourth of the members of any society may determine that the society shall be dissolved, and thereupon it shall be dissolved forthwith or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient:

Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustments of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the registered office of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided further that no society shall be dissolved unless three-fourths of the members shall have expressed a wish for such dissolution, by their votes delivered in person, or by proxy, at a general meeting convened for the purpose;

Provided also that whenever the State Government is a member of or a contributor to, or otherwise interested in, any society such society shall not be dissolved without the consent of the State Government.

24. *Upon a dissolution no member to receive profit.*—If upon the dissolution of any society, there shall remain after the satisfaction of all its debts and liabilities, any property, whatsoever, the same shall not be paid to, or distributed among the members of the said society, or any of them, but shall be given to the State Government upon such terms and conditions as may be mutually agreed upon or to some other society which has for its object, the furtherance of aims similar, as near as may be, to be objects of the dissolved society to be determined by the votes or not less than three-fifths of the members present, personally, or by proxy, at the time of the dissolution, or, in default thereof, by such court as aforesaid:

Provided, however, that this section shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of joint stock company.

25. *Application to court for dissolution, framing a scheme, dissolution, etc.*—(1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the Society is registered, the court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders:—

i. removing the existing governing body and appointing a fresh governing body; or

ii. framing a scheme for the better and efficient management of the society; or

iii. dissolving the society.

(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in court along with the application the sum of one thousand rupees in cash as security for costs.

26. *Handing over of surplus assets by court.*—When a society is dissolved under Section 25, the court may, if the Government are willing to accept the management of the society, order that such management shall be handed over to the State Government or that any surplus assets remaining after the satisfaction of the debts and liabilities of the society may be given to some other society which has for its objects, the furtherance of aims similar, as near as may be to the objects of the dissolved society.

27. *Appeal against orders under Section 25.*—Appeals shall lie to the High Court from orders passed under Section 25 as if they were decrees in suits and shall be presented within the time prescribed thereof.

28. *Registration of societies formed before this Act.*—(1) Any company or society registered previously to the passing of this Act under The Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860 hereafter, be deemed to be registered as a society under this Act if they re-register under this Act within a period of three months from the date of commencement of this enactment.

(2) During the interregnum no society registered under The Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860, shall transfer or incur expenses of more than one lakh rupees, without the written consent of the Charity Commissioner under this Act.

(3) No society can function under the said Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860 unless they are re-registered as per this provision.

29. *Charity Commissioner to maintain a register of societies.*—(1) The Charity Commissioner shall maintain a register of societies in which shall be entered the name of every society, the location of its office, the date of its registration and the names of the documents filed in pursuance of the provisions of this Act.

(2) The memorandum and all other documents relating to each society shall be kept filed in a separate file book maintained for each society.

(3) Where the Charity Commissioner has reasonable cause to believe that a society is not functioning, he shall send to the society by post a registered letter inquiring whether the society is functioning.

(4) If the Charity Commissioner either receives an answer from the society to the effect that it is not functioning or does not within one month after sending the letter referred to in sub-section (3), receive any answer, he may publish in the Kerala Government Gazette and send to the society by post a registered notice that at the expiration of three months from the date of that notice, the name of the society mentioned therein will unless cause is shown to the contrary, be struck off the register as defunct.

30. *Inspection of documents.*—Any person may require a copy or extract of any document or any part of any document to be certified by the Charity Commissioner, on payment of one rupee for every page of each copy or extract.

31. *Trial of offences under the Act.*—(1) No court inferior to that of a Magistrate of the First Class shall try any offence under this Act and the Magistrate shall not take action except upon a report received from the Charity Commissioner, or upon a complaint by any other person with the sanction in writing of the Charity Commissioner, or State Government or any other authority to whom such Charity Commissioner is subordinate, regarding such offence.

(2) The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the cost of the proceedings.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Charity Commissioner is authorized at any time on receipt of such compensation as may be fixed by him, to compound any offence punishable under the foregoing provisions of this Act. Such composition shall have the effect of an acquittal of the accused.

32. *Mediation and Conciliation Committee.*—(1) The Governing Body of the Society shall constitute a 'Conciliation and Mediation Authority' with 3 members to settle all dispute referred to it by the Civil Court under Section 9 of the Act. At least one of the members shall be a person well versed in law preferably a retired judicial officer and another person who has got experience in conciliation and mediation work gained by doing such work in Lok Adalat or otherwise. The members may be selected from persons who are willing to function as such accepting a honorarium to be fixed by the Governing Body from time to time.

(2) The Conciliation and Mediation Authority may function in the manner provided in the Rules to be framed by the governing body and at the place allotted to it by the governing body.

(3) The Conciliation and Mediation Authority may adopt such procedure which are in accordance with fairness and principles of natural justice.

33. *Repeal.*—The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and The Societies Registration Act, 1860 (Act XXI of 1860), so far as applicable to any of the areas of State of Kerala are hereby repealed.

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The Kerala Public Charitable Societies Bill

Statement of objects and reasons

The Charitable Societies in this State are now governed by the provisions of The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and The Societies Registration Act, 1860 (Act XXI of 1860). They are found to be inadequate to meet the needs of the current situation, where transparency is very essential to eliminate corruption and safety of the public Therefore to bring transparency and safety to the general public this enactment is made.

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THE KERALA PROHIBITION BILL

A

BILL

to effectively implement a comprehensive policy of Prohibition of all intoxicating substances as a paramount policy of the State.

BE it enacted in the Fifty-ninth Year of the Republic.

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement* —(1) This Act may be called the Kerala Prohibition Act ——

(2) It extends to the whole of the State of Kerala.

(3) The provisions of this Act shall come into force either wholly or partly on the dates notified by the Government in the Official Gazette.

2. *Definitions* —In this Act, unless there is anything repugnant in the subject or context.—

(1) "To Bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale whether any process of manufacture be employed or not and includes re-bottling;

(2) "Buy" or "Buying" includes any receipt including gift;

(3) "Commissioner" means the officer appointed under clause (a) of Section 34;

(4) "Cultivation" includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed;

(5) "Export" means.—

To take out of the State otherwise than across customs frontier as defined by the State Government;

(6) "Import" means.—

To bring into the State otherwise, than across a customs frontier as defined by the State Government.

(7) "Intoxicating" means.—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa L*) including all forms known as *bhang, siddhi or ganja;*

(ii) *Charas,* that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) Any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and

(iv) any other intoxicating or narcotic or psychotropic substance like pan parag, pan masala etc., which State Government may, by notification, declare to be an intoxicating drug such substance not being opium, coca leaf, or a manufactured drug as defined in Section 2 of the Dangerous Drugs Act, 1930 (Central Act 2 of 1930);

(8) "Liquor" includes toddy, spirits of wine, methylated spirits, spirits, wine, beer and all liquid consisting of or containing alcohol;

(9) "Local Authority" means all Corporations, Municipalities and Panchayats of three different types functioning under the Kerala Panchayat Raj Act;

(10) "Manufacture" includes every process, whether natural or artificial, by which any fermented, spirituous, or intoxicating liquor or intoxicating drug is produced, prepared or blended, and also re-distillation and every process for the rectification of liquor;

(11) "Collector" means the District Collector or any person appointed under clause (b) of Section 34 to exercise all or any of the powers or to perform all or any of the duties of a Collector under this Act;

(12) "Notification" means a notification by State Government published in the Kerala Government Gazette;

(13) "Public Place" includes among others hotel, motel, restaurants, coffee house or tea house, club or association of persons including those of men, women and juveniles, hospitals or other institutions where medical facilities of any type are provided, professional offices, legal, medical or educational or financial institutions, societies, co-operative or otherwise, sports organizations, parks, stadiums or places of amusements or theatres, lodges, hostels etc.;

(14) "Police Station" includes any place which State Government may, by notification, declare to be a police station for the purposes of this Act;

(15) "Prohibition Officer" means a Commissioner, a Collector or any officer or other person lawfully appointed or invested with powers under Section 34;

(16) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith;

(17) "Sale" or "Selling" includes any transfer including gifts;

(18) "State" means the State of Kerala,

(19) "Spirits" means any liquor containing alcohol and obtained by distillation (whether it is denatured or not);

Explanation.—"denatured" means subjected to a process prescribed by State Government by notification for the purpose of rendering unfit for human consumption;

(20) "Sweet Toddy" means unfermented juice drawn from coconut, palmyra, date or any other kind of palm tree into receptacles freshly coated internally with lime or otherwise treated so as to prevent any fermentation;

(21) "Toddy" means the fermented or unfermented juice drawn from coconut, palmyra, date or any other kind of palm tree;

(22) "Transport" means to move from one place to another within the State;

(23) "Tourist" means a person who is not a citizen of India and who is either born or brought up or domiciled in any country outside India, but who visits India on a tour for a temporary period.

CHAPTER II

PROHIBITIONS AND PENALTIES

3. *Prohibition of the manufacture or, traffic in, and consumption of, liquors and, intoxicating drugs.*—No one shall except as permitted in this Act and the Rules and regulations framed under this Act:

(a) Import, export, transport or possess liquor or any intoxicating drug;

(b) Manufacture any liquor or intoxicating drug;

(c) Construct or work any distillery or brewery;

(d) Cultivate the hemp plant or collect any portion of such plant from which an intoxicating drug can be manufactured;

(e) Tap any toddy producing tree or permit or suffer to be tapped any toddy producing tree belonging to him or in his possession for drawing toddy;

(f) Use, keep or have in his possession any materials, still, utensil implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug; or

(g) Bottle any liquor for the purpose of sale; or

(h) Sell liquor or any intoxicating drug; or

(i) Consume or buy liquor or any intoxicating drug; or

(j) Alter or attempt to alter any denatured spirituous preparation by dilution with water or by any method whatsoever, with the intention that such preparation may be used for human consumption as an intoxicating liquor or keep in his possession any denatured spirituous preparation in respect of which he knows or has reason to believe that such alteration or attempt has been made;

(k) Open or keep or use any place as a common drinking house; or have the care, management or control of, or in any manner assist in conducting the business of, any place opened, or kept or used as a common drinking house;

(l) Allow any of the acts aforesaid upon any premises in his immediate possession.

4. *Prohibition of public places being used as drinking places.*—No one shall keep, store, serve or otherwise distribute alcohol or any substance containing alcohol, pan masala, pan parag, narcotic drugs and substances containing narcotic drugs and psychotropic substances.

5. *No shop shall store, sell or give by way of gift or prize any of the substances of which sale, purchase or use is prohibited under this Act.*—No shop, stationary or mobile, wholesale or retail shall store or sell or give by way of gift or prize any of the substances of which sale, purchase or use is prohibited by this Act.

6. *Prohibition of soliciting use of liquor or any intoxicant or doing any act calculated to incite or encourage any member of public to commit an offence under this Act* —No person shall

(a) Solicit the use of, or offer any liquor or intoxicant substance; or

(b) Do any act which is calculated to incite or encourage any member of the public or a class of individuals or the public generally to commit any offence under this Act or to commit a breach of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted thereunder.

7. *Prohibition of advertisements relating to intoxicants etc.*—(1) No person shall print or publish in any newspaper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter.—

(a) Which solicits the use of or offers any intoxicant;

(b) Which is calculated to encourage or incite any individual class of individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted, thereunder.

(2) Save as otherwise provided in sub-section (3), nothing in this section shall apply to—

(a) Catalogues or price lists which may be generally or specially approved by the Commissioner in this behalf;

(b) Any advertisement or other matter contained in any newspaper, news-sheet, book, leaflet, booklet or other publication printed and published outside the State;

(c) Any advertisement or other matter contained in any newspaper printed, and published in the State before such date as the State Government may by notification in the Official Gazette, specify; and

(d) Any other advertisement or matter which the State Government may, by notification in the Official Gazette, generally or specially exempt from the operation of this section.

(3) Notwithstanding anything contained in sub-section (2), the State Government may, by notification in the Official Gazette, prohibit within the State the circulation, distribution or sale of any newspapers, news-sheet, book, leaflet, booklet or other publication printed and published outside the State which contains any advertisement or matter,—

(a) Which solicits the use of or offers any intoxicant or hemp; or

(b) Which is calculated to encourage or incite any individual or class of individuals or the public generally to commit any offence under this Act or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder, or the conditions of any licence, permit, pass or authorization granted thereunder.

8. *Provisions in this chapter not to apply to certain articles and substances* —Nothing in this Chapter shall be deemed to apply to—

(1) Any toilet preparation containing alcohol which is unfit for use as intoxicating liquor;

(2) Any medicinal preparation containing alcohol which is unfit for use as intoxicating liquor;

(3) Any antiseptic preparation or solution containing alcohol which is unfit for use as intoxicating liquor;

(4) Any flavouring extract, essence or syrup containing alcohol which is unfit for use as intoxicating liquor:

Provided that such article corresponds with the description and limitations mentioned in Section 59A.

9. *Punishment for offences falling under clauses (b) and (l) of Section 3* — Whoever contravenes the provisions in clause (b) and (l) of Section 3 in so far as it relates to an act specified in the other clauses of Section 3 of the Act shall be committing an offence and shall be punished with imprisonment for a term of 2 years and with a fine which extend to Rs.10,000 but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court.

(A) Such imprisonment shall not be less than six months and such fine shall not be less than Rs. 2,000 for first offence.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than one year and such fine shall not be less than Rs. 3,000 for a second or subsequent offences.

10. *Punishment for offences falling under clauses (b), (h) (i) of Section 3.*—Whoever contravenes the provision in clauses (b) (h) and (i) of Section 3 shall be committing an offence and shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to Rs. 5,000 but in the absence of special and adequate reasons to be mentioned in the judgment of the court:—

(A) Such imprisonment shall not be less than three months and such fine shall not be less than Rs. 2,000.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than one year and the fine shall not be less than Rs. 3,000 for a second and subsequent offences.

11. *Punishment for offences falling under other clauses of Section 3.*— (1) Whoever contravenes the provisions in the other clauses of Section 3 shall be committing an offence and shall be punished with imprisonment for a term which may extend to one year or with fine which may extent to Rs. 5000 or with both but in the absence of special and adequate reasons to the contrary to be stated in the judgment of the court:—

(A) Such imprisonment shall not be less than three months and such fine shall not be less than Rs. 1,000 for first offence.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than six months and such fine shall not be less than Rs. 2,000 for a second and subsequent offences:

Provided that nothing contained in this sub-section shall apply—

(i) to any act done under and in accordance with, the provisions of this Act or the terms of any rule, notification, order, licence or permit issued thereunder, or

(ii) to the possession, sale, purchase, use or consumption of duty-paid medicinal or toilet preparations for bona fide medicinal or toilet purposes.

(2) It shall be presumed until the contrary is shown—

(a) that a person accused of any offence under clauses (a) to (j) of Section 3 has committed such offence in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug for the possession of which he is unable to account satisfactorily; and

(b) that a person accused of any offence under Clause (l) of Section 3 has committed such offence if an offence is proved to have been committed in premises in his immediate possession in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug:

Provided that mere possession of an implement that may be used for tapping will not give rise to the presumption under this sub-section in respect of an area where tapping of sweet toddy may by notification be permitted.

12. *Punishment for being found in a state of intoxication* —Whoever is found in a state of intoxication in any public place and whoever not having been permitted to consume any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place, shall be punished with imprisonment which may extend to six months, or with fine which may extend Rs. 2,000 or with both.

13. *Punishment for rendering or attempting to render denatured spirits fit for human consumption.*—Whoever renders or attempts to render fit for human consumption any spirit or preparation containing spirit, whether manufactured in the State or not, which has been denatured or any preparation containing such spirit or has in his possession, any spirit or preparation containing spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to Rs. 5,000, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court:—

(i) Such imprisonment shall not be less than six months and such fine shall not be less than Rs. 2,000 for a first offence;

(ii) Such imprisonment shall not be less than nine months and such fine shall not be less than Rs. 3,000 for a second offence; and

(iii) Such imprisonment shall not be less than one year and such fine shall not be less than Rs. 3,500 for a third and subsequent offences.

For the purpose of this section it shall be presumed until the contrary is proved, that any spirit or preparation containing spirit which is proved on chemical analysis to contain any quantity of any of the prescribed denaturants is or contains or has been derived from denatured spirit.

14. *Punishment for violating prohibition in Section 7 (1) & (3).*—Whoever violates the prohibition contained in sub-sections (1) & (3) of Section 7 shall be committing an offence and shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 1,000 or with both.

15. *Punishment for vexatious delay.*—Any officer or person exercising powers under this Act, who vexatiously and willfully delays forwarding to a Prohibition Officer or to the Officer in-charge of the nearest Police Station as required by Section 42, any person arrested or any article seized under this Act, shall be punished with fine which may extend to Rs. 500.

16. *Punishment for abetment or escape of persons arrested, etc.*—Any Officer or person exercising powers under this Act who—

(a) Unlawfully releases or abets the escape of any person arrested under this Act, or abets the commission of any offence against this Act; or

(b) Acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken; and

Any other Officer of Government or of a local authority who abets the commission of any offence against this Act;

Shall be punished with imprisonment which may extend to six months, or with fine which may extend to Rs. 1,000 or with both.

17. *Things Liable to Confiscation.*—In any case in which an offence has been committed against this Act, the liquor, drug, materials, still, utensil, implement, or apparatus in respect or by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same.

18. (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to confiscation; such confiscation may be ordered by the court.

(2) When an offence against this Act has been committed but the offender is not known, or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector or other Prohibition Officer in-charge of the District or area or by any other officer authorized by State Government in that behalf, who may order such confiscation·

Provided that no such order shall be made until the expiration of fifteen days from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims.

19. *Offences under Act to be cognizable* —All offences under this Act shall be cognizable and the provisions of the Code of Criminal Procedure for the time being in force with respect to cognizable offences shall apply to them.

CHAPTER III
EXEMPTIONS AND LICENCES

20. *Power to notify exemptions* —(1) State Government may, by notification and subject to such conditions as they think fit, exempt any specified liquor or intoxicating drug, or articles containing such liquor or drug from the observance of all or any of the provisions of this Act on the ground that such liquor, drug or article is required for a medicinal, scientific, industrial or such like purpose. However, before issuing such exemption Government shall obtain certificates from the experts in the respective fields recognized by the Government regarding such requirement.

(2) When issuing a notification under sub-section (1) State Government shall have power to provide that a breach of any of the conditions subject to which the exemption is notified shall be punished with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

21. *Exemption regarding tapping for sweet toddy, etc.*—State Government shall have the power to exempt from the operation of all or any of the provisions of this Act, by notification, the tapping of any class of trees for sweet toddy, the possession, transport and sale of such toddy and the manufacture therefrom of jaggery or other non-intoxicating product in any local area.

22. *Licences for tapping for sweet toddy, etc* —Subject to the control, of State Government the Collector or any Officer empowered by him may issue—

(a) licences for the tapping of any trees for sweet toddy for consumption thereof without fermentation or for the manufacture of jaggery therefrom; or

(b) Permit for the possession, transport or sale of such toddy.

23. *Prescriptions for intoxicating liquor.*—(1) No person other than a registered medical practitioner, shall issue any prescription for any intoxicating liquor.

(2) No registered medical practitioner shall prescribe such intoxicating liquor, unless he believes in good faith after careful medical examination of the person for whose use such prescription is sought, that the use of such intoxicating liquor by such person is necessary, and will afford relief to him from some known ailment.

(3) A registered medical practitioner shall state, in every prescription for intoxicating liquor issued by him, the name and address of the person to whom issued, the date of issue, directions for use, and the amount and frequency of the dose, and shall preserve a copy of the prescription for one year from the date of issue. On the copy so preserved he shall state the purpose or ailment for which the intoxicating liquor is prescribed.

(4) Any violation of the provisions in this section shall be an offence punishable with an imprisonment for 3 months or a fine of Rs. 5,000 for the first time and for a second time or thereafter imprisonment for a period of 6 months or a fine of Rs. 50,000.

24. *Tourist's permit.*—(1) The State Government may, by rules or an order in writing, authorize an Officer to grant tourist's permit to consume, to use and buy foreign liquor to a person who is a tourist.

(2) A tourist's permit may be granted for the period of the tourist's intended stay in the State but shall in no case be granted for a period exceeding one month.

(3) Such permits shall be available at such places as may be fixed by the Commissioner in this behalf.

25. *Exemption of members of Armed Forces.*—(1) The Government may, by notification and subject to such conditions as they think fit, exempt members of the armed forces of the Union or of any other armed forces raised or maintained by the Union or attached to or operating with any of its armed forces and the members of the medical or other staff attached to any of the forces aforesaid from all or any of the provisions of this Act.

(2) When issuing a notification under sub-section (1) State Government shall have power to provide that a breach of any of the conditions subject to which the exemption is notified shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs.1,000 or with both.

26. *Granting of licences or permits.*—(1) Any hotel, club, bar or other institution or business place may apply as provided in the Rules for licence for storing, consuming, selling or otherwise distributing any of the above contraband substances to the local authority within whose jurisdiction the applicant carries on its activity.

(2) The Local Authority within whose jurisdiction such activity is to take place may on being satisfied that no abuse or misuse of contraband substances beyond permissible limits or in accordance with medical prescription may grant an appropriate licence for such operation as is permitted under the Act.

(3) The licence shall be for a limited period and a fee prescribed as per Rules may be levied in that behalf.

(4) On the expiry of the period, the authority may extend or reduce the period of the licence.

27 *Appeal against refusal of licence or arbitrary levy of fee* —In case of refusal of the licence or arbitrary levy of fee or abuse of power in choosing the licensee, an appeal shall lie to the nearest Judicial Magistrate in accordance with the Rules.

28. *Form and conditions of licences and permits.*—Every licence or permit granted under this Act or shall—

(1) be granted on payment of such fees, if any, for such period, and subject to such restrictions and limitations and on such conditions; and

(2) be in such form and contain such particulars as State Government may direct either generally or in any particular case.

29. *Counterpart agreement to be executed by licensee.*—Every person taking out any licence or permit under the Act may be required to execute a counterpart agreement in conformity with the tenor of his licence or permit and to give such security for the performance of his agreement as the Collector may require.

30. *Power to cancel or suspend licences and permits.*—(1) The Collector may cancel or suspend any such licence or permit—

(a) if any fee payable by the holder thereof be not duly paid; or

(b) in the event of any breach by the holder of such licence or permit or by his servants or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such licence or permit; or

(c) if the holder thereof is convicted of any offence against this Act, or any cognizable and non-bailable offence; or

(d) if the conditions of such licence or permit provide for its cancellation or suspension at will; or

(e) if the purpose for which the licence or permit is granted ceases to exist.

31. *Penalty for breach of the conditions of licences and permits* —In the event of any breach by the holder of such licence or permit or by his servants or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such licence or permit, such holder shall, in addition to the cancellation or suspension of the licence or permit granted to him be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both, unless he shall establish that all due and reasonable precautions were exercised by him to prevent any such breach.

Any person who commits any such breach shall, whether he acts with or without the permission of the holder of the licence or permit, be liable to the same punishment.

32. *Permits and licences to be non-transferable.*—Permits and licences granted under the Act shall be non-transferable.

33. *Exclusive privilege of Government to import etc , intoxicants, etc , and fees levied include rent or consideration for grant of such privilege to person concerned.*—Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicant, hemp or toddy, and whenever under this Act or any licence, permit, pass, thereunder any duty or fees are levied and collected for any licence, permit, pass, authorization or other permission given to any person for any such purpose, such fees shall be deemed to include the rent or consideration for the grant of such right or privilege to that person by or on behalf of the State Government.

CHAPTER IV

ESTABLISHMENT AND CONTROL

34. *Appointment of officers and withdrawal of powers.*—State Government may, from time to time, by notification—

(a) appoint any officer to exercise all the powers of a Commissioner under this Act in all local areas in which it is in force and to have the control of the administration of the provisions of this Act in such areas;

(b) appoint any person other than the District Collector to exercise within a district all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with or to the exclusion of the District Collector, subject to such control as the Government may, from time to time, direct;

(c) withdraw from the Commissioner or the Collector any or all of the powers conferred on him by this Act;

(d) appoint, paid or honorary officers with such designations, powers, and duties as State Government may think fit;

(e) order that all or any of the powers and duties assigned to any person under clause (d) shall be exercised and performed by any existing Government official or any other person; and

(f) delegate to any Prohibition Officer all or any of their powers under this Act.

35. *Power of Government to authorize officers to admit persons arrested to bail.*—State Government may, by notification and subject to such conditions as may be prescribed in such notification, empower all or any of the officers or classes of officers or persons mentioned in Section 30 throughout the State of Kerala or in any local area, to admit a person arrested under that Section to bail or to appear, when summoned or otherwise directed before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the offence for which such person has been arrested, and may cancel or vary such notification.

CHAPTER V

POWERS, DUTIES AND PROCEDURE OF OFFICERS, ETC.

36. *Issue of search warrants.*—If any Collector, Prohibition Officer or Magistrate upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under sub-section (1) of Section 3 has been committed, he may issue a warrant for the search for any liquor, intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed. Any person who has been entrusted with the execution of such a warrant may detain and search, and if he thinks proper, arrest any person found in the place searched, if he has reason to believe such person to be guilty of any offence under this Act:

Provided that every person arrested under this Section shall be admitted to bail by the person arresting if sufficient security be tendered for his appearance either before a Magistrate or before a Police or Prohibition Officer, as the case may be.

Before issuing such warrant, the Collector, Prohibition Officer or Magistrate shall examine the informant on oath and the examination shall be reduced into writing and be signed by the informant, and also by the Collector, Prohibition Officer or Magistrate.

37. *Powers of entry and search without warrant.*—Whenever a Collector, any Prohibition Officer not below such rank as State Government may determine, any Police Officer not below the rank of Inspector, any officer in charge of a Police Station, or any officer authorized by Government in this behalf has reason to believe that an offence falling under Section 3 has been committed and that the delay occasioned by obtaining a search warrant under Section 36 will prevent the execution thereof, he may after recording his reasons and the ground of his belief, at any time by day or night enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and may detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any office under this Act:

Provided that every person arrested under this Section shall be admitted to bail by such officer as aforesaid if sufficient security be tendered for his appearance either before a Magistrate or before a Police or Prohibition Officer, as the case may be

38. *Powers of entry and inspection* —The Collector, any Prohibition Officer not below such rank as the Government may determine, or any police or any officer authorized by the Government in this behalf, may enter and inspect, at any time by day or by night, any place in which it is reasonably suspected.—

(a) That any toddy is drawn or the manufacture of any other liquor or of any intoxicating drug is carried on, or

(b) That any liquor or intoxicating drug is kept for sale or stored, or

(c) That an offence under Section 10 has been, or is being committed;

And may examine, test, measure or weigh any material, still, vessel, implement, apparatus, liquor or intoxicating drug found in such place.

39. *Power to use force in case of resistance to entry.*—If any officer empowered to make an entry under Sections 37 & 38 cannot otherwise make such entry it shall be lawful for him to break open any outer or inner door or window and to remove any other obstacles to his entry into any such place.

40. *Arrest of offenders and seizure of contraband liquor and articles without warrant.*—Any Prohibition Officer, any officer of the Police Department and any other person authorized in that behalf—

(a) may arrest without warrant any person found committing an offence punishable under Section 3;

(b) may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act; and

(c) may search any person, vessel, vehicle, animal, package receptacle or covering, upon whom or in or upon which, he may have reasonable cause to suspect any such liquor, drug or other article to be, or to be concealed:

Provided that if the officer or person making the arrest under this Section be not empowered under Sections 36, 37 and 40 to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered if such an officer is known to be within a distance of five miles from the place where such arrest took place. And it shall be the duty of such officer empowered as aforesaid to admit such person to bail if sufficient security be tendered for his appearance before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the case.

42. *Arrest of persons refusing to give name or giving false name* —Any person, who may be accused or reasonably suspected of committing an offence against this Act, and who on demand made by any Prohibition Officer or any officer of the Police Department or by any person authorized in that behalf refused to give his name and residence or who gives a name or residence which such officer or person has reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.

43 *Searches how to be made* —All searches under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure for the time being in force.

44. *Duty of officials of all departments and local authorities to assist* — Officials of all departments of State Government and of all local authorities shall be legally bound to assist any Prohibition or Police Officer in carrying out the provisions of this Act.

45. *Offences to be reported, etc.*—Any person or a group of persons, or any organization non-governmental or otherwise and every official employed by State Government or by any local body, other than a Police or Prohibition Officer, shall be bound to give immediate information at the nearest police station or to a Prohibition Officer, of all breaches of any of the provisions of this Act either committed or likely to be committed which may come to his knowledge, and all such officials shall be bound to take all reasonable measures in their power to take follow up actions for the breach committed and to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

46. *Landholders and others to give information.*—All landholders, proprietors, tenants, sub-tenants and cultivators who own or hold land or house-property on or in which there shall be any tapping for toddy or manufacture of liquor or intoxicating drugs shall in the absence of reasonable excuse be bound to give notice of the same to a Magistrate or to a Prohibition Officer or to an officer of the Police or Land Revenue Department immediately the same shall have come to their knowledge.

47. *Persons arrested how to be dealt with* —(1) When any person is arrested under the provisions of Sections 36, 37, 40 and 46 the person arresting him shall, unless bail shall have been accepted under the provisions of Sections 32, 33 or 36 forthwith forward him to the nearest police station or to a Prohibition Officer with a report of the circumstances under which such arrest was made.

Procedure of Police Station Officer—(2) On any of such person being brought to a Police Station as aforesaid, the officer in charge thereof shall either admit him to bail to appear when summoned, before himself, or before the Prohibition Officer, if any, or any Police Officer within the limits of the jurisdiction of which Prohibition or Police Officer the offence with which he is charged is suspected to have been committed, or in default of bail, shall forward him in custody to such officer.

Procedure of Police or Prohibition Officer empowered to inquire —(3) On any such person being brought in custody before a Prohibition or Police Officer as aforesaid or appearing before such officer on bail or when such officer as aforesaid has himself made the arrest, such officer shall hold such enquiry as he may think necessary and shall either release such person, or forward him in custody to or admit him to bail to appear before the Magistrate having jurisdiction to inquire into or try the case:

Provided that if such inquiry is not commenced and completed on the day on which such person is arrested by or is brought or appears before such officer, he shall, if sufficient bail be tendered for the appearance of the person arrested, admit such person to bail to appear on any subsequent day before himself or any other officer having jurisdiction to inquire into the case

48. *Persons arrested to be admitted to bail* —It shall be the duty of any officer arresting any person under the powers conferred by Section 36 or 37 and of any officer in charge of a police station or any Police or Prohibition Officer before whom a person arrested is brought or appears under the provisions of Section 47 to release such person on bail if sufficient bail be tendered for his appearance before a Police or Prohibition Officer or before a Magistrate as the case may be.

49. *Bond of accused and sureties* —(1) Before any person is released on bail, a bond in such sufficient but not excessive sum of money as the officer admitting him to bail thinks proper shall be executed by such person and by one or more sureties, conditioned that such person shall attend in accordance with the terms of the bond and shall continue to attend until otherwise directed by the Police or Prohibition Officer before whom he was bailed to attend, or by the Magistrate, as the case may be·

Provided that the officer admitting any such person to bail may in his discretion dispense with the requirement of a surety or sureties to the bond executed by such person.

(2) State Government shall from time to time determine the form of the bond to be used in any local area.

50. *Procedure in case of default of person admitted to bail to appear before Prohibition Officer.*—When by reason of default of appearance of a person bailed to appear before a Police or Prohibition Officer such Officer is of opinion that proceedings should be had to compel payment of the penalty or penalties mentioned in the bond of the person bailed or of the surety or sureties, he shall forward the bond to the Magistrate having jurisdiction to inquire into or try the offence of which the person bailed was accused, and the Magistrate shall proceed to enforce the payment of the penalty or penalties in the manner provided by the Code of Criminal Procedure, for the time being in force, for the recovery of penalties in the like case of default of appearance by a person bailed to appear before his own Court.

51. *Obtaining of medical certificates in the case of persons found in a state of intoxication* —(1) Any officer authorized to arrest a person for an offence punishable under clause (i) of section 3 in so far as it relates to consumption of liquor or any intoxicating drug, who has reason to believe that any person has consumed liquor or any intoxicating drug, may produce such person for examination, before any medical officer authorized by the Government and request the medical officer to furnish a certificate on his finding whether such person has consumed any liquor or intoxicating drug

(2) Any such medical officer before whom such person is produced shall be bound to examine such person and furnish to the officer by whom such person has been produced a certificate as to the state of such person, and if any form has been prescribed for the purpose, in such form.

(3) If the person produced is a woman, the examination shall be carried out by a woman medical officer authorized by the Government.

(4) Any person who has been produced before a medical officer in pursuance of this section shall allow himself to be examined by the medical officer.

(5) If any person who under this section is required to undergo medical examination resists or refuses to allow himself to be produced before or to be examined by the medical officer, it shall be lawful to use all means necessary to secure the production and examination of such person.

(6) Resistance to production or refusal to allow examination under this section shall be deemed to be an offence under Section 186 of the Indian Penal Code (Central Act 45 of 1860).

(7) In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under clause (i) of Section 3 if he having been produced before a medical officer under this section had resisted or had refused to allow himself to be examined by such medical officer

(8) Any document purporting to be a certificate signed by a medical officer authorized by the Government may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (Central Act 45 of 1860), but the court may at the instance of the accused order the attendance for cross-examination of the medical officer who issued the certificate.

52. *Power of Police or Prohibition Officers to summon witnesses.*—Any Police or Prohibition Officer holding an inquiry in the manner provided in Section 47 may summon any person to appear before himself to give evidence on such inquiry or to produce any document relevant thereto which may be in his possession or under his control:

Provided that no such officer shall so summon any person to appear before him if the journey to be made for complying with such summons exceeds ten miles by road or fifty miles by rail or such other limits as State Government may fix.

53. *Term of summons* —Every summons issued under Section 52 shall state whether the person summoned is required to give evidence or to produce a document, or both, and shall require him to appear before the said officer at a stated time and place.

54. *Examination of witnesses* —Persons so summoned shall attend as required and shall answer all questions relating to such inquiry put to them by such officer. Such answer shall be reduced to writing and shall be signed by such officer.

55. *When attendance of witnesses to be dispensed with and procedure in such cases* —It shall be lawful for a Police or Prohibition Officer, instead of summoning to appear before him any person who, from sickness or other infirmity, may be unable so to do, or whom by reason of rank or sex, it may not be proper to summon, to proceed to the residence of such person and there to require him to answer such questions as he may consider necessary with respect to such inquiry; and such person shall be bound so to answer accordingly, and the provisions of Section 54 shall apply to such answers.

56. *Power of Police or Prohibition Officer to summon suspected persons.*— Any Police or Prohibition Officer may, after recording his reasons in writing, summon any person to appear before him whom he has good reason to suspect of having committed an offence under this Act. On such person appearing before such officer, the procedure prescribed by Sections 47 to 55 shall become applicable.

The Officer may also, if he considers it necessary for the investigation of the case, exercise the powers conferred by Sections 52 to 55 before summoning the person suspected.

57. *Law relating to criminal courts as to summoning of witnesses to apply*—The law for the time being in force as to summonses and compelling the attendance of persons summoned in criminal courts shall, so far as the same may be applicable, apply to any courts shall, so far as the same may be applicable. apply to any summons issued by a Police or Prohibition Officer and to any person summoned by him to appear under the provisions of this Act.

58. *Report of Police or Prohibition Officer to give jurisdiction to competent Magistrate* —When a Police or Prohibition Officer forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits any such person to bail to appear before such Magistrate, such officer shall also forward to such Magistrate, a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the Criminal Procedure, for the time being in force.

59. *Powers of Police and Prohibition Officers to cause attendance of witnesses before Magistrate* —When a Police or Prohibition Officer forwards in custody any person accused of an offence against this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits him to bail to appear before such Magistrate, such officer shall exercise all the powers such Magistrate, such officer shall exercise all the powers conferred by the Code of Criminal Procedure, for the time being in force.

60. *Procedure after arrest* —Any person arrested for an offence under this Act shall be informed, as soon as may be, of the grounds for such arrest and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.

61. *Police to take charge of articles seized.*—All officers in charge of police stations shall take charge of and keep in safe custody pending the orders of a Magistrate or of a Prohibition Officer all articles seized under this Act which may be delivered to them, and shall allow any Prohibition Officer who may accompany such articles to the police station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to make samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

62. *Power of District Magistrate to transfer cases* —The District Magistrate shall have power to transfer any case under this Act pending inquiry or trial before any Magistrate or Officer in the District to any other Magistrate or officer therein.

63. *Operation of the Code of Criminal Procedure* —Save as expressly provided in this Act, nothing contained therein shall affect the operation of the Code of Criminal Procedure, for the time being in force.

CHAPTER VI

MISCELLANEOUS

64. *Treatment of alcoholics and drug addicts.*—(a) Government shall take steps to encourage Medicare persons to treat addicts by providing appropriate training and necessary support;

(b) Government shall establish centers for retrieving persons addicted to alcohols and other drugs through more humane systems of treatment rendered by specialists in the field;

(c) The government shall also establish a research centre at state level to do research to find out more humane way to tackle the problem of addiction of people to alcohol and other drugs.

CHAPTER VII

RULES AND NOTIFICATIONS

65. *Power to make rules.*—(1) State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, State Government may make rules—

(a) For the issue of licences and permits and the enforcement of the conditions thereof;

(b) Prescribing the powers to be exercised and the duties to be performed by paid and honorary Prohibition Officers in furtherance of the objects of this Act;

(c) Prescribing the ways in which the fee under Section 29 may be levied;

(d) Determining the local jurisdiction of Police and Prohibition Officers in regard to inquiries and the exercise of preventive and investigating powers;

(e) Authorizing any officer or person to exercise any power or perform any duty under this Act;

(f) Prescribing the powers and duties of prohibition committees and the members thereof and the intervals at which the members of such committees shall make their reports;

(g) Regulating the delegation by the Commissioner or by Collectors or other District Officers of any powers conferred on them by or under this Act;

(h) Regulating the cultivation of the hemp plant, the collection of those portions of such plant from which intoxicating drugs can be manufactured and the manufacture of such drugs therefrom;

(i) Declaring how denatured spirit shall be manufactured.

(j) Declaring in what cases or clauses of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made thereunder, or by what authorities such orders may be revised, and prescribing the time and manner of presenting appeals, and the procedure for dealing therewith;

(k) For the grant of batta to witnesses, and of compensation for loss of time to persons released under section 47 (3) on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences under this Act and acquitted;

(l) Regulating the power of Police and Prohibition Officers to summon witnesses from a distance under Section 52 and

(m) For the disposal of articles confiscated and of the proceeds thereof;

(n) For the prevention of the use of medicinal or toilet preparations for any purpose other than medicinal or toilet;

(o) For all matters expressly required or allowed by this Act to be prescribed

(3) All rules made under this section shall be laid before the Legislative Assembly for not less than fourteen days as soon as possible after they are made and shall be subject so such modifications as the Assembly may make during the session in which they are so laid or the session immediately following.

66. *Publication of rules and notifications.*—All rules made under this Act shall be published in the Kerala Government Gazette and upon such publication, shall have effect as if enacted in this Act.

67. *Effect of the provisions of the Act on the provisions in the Abkari Act.*—Inconsistent provisions in the Kerala Abkari Act to be null and void. On and after the commencement of this Act, the provisions in the Kerala Abkari Act to the extent they are inconsistent with any of the provisions in this Act shall be null and void.

68. *Savings* —Notwithstanding the provision in clause (1) above any act done any liability incurred or right accrued under any of the provisions of the Abkari Act before the commencement of this Act shall stand unaffected and it will be governed by the relevant provisions of the Abkari Act

CHAPTER VIII

LEGAL PROCEEDINGS

69. *Actions against Government, etc* —No action shall lie against State Government or against any Prohibition, Police or other officer, for damages in any civil court for any act *bona fide* done or ordered to be done in pursuance of this Act.

70. *Courts to take judicial notice of appointments* —All courts shall take judicial notice of all notifications and orders conferring powers, imposing duties and making appointments under this Act.

Statement of objects and reasons

India continues to have the largest number of the poor, the illiterate and malnourished in the world. Kerala is no exception though Kerala boasts of 100% literacy. At the same time, it is well-known that liquor consumption in Kerala is very high. A large number of families get ruined day by day. Our drinking habits suggest total foolishness and near madness. Driving under the influence of alcohol and the consequent road accidents and deaths on the roads are frequent occurrences. Even young persons have taken to the habit of drinking. This is the position with regard to drugs as will. Very many deaths have taken place as a result of drinking illicit and spurious drinks manufactured and sold in the state by unsocial elements for making huge profits exploiting the poor victims of drinking habits.

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The Kerala Prohibition Bill

The Constitution of India in the Directive Principles of State Policy which are fundamental in the governance of the country contemplates total prohibition of alcohol and all types of intoxicating substance. The Commission feels that a law prohibiting liquor and similar substances is necessary in the best interests of the people of Kerala. Similar law exists in the State of Gujrat. Hence the parent Bill.

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THE POPULATION PLANNING FOR FAMILY WELL-BEING AND CHILDREN'S DEVELOPMENT BILL

A

BILL

to adopt Family Planning and Birth control as social justice strategies for organizing a humanist system, blending the patriotic policy of demographic equity and the constitutional mandate of democratic fraternity, as integral to National Development, Gender Liberty to consent to obligations of maternity and family well-being and the economic ability to fulfill parental responsibilities towards every child born with right to dignity and health in life, thereby promoting a progressive people and nation in happiness and harmony,

BE it enacted in the Fifty-ninth Year of the Republic

1. *Short title, extent and commencement* —(1) This Act may be called the Kerala Population Planning for Family Well-being, Birth Control and Children's Development Bill ——

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may notify in the Official Gazette.

2. *Definitions* —For the purpose of this Act, unless the context otherwise requires,—

(a) 'Government' means Government of Kerala.

(b) 'Family' means husband, wife or any one of them if the other is no more or is divorced, along with their children. Where more than one marriage is legally allowed, or, on valid divorce, another wife or husband is subsisting, such other person and children born under that wedlock will be included in the family. An adopted child will be a member of the family if the adoption is legal and consensual.

(c) 'Legal disqualification' means disentitlement, administrative or other, sustained by either spouse, as specified under Section 5 of this Act Provided that a child shall not be disentitled to any of its rights or claims on the score of any act or omission, default or disqualification suffered by either spouse, under the provision of this Act.

The Population Planning for Family Well-being and Children's Development Bill

3 *Adoption of Family Planning and Birth Control as Secular Policy of Population Regulation of the State.*—The Kerala State declares, as a means of social stability, family well-being and sound national economy, the need for State Level Family Planning and Birth Control as its basic policy with the object of checking the unhealthy, uneconomic and abnormal increase in population, and for sustaining harmony and happiness among all communities. This State Policy shall be geared to promoting the fraternal comity and secular structure of society so as to secure the health and welfare of women and children in every family and ultimately of the State and the nation.

4. *Family norm to be adopted by every person, who is a major, under the Act.*—Within the scope of a lawful wedlock, solemnized after the date of commencement of this Act, each unit of husband and wife shall limit its children to two for entitlement to the advantages the State grants to the members of a family and for avoidance of the legal disqualifications provided under this Act. If, on the legal termination of a wedlock, one of the spouses lawfully marries again, the children born by that wedlock shall be members of a different family for the purpose of this Act.

5. *Violation of Family norm to be a legal disqualification.*—One year after this Act comes into force, any person who commits any act or omission, movement, campaign or project which induces or tends to induce the violation of the family norm of two children as prescribed under this Act, or in any other manner abets the violation of the provisions, under this Act, shall be regarded as a 'legally disqualified person' for the purpose of this Act. Abetment, in this Act shall have the same meaning as under Section 107 of the Indian Penal Code.

6. *Grant of additional facilities and advantages for those who conform to the family norm set out under this Act and are not legally disqualified under Section 5* —The Government shall, through the Village, Panchayats, Municipalities and other local self-government units or prescribed agencies, provide a cash incentive not exceeding Rs. 50,000 to women who belongs to the Below Poverty Category of people and marry after the age of nineteen and have their first child after the 20th year of age, the eligible event being the birth of the first child; a similar sum shall be granted on the birth of the second child. This cash eligibility shall be available for the birth of the second child only if a spacing of three years after the date of birth of the first child is proved by a certificate from a Gazetted Officer of the Revenue or a Medical Officer of the Health Department or a Village Panchayat President or Legislative Assembly member. The sum so entitled shall be payable by the District Collector on an application, with the aforesaid certificate, if made within six months of the date or dates of birth.

7. *Prevention of Population Regulation Policy*.—(a) Any person, who, or any organization, which actively imparts publicity to the State's Statutory Population Regulation Policy or other positive dimensions of family planning in general conformity with the principles indicated in this Act, shall be eligible for such special consideration as may be notified by the Government.

(b) Where a social or religious organization, academic or political institution engages in active publicity or resorts to any measures calculated to negative or discourage the plan, policy or principle of population regulation, family planning or birth control outlined in this Act generally, such entity shall be liable to censure by the Governor except where absence of any motive to discourage or defeat the policy of this Act is proved. The Governor shall exercise this Option of censure only on the recommendation of the Commission set under Section 8 of this Act.

(c) Where any person or institution by any act or omission encourages, facilitates or otherwise promotes the State population policy, family planning project or birth control scheme set out under this Act and creates public opinion favourable to the provision of this Act, such entity may be granted rewards in cash or awards conferring distinction by the Governor on the recommendation of the Commission set up under Section 8 of the Act.

8. *Commission for the implementation of Population Regulation Policy*.—(a) The Government shall constitute a Commission of not more than ten members, consisting of social activists and public personalities or heads of institutions with commitment to the philosophy and policy spelt out in this Act. The objectives of the Commission shall be to function in every manner supportive of;

(b) The policies of population planning, family well-being, birth-control as well as the moral and economic advantages, gender justice and other progressive dimensions of the programme underlying this Act;

(c) To suggest creative changes and improvements and elimination of harmful features if any, in the objectives, provisions and working of the Act;

(d) To hold dialogues, discussions, invite papers and organize seminars to create public opinion favourable to the policy of the Act, clarify misunderstandings, if any, about the social and economic basics of the Act and eliminate any anti-religious or communal or political interpretations of this Act and explain the sociological and economic gains, public health benefits and child development advantages intended by

the Act. This Commission shall be headed by a social activist of outstanding stature and secular commitment with concern for demographic and developmental considerations. The Members of the Commission shall not be political or religious office holders at the District or State level and shall be appointed by the Governor in consultation with the Chief Minister and such other dignitaries as he deems fit;

(e) All the members, including the President, shall be appointed by the Governor according to rules prescribed in this behalf.

(f) The Commission considers that there is general willful indifference to the provision of this Act or frequent violation thereof may recommend to the State Government to make provisions by way of Civil and Criminal liability in the shape of damages upto Rs. 10,000 or penal liability not exceeding three months simple imprisonment or fine of Rs.10,000. Provided that this provision shall be made only after a resolution is passed in the Legislative Assembly authorizing the imposition of such a penal liability. Such a provision shall cease to be in force if a repeal thereof is required by a fresh resolution with a 2/3rd majority of the total membership of the house whether present or not.

9. *Health Insurance Plan.*—There shall be established a Health Insurance Plan which covers all couples with their children below the poverty line, if one of the spouses had undergone sterilization. There shall also be a personal accident insurance cover for the spouse undergoing sterilization if any injury is sustained accountable to the sterilization.

10. *Facilities to be provided to Couples* —(a) Medically safe contraceptives and instructive literature shall be made accessible free at the time of marriage and at any time thereafter by the District Medical Officer. Counseling services shall be made available by every hospital free on request as a professional obligation under the Public Health Code.

(b) Facilities for safe abortion will be made available free and through hospitals, health care Centres, governmental and private as an obligation under the Public Health Code.

11. *Prohibition of inducements for generation of more children than provided in Section 4 of this Act.*—(1) No person or institution shall use religion, region, sect, caste, cult or other ulterior inducements for the bearing of more children than permitted by Section 4.

(2) Such child born in contravention of sub-section (1) shall, all the same, be entitled to all the rights of the child and shall not be subjected to any penalty, discrimination or disadvantage. Notwithstanding this immunity, the parents may for the purposes of this Act be subject to the legal disqualification specified under this Act.

12. *Filing of complaint and the court having jurisdiction to try the offences.*—(1) Any person or a public organization or Institution associated with or carrying on the work of Family Planning and Birth Control may file a complaint alleging violation of the provisions in Section 5 or 7 or both before the Judicial Magistrate of the First Class within whose jurisdiction the offence is alleged to have been committed.

(2) On filing the complaint, the court shall entertain and dispose of it in accordance with the provisions in the Public Health Code and decision therein shall be subject to appeal and revision as provided in the Criminal Procedure Code.

13. *Operation of provisions in Sections 5 and 6.*—Provisions in Section 5 shall have operation only after the expiry of a period of one year from the date of commencement of this Act.

14. *Rendering assistance to the public in the matter of birth control.*—(1) The Government and the Commission appointed under Section 8 shall conduct awareness programmes especially in rural areas to encourage people to adopt birth control methods to enable them to comply with the requirements of the Act and to lead a healthy family life.

(2) The Government through its hospitals, health care institutions and other centers shall provide free of cost all facilities to undergo sterilization and vasectomy operations and to adopt other birth control methods medically approved to those who choose to have such assistance.

15. *Appointment of a Population Control Officer.*—There shall be a State Population Control Officer who will survey and supervise and audit the working of the Act and make Annual Report of the said working with suggestions for improvement, if any, of the policy implementation of the Act. This Report shall be placed on the table of the House and shall be discussed in the House if so desired by any member.

16. *Power to make rules.*—The Government may frame necessary Rules for effectively implementing the provisions by issuing notifications in the Gazette.

The Population Planning for Family Well-being and Children's Development Bill

Statement of Objects and Reasons

Birth control and family planning are essential measures in the best interests of a family and the State to be adopted and practiced by all sections of the vast population of this State. There have been many impediments in the way of implementing a policy based on birth control and family planning Such inhibitions have contributed too many handicaps within the family and outside. The State has a duty to implement the National Population Policy by limiting the number of children born out of a lawful wedlock to two for entitlement to the advantages of the State grants to the members of a family.

Family well-being is dependant on the economic ability of the family to meet the ever-increasing needs for providing a qualitative life to the members of the family. Population control has been advocated by researchers in the field both in the interests of the family as well as the State.

Hence the Bill.

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THE KERALA MEDICAL PRACTITIONERS BILL

Preamble —Whereas it is expedient to regulate the qualifications and provide for the registration of practitioners of modern medicine, homeopathic medicine indigenous medicine and traditional practitioners of Ayurvedic medicines with a view to encourage the study and spread of such medicines and to enact a law relating to medical practitioners generally in the Kerala State

BE it enacted in the Fifty-ninth Year of the Republic of India as follows.—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Medical Practitioners Act, ——.

(2) It extends to the whole of the State of Kerala.

(3) It shall come in to force on such date as the Government may notify in the official Gazette.

2. *Definitions* —In this Act, unless there is anything repugnant in the subject or context.

(a) "Council" means, in relation to matters pertaining to modern medicine, 'the Council of Modern Medicine', in relation to matters pertaining to Homeopathic Medicine 'the Council of Homeopathic Medicine', and in relation to matters pertaining to indigenous medicine, 'the Council of Indigenous Medicine', established under Section 3.

(b) "Homeopathy" means the system of medicine founded by Dr Hahnemann and the expression "homeopathic" shall be construed accordingly;

(c) "Hospitals", "asylums", "infirmaries", "dispensaries", "clinics", "surgeries", "lying-in-hospitals", "sanatorium", "nursing homes", "vaidyasalas", "dharmasalas", and other cognate expressions means institutions where the methods of treatment approved by the appropriate council are carried out;

(d) "Indigenous medicine" means the ayurvedic medicine, the siddha medicine, Marma Chikitsa, the Unani tibbi and other kinds of indigenous medicine as the Council of Indigenous Medicine may, from time to time, recognize,

(e) "Medical School or College" means any institution where facilities for teaching or training in the art and science of healing for human ailments according to modern medicine, homeopathic medicine or indigenous medicine are provided,

(f) "Modern medicine" means the allopathic system of medicine;

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(g) "Practitioner" means any person ordinarily engaged in the practice of modern medicine or homeopathic medicine or indigenous medicine, as the case may be, including traditional practitioners of Ayurvedic medicines specially included in indigenous medicines known as "Paramparya Vaidyans" and "Marma Chikitsakas" having at least five years of experience as on the date of commencement of this Act;

(h) "President" means the president of the appropriate council;

(i) "Qualified practitioner" means a person holding a recognized qualification;

(j) "Recognized qualifications" means the qualifications enumerated in the Schedule;

(k) "Register" means a register of practitioners maintained under this Act;

(l) "Registered practitioner" means a practitioner whose name is for the time being entered in the register maintained under the Act;

(m) "Registrar" means the authority constituted under Section 19 to function as Registrar;

(n) "Regulations" means regulations made by the appropriate council under this Act;

(o) "Rules" means the rules made by the Government under this Act;

(p) "Schedule" means the Schedule to this Act.

3. *Establishment, incorporation and constitution of councils.*—(1) The Government shall, by notification in the Gazette, establish the following three councils:—

(a) The Council of Modern Medicine;

(b) The Council of Homeopathic Medicine; and

(c) The Council of Indigenous Medicine.

Each such council shall be a body corporate, and have perpetual succession and a common seal and shall by the said name sue and be sued

(2) (i) The Council of Modern Medicine shall consist of the following nine members.-

(a) Director of Medical Education;

(b) One member elected by the Faculties of Medicines, University of Kerala, Kozhikode, Cochin, Kannur and Mahatma Gandhi University,

(c) One member elected by the teachers of the Medical Colleges of Tiruvananthapuram, Kottayam, Trissur and Kozhikode;

(d) Four members, elected by the registered practitioners of modern medicine of that district from among themselves; and

(e) Two members nominated by the Government.

(ii) in making nominations under clause (i) (e), the Government shall have due regard to the claims of women, of medical missions and of other groups of practitioners, representatives of whom have not been elected by the electorates referred to in clauses (i) (b), (i) (c) and (i) (d)

(3) The Council of Homeopathic Medicine shall consist of the following five members:—

(a) Four members, elected by the registered practitioners of Homeopathic Medicine from among themselves; and

(b) One member nominated by the Government.

(4) The Council of Indigenous Medicine shall consist of the following eleven members:—

(a) One member elected by the Faculty of Ayurveda, University of Kerala, Kozhikode, Cochin, Kannur and Mahatma Gandhi University from among themselves;

(b) Three members elected from among themselves by the teachers of—

(i) The Government Ayurveda College, Tiruvananthapuram;

(c) Four members, elected by the registered practitioners of Ayurvedic medicine from among themselves;

(d) One member elected by the registered practitioners of the Ayurvedic grant-in-aid Vaidyans and Traditional practitioners known as Paramparya Vaidyans and Marma Chikitsakas from among themselves;

(e) Two members elected by the registered practitioners of Siddha medicine from among themselves.

(f) One member elected by the registered practitioners of Unani tibbi medicine from among themselves;

(g) One member nominated by the Government from among the registered practitioners of Indigenous medicines·

Provided that, if there are not at least twenty-five registered practitioners in the Ayurvedic medicine or the Siddha medicine or the Unani tibbi medicine, the Government shall nominate a member in respect of that medicine from among the registered practitioners of that medicine and the member so nominated shall, for the purposes of this sub-section, be deemed to have been duly elected.

(5) Notwithstanding anything contained in sub-section (4), the Government may, by notification in the Gazette, direct that the Council of Indigenous Medicine shall consist less than eleven members if there are no qualified registered practitioners in the Ayurvedic medicine or the Siddha medicine or the Unani tibbi medicine or registered traditional practitioners of Ayurveda Medicines known as Paramparya Vaidyans and Marma Chikitsakas to be elected from among them.

4. *Nomination of members in default of election.*—If any members mentioned in clauses (i) (b), (i) (c) or (i) (d) of sub-section (2) or in clause (a) of sub-section (3) or in clause (a),(b),(c),(d),(e) or (f) of sub-section(4) of registered practitioner as they may deem fit and the practitioners so nominated shall, for the purposes of this Act be deemed to have been duly elected under clause (1) (b), (1) (c) or (1) (d) of sub-section (2) or clause (a) of sub-section (3) or clause (a), (b), (c), (d), (e) or (f) of sub-section (4) of Section 3, as the case may be.

5. *Qualification of members* —Every member of a Council shall be a registered practitioner and the holder of a recognized qualification except in the case of Paramparya and Marma Chikitsakas.

6. *Nomination of members of first Councils* —Notwithstanding anything contained in Sections 3, 4 and 5, in the case of the first Councils, all the members other than the *ex-officio* member shall be nominated by the Government:

Provided that the members so nominated shall be holders of recognized qualifications.

7. *Disqualifications for membership* —A person shall be disqualified for being elected or nominated as, and for being, a member of a council,—

(a) if he has not attained the age of majority;

(b) If he is an undischarged insolvent;

(c) If he is of unsound mind and stands so declared by a competent court, a deaf-mute or a leper;

(d) If he has been punished by an appropriate council or by the Travancore Medical Council in any manner for infamous conduct in the profession or if he is dismissed from service under any Government;

(e) If his name has been removed from the appropriate register maintained under this Act and has not been reinstated;

(f) If having been elected under clause (i) (b) of sub-section (2) of Section 3, he ceases to be a member of the Faculty of Medicine, University of Kerala, Kozhikode, Cochin, Kannur or Mahatma Gandhi University as the case may be.

(g) If having been elected under clause (i) (c) of sub-section (2) of Section 3, he ceases to be a teacher of the Medical Colleges of Thiruvananthapuram, Alappuzha, Trissur or Kozhikode as the case may be.

(h) If having been elected under clause (a) of sub-section (4) of Section 3, he ceases to be a member of the Faculty of Ayurveda, University of Kerala, Kozhikode, Cochin, Kannur or Mahatma Gandhi University as the case may be.

(i) If having been elected under clause (b) of sub-section (4) of Section 3 he ceases to be a member of the teaching staff of the Ayurveda College in which he is a teacher.

(j) If having been elected under clause (d) of sub-section (4) of Section 3, he ceases to be an Ayurvedic grant-in-aid vaidyan

8. *Term of office of members.*—(1) Save as otherwise provided in this Act, the term of office of the members other than the ex-officio member shall—

(a) In the case of the first Councils, be for a period of two years commencing from the date on which the first meeting of such councils is held; and

(b) In the case of any Council other than the first Council, be for a period of five years from the date on which the first meeting of such council is held.

(2) An outgoing member shall continue in office until the election or nomination, as the case may be, of his successor

(3) An outgoing member shall be eligible for re-election or renomination, if otherwise qualified.

9. *President and Vice-President.*—(1) Each Council shall elect one of its members to be its President and also another member to be its Vice-President:

Provided that the President of the first Councils shall be nominated by the Government.

(2) The President shall be deemed to have vacated his office on resignation or on the expiry of his term of office as a member or on his otherwise ceasing to be a member.

(3) The Vice-President shall be deemed to have vacated his office-

(a) On resignation or on the expiry of his term of office as a member or on his otherwise ceasing to be a member; and

(b) On his election as President.

(4) When the office of the President is vacant, the Vice-President shall exercise the functions of the President until a new President assumes office.

(5) When the office of the President is vacant or the President is incapacitated and there is either a vacancy in the office of the Vice-President or Vice-President is incapacitated, the Registrar shall, after giving notice of not less than seven clear days to the members of the Council, convene a meeting for the election of a President, if there is a vacancy in that office, and until a new President or Vice-President is elected and assumes office, or either the President or the Vice-President recovers from his incapacity, as the case may be, the Surgeon-General shall, notwithstanding anything contained in this Act, be *ex-officio* member and President of the council

(6) An outgoing President or Vice-President is eligible for re-election if otherwise qualified.

Explanation.—A new President or Vice-President shall be deemed to have assumed office on his being declared elected as such.

10. *Vacancies.*—If vacancy occurs in the office of a member of a Council through death, resignation, removal or disability of such member or otherwise, previous to the expiry of the term of his office, the vacancy shall be filled in the manner prescribed by rule. Any person elected or nominated to fill the vacancy shall. notwithstanding anything contained in Section 8, hold office only so long as the member in whose vacancy he is elected or nominated would have held office if the vacancy had not occurred:

Provided that it shall be lawful for Council to exercise its powers under this Act, notwithstanding such vacancy.

11. *Appointments to be notified in the Gazette.*—All elections, nominations and the appointment of Registrar shall be notified in the Gazette.

12. *Cessation of membership.*—A member of a Council shall be deemed to have vacated his seat—

(a) On the expiry of the term of office;

(b) On resignation;

(c) On absence without sufficient cause in the opinion of the appropriate Council from three consecutive meetings of such Council; or

(d) On becoming subject to any of the disqualifications mentioned in Section 7.

13. *Resignation of Membership.*—Any member, President or Vice-President may at any time resign his office by giving notice in writing to the appropriate Council. Such resignation shall take effect in the case of a member, President or Vice-President from the date on which it is received by the President and in the case of the President from the date on which it is placed before the council.

14. *Validity of Proceedings.*—(1) No disqualification of or defect in the election or nomination of any person acting as a member of a Council or as President or Vice-President or presiding member of a meeting shall be deemed to invalidate any act or proceedings of such council in which such person has taken part.

(2) No act done by a Council shall be deemed to be invalid on the ground merely of the existence of any vacancy in or any defect in the constitution of such council.

15. *Time and place of meeting of Council.*—Each Council shall meet at such time and place and every meeting of the Council shall be summoned by such person and in such manner as may be prescribed by regulations:

Provided that until such regulations are made, it shall be lawful for the President to summon a meeting at such time and place as he may deem expedient by notice addressed to each member.

16. *Presidency at meetings of Council and procedure thereat.*—(1) Every meeting of a Council shall be presided over by the President; in his absence by the Vice-President; and in the absence of both the President and the Vice- President, by a member chosen for the occasion.

(2) The President shall maintain discipline and shall decide all points of order at or in connection with meetings. There shall be no discussion on any point of order and the decision of the President on any point of order shall be final

(3) The Vice-President or member presiding for the occasion shall, for that meeting and during the period that he presides over it, have all the powers of the President.

(4) All questions at a meeting of a Council shall be decided by the votes of the majority of the members present and voting at the meeting. Five members shall form a quorum except in the case of the Council of Homeopathic Medicine for which quorum shall be three. If within half an hour from the time appointed for the meeting there is no quorum, the meeting shall stand adjourned to the same day in the following week at the same time and place, and if at the adjourned meeting there is no quorum within half an hour from the time appointed for the meeting, the members present shall form a quorum

(5) At every meeting of a Council, the President shall, in addition to his vote as a member of the council, have a second or casting vote in case of an equality of votes.

17. *Payment of fees and allowances.*—There shall be paid to the President, Vice-President and other members of each Council such fees and allowances for attendance in connection with the meetings of the Council or of any committee thereof and such travelling allowances as shall, from time to time, be prescribed by rules.

18. *Executive Committee.*—Each Council shall have power to appoint an Executive Committee and other Committees from among its members and to delegate to such committee such of the powers and duties vested in the Council as the council may deem fit, other than those provided by Sections 19 and 21

19. *Registrar*—(1) The Government shall, after consulting each council, appoint a Registrar who shall be the Secretary to such Council. He shall also be the Secretary to the committee appointed under sub-section (1) of Section 21. The Registrar shall receive such salary and allowances as may be prescribed by rules. The Government may grant him leave and may appoint a person to act in his place.

(2) Subject to such rules as may be prescribed, each Council shall, have power to punish the Registrar. Any order of such Council punishing the Registrar shall not take effect without the previous approval of the Government

(3) Each Council may appoint or employ such other officers and servants as it may deem necessary for the purposes of this Act·

Provided that the number and designations of such officers and servants and their salaries and allowances shall be subject to the previous approval of the Government.

(4) The method of recruitment and the conditions of service such as pay, allowances, promotions, leave, pension, gratuity and provident fund relating to the officers and servants appointed or employed under sub-section (3) shall be governed by the rules applicable to officers and servants of the Government of similar class/ grade.

(5) All officers and servants appointed or employed under sub-section (3) shall be under the direct control and supervision of the Registrar. The powers of the Registrar to punish, dismiss, discharge and remove any such officer or servant shall be governed by such rules as may be framed by the Government in this behalf.

(6) All officers and servants appointed or employed under sub-sections (1) and (3) shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

20. *Duties of Registrar.*—(1) Subject to the provisions of this Act and subject to any general or special order of the appropriate Council, it shall be the duty of the Registrar to keep the registers.

(2) There are to be separate registers for modern medicine, homeopathic medicine, ayurvedic medicine, siddha medicine, unani tibbi medicine, traditional practitioners of Ayurveda medicines known a 'Paramparya Vaidyans' and 'Marma Chikitasakas' and practitioner of modern medicine having minimum 20 years practice as such but not having any recognised qualifications. The registers shall be in such form and shall contain such particulars as may be prescribed by rules. Each register shall be divided into two parts, A and B, Part A containing the names of practitioners holding recognized qualifications and the names of practitioners holding appointments under the Government at the commencement of this Act, and Part B containing the names of those registered by virtue of clause (ii) of sub-section (1) of Section 23 and Section 39.

(3) The Registrar shall keep the registers up-to-date in accordance with the provisions of this Act and the rules and regulations made thereunder, and shall remove from the registers the names of registered practitioners who are dead or whose names are directed to be removed from the registers under Sections 28, 33 and 34.

(4) For the purposes of this section, the Registrar may write by registered post to any registered practitioner at the address which is entered in his register to enquire whether he has ceased to practice or has changed his residence and if no reply is received to the said letter within a period of six months, the Registrar, may remove the name of the said practitioner from the register:

Provided that the appropriate Council may, on the application of the said practitioner, direct that his name be re-entered in the register, if it is satisfied that the said practitioner has not ceased to practice.

(5) The registers shall be deemed to be public documents under Section 74 of the Indian Evidence Act.

21. *Framing of regulations and procedure for amendment thereof.*— (1) As soon as the first Council is formed, the Council of Modern Medicine, the Council of Homeopathy Medicine and the Council of Indigenous Medicine shall each appoint a committee of three members. The Registrar and the Secretary to Government in charge of the Health Section shall be *ex officio* members of each committee. Three members shall form the quorum for each committee.

(2) The committee shall draw up the regulations under this Act. All regulations framed by the committee shall be placed before the appropriate Council for its consideration and with the modifications, if any, made by such Council, shall be submitted to the Government for approval.

(3) It shall be competent to each Council to delete, add to, modify or alter all or any of the regulations. A proposal for such deletion, addition, modification or alteration shall not be taken into consideration unless twenty-five or more registered practitioners petition to such Council and demand the same. Such changes shall not be deemed to have been effected by such Council unless not less than seventy-five per cent of the members present at the meeting of such Council vote in favour of the same.

22. *Default of Council*—(1) If at any time it shall appear to the Government that a Council has failed to exercise or has exceeded or abused any of the powers conferred on it by or under this Act or has failed to perform any of the duties imposed upon it by or under this Act, the Government may, if it considers such failure, excess or abuse to be of a serious character notify the particulars thereof to such Council, and if such Council fails to remedy such default, excess or abuse, within such time at the Government may fix in this behalf, the Government may dissolve such Council and cause all or any of the powers and duties of such period as it may think fit, and thereupon the funds and property of such Council shall vest in the Government for the purposes of this Act until a new Council shall have been constituted under Section 3.

(2) When the Government have dissolved a Council under sub-section (1), it shall take steps as soon a may be to constitute a new Council under Section 3; and thereupon the property and funds referred to in sub-section (1) shall vest in the council so constituted.

REGISTRATION

23. *Eligibility for registration.*—(1) Subject to the provisions of sub-sections (2) and (5),—

(i) Every holder of a recognized qualification and every practitioner holding appointment under the Government at the commencement of this Act,

(ii) Every person who, within the period of one year or such other longer period as may be fixed by the Government from the date on which this Act comes into force, proves to the satisfaction of the appropriate Council that he has been in regular practice as a practitioner for a period of not less than five years preceding the date of commencement of this Act.

(iii) Every person who, within a period of 6 months from the commencement of this Act, proves to the satisfaction of the appropriate Council that he has been in regular practice as a practitioner of allopathic medicine barring the practice in Surgical Operation, Gynacology Obstetrics and Radiation Therapy for not less than 20 years preceding the date of commencement of this Act.

Shall be eligible for registration under this Act:

Provided, however, that no practitioner shall be registered under sub-clauses (ii) and (iii) after the expiration of one year, or such other longer period as may be fixed by the Government, from the date on which this Act comes into force.

(2) Applicants for registration under clause (ii) of sub-section (1) shall produce a certificate in Form I as set forth in the Schedule. The certificate shall be from an officer of the Revenue Department not below the rank of a Tahsildar or any other person authorized by the Government in this behalf:

Provided that in the case of traditional practitioners of Ayurvedic medicines known as 'Paramparya Vaidyans' and 'Marma Chikitsakas' the application for registration shall be in Form III as set forth in the schedule:

Provided further that in the case of unqualified practitioner of Allopathic Medicines referred to in sub clause (iii) of sub-section (1) the application for registration shall be in form accompanied by an affidavit containing an unconditioned undertaking that the applicant shall not practice in Surgical Operations, Gynacology, Obstetrics and Radiation Therapy and a Certificate of 20 years experience issued by a Registered Medical Practitioner having more 20 years practice and having direct knowledge about the professional experience the applicant is having in the practice of allopathic medicines.

(3) the Government may, after consulting the appropriate Council, permit the registration of any person who shall furnish to such Council proof that he is possessed of a medical degree, diploma or certificate of any University, medical school or college approved by such Council other than those mentioned in the Schedule.

(4) The Government shall have power to direct the registration of any practitioner who, at the time of registration under this Section, is employed in a Hospital, asylum, infirmary, clinic, surgery, lying-in-hospital, sanatorium, nursing home, dispensary, vaidyasala or dharmasala managed by any corporate body:

Provided, however, that no such practitioner shall be registered under this sub-section after the expiration of one year, or such other longer period as may be fixed by the Government from the date on which this Act comes into force.

(5) No person shall be eligible for registration under sub-section (1), sub-section (3), or sub-section (4) if he is subject to any of the disqualifications mentioned in clauses (a) to (e) of Section 7.

(6) No application for registration as a practitioner under the Act shall be entertained from any person who does not possess less than five years experience on the date of commencement of this Act as a Paramparya Vaidya or as a Marma Chikitsaka or less than 20 years experience as a practitioner of modern medicine on the date of commencement of this Act exercising the enabling provisions under this Act.

24. *Registration fee.*—(1) An application for registration under this Act shall be in Form II as set forth in the Schedule accompanied by a fee of Rupees 20.

(a) An application for Registration under this Act from practitioners coming within sub clauses (ii) and (iii) of Section 23 shall be respectively in Form III and IV attached to the Schedule.

(2) Every registered practitioner who applies to the Registrar for registration in respect of any additional recognized qualification shall pay a fee of Rupees 5.

(3) If the appropriate council directs the registration of the applicant, the Registrar shall enter the name of the applicant in the appropriate register and issue to him a certificate in such form and containing such particulars as may be prescribed by rules.

(4) Nothing in sub-section (1) or sub-section (2) shall be deemed to apply to any person whose name has been registered for the primary or additional recognized qualification, as the case may be under any enactment for the registration of practitioners in modern medicine, homeopathic medicine or indigenous medicine for the time being in force in any State in India, if the said enactment provides for the registration of persons registered under this Act without payment of any fee or on payment of a smaller fee for the primary or additional recognized qualification, as the case may be.

(5) Any practitioner not registered under this Act or to whom sub-section (4) does not apply but registered in any other State in India shall obtain the previous permission of the appropriate Council for practicing as a medical practitioner in the State on payment of such fee as may be prescribed by rules.

25. *List of practitioners as on a date to be notified by the Government under this Act* —(1) The Registrar shall prepare and keep a list called "List of persons in practice as on the date to be notified by the Government under this Section.

(2) Every person not being a person qualified for or entitled to registration under this Act, who within a period of one year, or such other longer period as may be fixed by the Government from the commencement of this Act, proves to the satisfaction of the Registrar, that he has been in regular practice in the State on the date to be notified by the Government of modern medicine, homeopathic medicine, ayurvedic medicine, siddha medicine or unani tibbi medicine shall be entitled to have his name entered in the aforesaid list on payment of Rs.10:

Provided, however, that any person whose name has been removed from the registers maintained under the Travancore Medical Practitioners Act, 1119 or the registers maintained under any Act of a State Legislature in India or of the register of any country where he was formerly practicing for the in famous conduct in a professional respect, shall not be entitled to have his name entered in the list.

(3) The provisions of Sub-sections (3) and (4) of Section 20, Section 27 and Section 33 shall *mutatis mutandis* apply to the list referred to in sub-section (1).

26. *Practitioners registered under the Travancore-Cochin Medical Practitioners Act, 1953* —(1) Every practitioner registered under the Travancore-Cochin Medical Practitioners Act, 1953, shall be and all practitioners deemed to have been registered under that Act, be deemed to be a practitioner registered under this Act, if at the commencement of this Act, his name stands entered in the appropriate register maintained under the said Act; and every certificate of registration issued to every such practitioner shall be deemed to be a certificate of registration issued under this Act.

(2) The Registrar shall, as soon as may be after the commencement of this Act, enter in the appropriate registers the names of all such practitioners as are referred to in sub-section (1) without an application and without payment of any fee.

27. *Application for registration* —(1) All applications for registration under Section 23 shall be sent direct to the Registrar.

(2) The Registrar shall place all applications under this section before the committee of the appropriate Council appointed for the purpose for its report.

(3) The report of the committee under sub-section (2) shall be placed before the appropriate Council for its decision.

28. *Removal from registers by Council* —(1) The name of any person who becomes subject to any of the disqualifications mentioned in clauses (b) to (d) of Section 7 shall be liable to be removed altogether or for a period from the register.

Provided that the appropriate Council may, on sufficient cause being, shown, direct that the name of the practitioner so removed shall be re-entered in the register.

(2) The name of a practitioner shall not be removed from the register on the ground of his association with an unregistered practitioner if such unregistered practitioner is possessed of recognized qualification:

Provided that the registered practitioner shall not be relieved of any obligations or compliance with any rules of conduct which may be imposed upon registered practitioners generally by the appropriate Council.

29. *Removal from registers on application* —(1) Any practitioners registered under this Act may make an application to the appropriate council for the removal of his name from the register of practitioners and the Council may on such application direct such removal:

Provided that no application from such practitioner for the removal of his name from the register shall be considered during the pendency of any disciplinary proceedings against him or in cases where disciplinary proceedings are contemplated against him, until such proceedings are dropped or concluded:

Provided further that if any such applications is made with a view to enable the applicant to pursue a course of conduct which would have brought him under the disciplinary jurisdiction of the appropriate Council, had his name continued to remain on the register, it shall be rejected.

(2) A practitioner whose name has been removed from the register under sub-section (1) may, on application being made and on payment of such fees as may be prescribed by rules, get himself re-registered, if he is at that time eligible for registration under this Act.

30. *Annual list of practitioners* —(1) the Registrar shall in every year on a date to be fixed by the appropriate council, cause to be published in the Gazette a full or supplementary list of the names and qualifications of all practitioners registered under this Act and the dates on which such qualifications were acquired except in the case Paramparya Vaidyas, Marma Chikitsakas and unqualified practitioners of modern medicine with 20 years practice as on the date of commencement of this Act.

(2) The Registrar shall, from time to time, cause to be published in the Gazette the names of such practitioners which have been duly removed under any of the provisions of this Act.

(3) In any proceeding it shall be presumed that every person whose name is entered in the list published under sub-section (1) is a registered practitioner and that any person whose name is not so entered is not a registered practitioner:

Provided that, in the case of a person whose name has been entered in the register after the publication of the list, a certified copy signed by the Registrar of the entry of the name of such person in the register shall be evidence that such person is registered under this Act. Such certificate shall be issued free of charge.

31. *Disability* —(1) No registered practitioner, other than a qualified registered practitioner, who has not undergone a course of practical training in surgery or obstetrics under modern medicine to the satisfaction of the appropriate council shall practice surgery or obstetrics.

(2) No registered practitioner shall follow any other profession without the sanction of the appropriate council so long as his name continues in the register.

32. *Privileges* —(1) Notwithstanding anything contained in any law for the time being in force.—

(i) The words "legally qualified medical practitioner" or "duly qualified medical practitioner" or any word or words importing a person recognized by law as a medical practitioner or a member of the medical profession when used in any enactment for the time being in force in the State shall be construed to mean a qualified registered practitioner;

(ii) No certificate required by law to be given by a medical practitioner shall be valid unless it is signed by a practitioner registered in Part A of the Register.

(iii) No person other than qualified registered practitioner shall be eligible to hold, after one year from the commencement of this Act, any appointment as a physician, surgeon, vaidhyan, or other medical officer of any dispensary, hospital, infirmary, clinic, surgery, lying-in-hospital, sanatorium, nursing home, vaidhysala, dharmasala or other similar institution:

Provided that this clause shall not be deemed to operate against a registered practitioner, not being the holder of a recognized qualification, who at the commencement of this Act holds any such appointment.

(2) Any person who, not being eligible to hold any appointment referred to in clause (iii) of sub-section (1), holds any such appointment shall, on conviction be punishable with fine which may extend to five thousand rupees.

(3) Whoever, after having been convicted under sub-section (2), continues to hold any such appointment shall, on conviction be punished for each day after the previous date of conviction during which he continues to hold the appointment with fine which may extend to five thousand rupees.

33. *Appeal to the Council from the action of the Registrar*—(1) Any person aggrieved by the action of the Registrar regarding any entry in the register may appeal to the appropriate Council within 2 months from the date of decision of the Registrar.

(2) Such appeal shall be heard and decided by the Council in the manner prescribed by regulations.

(3) The appropriate Council may, of its own motion or on the application of any person, after such inquiries as the Council may deem fit to make and after giving an opportunity to the person concerned of being heard, correct such entry in the register, if in the opinion of the Council, such entry was fraudulently or incorrectly made.

34. *Alteration of register by Government*—The Government may after, giving due notice to the person concerned and to the appropriate Council and after inquiry into his objections, if any, order that any entry in the register which shall be proved to the satisfaction of the Government to have been fraudulently or incorrectly made or brought about be cancelled or amended.

35. *Appeal to Government from the decision of the Council.*—An appeal shall lie to the Government from every decision of a Council under Sections 24, 27, 28 and 33. Such appeal shall be preferred within three months from the date on which notice of the order of the Council was issued in such manner and subject to such conditions as may be prescribed by rules.

36. *Rules* —(1) The Government may, after previous publication, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules—

(a) with reference to all matters expressly required or allowed by this Act to be prescribed by rules;

(b) With reference to the elections of President and Vice-President or members including election petitions, deposits to be made by candidates standing for election as members and the conditions under which such deposits may be forfeited:

Provided that the deposit required shall not exceed fifty rupees;

(c) As to the manner in which vacancies shall be filled under Section 10;

(d) As to the fees and other allowances payable to the President, Vice-President and the other members of each council under Section 17;

(e) As to the salary, allowances and other conditions of service of the Registrar under Section 19;

(f) As to the powers of the Registrars to punish the officers and servants appointed or employed under Section 19;

(g) As to the form and contents of the Registers and the particulars to be entered therein under Section 20;

(h) As to the application of the fees and other amounts received under this Act;

(i) As to the form of the certificate to be issued under Section 24 and the particulars which it shall contain;

(j) As to the procedure relating to appeal to the Government from the decisions of each Council under Section 35;

(k) As to the furtherance of any of the objects of each Council.

(3) All rules made under this Section shall be published in the Gazette.

37. *Regulations*.—(1) Each council may, with the previous sanction of the Government, make regulations not inconsistent with this Act or the rules made thereunder for all or any of the following matters, namely:—

(a) The time and place at which the council shall hold its meetings and the manner in which such meeting shall be convened and held;

(b) The procedure relating to appeals against the action of the Registrar under Section 33;

(c) All other matters which may be necessary for the purposes of carrying out the objects of this Act

(2) All regulations made under this section and duly confirmed by the Government shall be published in the Gazette.

(3) The Government may, by notification in the Gazette, cancel any such regulations.

PART III

MEDICAL PRACTITIONERS GENERALLY

38. *Persons not registered under this Act, etc , not to practice* —No person other than (i) a registered practitioner or (ii) a practitioner whose name is entered in the list of practitioners published under Section 30 or (iii) a practitioner whose name is entered in the list mentioned in Section 25 shall practice or hold himself out, whether directly or by implication, as practicing modern medicine, homeopathic medicine or ayurvedic medicine, siddha medicine or unani tibbi Paramparya Vaidya or Marma Chikitsaka and no person who is not a registered practitioner of any such medicine shall practice any other branch of medicine unless he is also a registered practitioner of that medicine:

Provided that the Government may, by notification in the Gazette, direct that this section shall not apply to any person of class or persons practicing medicine in the State while none of the three classes of practitioners mentioned above carried on medical practice:

Provided further that this section shall not apply to a practitioner eligible for registration under this Act who, after having filed the application for registration, is awaiting the decision of the appropriate Council or of the Government in case of appeal:

Provided also that this section shall not apply to a practitioner eligible for registration under this Act until the period prescribed for application under Section 23 expires.

39. *Penalty*.—Any person who acts in contravention of Section 38 shall, on conviction, be punishable with fine which may extends to Rs.500 for the first offence, and to Rs.1000 for every subsequent offence after his conviction for such first offence.

40. *Authority to confer title.*—The right of conferring, granting or issuing in the State of Kerala degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice modern medicine, homeopathic medicine or ayurvedic medicine, siddha medicine, or unani tibbi medicine as the case may be shall be exercisable only by an authority, body or institution mentioned in the Schedule.

41. *Prohibition of conferment, etc , of degree, etc* —(1) Save as provided by Section 40, no person shall confer, grant or issue or hold himself out as entitled to confer, grant or issue any degree, diploma, license, certificate or other document stating or implying that the holder, grantee or recipient thereof is qualified to practice modern medicine, homeopathic medicine or ayurvedic medicine, siddha medicine, or unani tibbi medicine, as the case may be.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs.1000, and if the person, so contravenes is an association, every member of such association who knowingly or willfully authorizes or permits the contravention shall, on conviction, be punishable with fine which may extend to Rs.1000.

42. *Penalty for unauthorized use of titles, etc , implying medical qualifications.*—(1) No person shall add to his name any title, letters or abbreviations which imply that he holds a degree, diploma, license or certificate as his qualification to practice modern medicine, homeopathic medicine or ayurvedic medicine, siddha medicine or unani tibbi medicine, unless—

(a) He actually holds such degree, diploma, license or certificate, and

(b) Such degree, diploma, license or certificate—

(i) Is recognized by any law for the time being in force in the State of Kerala;

(ii) Has been conferred, granted or issued by an authority referred to in the Schedule; or

(iii) Has been recognized by the Medical Council of India.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable, in the case of a first conviction, with fine, which may extend to Rs. 2500 and in the case of a subsequent conviction, with fine which may extend to Rs.5000.

43. *Penalty for falsely assuming or using medical titles.*—Whoever willfully and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree, diploma, license or certificate conferred, granted or issued by any authority referred to in Section 40 or recognized by the Medical Council of India or that he is qualified to practice Modern medicine, Homeopathic medicine or Ayurvedic medicine, Sidha medicine or Unani Tibbi medicine shall be punishable with fine which may extend to Rs. 2500 for the first offence, and to fine which may extend to Rs.5000 for every subsequent offence.

44. *Prosecution* —Whenever a council is of the opinion that the prosecution of any person for breaches of any of the provisions of this Act is necessary, such council may, by resolution, recommend to the Government the institution of such prosecution, and the Government may thereupon authorize in writing any officer to initiate such prosecution.

45. *Jurisdiction of Magistrate* —(1) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act.

(2) No court shall take cognizance of any offence under this Act except on a complaint in writing of an officer empowered by the Government in this behalf.

46. *Jurisdiction of civil courts barred.*—No act done in the exercise of any power conferred by or under this Act on the Government a Council, the executive committees, or the Registrar shall be questioned in any civil court.

PART IV

MISCELLANEOUS

47. *Alteration of list of recognized qualifications mentioned in the Schedule* —If it shall appear to the Government, on the report of the appropriate council or otherwise, that the course of study and examinations prescribed by any of the medical schools or colleges or bodies conferring the qualifications described in the Schedule are not such as to secure the possession by persons obtaining such qualifications of the requisite knowledge and skill for the efficient practice of their profession or if it shall appear to the Government, on the report of the appropriate Council or otherwise, that the course of study and examinations prescribed by any medical school or college or body conferring a qualification not entered in the Schedule are such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, it shall be lawful for the Government, from time to time by notification in the Gazette, to direct that the possession of any qualification entered in the Schedule shall not entitle any person to registration under this Act, or to direct that the possession of any qualification not entered in the Schedule shall, subject to the provisions of this Act, entitle a person to be registered, as the case may be, and the Schedule shall thereupon be deemed for all purposes to be altered accordingly.

48. *Repeal* —The Travancore-Cochin Medical Practitioners Act, 1953 is hereby repealed and The Madras Medical Registration Act 1914 (Act IV of 1914) as in force in the Malabar District referred in sub-section (2) of Section 5 of the State Re-organization Act, 1956 (Central Act 37 of 1956) is hereby repealed:

Provided that such Repeal shall not affect,—

(a) The previous operations of the said enactment or anything duly done or suffered thereunder;

(b) Any right, privilege, obligation or liability acquired, accrued or incurred under the said enactment;

(c) Any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactment; or

(d) Any investigation, legal proceedings or remedy in respect of any such right, privilege, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture, or punishment may be imposed as if this amendment Act has not been passed.

(e) Any appointment or rules, bye laws or regulation made, any notification, notice, order, declaration or direction issued under the repealed Act to the extend they are not inconsistent with the provisions of this Act.

THE SCHEDULE

RECOGNIZED QUALIFICATIONS

A. Qualification for Modern Medicine

1. Any medical degree or diploma granted by:

(i) The University of Travancore or the University of Kerala, Kozhikode, Cochin, Kannur and Mahatma Gandhi University.

(ii) Universities established by an Act of Parliament.

(iii) Any other University in India recognized by the Government.

(iv) State Medical Faculty of Bengal.

(v) 'College of Physicians and Surgeons of Bombay.

(vi) Board of Examiners, Medical College, Madras.

2. All qualifications recognized under Indian Medical Council Act, 1956.

3. D.M.S. Kerala.

B. Qualification for Homeopathic Medicine:

1. Certificate of Diploma granted by,

(i) The Calcutta Homeopathic College and Hospital.

(ii) The Bengal Allen Homeopathic Medical College and Hospital.

(iii) Pratap Chandran Memorial Homeopathic Medical Hospital and College.

(iv) The Dunham Homeopathic Medical College and Hospital.

(v) Herring Homeopathic Medical College and Hospital (upto 1943).

(vi) The Standard Homeopathic Medical College (upto 1943).

(vii) The Regular Homeopathic Medical College (Upto 1943).

(viii) The Central Homeopathic College (Upto 1943).

2. All qualifications which may be recognized by the Government of Kerala or the Government of any State in India for purposes of registration.

3. Diploma granted by General Council and State Faculty of Homeopathic Medicine, West Bengal.

4. L.M & S. (M) of the College of Physicians and Surgeons, Calcutta (Upto 1920).

5. Diploma awarded by the Board of Examiners in Homeopathic Medicine (D.H.M) Kerala.

6. L.R.C.H.P. of the Royal College of Homeopathic Physicians, Ernakulam from 1952-53 to 1966-67.

C. Qualifications for Ayurveda and Siddha Medicines

1. Certificate or Diploma granted by:

(i) The University of Travancore or the University of Kerala, Kozhikode, Cochin, Kannur and Mahatma Gandhi University.

(ii) His Highness The Maharaja's Ayurveda College, Trivandrum, or the Government of Travancore-Cochin.

(iii) The Government Ayurveda College, Tripunithura.

(iv) The Benares Hindu University, Benares.

(v) The Mysore Government Ayurvedic Vidyalaya, Mysore.

(vi) The Madhava Ayurveda College, Ernakulam.

2. The L.I.M. Diploma in Ayurveda granted by the School of Indian Medicine, Madras.

3. The qualification 'Ayurveda Siromani' awarded by the University of Madras.

4. The Ayurveda Bhooshana Certificate granted by the Board of Public Examination of the erstwhile State of Cochin from 114 M.E. onwards.

5. The Vaidya Padan Diploma granted by the Keraleeya Ayurveda Mahapatasala, Shornur.

6. The Arya Vaidya Diploma granted by the Arya Vaidya Patasala, Kottakkal.

7. The Vaidya Vibhooshaom Diploma granted by the Madhava Memorial Ayurveda College, Cannanore.

8. The Certificate 'High Proficiency in Ayurveda' (H.P.A.) granted by the post Graduate Training Centre in Ayurveda Jamnagar.

9. The Certificate 'Visha Vaidya Training' granted by the erstwhile Government of Cochin.

10. The Certificate 'Sastra Bhooshana-Ayurveda' of the Government Ayurveda College, Tripunithura.

11. The D.I. M & S. diploma granted by the Board of Indigenous Medicine constituted by the Government of Ceylon.

12. Diploma or certificate in Siddha Medicine recognized by the Government of Madras.

13. Diploma or certificate in Siddha Medicine granted by the All Travancore Siddha Vaidya Sanghom Munchira upto the last day of May, 1947.

14. Certificate of competence—Visha Vaidya awarded by the Government of Kerala.

D. Qualification for Unani Tibbi Medicine:

Certificate or Diploma in Unani Tibbi Medicine granted by:

(i) Government of Madras.

(ii) The Tibbi College, Delhi.

(iii) The Aligarh University.

(Sd.)
Superintendent

FORMS

FORM I

Certificate of Five Years Practice Referred to in Section 23(2)

Office of the..... .....

Dated.....20.....

On the basis of the records in this Office or facts known after due inquiry I certify that Sri..... Has been shown or proved as following the occupation of a practitioner of the .....medicine for not less than five years as shown below:—

(a) at	1	(b) from.....to.....
	2	from.....to.....
	3	from.....to.....

1. The date of birth of the applicant
2. Present occupation of the applicant
3. Father's name and occupation
4. Other occupations (if any) of the applicant

Signature

Designation

(a) Here enter the name or names of the place or places where the applicant is shown of practicing or having practiced.

(b) Here enter the dates showing the beginning and termination of practice in each place.

N B —(1) The certificate should bear the date stamp of the office of issue, if any.

(2) The printed wording in the certificate should not be altered.

(3) Other occupations to be noted in this column are other occupations followed during the periods of practice noted above.

FORM II

Application for Registration Referred to in Section 24 (1)

Professional address

Dated .....20....

To

The Registrar,
The Council of Modern Medicine/ The Council of
Homoeopathic Medicine/
The Council of Indigenous Medicine,
Travancore-Cochin,
Trivandrum.

Sir,

I have the honour to request that my name may be registered under The Kerala Medical Practitioners Act, 2008 and that I may be furnished a certificate of registration.

2. The information necessary for registration is specified below.

3. The diploma which I possess is forwarded herewith in original which please return when no longer required.

4. The registration fee of Rs. 20 is herewith sent.

Yours faithfully,

(Signature)

Applicants name in full (the full signification of the initials which stand before the name should be given)

Date of birth

Father's name

Medical qualifications of which registration is required

College or school where each was obtained and Year of Diploma

Any remarks

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FORM III

Application for Registration Referred to in Section 24 (1A)

Professional address

Dated .....20....

To

The Registrar,
The Council of Modern Medicine/ The Council of
Homoeopathic Medicine / The Council of Indigenous Medicine,
Travancore-Cochin,
Trivandrum.

Sir,

I have the honour to request that my name may be registered under The Kerala Medical Practitioners Act, 2008 and that I may be furnished a certificate of registration.

2. The information necessary for registration is specified below.

3. The registration fee of Rs. 20 is herewith sent.

Yours faithfully,

(Signature)

Applicants name in full (the full signification of the initials which stand before the name should be given)

Date of birth

Father's name

Details of the Certificate obtained under Section 23.

Any remarks

FORM IV

Application for Registration Referred to in Section 24 (1A)

Professional address

Dated .....20....

To

The Registrar,
The Council of Modern Medicine/ The Council of
Homoeopathic Medicine / The Council of Indigenous Medicine,
Travancore-Cochin,
Trivandrum.

Sir,

I have the honour to request that my name may be registered under The Kerala Medical Practitioners Act, 2008 and that I may be furnished a certificate of registration.

2. The information necessary for registration is specified below.

3. The registration fee of Rs. 20 is herewith sent.

Yours faithfully,

(Signature)

Applicants name in full (the full signification of the initials which stand before the name should be given)

Date of birth

Father's name

Place or Places of Practice conducted during the part 20 years

Place of Practice at present

Other occupations of the applicant if any

The Kerala Medical Practitioners Bill

Statement of objects and reasons

It is said that Medicine is a science and that making a practice of it is a sacred duty. This sacred duty can be performed only by those who are fully equipped for the job. They need to possess the prescribed qualifications and knowledge in the respective system of medicine which they intend to practice and posses the right type of aptitude to deal with the patients who seek their help.

Various systems of medicine are now in vogue like Modern Medicine-(Allopathy), Ayurveda, Homeopathy, indigenous medicine (Parambarya and Marma Chikitsa) etc. at present, there is no unified law on the subject. The Commission, therefore, felt that it is necessary to propose a comprehensive law to regulate all matters connected with the practice of medicine to ensure that those entrusted with the duty to treat the patients discharge their duties diligently and faithfully.

Negligence is an offence under the general law of the land. Doctors these days have been frequently accused of negligent conduct in the discharge of their duties. It is also necessary to prevent frivolous litigation against them various provisions are made in the Bill to regulate the practice of this noble provision. The Commission feels that the Bill will help the profession to a great extent in meeting the felt needs of the times.

* * * * * * * *

THE KERALA ELECTRONIC WASTE MANAGEMENT BILL

A

BILL

to regulate the disposal of obsolete electronic machines and spare parts otherwise known as electronic waste or e-waste generated within State of Kerala.

BE it enacted in the Fifty Ninth year of the Republic of India.

1. *Short title, extent and commencement* —(1) This Act may be called the Kerala Electronic Waste Management Bill—

(2) It extends to the whole of the State of Kerala.

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

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

(a) "Electronic Waste (e-waste)" means and includes discarded electronic equipments, all old TVs, mobile phones, computers and their accessories, refrigerators, air-conditioners, washing machines, dish washers, electric bulbs etc. and all other new gadgets including their circuit board, integrated circuit board, complex circuitry, signal processor, and other parts of the electronic equipments which cannot be used again in normal circumstances.

(b) "Producer" means manufacturer of the electronic equipments or any part or parts of such electronic equipments.

(c) "Recycling" means the process of transforming segregated e-wastes into materials for producing new products which may or may not be similar to the original product.

3. *Effect of the Act on other Acts* —The provisions of this Act are not in derogation of the provisions contained in the Kerala Panchayat Raj Act, Kerala Municipality Act relating to the powers of the concerned local authority regarding the management and disposal of waste, but are only supplemental.

4. *Management of the electronic waste* —(1) Every producer of electronic equipment including its distributor or a consortium of brand owners, shall develop an approved system for the management of collection and recycling of discarded electronic equipments.

Explanation.—The duty of collection and recycling applies to all brand owners regardless of sales channels, and to all end users.

(2) It shall be the duty of the end-user of discarded electronic equipments to collect, handle and transport, e-waste to the producer's approved system, in an environmental friendly manner.

(3) No e-waste shall be used for landfills and incineration.

5. *Reduction of usage of hazardous materials.*—(1) The Government by notification issued in this behalf may phase out the usage of hazardous chemicals like lead, mercury, polyvinyl chloride and brominated flame retardants in electronic equipments.

(2) The producers of present equipments containing hazardous chemicals like lead, mercury, polyvinyl chloride and brominated flame retardants in electronic equipment shall label their products to the said effect.

6. *Penalty for the contravention.*—(1) Contravention of any of the provisions of this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees.

(2) If the offence under this Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to the company for the conduct of, business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

7. *Power of State Government to make rules.*—The State Government may make appropriate rules for the proper implementation of this enactment by issuing notifications in the Official Gazette.

Statement of objects and reasons

In this era of electronic equipments, the rate at which electronic waste shortly stated, e-waste, is very high. Old and useless electronic machines and parts become, e-waste. They have to be disposed of in a scientific manner to prevent pollution of environment. As such if there is no strict system for disposal of e-waste, it will cause environmental pollution and danger to life of the people. As such the Commission is of the view that an enactment is necessary to regulate the disposal of e-waste in a proper manner. The object and reason for recommending the bill is to have such an enactment.

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THE KERALA RIGHT TO PROPERTY (OF LEGAL HEIRS OF PREDECEASED CHILD OF A MUSLIM) BILL

Whereas the Muslim Personal Law which is applied to Muslims in India does not provide any share to the legal heirs of a predeceased son or daughter in the assets of the deceased, and

Whereas the denial of such right is against the letter and spirit of Quranic injunction as revealed from the contents of verse 180 of Chapter 2 of the Holy Quran which provides that it shall be mandatory on the part of believers to create a will bequeathing a share in their assets in favour of close relations, and

Whereas the legal heirs of predeceased child of a Muslim is his or her close relations; and

Whereas in the circumstances, it is deemed highly proper and necessary to bring in a new legislation to get over the above anomaly and to do justice as contemplated in Holy Quran.

BE it enacted in the Fifty ninth year of the Republic as follows:—

1. *Short title, extent and commencement of the Act.*—(1) This Act may be called The Kerala Right to Property (of legal heirs of predeceased child of a Muslim) Act——

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may notify in the Official Gazette.

2. *Definitions.*—In this Act unless the context otherwise requires.

(a) "Child" includes both son and daughter.

(b) "Muslim" includes both man and woman following Muslim religion.

3. *Legal obligation of a Muslim to execute a will.*—(a) Notwithstanding anything contained in any other law, custom or decision of any court, it shall be mandatory on the part of a Muslim to create a will in favour of the legal heirs of his or her predeceased child bequeathing a share of the assets left by him or her equal to the share that the predeceased son or daughter would have inherited if he or she were alive on the death of that person, provided the extent of the assets so bequeathed shall not exceed $^{1}/_{3}$ of total assets of such person.

(b) If a Muslim dies after the commencement of this Act, but before creating a will as indicated in clause (a) above, he will be deemed to have died creating such a will for the purpose of dividing his assets between his legal heirs including the heirs of predeceased son or daughter.

Notwithstanding anything contained in the personal law applicable to Muslims belonging to any sect in Kerala or in any custom or practice hitherto followed by them, daughter of a Muslim dying intestate or leaving property not covered by a will after the date of commencement of this Act or any other date notified in this behalf by the Government; shall have right equal to that of a son in the properties left by the deceased along with other sharers if any:

Provided that in cases where the deceased had left only a daughter or daughters, they shall inherit the share of properties which would have been inherited by a son or sons if they were alive on the date of death of the deceased along with other sharers if any.

Statement of Objects and Reasons

The Holy Quran declares in verse 180 of Chapter 2, that it is mandatory for every Muslim believer to create a will bequeathing a share in favour of his or her close relations. But curiously the personal law applicable to Muslims in Kerala does not provide any share in the assets of a deceased Muslim to the heirs of a predeceased son or daughter. This is an anomaly. The Muslims generally and legal luminaries in the Muslim religion are strongly of the view that an Act enabling the legal heirs of a predeceased son or daughter to claim a share in the assets of their deceased grand father is fair and just and must be enacted to solve the anomaly noted in the matter between the practice followed and the Quranic mandate. To confer the right on the daughter or daughters to claim a share in the properties left by the deceased equal to that of a son or sons, if the deceased has left only a daughter or daughters and no son along with other sharers if any.

****

THE KERALA MEDICAL PRACTITIONERS (PROTECTION FROM FRIVOLOUS AND UNJUST PROSECUTIONS) BILL

A

BILL

to protect the Medical practitioners from frivolous and unjust prosecutions and to regulate the initiation and conduct of prosecution in appropriate cases, in a just and fair manner and thus to safe guard the interest of both the patients and the Medical practitioners who attend on them,

BE it enacted in the Fifty Ninth Year of the Republic of India.

1. *Short title, extent and commencement of the Act* —(1) This Act shall be called The Kerala Medical Practitioners (Protection from frivolous and unjust prosecutions) Bill—

(2) It shall extent to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may notify in the Official Gazette.

2. *Definitions* —Unless the context otherwise require the words.—(a) "Act of Commission and omission" means any culpable act or omission committed by medical practitioners in the performance of their duties as such, to patients under their treatment.

Explanation —'For an act or omission' to become culpable, an element of 'mens rea' should be involved in it or the 'act or omission' should be grossly negligent.

(b) "Medical Practitioners" means and includes any person ordinarily engaged in the practice of modern medicine, homeopathic medicine or indigenous medicine including traditional practitioners of Ayurvedic medicine included in indigenous medicine known as Paramparya Vaidyans and 'Marma Chikitsakas' registered under the Travancore Cochin Medical Practitoners Act or any other corresponding Act in force in Kerala at the commencement this Act.

(c) "Patient" means and includes any person who seeks or receives medical advice or any kind of medical assistance for any ailment or any other body or mental condition.

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3. *Procedure for initiation and conduct of criminal proceedings against Medical Practitioners* —Medical Practitioners are liable to be prosecuted for their acts of commissions and omissions only in the manner and to the extent permitted hereunder.

(a) Notwithstanding anything to the contrary contained in the Criminal Procedure Code, no Court shall entertain a complaint against a medical practitioner unless the complainant produces along with the complaint or within the time allowed by the Court a credible opinion given by another doctor belonging to the same discipline and having not less than 10 years of service under the Government as a prima facie evidence in support of the charge of culpability of the act or omission on the part of the Medical Practitioner in the course of performance of his duties as such.

(b) In all other cases, on receipt of information about the commission of any act or omission by a Medical Practitioner in the course of performance of his duties as such either orally or in writing, the Police Officer concerned shall make a record of the same and shall refer the matter to a Doctor practicing in the same system of medicine in which the concerned doctor was practicing and having not less than 10 years of practice under the Government for his opinion regarding the culpability of the act or omission about whom the complaint is filed.

(c) If the opinion formed by the Doctor to whom the matter is referred to is that the act of commission or omission complained of is culpable; investigation officer shall proceed with the investigation and take all further steps in accordance with the provisions contained in the Criminal Procedure Code.

(d) If the opinion of the Doctor is against the culpability of the medical practitioner, the Investigation Officer shall close the complaint summarily on the basis of the opinion giving notice of the same to the complainant.

(e) Any person aggrieved by an order passed under clauses (c) or (d) may file a revision challenging the orders passed by the Court or the Investigation Officer, before the District and Sessions Court and the Court may after issuing notice to both parties dispose of the revision giving both side sufficient opportunities to establish their respective cases. The order passed by the District Judge in revision shall be final and binding on the parties.

(f) In cases where a Medical Practitioner is allowed to be prosecuted under clauses (a) and (b) of this Section, all further proceedings shall be continued following the normal procedures prescribed under the relevant provisions of the Criminal Procedure code.

(g) It is made clear that the opinion filed in court or received by the investigating officer under clauses (a) and (b) respectively shall only be treated as prima facie evidence and both sides are at liberty to produce further evidence of any kind either in support or against it

(h) A Medical Practitioner proceeded against under this Act can be arrested only under orders of Court after hearing him and giving reasons for passing the order for arrest.

4. *Rule Making Power*—Every rule under this Act shall be laid as soon as may be after it is made or issued before the legislative assembly for a total period of fourteen days which may be comprised in one session on in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the legislative assembly makes any modification in the rule or decided that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Objects and Reasons

The Supreme Court has in the decision Jacob Mathew V. State of Punjab reported in 2005(3) KLT 965 has elaborately considered the true nature of the negligence for which medical practitioners can be justifiably be prosecuted for the alleged acts or omission treating it as a criminal offence. The judges comprising the Bench especially Chief Justice Lahoti who wrote the Judgment, has elaborately brought out the need to have some caution in the matter of initiation of criminal proceedings against the medical practitioners mainly for the purpose of ensuring fair and reasonable treatment for patients. The Bench has also laid down the guidelines regarding prosecution of medical professionals in the concluding portion of the judgment. In the light of the various principles explained and guidelines laid down in the judgment the commission found it fit to prepare a bill indicating the circumstances in which and the conditions subject to which a medical practitioner can be prosecuted for acts or omission amounting to culpable or gross negligence. As the title of the Bill itself shows the object and reason of the Bill is to protect the medical practitioner from frivolous or unjust prosecutions and at the same time make them liable to be proceeded against criminally in justifiable circumstances and that too subject to special conditions.

****

THE KERALA RURAL AND TOWN PLANNING BILL

A

BILL

to provide for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State.

WHEREAS it is necessary and expedient,

(i) to create conditions favourable for planning and re-planning of the urban and rural areas in the State, with a view to providing full civic and social amenities for the people in the State,

(ii) to stop uncontrolled development of land due to land speculation and profiteering in land,

(iii) to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land; and

(iv) to direct the future growth of populated areas in the State, with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting generally the standard of living in the State;

AND WHEREAS in order to ensure that town planning schemes are made in a proper manner and their execution is made effective, it is necessary to provide that a local authority shall prepare a development plan for the entire area within its jurisdiction;

AND WHEREAS it is necessary and expedient to consolidate and amend the law relating to town planning for the aforesaid and other purposes hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Kerala Rural and Town Planning Act, ——.

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification, appoint.

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

(1) "agriculture" includes horticulture, farming, growing of crops, fruits, vegetables, flowers, grass, fodder, trees or any kind of cultivation of soil, breeding and keeping of livestock including cattle, horses, donkeys, mules, pigs, fish, poultry and bees, the use of land which is ancillary to the farming of land or any purpose aforesaid, but shall not include the use of any land attached to a building for the purposes of garden to be used along with such building; and 'agricultural' shall be construed accordingly;

(2) "Board" means the State Town Planning Board constituted under this Act;

(3) "commerce" means carrying on any trade, business or profession, sale or exchange of goods of any type whatsoever, the running of, with a view to make profit, hospitals, nursing homes, infirmaries, saris, educational institutions, hotels, restaurants, boarding houses not attached to educational institutions; and 'commercial' shall be construed accordingly;

(4) "development" with its grammatical variations, means the carrying out of building, engineering, mining, or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land;

(5) "Director" means the Director of Town Planning appointed under this act;

(6) "Heritage Building" means a building possessing architectural, aesthetic, historic or cultural values and which is declared as heritage building by the Planning Authority or any other competent authority within whose jurisdiction such building is situated;

(7) "Heritage Precinct" means an area comprising heritage building or buildings and precincts thereof or related places declared as such by the Planning Authority or any other Competent Authority within whose jurisdiction such area is situated;

(8) "industry" includes the carrying on of any manufacturing process as defined in the Factories Act, 1948 (Central Act 63 of 1948), and 'industrial' shall be construed accordingly;

(9) "land" includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(10) "land use" means the major use to which a plot of land is being used on any specified date;

(11) "local authority" means a municipal corporation, municipal council, Town Panchayat or Grama Panchayat; and a local authority is a 'local authority concerned' if any land within its local limits falls in the area of a plan prepared or to be prepared under this Act;

(12) "notification" means a notification published in the official Gazette;

(13) "owner" includes any person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager, or receiver for another person, or for any religious or charitable purpose, the rents or profits of the property in connection with which it is used;

(14) "Planning Area" means any area declared to be or included in a local planning area under this Act;

(15) "Planning Authority" means,—

(a) The Planning Authority constituted under this Act;

(b) In the case of any local planning area in respect of which a Planning Authority is not constituted under this Act, the Town Improvement Board constituted under any law for the time being in force having jurisdiction over such local planning area, and where there is no such Town Improvement Board, the local authority having jurisdiction over such local planning area;

(16) "plot" means a continuous portion of land held in one ownership;

(17) "prescribed" means prescribed by rules made under this Act;

(18) "reconstituted plot" means a plot which is in any way altered by the making of a town planning scheme;

Explanation — "altered" includes the alternation of ownership.

(19) "regulations" means the Zonal Regulations governing land-use made under this Act;

(20) "residence" includes the use for human habitation of any land or building or part thereof including gardens, grounds, garages, stables, and out houses, if any, appertaining to such building and 'residential' shall be construed accordingly;

(21) "Scheme" includes a plan relating to a town planning scheme;

(22) Words and expressions not defined in this Act shall have the same meaning as in the Kerala Municipalities Act, 1994.

3. Appointment of Director of Town Planning.— (1) The State Government shall appoint a person, having the prescribed qualifications as Director of Town-Planning for the State and may assign to him such salary and establishment as it thinks fit.

(2) The cost of such appointment and his establishment shall be paid out of the revenues of the State.

4. State Town-Planning Board.—The State Government may, by notification, constitute a State Town-Planning Board for the State with such members and in such manner as may be prescribed for advising the State Government regarding planning and development and for determining principles and policies for achieving the balanced development of the State as a whole.

CHAPTER II

LOCAL PLANNING AREAS AND PLANNING AUTHORITIES

5. Constitution of Environment Impact Assessment Authority, Declaration of Local Planning Areas, their amalgamation, Sub-Division, inclusion of any area in a Local Planning Area.—(1) The State Government may by notification constitute an independent Environment Impact Assessment Authority, consisting of well known environmentalists, ecology specialist, River management experts, experts in Forestry, etc.

(2) The State Government may by notification declare any area in the State to be a Local Planning Area for the purposes of this Act, or include within such local planning area, any area adjacent thereto, and on such declaration or inclusion this Act shall apply to such area:

a. Provided that no military cantonment or part of a military cantonment shall be included in any such area.

b. Provided further that in the case of the heritage area, the local planning area declared under this sub-section shall be co-terminus with the heritage area.

c. Provided further that no forest land, river beds, hills or hillocks shall be included in such area unless previous permission to that effect is obtained from the Environment Impact Assessment Authority constituted by the Government.

(3) Every such notification shall define the limits of the area to which it relates.

(4) The State Government may, after consultation with the Board, amalgamate two or more planning areas into one local planning area, sub-divide a local planning area into different local planning areas, and include such divided areas in any other local planning area.

(5) The State Government may by notification direct that all or any of the rules, regulations, orders, directions and powers made, issued, conferred and in force in any other local planning area at the time, with such exceptions and adaptations and modifications as may be considered necessary by the Local authority, shall apply to the area declared as, amalgamated with or included in, a local planning area under this section and such rules, regulations, bye-laws, orders, directions and powers shall forthwith apply to such local planning area without further publication.

(6) When local planning areas are amalgamated or sub-divided, or such sub-divided areas are included in other local planning areas, the Local authority shall, after consulting the Board, the Planning Authority or authorities concerned, frame a scheme determining what portion of the balance of the fund of the Planning Authority shall vest in the Planning Authority or authorities concerned and in what manner the properties and liabilities of the planning authority or authorities shall be apportioned amongst them and on the scheme being notified the fund, property and liabilities shall vest and be apportioned accordingly.

6. **Power to withdraw Local Planning Area from operation of this Act.**— (1) The State Government may, by notification withdraw from the operation of this Act the whole or a part of any local planning area declared thereunder.

(2) When a notification is issued under this section in respect of any local planning area,—

(i) This Act and all notifications, rules, regulations, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the said area;

(ii) the State Government shall, after consulting the Board and the local authority or authorities concerned, frame a scheme determining what portion of the balance of the fund of the local planning authority shall vest in the State Government and the local authority or authorities concerned, and in what manner the properties and liabilities of the local planning authority shall be apportioned between the State Government and the local authority or authorities, and on the scheme being notified, the fund, property and liabilities of the planning authority shall vest and be apportioned accordingly.

7. **Constitution of Planning Authority.**—(1) As soon as may be, after declaration of a local planning area, the local authority in consultation with the Board, may, by notification, constitute for the purposes of the performance of the functions assigned to it, an authority to be called the "Planning Authority" of that area, having jurisdiction over that area

(2) Every Planning Authority constituted under sub-section (1), shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue and be sued.

(3) Every Planning Authority constituted under sub-section (1), shall consist of the following members, namely:—

(i) A Chairman appointed by the Local authority;

(ii) The Town Planning Officer of the local authority, who shall be a Member-Secretary to the Planning Authority;

(iii) representatives of local bodies composed as follows:—

(a) in the case of a planning area in which only one local authority has jurisdiction, a representative nominated by that local authority from among the members of that authority and the Chief Executive Officer of that local authority;

(b) in the case of a planning area in which two or more local authorities have jurisdiction, one representative each of such local authorities as the Local authority may consider necessary to be represented, nominated by the respective local authorities from among the members of each such local authority: Provided that, the total number of such representatives shall not exceed five.

(iv) three other members, appointed by the local authority.

(4) The local authority may, if it thinks fit, appoint one of the members as Vice-Chairman of the Planning Authority.

8. Term of office and conditions of service of the Chairman and members of Planning Authorities.—(1) Subject to the provisions of sub-section (2), the term of office and conditions of service of the Chairman and members of a planning authority constituted under Section 7 shall be such as may be prescribed.

(2) The Chairman and members of a Planning Authority constituted under Section 7, except those nominated by local authorities shall hold office during the pleasure of the local authority. The representative of a local authority who is a member of that authority shall cease to be a member of the Planning Authority when he ceases to be a member of the local authority concerned.

(3) The Chairman or any member may resign his membership of the Planning Authority by giving notice in writing to the local authority and on such resignation being accepted, he shall cease to be a member of that planning authority.

(4) Any vacancies shall be filled by fresh appointment by the Local Authority or by nomination by the local authority concerned, as the case may be.

9. Meetings of Planning Authorities.—(1) Each Planning Authority constituted under Section 7 shall meet at such times and places and shall, subject to the provisions of sub-sections (2) and (3), observe such procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) The Chairman, or in his absence, the Vice-Chairman, if any, or in the absence of the Chairman and of the Vice-Chairman, any member chosen by the members from amongst themselves, shall preside at a meeting of such Planning Authority.

(3) All questions at a meeting of such Planning Authority shall be decided by a majority of the votes of the members present and voting, and in the case of an equality of votes, the person presiding shall have a second or casting vote.

(4) Minutes shall be kept of the names of the members present and of the proceedings at each meet in a book to be kept for this purpose, and shall be open for inspection by any member during office hours.

10. Temporary association of persons with the Planning Authority for particular Purposes. —(1) Every Planning Authority may associate with itself in such manner and for such purposes as may be prescribed any person whose assistance or advice it may desire in performing any of its functions under this Act.

(2) Any person associated with it by the Planning Authority under sub-section (1) for any purpose shall have a right to take part in the discussions of the Planning Authority relevant to that purpose but shall not have a right to vote at a meeting.

11. Staff of the Planning Authority.—(1) Subject to such control and restrictions as may be prescribed, a Planning Authority constituted under Section 7 may appoint such number of officers and employees as may be necessary for the efficient performance of its functions and may determine their designations and grades.

(2) The officers and employees of such Planning Authority shall be entitled to receive such salaries and allowances as may be fixed by the Planning Authority and shall be governed by such terms and conditions of service as may be prescribed.

12. Functions of the Member-Secretary of the Planning Authority.—Subject to the general powers of the Planning Authority and without prejudice to the powers of the Chairman under this Act, the Member-Secretary to the Planning Authority shall,

(i) be the Chief Executive and Technical Officer of the Planning Authority;

(ii) be responsible for all budgetary, planning, enforcement and supervisory functions of the Planning Authority;

(iii) furnish to the Planning Authority all the information relating to the administration and accounts of the Authority as well as other matters whenever called upon by the Authority to do so;

(iv) prepare and submit the Annual Reports and audited accounts of the Planning Authority for its approval within three months of the close of every financial year and thereafter submit copies of the same to the Board, the Director and the State Government;

(v) If, in the opinion of the Member-Secretary, any resolution passed by the Planning Authority contravenes any provisions of this Act or any other law or of any rule, notification, regulation or bye-law made or issued under this Act or any other law or any order passed by the State Government or it is prejudicial or detrimental to the interests of the Planning Authority, he shall, within fifteen days of the passing of such resolution refer the matter to the State Government through the Director for orders and inform the Planning Authority at its next meeting of the action taken by him and until the orders of the State Government on such reference are received, the Member-Secretary of the Planning Authority shall not be bound to give effect to the resolution.

CHAPTER III
PRESENT LAND USE

13. Date to be specified.—The State Government shall, by notification, specify the date with reference to which the present land use of any land in the State has to be determined and different dates may be fixed for different areas in the State.

14. Preparation of a map showing present land use.—Every Planning Authority shall, as soon as possible and not later than two years after the date specified under Section 13, prepare an accurate map showing the present land use in the Planning Area under its jurisdiction and such other particulars as may be prescribed. A copy of such map shall be sent to the Director and another copy shall be displayed for public information in the office of the Planning Authority.

15. Application for correction of entries in map.—(1) The owner of any plot of land included in the map prepared under Section 14, may within one month of its publication in the office of the Planning Authority, apply to such authority for any entry of land use or other particulars made in the map to be corrected.

(2) On receipt of such application, the Planning Authority or any officer of such authority appointed by it, shall after such inquiry as may be prescribed make an order if the entry is incorrect and if found incorrect direct it to be corrected.

(3) From an order under sub-section (2), an appeal shall lie within sixty days from the date of the order, to the prescribed authority, or, if no authority has been prescribed, to the State Government, and the order of the prescribed authority or the State Government in appeal shall be final.

16. Entries in map conclusive evidence subject to orders under Section 15.—Subject to any order that may be made under Section 15 all entries regarding present land-use and other prescribed particulars made in the map under Section 6 shall be conclusive evidence of the correctness of such entries on the specified date.

CHAPTER IV
OUTLINE DEVELOPMENT PLAN

17. Preparation of Master Plan.—(1) Every planning authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the local planning area, prepare and publish in the prescribed manner a master plan for such area and submit it to the State Government, through the Director, for provisional approval.

(2) If the master plan is not prepared, published and submitted to the State Government by the Planning Authority within the period specified in sub-section (1), the State Government may authorise the Director to prepare and publish such plan in the prescribed manner and direct the cost thereof to be recovered from the Planning Authority out of its funds, notwithstanding anything contained in any law relating to the said fund.

(3) Notwithstanding anything contained in sub-section (2), if any Planning Authority is converted into, or amalgamated with any other Planning Authority or is sub-divided into two or more Planning Authorities, the master plan prepared for the area by the planning authority so converted, amalgamated or sub-divided shall, with such alterations and modifications as the State Government may approve, be deemed to be the master plan for the area of the new Planning Authority or authorities into or with which the former Planning Authority was converted, amalgamated or sub-divided.

(4) A copy of the master plan with the report sent to State Government under sub-section (1) or sub-section (3) shall be kept open for inspection by the public at the head office of the Planning Authority.

18. Declaration of intention of making outline development plan.— (1) A Planning Authority, before carrying out a survey of the area under its jurisdiction under sub-section (1) of Section 17, for the purpose of preparing a Master Plan for such area, shall make a declaration of its intention to prepare such plan and shall despatch a copy of such resolution with a copy of plan showing only boundary of the entire area proposed to be included in the master plan to the State Government. The planning authority shall publish a notice of such declaration in the Official Gazette and also in one or more local newspapers in the prescribed manner calling suggestions from the public within a period of sixty days:

Provided that no such declaration of intention need be made when the master plan is prepared and published by the Director under sub-section (2) of Section 17.

(2) If within two months from the date of publication of the declaration under sub-section (1) any member of the public communicates in writing to the Planning Authority any suggestion relating to such plan, the Planning Authority shall consider such suggestion and may, at any time, before sending the Plan to the State Government make such modification in the plan as it thinks fit.

(3) A copy of the plan showing the boundaries of the area included in the master plan shall be kept open to public at all reasonable hours at the office of the Planning Authority or Local Authority.

19. Power of entry for carrying out surveys for preparing outline development plan.—For the purpose of carrying out a survey for preparation of an outline development plan and for the purpose of preparing of such plan, any person authorised by the Director or the Planning Authority or any public servant or person duly authorised or appointed under this Act may, after giving such notice as may be prescribed to the owner, occupier or other person interested in the land, enter upon, survey and mark out such land and do all things necessary for such purpose.

20. Contents of Master Plan.—(1) The Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated, such plan shall include proposals for the following, namely:—

(a) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;

(b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;

(c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;

(d) areas earmarked for future development and expansion;

(e) reservation of land for the purposes of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the land in the manner provided by or under this Act;

(f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed;

(g) stages by which the plan is to be carried out;

(h) Schemes for promotion of tourism whichever possible:

Provided that the promotion of tourism shall be without destroying our traditional culture and moral values. Chances of promotion of immoral traffic shall be blocked:

Provided further that all the tourism schemes shall be eco-friendly;

(i) areas for massage Parlour, Herbal treatment, traditional ayurvedic treatment, health club etc.

Explanation.—(i) **"Building Line"** means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme;

(ii) **"Floor Area Ratio"** means the quotient of the ratio of the combined gross floor area of all the floors, excepting areas specifically exempted under the regulations, to the total area of the plot.

(2) The following particulars shall be published and sent to the State Government through the Director along with the masterplan, namely:—

(1) a report of the surveys carried out by the Planning Authority before the preparation of such plan;

(2) a report explaining the provisions of the Master Plan;

(3) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority;

(4) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan.

(3) Master Plan shall indicate "Heritage Buildings" and "Heritage Precincts" and shall include the regulations made therein for conservation of the same.

21. Approval of the Master Plan.—(1) On receipt of the Master Plan with the reports referred to in Section 20 from the Planning Authority under sub-section (1) of Section 17, or after such plan and reports are prepared and published under sub-section (2) of Section 17, the State Government after making such modifications as it deems fit or as may be advised by the Director, shall return through the Director, the plan and the reports to the Planning Authority, which shall thereupon publish, by notification, the plan and the reports inviting public comments within sixty days of such publication.

(2) If within sixty days of the publication under sub-section (1), any member of the public communicates in writing to the Planning Authority any comments on the plan and the reports, the Planning authority shall consider such comments and resubmit the plan and the reports to the State Government, through the Director with recommendations for such modifications in the plan and reports as it considers necessary in the light of the public comments made on the plan and reports.

(3) The State Government, after receiving the plan and the reports and the recommendations for modifications from the Planning Authority, shall, in consultation with the Director, give its final approval to the plan and the reports with such modifications as the Director may advice in the light of the comments and the recommendations of the Planning authority or otherwise.

(4) The Planning Authority shall then publish in the prescribed manner the Master Plan and the reports as finally approved by the State Government. The plan and the reports shall be permanently displayed in the offices of the Director and the Planning Authority and a copy shall be kept available for inspection of the public at the office of the Planning Authority.

22. Interim Master Plan.—(1) Pending the preparation of Master Plan, a Planning Authority may, where it considers it expedient, and shall, when so directed by the State Government, prepare and publish the Interim Master Plan for the entire area within the jurisdiction of the Planning authority, or for any part thereof; and there upon, the provisions of Section 21 shall, so far as may be, but subject to the provisions of this section, apply in relation to such Interim Master Plan as they apply in relation to the preparation and publication of the Master Plan.

(2) The Planning Authority shall prepare and publish such plan not later than one year from the date of notice in the official Gazette of its declaration of intention to prepare a Master plan or not later than such further period not exceeding one year as may be extended by the State Government.

(3) The Interim Master Plan shall provide only for matters mentioned in clauses (a), (b) and (c) of Section 20 and if necessary, such other matters specified in that section as the Planning Authority may decide to include or as may be directed by the State Government.

(4) The Interim Master Plan shall consist of such maps and such descriptive matters as the Planning Authority may consider necessary to explain and illustrate the proposals made in such plan.

23. Preparation of Master Plan for Additional Area.—If at any time after a Planning Authority has declared its intention to prepare a Master Plan or after a Master Plan prepared by a Planning Authority has been sanctioned the jurisdiction of the Planning Authority is extended by inclusion of an additional area, the Planning Authority after following the provisions of this Act for the preparation of a Master Plan, prepare and publish a Master Plan for such additional area either separately or jointly with the provisional or final Master Plan prepared or to be prepared for the area originally under its jurisdiction, and submit it to the State Government for sanction after following the same procedure as it followed for submission of a Master Plan to the State Government for approval:

Provided that, where a Master Plan for the additional area requires modification of the final Master Plan or where the State Government directs any such modifications, the Planning Authority shall revise the final Master Plan after following the procedure laid down in Section 17, so far as may be relevant.

24. Revision of Master Plan.—At least once in every ten years from the date on which the Master Plan has come into force, the Planning Authority may and if directed so by the local authority shall, carryout a fresh survey of the area within its jurisdiction, with a view to revising the existing Master Plan and the provisions of Section 17 to Section 20 (both inclusive) shall mutatis mutandis apply in respect of such revision of the Master Plan.

25. Amendment to Regulations.—The State Government may, after previous publication of the draft for not less than one month by notification make amendments to regulations.

26. Enforcement of the Master Plan and the Regulations.—(1) On and from the date on which a declaration of intention to prepare a Master Plan is published under sub-section (1) of Section 18, every land use, every change in land use and every development in the area covered by the plan subject to Section 27 shall conform to the provisions of this Act, the Master Plan and the Report, as finally approved by the State Government under sub-section (3) of Section 21.

(2) No such change in land use or development as is referred to in sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed:

Provided that where the use or change of land use under this section needs the diversion of agricultural land to non-agricultural purposes, such use or change of use shall not be permitted unless permission is obtained in accordance with the provisions of law in force for such diversion.

Explanation — For the purpose of this section,—

(a) the expression "development" means the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land;

(b) the following operations or uses of land shall not be deemed to involve a development of any building or land, namely:—

(i) the carrying out of works for maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;

(ii) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(iii) when the normal use of land which was being temporarily used for any other purpose on the day on which the declaration of intention to prepare the outline development plan is published under sub-section (1) of Section 18 is resumed;

(iv) when land was normally used for one purpose and also on occasions for any other purpose, the use of the land for that other purpose on similar occasions.

(3) Every application for permission under sub-section (2) shall be accompanied by a plan, drawn to scale showing the actual dimensions of the plot of land in respect of which permission is asked, the size of the building to be erected and the position of the building upon the plot and such other information as may be required in this behalf by the Planning Authority.

27. Change of land use from the outline development plan.—(1) At any time after the date on which the outline development plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the outline development plan as may be necessitated by topographical cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in outline development plan or the circumstances prevailing at any particular time, by the enforcement of the plan:

Provided that,—

(i) all changes are in public interest;

(ii) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and

(iii) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of sub-section (2) and (3) of Section 26 shall apply mutatis mutandis to the change in land use or development from the outline development plan.

(3) Notwithstanding anything contrary contained in the Act, if the change in land use or development is from commercial or industrial to residential or from industrial to commercial and the stipulated fee is paid and the Local Planning Authority is informed prior to effecting the change, the permission for such change of land use or development shall be deemed to have been given.

28. Benefit of development rights.—Where any area within a local planning area is required by a Planning Authority or local authority for a public purpose and the owner of any site or land which comprises such area surrenders it free of cost and hands over possession of the same to the Planning Authority or the local authority free of encumbrances, the planning authority or the local authority, as the case may be, may notwithstanding anything contained in this Act or the regulations but subject to such restrictions or conditions as may be specified by notification by the local authority, permit development rights in the form of additional floor area which shall be equal to one and half times of the area of land surrendered. The development right so permitted may be utilised either at the remaining portion of the area after the surrender or anywhere in the local planning area, either by himself or by transfer to any other person, as may be prescribed. The area remaining after surrender shall have the same floor area which was available before surrender for the original site or land as per regulations.

Explanation.—For the purpose of this section,

(a) Public purpose means.—

(i) widening of an existing road or formation of a new road;

(ii) providing for parks, playgrounds and open spaces or any other civic amenities;

(iii) maintaining or improving heritage building or precincts notified by the Local authority.

(b) "development right" means the right to carryout development or to develop land or building or both.

Illustration No. 1: In a plot area of 500 square meters at road "A", where floor area ratio is 1.5:—

(i)	Plot area	500 square meters
(ii)	Permissible floor area ratio	1.5
(iii)	Buildable floor area	500 x 1.5=750 square meters
(iv)	Area surrendered	100 square meters
(v)	Additional floor area in the form of Development Rights	150 square meters
(vi)	Plot area after surrender	500-100=400 square meters
(vii)	Buildable floor area in plot area of 400 square meters (after surrender):	
	(a) If additional floor area is not utilised in the same plot	750 square meters
	(b) If additional floor area is utilised in the same plot	750+150 =900 square meters

Illustration No. 2: In a plot area of 500 square meters at road "B", where floor area ratio is 0.75:—

(i) Plot area : 500 square meters

(ii) Permissible floor area ratio : 0.75

(iii) Buildable floor area : 500 x 0.75=375 square meters

(iv) Area surrendered : 100 square meters

(v) Additional floor area in the form of Development Rights : 150 square meters

(vi) Plot area after surrender : 500-100 = 400 square meters

(vii) Buildable floor area in plot area of 400 square meters (after surrender)

(a) If additional floor area is not utilised in the same plot : 375 square meters

(b) If additional floor area is utilised in the same plot : 375+150 = 525 square meters

Illustration No. 3: In a plot area of 500 square meters at road "C", where floor area ratio is 0.75 and Development Right of 150 square meters originated at road "A" is transferred.—

(i)	Plot area	:	500 square meters
(ii)	Permissible floor area ratio	:	0.75
(iii)	Buildable floor area	:	500x0.75=375 square meters
(iv)	Additional floor area transferred from road "A"	:	150 square meters
(v)	Total Buildable floor area	:	375+150 = 525 square meters

29. Permission for development of building or land.—(1) On receipt of the application for permission under section 26, the Planning Authority shall furnish to the applicant a written acknowledgment of its receipt and after such inquiry as may be necessary either grant or refuse a commencement certificate.

Provided that such certificate may be granted subject to such general or special conditions as the local authority may, by order made in this behalf, direct

(2) If the Planning Authority does not communicate its decision to the applicant within three months from the date of such acknowledgment, such certificate shall be deemed to have been granted to the applicant:

Provided that the land use, change in land use or the development for which permission was sought for is in conformity with the outline development plan and the regulation finally approved under sub-section (3) of Section 21.

(3) Subject to the provisions of Section 30, no compensation shall be payable for the refusal of or the insertion or imposition of conditions in the commencement certificate.

(4) If any person does any work on, or makes any use of, any property in contravention of Section 26 or of sub-section (1) of this section, the Planning Authority may direct such person by notice in writing, to stop any such work in progress or discontinue any such use; and may, after making an inquiry in the prescribed manner, remove or pull down any such work and restore the land to its original condition or, as the case may be, take any measure to stop such use.

(5) Any expenses incurred by the Planning Authority under sub-section (4) shall be a sum due to such Authority under this Act from the person in default or from the owner of the land.

Explanation.—The power to grant necessary permission under this section for a change of user of land shall include the power to grant permission for the retention on land of any building or work constructed or carried out thereon before the date of the publication of the declaration of intention to prepare an outline development plan under sub-section (1) of Section 16 or for the continuance of any use of land instituted before the said date.

(6) Any person aggrieved by the decision of the Planning Authority under sub-section (1) or sub-section (4) may, within thirty days from the date of such decision, appeal to such authority as may be prescribed.

(7) The prescribed authority may, after giving a reasonable opportunity of being heard to the appellant and the Planning Authority, pass such orders as it deems fit, as far as may be, within four months from the date of receipt of the appeal.

30. Obligation to purchase land on refusal of permission in certain cases.—(1) Where permission for change of land use of the kind referred to in the explanation to Section 19 is refused or is granted subject to conditions, then, if any owner of the land claims, —

(a) that the land has become incapable of reasonable beneficial use in its existing state, or

(b) in a case where permission for such use is granted subject to conditions, that the land cannot be rendered capable of reasonable beneficial use, by carrying out the conditions of the permission,

he may within the time and in the manner prescribed by regulations made by the Planning Authority, serve on the Planning Authority a notice (hereinafter referred to as a 'purchase notice'), requiring the Planning Authority to purchase his interest in the land in accordance with the provisions of this section.

(2) Where a purchase notice is served on a Planning Authority under this section, the Planning Authority shall forthwith transmit a copy of the notice to the State Government through the Director, and the State Government shall, if it is satisfied that the conditions specified in paragraph (a) or (b) of sub-section (1), as the case may be, are fulfilled, confirm the notice, and thereupon, the Planning Authority shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of this Act, and to have served a notice to acquire in respect thereof on such date as the State Government may direct.

(3) If, within the period of six months from the date on which the purchase notice is served under this section, the State Government has not confirmed the notice, the notice shall be deemed to be confirmed at the expiration of that period, and the Planning Authority on which the notice was served shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of this Act at the expiration of the said period.

(4) The compulsory acquisition of the interest of the owner of a land under this section shall be deemed to be acquisition of land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act I of 1894).

31. Sanction for subdivision of plot or lay-out of private street.— (1) Every person who intends to subdivide his plot or make or lay-out a private street on or after the date of the publication of the declaration of intention to prepare the outline development plan under sub-section (1) of Section 18, shall submit the lay-out plan together with the prescribed particulars to the Planning Authority for sanction

(2) The Planning Authority may, within the prescribed period, sanction such plan either without modification or subject to such modifications and conditions as it considers expedient or may refuse to give sanction, if the Planning Authority is of opinion that such division or laying out is not in any way consistent with the proposals of the outline development plan.

(3) No compensation shall be payable for the refusal or the insertion, imposition or modification or conditions in the grant of sanction.

(4) If any person does any work in contravention of sub-section (1) or in contravention of the modifications and conditions of the sanction granted under sub-section (2) or despite refusal for the sanction under the said sub-section (2), the Planning Authority may direct such person by notice in writing to stop any work in progress and after making an inquiry in the prescribed manner, remove or pull down any work or restore the land to its original condition.

(5) Any expenses incurred by the Planning Authority under sub-section (4) shall be a sum due to the Planning Authority under this Act from the person in default.

(6) Any person aggrieved by the decision of the Planning Authority under sub-section (2) or sub-section (4) may, within thirty days from the date of such decision appeal to such authority as may be prescribed.

(7) The prescribed authority may after giving a reasonable opportunity of being heard to the appellant and the Planning Authority, pass such order as it deems fit, as far as may be, within four months from the date of receipt of the appeal.

32. Recovery of a fee in certain cases of permission for change in the use of land or building.—(1) Where permission for change of land use or development of land or building is granted under Section 27 or Section 28 or Section 29 or Section 34 and such change of land use or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change of land use or development of land or building

(2) Any person aggrieved by the levy of fee under sub-section (1), may within such period as may be prescribed, appeal to the District Court having jurisdiction on the ground that the change or development is not capable of yielding a better income to the owner. The decision of the District Court on such appeal shall be final.

(3) The State Government may exempt any Board, Authority or body constituted by or under any law and owned or controlled by the State Government or Central Government or an infrastructure Project promoted or implemented by any Company or person and approved by the State Government or Central Government from the payment of fee specified under sub-section (1).

Explanation.—For the purpose of this section and Section 33 "Infrastructure Project" means,—

(a) road, bridge, air port, port, inland water ways and inland ports, rail system or any other public facility of a similar nature as may be notified by the State Government from time to time;

(b) a highway project including housing or other activities being an integral part of that project;

(c) water supply project, irrigation project, sanitation and sewerage system;

(d) a tourism project with an investment of not less than Rupees one hundred crores as may be notified by the State Government from time to time.

33. Levy and collection of cess and surcharge.—(1) Notwithstanding anything contained in this Act, the Planning Authority may while granting permission for development of land or building levy and collect from the owner of such land or building:—

(i) a cess for the purpose of carrying out any water supply scheme;

(ii) a surcharge for the purpose of formation of ring road,

(iii) a cess for the purpose of improving slums; and

(iv) a surcharge for the purpose of establishing Mass Rapid Transport System, at such rates but all the above levies together not exceeding one-tenth of the market value of the land or building as may be prescribed.

(2) The cess and surcharge levied under sub-section (1) shall be assessed and collected in such manner as may be prescribed.

(3) Any person aggrieved by the levy, assessment and collection of cess or surcharge under this section may within thirty days from the date of the order appeal to the prescribed authority whose decision shall be final.

(4) The prescribed authority may after giving a reasonable opportunity of being heard to the appellant and the Planning Authority pass such order as it deems fit.

(5) The State Government may exempt any Board, Authority or Body constituted by or under any law and owned or controlled by the State Government or the Central Government or an infrastructure Projects promoted or implemented by any company or person and approved by the State Government or Central Government from the payment of cess or surcharge leviable under sub-section (1).

34. Enforcement of the Comprehensive Development Plan.—The Provisions of Sections 26, 27, 29, 30, 31, 32 and 33 shall apply mutatis mutandis to the enforcement of the Comprehensive Development Plan.

CHAPTER V

TOWN PLANNING SCHEMES

35. Making of town planning scheme and its contents.—

(1) Subject to the provisions of this Act, a Planning Authority, for the purpose of implementing the proposals in the Master Plan published under sub-section (4) of Section 21, may make one or more town planning schemes for the area within its jurisdiction or any part thereof.

(2) Such town planning scheme may make provisions for any of the following matters namely:—

(a) the laying out or re-laying out of land, either vacant or already built upon,

(b) the filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land;

(c) lay-out of new streets or roads; construction, diversion, extension, alteration, improvement and stopping up of streets, roads, parking space and communications;

(d) the construction, alteration and removal of buildings, bridges and other structures;

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts and dairies, transport facilities and public purposes of all kinds;

(f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(g) lighting;

(h) water supply;

(i) the preservation of objects of historical or national interest or natural beauty and of buildings actually used for religious purposes;

(j) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, size, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs;

(k) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order, made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend;

(3) The imposition of conditions and restrictions in regard to construction of flats and villa projects.—No flat or villa projects shall be carried out in the State without providing the following requirements.

(1) Sufficient area shall be provided for the parking of vehicles of the inmates and visitors of the inmates within the plot in which the flat or villa project or other projects are being carried out.

(2) Arrangements shall be made for generating electricity utilizing Solar Energy, Wind Energy, Water Current as the case may be.

(3) Provision for drinking water shall be made utilizing rain harvesting.

(4) Provision for disposal of garbage's by constructing garbage disposal plant, or converting to compost or using some other devise.

(4) Such other matter not inconsistent with the objects of this Act as may be prescribed.

36. Right of entry.—For the purpose of making or execution of any town planning scheme, any person authorised by the Planning Authority or any public servant or person duly appointed or authorised under this Act, may, after giving such notice as may be prescribed to the owner, occupier or other person interested in any land, enter upon, survey and mark out such land and do all acts necessary for such purpose.

37. Land in respect of which a town planning scheme may be made.—(1) A town planning scheme may be made in accordance with the provisions of this Act in respect of any land which is,—

(i) in the course of development,

(ii) likely to be used for building purposes, and

(iii) already built upon.

(2) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreation grounds, parking spaces or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not.

38. Declaration of intention to make a scheme.—(1) A Planning Authority having jurisdiction over any such land as is referred to in Section 37 or over any such area as is referred to in Section 35, may by resolution declare its intention to make a town planning scheme in respect of the whole or any part of such land or such area.

(2) Within twenty-one days from the date of such declaration (hereinafter referred to as the declaration of intention to make a scheme), the Planning Authority shall publish it in the prescribed manner and shall despatch a copy thereof to the State Government through the Director.

(3) The Planning Authority shall send a plan showing the area which it proposes to include in the town planning scheme to the State Government through the Director.

(4) A copy of the plan shall be open to inspection by the public at the office of the Planning Authority.

39. Making and publication of draft scheme.—(1) Within twelve months from the date of declaration of intention to make a scheme under Section 38, the Planning Authority shall make in consultation with the Director, a draft scheme for the area in respect of which the declaration has been made and publish the same in the prescribed manner:

Provided that on application by the Planning Authority in that behalf, the State Government may from time to time, by notification extend the aforesaid period by such period as may be specified not exceeding six months.

(2) If the draft scheme is not made and published by the Planning Authority within the period specified or within the period so extended under sub-section (1), the State Government or an officer authorised by the State Government in this behalf may make and publish in the prescribed manner a draft scheme for the area in respect of which the declaration of intention to make a scheme has been made by the Planning Authority within a further period of nine months from the date of the expiry of the extended period.

(3) If such publication is not made by the State Government within the further period specified in sub-section (2), the declaration of intention to make a scheme shall lapse, and until a period of three years has elapsed from the date of such declaration, it shall not be competent to the Planning Authority to declare its intention to make any town planning scheme for the same area or for any part of it.

40. Power of State Government to require Planning Authority to make a scheme.—(1) Notwithstanding anything contained in Sections 38 and 31, the State Government may, in respect of any Planning Authority after making such inquiry as it deems necessary by notification, require the Planning Authority to make and publish in the prescribed manner and submit for its sanction through Director a draft scheme in respect of any land in regard to which a town planning scheme may be made under Section 37.

(2) For the purpose of this Act and the rules made thereunder, the requisition under sub-section (1) by the State Government shall be deemed to be the declaration of intention to make a scheme under Section 38.

41. Contents of draft scheme.—The draft scheme shall contain the following particulars, namely:

(a) the area, ownership and tenure of each original plot, the land allotted or reserved under clause (e) of sub-section (2) of section 35 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which such land is to be put to such uses;

(b) the extent to which it is proposed to alter the boundaries of original plots;

(c) an estimate of the net cost of the scheme to be borne by the Planning Authority;

(d) a full description of all the details of the scheme under such clauses of sub-section (2) of Section 35 as may be applicable;

(e) the laying out or re-laying out of land either vacant or already built upon;

(f) the filling up or reclamation of low-lying swamp or unhealthy areas, or levelling up of land; and

(g) any other prescribed particulars.

42. Reconstituted plot.—(1) In the draft scheme the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building as far as possible complies with the provisions of the scheme as regards open spaces.

(2) For the purpose of sub-section (1) the draft scheme may contain proposals,—

(a) to form a reconstituted plot by the alteration of the boundaries of an original plot;

(b) to form a reconstituted plot by the transfer, wholly or partly, of the adjoining lands;

(c) to provide that the consent of the owners that two or more original plots each of which is held in ownership in severalty or in joint ownership, shall hereafter with, or without alteration of boundaries, be held in ownership in common as reconstituted plot;

(d) to allot a plot to any owner dispossessed of the land in furtherance of the scheme; and

(e) to transfer the ownership of a plot from one person to another.

43. Consideration of objections and sanction of draft scheme.—(1) If, within one month from the date of publication of the draft scheme under sub-section (1) or sub-section (2) of Section 31, as the case may be, any person affected by such scheme communicates in writing to the Planning Authority any objection relating to such scheme, the Planning Authority shall consider such objection and may, at any time before submitting the draft scheme to the State Government, as hereinafter provided, modify such scheme in such manner as it thinks fit.

(2) The Planning Authority shall, within four months from the date of its publication under sub-section (1) or sub-section (2) of section 31, submit the draft scheme with any modifications which it may have made therein together with the objections which may have been communicated to it, to the State Government through the Director and shall at the same time apply for its sanction.

(3) After receiving such application and after making such inquiry as it may think fit, the State Government, in consultation with the Director, may by notification, within six months from the date of its submission, either sanction such scheme with or without modifications and subject to such conditions as it may think fit to impose, or refuse to give sanction.

(4) If the State Government sanctions such scheme, it shall in such notification state at what place and time the draft scheme so sanctioned shall be open to the inspection of the public.

44. Restrictions after declaration to make a scheme.—(1) On or after the date on which the Planning Authority's declaration of intention to make a scheme under Section 38 or the notification issued by the State Government under Section 40 is published,—

(a) no person shall within the area included in the scheme erect or proceed with any building work or remove, pull down, alter, make additions to, or make any substantial repair to any building, part of a building, a compound wall or any drainage work or remove any earth, stone or material, or sub-divide any land or change the user of any land or building unless such person has applied for and obtained necessary permission which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed;

(b) the Planning Authority on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt and may, after inquiry and in consultation with the Director, either grant or refuse such certificate or grant it subject to such conditions as the Planning Authority may, with the previous approval of the Director, think fit to impose. If the Planning Authority communicates no decision to the applicant within three months from the date of such acknowledgment, the applicant shall be deemed to have been granted such certificate;

(c) if any person contravenes the provisions contained in clause (a) or clause (b), the Planning Authority may direct such person by notice in writing to stop any work in progress, and after making inquiry in the prescribed manner, remove, pull down, or alter any building or other work or restore the land in respect of which such contravention is made to its original condition;

(d) any expenses incurred by the Planning Authority under clause (c) shall be a sum due to such authority under this Act from the person in default or the owner of the plot.

(2) No person shall be entitled to compensation in respect of any damage, loss or injury resulting from any action taken by the Planning Authority under sub-section (1) except in respect of a building or work begun or a contract entered into before the date on which the Planning Authority published a declaration of intention to make a scheme under Section 38 or the State Government published a notification under Section 40 and only in so far as such building or work has proceeded at the time of the publication of such declaration or notification:

Provided that such claim to compensation in the excepted cases shall be subject to the conditions of any agreement entered into between such person and the Planning Authority.

(3) Where under clause (l) of sub-section (2) of Section 35 or under a draft scheme under section 41,—

(a) the purpose to which any plot of land may not be used has been specified, such plot of land shall, within such period of not less than one year as may be specified in the final scheme, cease to be used for such purpose and shall be used only for the purposes specified in the Scheme;

(b) the purpose to which any existing building may not be used has been specified, such building shall, within such period of not less than three years as may be specified in the scheme, cease to be used for the purpose other than the purpose specified in the scheme;

(c) the purpose to which any plot of land with existing buildings may not be used has been specified in the scheme and the existence of such buildings is inconsistent with the provisions of the scheme, such buildings shall, within such period of not less than ten years as may be specified in the scheme cease to exist:

Provided that such period shall not be less than the reasonable life of the building;

No compensation shall be payable for any plot of land or building adversely affected by the making of town planning scheme.

(4) Any person aggrieved by the decision of the Planning Authority under this section may, within sixty days from the date of the decision, appeal to the prescribed authority or if no authority has been prescribed, to the State Government and the order of such prescribed authority or State Government in appeal shall be final.

(5) The restrictions imposed by sub-sections (1) and (2) shall cease to operate in the event of the State Government refusing to sanction the draft scheme or the final scheme.

45. Power of the Local authority to suspend rule, bye-law, etc.— (1) When a Planning Authority has published a declaration of intention to make a scheme under Section 38 or the State Government has published a notification under Section 40, the Local authority may, by notification, suspend to such extent only as may be necessary, for the proper carrying out of the scheme, any rule, bye-law, regulation, notification or order made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend.

(2) Any order issued under sub-section (1) shall cease to operate in the event of the State Government refusing to sanction the final scheme or in the event of the coming into force of the final scheme.

CHAPTER VI

TOWN PLANNING OFFICER AND HIS DUTIES

46. Appointment of Town Planning Officer.—(1) Within one month from the date of the publication of the notification sanctioning a draft scheme under sub-section (3) of Section 44, the Local authority shall appoint a person with prescribed qualifications as Town Planning Officer whose duties shall be as hereinafter provided.

(2) The Local authority shall provide such establishment as it thinks necessary to assist the Town Planning Officer in the discharge of his duties.

(3) The Town Planning Officer appointed under sub-section (1) shall be subordinate to the Director and shall perform his duties under this Act, subject to the general control and supervision of the Director.

(4) When a person appointed as Town Planning Officer under sub-section (1) ceases to hold the office and another person is appointed in his place, any proceedings pending before such officer immediately before the date he ceases to hold the office, shall be continued and disposed of by the new Town Planning Officer appointed in his place.

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47. Duties of the Town Planning Officer.—(1) Subject to the provisions of sub-section (3) of section 46, the Town Planning Officer shall in accordance with the provisions of this Act and the rules made thereunder,—

(a) define and demarcate the areas allotted to, or reserved, for a public purpose or purpose of the Planning Authority and the reconstituted plots;

(b) determine in the case in which a reconstituted plot is to be allotted to persons in ownership in common, the shares of such persons;

(c) fix the difference between the total of the values of the original plots and the total of the values of the plots included in the final scheme;

(d) determine whether the areas used, alloted or reserved for a public purpose or purpose of the Planning Authority are beneficial wholly or partly to the owners or residents within the area of the scheme;

(e) estimate the portion of the sums payable as compensation on each plot used, allotted or reserved for a public purpose or purpose of the Planning Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;

(f) calculate the contribution to be levied on each plot used, allotted or reserved for a public purpose or purpose of the Planning Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;

(g) determine the amount of exemption, if any, from the payment of the contribution, that may be granted in respect of plots exclusively occupied for religious or charitable purposes;

(h) estimate the increment to accrue in respect of each plot included in the final scheme;

(i) calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme;

(j) calculate the contribution to be levied on each plot included in the final scheme,

(k) determine, as the case may be, the amount to be deducted from or added to the contribution leviable from a person;

(l) provide for the total or partial transfer of any right in an original plot to a reconstituted plot or provide for the extinction of a right in the original plot;

(m) estimate in reference to claims made before him, the compensation to be paid to the owner of any property for rights injuriously affected by the making of a Town Planning Scheme;

(n) draw in the prescribed form the final scheme in accordance with the draft scheme sanctioned by the Local authority under Section 34:

Provided that he may make variation from the sanctioned draft scheme, subject to the condition that any variation estimated by him to involve an increase of ten percentum in the costs of the scheme or rupees one lakh, whichever is lower, shall require the sanction of the Local authority·

Provided further that the Town Planning Officer shall make no substantial variation without the consent of the Planning Authority and without hearing any objections, which may be raised by the owners concerned.

(2) If there is any difference of opinion between the Town Planning Officer and the Planning Authority whether variation made by the Town Planning Officer is substantial or not, the matter shall be referred by the Planning Authority to the State Government through the Director and the decision of the State Government shall be final and conclusive.

(3) The Town Planning Officer appointed for any draft scheme shall decide all matters referred to in sub-section (1) within a period of twelve months from the date of his appointment:

Provided that the State Government may, from time to time by order in writing, extend the said period by such further period as may be specified in the order.

48. Certain decisions of the Town Planning Officer to be final subject to an appeal to the Director.—From every decision of the Town Planning Officer, in matters not arising out of clauses (e), (f), (h), (i), (j), (k) and (m) of sub-section (1) of Section 47, an appeal shall lie to the Director within one month from the date of the decision and subject to the orders in such appeal, the decision of the Town Planning Officer shall be final and conclusive.

49. Appeal.—(1) Any decision of the Town Planning Officer under clauses (e), (f), (h), (i), (j), (k) and (m) of sub-section (1) of Section 47 shall be forthwith communicated to the party concerned and any party aggrieved by such communication of the decision, may appeal to the District Judge within the local limits of whose jurisdiction the area included in the scheme is situated.

(2) The District Judge may transfer an appeal filed before him to the Additional District Judge for disposal.

(3) The District Judge or the Additional District Judge, as the case may be, after making such inquiry as he may think fit, may either direct the Town Planning Officer to reconsider his proposals or accept, modify, vary or reject the proposals of the Town Planning Officer and shall decide all matters arising out of clauses (e), (d), (h), (i), (j), (k) and (m) of sub-section (1) of Section 47.

(4) The District Judge or the Additional District Judge hearing an appeal under this section may require the Town Planning Officer to be present during the hearing. On such requisition the Town Planning Officer shall be present at the proceedings before the Judge and shall assist the Judge in an advisory capacity, but shall not be required to give evidence.

(5) The decision of the District Judge or the Additional District Judge, as the case may be, under sub-section (3) shall be final and conclusive and binding on all persons. A copy of the decision in appeal shall be sent to the Town Planning Officer.

50. Decision of Town Planning Officer to be final if no appeal is filed and variation of scheme in accordance with decision in appeal.—(1) Where no appeal has been made under Section 49, the decision of the Town Planning Officer under clauses (e), (f), (h), (i), (j), (k) and (m) of sub-section (1) of Section 38 shall be final and conclusive.

(2) Where an appeal has been made under section 49 and a copy of the decision in appeal is received by the Town Planning Officer, such officer shall, if necessary, make variation in the scheme in accordance with such decision and shall then forward the final scheme together with a copy of his decision under section 47 and a copy of the decision in appeal under section 49 to the Director, for obtaining the sanction of the State Government to the final scheme.

CHAPTER VII

DISPUTED OWNERSHIP, PRELIMINARY SCHEMES AND FINAL SCHEME, ITS SANCTION AND ENFORCEMENT

51. Disputed ownership.—(1) Where there is a disputed claim as to the ownership of any piece of land included in an area in respect of which the planning authority has declared under section 38 its intention to make a town planning scheme and any entry in the Record of Rights or Mutation Register relevant to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the Planning Authority or the Town Planning Officer, at any time prior to the date on which the Town Planning Officer draws up the final scheme under sub-section (1) of Section 47, by such officer as the State Government may appoint for the purpose of deciding who shall be deemed to be the owner for the purposes of this Act.

(2) Such decision shall not be subject to an appeal but it shall not operate as a bar to a regular suit.

(3) Such decision shall, in the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree or if there is an appeal in accordance with the decree passed in the appeal which will be treated as final, as soon as practicable, after such decree has been brought to the notice of the Planning Authority or the Town Planning Officer either by the original Court or by the appellate court or by some person affected by such decree.

52. Town Planning Officer to prepare preliminary scheme in certain cases.—If a draft scheme as sanctioned by the State Government under Section 43 contains any of the following works,—

(i) construction or alteration of bridges,

(ii) roads, open spaces, gardens and recreation grounds,

(iii) drainage, inclusive of sewage, surface drainage and sewage disposal,

(iv) water supply,

(v) any other work which, in the opinion of the Town Planning Officer, is for a public purpose, the Town Planning Officer shall, on the application of the Planning Authority, prepare in regard to such scheme in the prescribed manner a preliminary scheme in accordance with the provisions of Section 47:

Provided that it shall not be necessary for the Town Planning Officer at this stage to exercise the powers referred to in clauses (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n) of sub-section (1) of Section 47.

53. Power to hand over possession of land required for bridges, roads, etc.—(1) Where a Planning Authority thinks that, in the interest of the public, it is necessary to undertake forthwith any of the works referred to in Section 52 and included in a preliminary scheme, the Planning Authority shall make an application through the Director to the State Government to vest in it the land shown in the preliminary scheme.

(2) The State Government, if satisfied, that it is urgently necessary in the public interest to empower the Planning Authority to enter on the land for the purpose of executing any of the works aforesaid, may direct the Town Planning Officer, by notification, to take possession of the land and may also fix the period during which the execution of the said works shall be completed:

Provided that the period so fixed may for sufficient reasons be extended from time to time.

(3) The Town Planning Officer shall then give a notice in the prescribed manner to the person interested in the land requiring him to give possession of his land to the Town Planning Officer or any person authorised by him in this behalf within a period of one month from the date of service of notice and if no possession is delivered within the period specified in the notice, the Town Planning Officer shall take possession of the land and shall hand over the land to the Planning Authority. Such land shall thereupon vest absolutely in the Planning Authority free from all encumbrances.

(4) If the Town Planning Officer is obstricted or impeded in taking possession of the land under sub-section (3) he shall request the District Magistrate or any First Class Magistrate having jurisdiction as such enforce the delivery of possession of the land to him. Such Magistrate shall take or cause to be taken such steps and use or cause to be used such force as may reasonably be necessary for securing the delivery of possession of the land to the Town Planning Officer.

Explanation.—The power to take steps under this sub-section shall include the power to enter upon any land or other property whatsoever.

(5) The owner of the land the possession of which is taken by the Town Planning Officer under this section shall be entitled to an interest at the rate of 9 per cent per annum on the amount of compensation payable to him under this Act in respect of the said land from the date on which such possession is taken till the date on which the final scheme in which such land is included comes into force or till the land is restored to the owner under sub-section (6), as the case may be

(6) If the Planning Authority has not executed any works on the land for which the land was vested in the Planning Authority under sub-section (3) within the period fixed under sub-section (2), the Town Planning Officer shall make or tender to the owner or the person interested in the land such compensation for the damage, if any, done to the land as he may think reasonable and shall restore the land to the owner or person interested therein.

54. Final scheme.—(1) Within a period of three months from the date of receipt of the final scheme from the Director under sub-section (2) of Section 50, the State Government may, by notification, sanction the scheme or refuse to give such sanction, provided that in sanctioning the scheme the State Government may make such modifications as may, in its opinion, be necessary for the purposes of correcting any error, irregularity or informality.

(2) If the State Government sanctions such scheme, it shall state in the notification,—

(a) the place at which the final scheme is kept open to inspection by the public;

(b) the price at which copies may be obtained;

(c) a date (which shall not be earlier than one month after the date of publication of the notification) on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force:

Provided that the State Government may, from time to time postpone such date by notification by such period not exceeding three months at a time as it thinks fit.

(3) On and after the date fixed in such notification the Town Planning Scheme shall have effect as if it were enacted in this Act.

55. Effect of final scheme.—(1) On the day on which the final scheme comes into force,—

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the Town Planning Officer.

(2) On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the Planning Authority.

56. Power to enforce scheme.—(1) On and after the day on which the final scheme comes into force the Planning Authority may, after giving the prescribed notice and in accordance with the provisions of the scheme,—

(a) remove, pull down or alter any building or other work in the area included in the scheme, which is such as to contravene the scheme or in the erection or carrying out of which, any provisions of the scheme has not been complied with,

(b) execute any work which it is the duty of any person to execute under the scheme, in any case where it appears to the Planning Authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the Planning Authority under this section may be recovered from the persons in default or from the owner of the plot in the manner provided for the recovery of sums due to the Planning Authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a Town Planning Scheme, or whether any provision of a Town Planning Scheme is not complied with in the erection of any such building or the carrying out of any such building or work, it shall be referred to the State Government or the Director if authorised by the Local authority in this behalf, and the decision of the State Government or the Director, as the case may be, shall be final and conclusive and binding on all persons.

57. Power to vary scheme on ground of error, irregularity or informality.—(1) If after the final scheme has come into force, the Planning Authority considers that the scheme is defective on account of an error, irregularity or informality, the Planning Authority may apply in writing to the State Government through the Director for the variation of the scheme

(2) If on receiving such application or otherwise, the State Government is satisfied that the variation required is not substantial, the State Government shall publish a draft of such variation in the prescribed manner

(3) The draft variation published under sub-section (2) shall state every amendment proposed to be made in the scheme, and if any such amendment relates to a matter specified in any of the clause (a) to (k) of sub-section (2) of Section 35, the draft variation shall also contain such other particulars as may be prescribed.

(4) The draft variation shall be open to the inspection of the public at the office of the Planning Authority.

(5) Within one month of the date of publication of the draft variation, any person affected thereby may communicate in writing his objections to such variation to the State Government through the Director and send a copy thereof to the Planning Authority.

(6) After receiving the objections under sub-section (5), the State Government may, after consulting the Director and the Planning Authority and after making such inquiry as it may think fit, by notification, approve the variation with or without modification or refuse to make the variation.

(7) From the date of the notification making the variation, with or without modifications, such variation shall take effect as if it were incorporated in the scheme.

58. Power to revoke or vary town planning scheme.—(1) Notwithstanding anything contained in Section 57, a Town Planning Scheme may at any time be varied or revoked by a subsequent scheme made, published and sanctioned in accordance with this Act.

(2) The State Government

(a) on the application of the Planning Authority, or

(b) of its own motion, after making such enquiry as it deems fit and after giving the Planning Authority an opportunity to be heard,may at any time, after consulting the Director, by notification, revoke a Town Planning Scheme if it is satisfied that under the special circumstances of the case the scheme should be revoked.

59. Compensation when the final scheme is varied or revoked and apportionment of costs.—(1) If at any time after the day on which the final scheme has come into force, such scheme is varied or revoked, any person who has incurred expenditure for the purpose of complying with such scheme shall be entitled to receive compensation from the Planning Authority, in so far as any such expenditure is rendered abortive by reason of the variation or revocation of such scheme.

(2) In the event of sanction to final scheme being refused by the State Government or a final scheme being revoked, the State Government may direct that the costs of the scheme shall be borne by the Planning Authority or be paid to the Planning Authority by the owners concerned, in such proportion as the State Government may in each case determine.

60. Joint Town Planning Schemes.—(1) When two or more Planning Authorities are of opinion that the interests of contiguous areas within their respective jurisdictions can best be served by the making of a Joint Town Planning Scheme, and the local authority agrees with such opinion, a Joint Town Planning Board shall be constituted.

(2) Such Board shall consist of representatives of each of the several Planning Authorities duly elected in the prescribed manner and of persons nominated by the local authority.

(3) Such Board, when duly constituted, shall make a declaration of the intention to make a Joint Town Planning Scheme in respect of the contiguous areas in the manner provided in Section 38, and thereafter the Board shall have all the powers and be liable to all the duties of the Planning Authority under this Act and all the provisions in respect of procedure shall apply, so far as may be applicable.

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(4) The draft joint town planning scheme shall specify the parts of the scheme to be executed by the several Planning Authorities in the several contiguous areas and the several parts of the scheme shall, when notified in the final scheme, have effect in the several contiguous areas, as if they are separate schemes:

Provided that any part of a Joint Town Planning Scheme may be executed jointly by two or more Planning Authorities.

61. Delegation of certain powers of Joint Town Planning Board.—A Joint Town Planning Board may, by order in writing, direct that all or any of the powers conferred on it by Section 44, sub-section (2) of Section 55 and Section 56 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by such officer as the Joint Town Planning Board may specify in the order.

62. Right to appear by recognised agent.—Every party to any proceeding before the Town Planning Officer or the Officer to whom under Section 61, the Joint Town Planning Board has delegated its powers, shall be entitled to appear either in person or by his recognised agent.

63. Power to compel attendance of witnesses, etc.—For the purposes of this Act, an officer appointed under sub-section (1) of Section 51, or a Town Planning Officer or an Officer to whom the Joint Town Planning Board has under Section 61 delegated its powers, may summon and enforce the attendance of witnesses including the parties interested or any of them and compel them to give evidence and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

64. Costs of a scheme.—(1) The costs of a Town Planning Scheme shall include,

(a) all sums payable by the Planning Authority under the provisions of this Act, which are not specifically excluded from the costs of the scheme;

(b) all sums spent or estimated to be spent by the Planning Authority in the making and in the execution of the scheme;

(c) all sums payable as compensation for land reserved or designated for any public purpose or purpose of the Planning Authority, which is solely beneficial to the owners or residents within the area of the scheme;

(d) such portion of the sums payable as compensation for land reserved or designated for any public purpose or purpose of the Planning Authority, which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, as is attributable to the benefit accruing to the owners or residents within the area of the scheme from such reservation or designation;

(e) all legal expenses incurred by the Planning Authority in the making and in the execution of the scheme;

(f) any amount by which the total of the values of the original plots exceeds the total of the values of the plots included in the final scheme, each of such plots being estimated at its market value on the date of the declaration of intention to make a scheme, with all the buildings and works thereon on that date and without reference to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries.

(2) If, in any case, the total of the values of the plots included in the final scheme exceeds the total of values of the original plots, each of such plots being estimated in the manner provided in clause (f) of sub-section (1), then the amount of such excess shall be deducted in arriving at the costs of the scheme, as defined in sub-section (1).

65. Calculation of increment.—For the purposes of this Act, the increment shall be deemed to be the amount by which on the date of the declaration of intention to make a scheme, the market value of a plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed on the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme:

Provided that in estimating such values, the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration.

66. Contribution towards costs of scheme.—(1) The costs of the scheme shall be met wholly or in part by a contribution to be levied by the Planning Authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer.

Provided that,—

(a) no such contribution shall exceed one-third of the increment estimated by the Town Planning Officer to accrue in respect of such plot;

(b) where a plot is subject to a mortgage with possession or to a lease, the Town Planning Officer shall determine in what proportion the mortgagee or lessee on the one hand and the mortgagor or lessor on the other hand, shall pay such contribution;

(c) no such contribution shall be levied on a plot used, allotted or reserved for a public purpose or purpose of the Planning Authority which is solely for the benefit of owners or residents within the area of the scheme; and

(d) the contribution levied on a plot used, allotted or reserved for a public purpose or purpose of the Planning Authority, which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment or reservation.

(2) The owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

67. Certain amount to be added to or deducted from contribution leviable from a person.—The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall, as the case may be, be deducted from or added to the contributions leviable from such person, each of such plots being estimated at its market value on the date of the declaration of intention to make a scheme or the date of a notification under Section 40 and without reference to improvements contemplated in the scheme other than improvements due to the alterations of its boundaries.

68. Transfer of right from original to reconstituted plot or extinction of such right.—Any right in an original plot which in the opinion of the Town Planning Officer is capable of being transferred wholly or in part, without prejudice to the making of a Town Planning Scheme to a reconstituted plot shall be so transferred and any right in an original plot which in the opinion of the Town Planning Officer is not capable of being so transferred shall be extinguished.

69. Compensation in respect of property or right injuriously affected by scheme.—The owner of any property or right which is injuriously affected by the making of a Town Planning Scheme shall, if he makes a claim before the Town Planning Officer within the prescribed time, be entitled to obtain compensation in respect thereof from the Planning Authority or from any person benefited or partly from the Planning Authority and partly from such person as the Town Planning Officer may in each case determine:

Provided that the value of such property or right shall be held to be its market value on the date of the declaration of intention to make a scheme or the date of a notification under Section 40 without reference to improvements contemplated in the scheme.

70. Exclusion or limitation of compensation in certain cases.—(1) No compensation shall be payable in respect of any property or private right of any sort which is alleged to be injuriously affected by reason of any provisions contained in the Town Planning Scheme, if under any other law for the time being in force applicable to the area for which such scheme is made, no compensation is payable for such injurious affection.

(2) Property or a private right of any sort shall not be deemed to be injuriously affected by reason of any provision inserted in a Town Planning Scheme, which, with a view to securing the amenity of the area included in such scheme or any part thereof, imposes any conditions and restrictions in regard to any of the matters specified in clause (j) of sub-section (2) of Section 35.

71. Provision for cases in which amount payable to owner exceeds amount due from him.—If the owner of an original plot is not provided with a plot in the final scheme or if the contribution to be levied from him under Section 66 is less than the total amount payable to him under any of the provisions of this Act, the net amount of his loss shall be payable to him by the Planning Authority in cash or in such other way and within such time as may be agreed upon by the parties of such amount is not paid within the time fixed, the amount shall be paid with 9 per cent interest till date of payment.

72. Provisions for cases in which value of developed plot is less than the amount payable by owner.—(1) If, from any cause, the total amount which would be due to the Planning Authority under the provisions of this Act from the owner of a plot to be included in the final scheme, exceeds the value of such plot estimated on the assumption that the scheme has been completed, the Town Planning Officer shall, at the request of the Planning Authority, direct the owner of such plot to make payment to the Planning Authority of the amount of such excess.

(2) If such owner fails to make such payment within the prescribed period, the Town Planning Officer shall, if the Planning Authority so requests, acquire the original plot of such defaulter and apportion the compensation among the owner and other persons interested in the plot on payment by the Planning Authority of the value of such plot estimated at its market value on the date of the declaration of intention to make a scheme or the date of a notification under Section 40 and without reference to improvements contemplated in the scheme, and thereupon the plot included in the final scheme shall vest absolutely in the Planning Authority free from all encumbrances, but subject to the provisions of this Act:

Provided that the payment made by the Planning Authority on account of the value of the original plot shall not be included in the costs of the scheme.

73. Payment by adjustment of account.—All payments due to be made to any person by the Planning Authority under this Act shall, as far as possible be made by adjustment in such person's account with the Planning Authority in respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment shall be paid in cash or in such other way as may be agreed upon by the parties.

74. Payment of net amount due to Planning Authority.—(1) The net amount payable under the provisions of this Act by the owner of a plot included in the final scheme may, at the option of the contributor, be paid in lump sum or annual instalments not exceeding ten. If the owner elects to pay the amount by instalments, interest at four and a half per cent per annum shall be charged on the net amount payable. If the owner of a plot fails to so elect on or before the date specified in a notice issued to him, he shall be deemed to have elected to pay the contribution by instalments and the interest on the contribution shall be calculated from the date specified in the notice, being the date before which he was required to make an election as aforesaid.

(2) Where two or more plots included in the final scheme are in the same ownership, the net amount payable by such owner under the provisions of this Act shall be distributed over his several plots in proportion to the increment which is estimated to accrue in respect of each plot, unless the owner and the Planning Authority agree to a different method of distribution.

75. Power of Planning Authority to make agreements.—(1) A Planning Authority shall be competent to make any agreement with any person in respect of any matter which is to be provided for in a Town Planning Scheme, subject to the power of the State Government to modify or disallow such agreement and unless it is otherwise expressly provided therein, such agreement shall take effect on and from the date on which the Town Planning Scheme comes into force.

(2) Such agreement shall not in any way affect the duties of the Town Planning Officer as described in Chapter VI or the rights of third parties, but it shall be binding on the parties to the agreement notwithstanding any decision that may be made by the Town Planning Officer:

Provided that, if the agreement is modified by the State Government, either party shall have the option of avoiding it if they so elects.

76. Recovery of arrears.—(1) Any sum due to the Planning Authority under this Act or any regulation made thereunder shall be a first charge on the plot on which it is due, subject to the prior payment of land revenue, if any, due to the State Government thereon.

(2) Any sum due to the Planning Authority under this Act or any regulation made thereunder which is not paid on the date fixed by the Planning Authority, of which due notice is given in this behalf, shall be recoverable by the Planning Authority by distress and sale of the goods and chattel of the defaulter as if the amount thereof were a property tax due by the defaulter

(3) In lieu of the recovery of the dues of the Planning Authority in the manner provided in sub-section (2) or after recovering part of the dues of the Planning Authority in the manner provided in sub-section (2), any sum due or the balance of any sum due as the case may be, by such defaulter may be recovered from him by a suit in any court of competent jurisdiction.

77. Powers of Planning Authority to borrow money for Development Plan or for making or executing a Town Planning scheme.—(1) A Planning Authority may, for the purpose of an outline or comprehensive development plan or the making or execution of a Town Planning scheme, borrow loans in accordance with the provisions of this Act under which the Planning Authority as a local authority is constituted or if such Act does not contain any provision for such borrowing in accordance with any other law for the time being in force.

(2) Any expense incurred by a Planning Authority or the Local authority under this Act or in connection with an outline or comprehensive development plan or a Town Planning scheme, may be defrayed out of the funds of the Planning Authority.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT

78. Funds of Planning Authority.—(1) Every Planning Authority shall have and maintain a separate fund to which shall be credited,

(a) all moneys received by the Planning Authority from the State Government by way of grants, loans, advances or otherwise;

(b) all charges or fees received by the Planning Authority under this Act or rules, regulations or bye-laws made thereunder;

(c) in the case of a Planning Authority constituted under Section 7, such contributions from the Fund or Funds of the local authority or local authorities of the area included in the planning area, as such local authority or local authorities may from time to time be required by the Local authority to make to such Planning Authority;

(d) all moneys received by the Planning Authority from any other source.

(2) The Fund shall be applied towards meeting,—

(a) the expenditure incurred in the administration of this Act;

(b) the cost of acquisition of land in the planning area for the purposes of development;

(c) the expenditure for such other purposes as the Local authority may direct.

79. Budget of the Planning Authority.—Every Planning Authority shall prepare in such form and at such time every year as may be prescribed, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Planning Authority in respect of the administration of this Act and shall forward to the State Government and the Board, such number of copies thereof as may be prescribed.

80. Accounts and Audit.—(1) Every Planning Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be prescribed.

(2) The accounts of every Planning Authority shall be subject to audit annually by the Comptroller of State Accounts.

(3) The accounts of every Planning Authority as certified by the Comptroller of State Accounts together with the audit report thereon shall be forwarded annually to the State Government and the Board.

81. Annual Reports.—Every Planning Authority shall prepare for everyyear a report of its activities under this Act during that year and submit the report to the State Government and the Board in such form on or before such date as may be prescribed.

CHAPTER IX

LAND ACQUISITION

82. Acquisition of land designated for certain purposes in a Master Plan.—(1) The Planning Authority may acquire any land designated in a Master Plan for a specified purpose in clause (b), (c) or (d) of sub-section (1) of Section 20, or for any public purpose out of those specified land in clause (a) of sub-section (1) of Section 20 by agreement or under the Land Acquisition Act, 1894 (Central Act 1 of 1894) as in force in the State.

(2) If the designated land, except land specified for the purpose in clause (b) of sub-section (1) of Section 20, is not acquired by agreement within five years from the date, the Master Plan is published in the gazette under sub-section (4) of Section 21 or if the proceedings under Land Acquisition Act are not commenced within such period the designation shall be deemed to have been lapsed.

83. Land acquisition for purposes of a scheme or Development Plan to be deemed for a public purpose.—Land needed for purpose of a Town Planning scheme or Master Plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

84. Power of Local authority to acquire lands included in a scheme.—(1) If, at any time, the State Government is of opinion that any land included in a Town Planning scheme is needed for a public purpose other than that for which it is included in the scheme, it may make a declaration to that effect in the Official Gazette in the manner provided in section 6 of the Land Acquisition Act, 1894. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section.

(2) On the publication of a declaration under sub-section (1) the Deputy Commissioner shall proceed to take order for the acquisition of the land and the provisions of the Land Acquisition Act, 1894, so far as may be, apply to the acquisition of the said land.

CHAPTER X

OFFENCES AND PENALTIES, RULES AND BYE-LAWS

85. Offences and Penalties.—Whoever,

(1) does any work in contravention of the provisions of Section 26;

(2) contravenes the conditions of the commencement certificate granted under sub-section (1) of Section 22, XXX, or of the sanction granted under sub-section (2) of Section 31;

(3) does any work in spite of refusal to grant a commencement certificate under sub-section (1) of Section 15 or of the sanction under sub-section (2) of Section 31;

(4) obstructs the entry of any person upon any land under Sections 19 or 36 or prevents such person from doing anything in accordance with the said section;

(5) does any work in contravention of clause (a) or (b) of sub-section (1) of Section 44; shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both and the Court shall, in such order of conviction, direct that if such contravention continues after the date of the order of conviction, a fine not exceeding two hundred and fifty rupees per day for the period from which the contravention continues shall be recovered from the person so convicted:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than five hundred rupees and in the case of a continuing contravention of the provisions, the fine shall not be less than twenty five rupees per day.

86. Rules.—(1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made to determine the following matters:—

(a) the functions and powers of the Board and Planning Authorities constituted under Section 7;

(b) the qualifications and disqualifications for being chosen as and for being members of the Board, and Planning Authorities constituted under Section 7;

(c) the manner of nomination of representatives of local authorities under clause (iii) of sub-section (3) of Section 7;

(d) the manner in which and the purposes for which any Planning Authority may associate with itself any person under Section 10;

(e) the particulars that are to be shown in a map under section 14;

(f) the manner of and the procedure to be followed in making an inquiry under sub-section (2) of Section 15;

(g) the manner of publication of the outline development plan under sub-section (1) or sub-section (2) of section 17; or under sub-section (4) of Section 21;

(h) the notices to be given under section 19 and Section 36;

(i) the form of the commencement certificate to be granted under sub-section (1) of Section 29;

(j) the particulars to be furnished by a person submitting a lay-out plan under sub-section (1), the period within which the Planning Authority may sanction such plan under sub-section (2) and the manner of holding an inquiry under sub-section (4) of Section 31;

(k) the betterment fee to be levied and the manner of levy under Section 32;

(l) the manner of publication of a declaration of intention to make a scheme under sub-section (2) of Section 38;

(m) the manner of publication of a draft scheme under Section 39;

(n) the further particulars to be included in the draft scheme under clause (g) of Section 41;

(o) the form of the commencement certificate to be granted under clause (a) of sub-section (1) of Section 44 and the conditions, if any, to be included therein;

(p) the procedure to be followed in making an inquiry under clause (c) of sub-section (1) of Section 44;

(q) the manner in which, and the method according to which, compensation shall be payable under sub-section (2) of Section 44;

(r) the qualifications of persons to be appointed as Director of Town Planning and as Town Planning Officer;

(s) the procedure that is to be followed by a Town Planning Officer in making orders under any of the several clauses of sub-section (1) of Section 47;

(t) the form in which the Town Planning Officer is to draw the final scheme under clause (n) of sub-section (1) of Section 47;

(u) the procedure to be followed by the officer appointed to hold an inquiry for the purpose of deciding a disputed claim as to ownership under Section 51;

(v) the manner of preparing a preliminary scheme under Section 52;

(w) the manner of giving notice under Section 53;

(x) the procedure to be followed in summarily evicting a person under Section 55;

(y) the notice to be given before action is taken under section 56;

(z) the manner of publication of a draft variation under sub-section (2) and the particulars which a draft variation shall contain under sub-section (3) of Section 57;

(aa) the manner of election of representatives of the several Planning Authorities under sub-section (2) of section 60;

(bb) the time to be allowed for making a claim to compensation under section 69;

(cc) the period within which payment is to be made to the Planning Authority under section 72;

(dd) the form of the budget of Planning Authorities, the date on or before which it shall be prepared, the manner of preparing it and the number of copies that have to be sent to the Board and the Local authority;

(ee) the form of the annual statement of accounts and balance sheets to be prepared under section 80;

(ff) the form of the annual report of the Planning Authorities and the dates on or before which they shall be submitted under section 81;

(gg) the manner in which documents, plans, maps shall be made accessible to the public under the proviso to section 104;

(hh) the procedure to be adopted by the Planning Authority to secure co-operation on the part of the owners or persons interested in the land proposed to be included in a Town Planning Scheme at every stage of the proceedings by means of conferences and such other means as may be expedient;

(ii) the procedure to be followed by a Town Planning Officer generally under this Act;

(jj) the extent to which the proceedings of Planning Authorities under this Act shall be regulated by any municipal or local law applicable to such authorities;

(kk) (ak) the documents of which copies may be granted and the fees payable for the inspection of such documents and the grant of copies thereof; and

(ll) any other matter for which there is no provision or no sufficient provision in this Act (including provision relating to appeals, appellate authorities, time for filing appeals, fees payable in respect of appeals and other matters), and for which provision is in the opinion of the Local authority, necessary for giving effect to the purposes of this Act.

(3) A rule made under this section may provide that a contravention of any of the provisions of the rules which are specified in such rule shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing contravention, with an additional fine which may extend to ten rupees for every day during which such contravention continues after conviction for the first such contravention.

(4) Any rule under this Act may be made to have effect retrospectively and when any such rule is made a statement specifying the reasons for making such a rule shall be laid before the State Legislature along with the rule under sub-section (4). All rules made under this Act shall, subject to any modification made under sub-section (4), have effect as if enacted in this Act.

(5) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the legislature agree in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

87. Bye-laws.—(1) A Planning Authority may, with the previous sanction of the local authority, make bye-laws consistent with the provisions of this Act and the rules thereunder to carry out the purposes included in the Master Plan.

(2) A bye-law made under this section may provide that a person contravening any of the provisions of the bye-laws which are specified in such bye-law shall on conviction, be punished with fine, which may extend to one hundred rupees and in the case of a continuing contravention, with an additional fine, which may extend to five rupees for every day during which such contravention continues after conviction, for the first such contravention.

(3) The power to make bye-laws under this section shall be subject to the condition of previous publication and such publication shall be in the official Gazette and in such other manner as may be directed by the local authority.

CHAPTER XI
MISCELLANEOUS

88. Bar of Legal Proceedings.—No suit or other legal proceedings shall be maintained against the State Government, the Planning Authority, local authority or any public servant or persons duly appointed or authorised under this Act, in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

89. Mode of Proof of Records of the Board and the Planning Authority.— A copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Board or any Planning Authority, if duly certified by the legal keeper thereof, or other person authorised by the Board or the Planning Authority in this behalf, shall be received as prima facie evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

90. Restriction on Summoning of Officers and Servants of the Board and Planning Authority.—No chairman, member or Officer or servant of the Board or any Planning Authority shall in any legal proceeding to which the Board or Planning Authority is not a party, be required to produce any register or document the contents of which can be proved under Section 89 by a certified copy, to appear as a witness to prove the matters and transactions recorded therein, unless by order of the Court made for special cause.

91. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person, who, at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

Explanation.—For the purpose of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

92. Penalty for obstructing contractor or removing mark.—If any person,—

(a) obstructs, or molests any person engaged or employed by the Board or any Planning Authority, or any person with whom the Board or the Planning Authority has entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do under this Act, or

(b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act,

(c) he shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two months.

93. Sanction of prosecution.—No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the State Government or Planning Authority or any officer authorised by the Local authority or the Planning Authority in this behalf.

94. Composition of offences.—(1) The Local authority or the Planning Authority concerned or any person authorised by the Local authority or the Planning Authority in this behalf by general or special order may either before or after the institution of the proceedings compound any offence made punishable by or under this Act.

(2) When an offence has been compounded, the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

95. Fine when realised to be paid to Planning Authority.—All fines realised in connection with any prosecution under this Act shall be paid to the planning authority concerned.

96. Member and officers to be public servants.—Every member and every officer and other employee of the Board and of every Planning Authority shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

97. Finality of orders.—Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or the Board or order passed or notice issued by any Planning Authority under this Act shall be final and shall not be questioned in any suit or other legal proceeding.

98. Validation of acts and proceedings.—No act done or proceeding taken under this Act shall be questioned on the ground merely of,-

(a) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority;

(b) any person having ceased to be a member;

(c) any person associated with the Board or any planning authority under section 4F having voted in contravention of the said section; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure, or

(e) any omission, defect or irregularity not affecting the merits of the case.

99. Control by the local authority.—(1) Every Planning Authority shall carry out such directions as may be issued from time to time by the local authority for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Planning Authority under this Act, any dispute arises between the Planning Authority, and a local authority, the decision of the Local authority on such dispute shall be final.

100. Returns and information.—Every Planning Authority shall furnish to the Local authority such reports, and other information as the Local authority may from time to time require.

101. Effect of other Laws.—(1) Save as provided in this Act, the provisions of this Act and the rules, regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any such other law,-

(a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

102. Local authority's powers to cancel the resolution or order.—(1) If the local authority is of opinion that the execution of a resolution or order issued by or on behalf of the Planning Authority or the doing of any act which is about to be done or is being done by or on behalf of the Planning Authority is in contravention of or in excess of the powers conferred by this Act or any other law for the time being in force or is likely to lead to breach of peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interest of the Planning Authority, it may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act after issuing a notice to the Planning Authority to show-cause within the specified period which shall not be less than fifteen days, why,—

(a) the resolution or order may not be cancelled, in whole or in part; or

(b) any regulation or bye-law concerned may not be repealed in whole or in part.

(2) Upon consideration of the reply, if any, received from the Planning Authority and after such inquiry as it thinks fit, the local authority may, pass orders cancelling the resolution or order or repealing the regulation or bye-law and communicate the same to the Planning Authority.

(3) The local authority may at any time, on further representation by the Planning Authority or otherwise revise, modify or revoke an order passed under sub-section (2).

103. Power of Planning Authority to suspend or revoke permission etc.—Planning Authority may suspend or revoke any licence, permission or sanction granted by it if,

(1) the grantee has evaded or committed breach of any of the restrictions or conditions subject to which such licence, permission or sanction was granted; or

(2) the grantee is convicted for contravention of any of the provisions of this Act, or of any rule, bye-law or regulation made thereunder in respect of any matter relating to such licence, permission or sanction, or

(3) the grantee has obtained the licence, permission or sanction by mis-representation or fraud:

Provided that before making any order under this section the Planning Authority shall give the grantee a reasonable opportunity of making representation against the proposed order.

104. Registration of documents, plan or map in connection with final scheme not required.—(1) Nothing in the Indian Registration Act, 1908 (Central Act XVI of 1908), shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a final scheme which has come into force and which has not been revoked.

(2) All such documents, plans and maps shall, for the purposes of Section 57 and Section 58 of the Indian Registration Act, 1908, be deemed to have been and to be registered in accordance with the provisions of that Act:

Provided that copies of documents, plans and maps relating to the sanctioned scheme shall be sent to the Sub-Registry office concerned, where such copies shall be kept and made accessible to the public in the manner prescribed.

105. Vesting of property and rights of a Planning Authority ceasing to exist or ceasing to have jurisdiction.—When any Planning Authority ceases to exist or ceases to have jurisdiction over any area included in a Town Planning scheme, the property and rights vested in such Planning Authority under this Act, shall, subject to all charges and liabilities affecting the same vest in such other Planning Authority or authorities as the State Government may, with the consent of such authority or authorities, by notification direct; and the Planning Authority or each of such Planning Authorities shall have all the powers under this Act in respect of such schemes or such part of a scheme as comes within its jurisdiction which the Planning Authority had, immediately before it ceased to exist or ceased to have jurisdiction.

106. Default in exercise of power or performance of duty by Planning Authority.—(1) If, in the opinion of the local authority, any Planning Authority is not competent to exercise or perform, or neglects or fails to exercise or perform any power conferred or duty imposed upon it under any of the provisions of this Act, the local authority or any person or persons appointed in this behalf by the local authority, may exercise such power or perform such duty.

(2) Any expenses incurred by the local authority or by such person in exercising such power or performing such duty, shall be paid out of the funds of the Planning Authority and the local authority may make an order directing any person who, for the time being, has custody of any such funds to pay such expenses from such funds and such person shall be bound to obey such order.

107. Special provision in case of a dissolution or supersession of a local authority.—(1) Where a local authority which is a Planning Authority under this Act, is dissolved or superseded under the law governing its constitution, the person or persons appointed under such law to exercise the powers and perform the duties of such local authority shall be deemed to be the local authority within the meaning of clause 11 of Section 2 of this Act, and may exercise all the powers and perform all the duties of a Planning Authority under this Act, during the period of dissolution or supersession of such local authority.

(2) In the event of a person or persons appointed as aforesaid exercising the powers and performing the duties of a Planning Authority under this Act, any property, which may under the provisions of this Act vest in the Planning Authority exercising such powers and performing such duties shall during the period of dissolution or supersession of the local authority vest in the State Government and such property shall, at the end of the said period, vest in such local authority as the State Government may, by notification direct.

(3) Where a local authority which is not a Planning Authority is dissolved or superseded under the law governing its constitution, the representatives of such local authority shall for purpose of clause (iii) of sub-section (3) of Section 7, be nominated from among the officers of such local authority by the person or persons appointed under such law to exercise the powers and perform the duties of such local authority, and such representatives shall, notwithstanding anything contained in sub-sections (1) and (2) of Section 8, hold office during the pleasure of the said person or persons.

108. Dissolution of Planning Authorities.—(1) Where the local authority is satisfied that the purposes for which any Planning Authority was established under this Act, have been substantially achieved so as to render the continued existence of the Planning Authority in the opinion of the local authority unnecessary, the local authority, may, by notification, declare that the Planning Authority shall be dissolved with effect from such date as may be specified in the notification, and the Planning Authority shall be deemed to be dissolved accordingly.

(2) With effect from the date of dissolution of a Planning Authority under sub-section (1), except where a direction is issued under section 78, all properties, rights and liabilities of such Planning Authority shall vest in the local authority.

109. Delegation of powers of Planning Authority.—The local authority may, by notification and subject to such restrictions and conditions as may be specified therein, delegate any of the powers and functions of the Planning Authority under this Act to any local authority or any officer of the local authority.

110. Removal of difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may by order published in the official Gazette, as the occasion may require do anything which appears to it to be necessary to remove the difficulty.

(2) Every order made under sub-section (1) shall as soon as may be after it is published, be laid before the State Legislature and shall, subject to any modification which the State Legislature may make, have effect as if enacted in this Act.

111. Repeal and savings.—(1) The Town Planning Act IV of 1108, as in force in the former Travancore-Cochin area of the State and;

(2) the Madras Town Planning Act, 1920 (Madras Act VII of 1920), as in force in the Malabar area of the State and the Travancore Town and Country Planning Act, 1120 as in force in former Travancore area of the State area hereby repealed:

Provided that such repeal shall not affect,—

(a) the previous operation of the said Acts or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Acts; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Acts; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken (including any appointment made, any declaration of intention to make a scheme published, any application made to the local authority for sanction of the making of the scheme, any draft scheme published by a local authority, any application made to the local authority for the sanction of the draft scheme, any sanction given by the local authority to the draft scheme, any restriction imposed upon an owner of land or building against the erection or re-erection of any building or works, any

commencement certificate granted, any order of suspension of rule, bye-law, regulation, notification or order made, any final scheme forwarded to or sanctioned or varied by the local authority and any recoveries made or compensation given in respect of any plot under the repealed Acts) shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue to be in force accordingly unless and until they are superseded by anything done or any action taken under this Act.

Statement of Objects and Reasons

The object of the Bill is have a comprehensive legislation to ensure planned growth of land use and development both in Urban and Rural areas. Another object is to have a uniform legislation on the subject repealing the three different enactments applicable to the different parts of the State. Proper and effective implementation of Town Planning scheme is yet another object of recommending the Bill. A comprehensive and common law applicable to the entire State may be of great advantage to the public, is the main reason for the recommendation.

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THE KERALA WIDOW'S RIGHT TO (SHELTER AND MAINTENANCE) BILL

A

BILL

to provide a right to have a shelter to a widow who has no source of her own or any near relation capable of providing such shelter and maintenance.

BE it enacted in the Fifty Ninth Year of the Republic.

1. *Short title, extent and commencement.*—(1) This Act may be called "the Kerala Widow's Right to (Shelter and Maintenance) Bill——

(2) It shall extend to the whole of State of Kerala.

(3) It shall come into force on such date notified by the Government in the Gazette.

2. *Definitions.*—For the purposes of this Act,

(a) "Maintenance" means such sum of money necessary to have food and other necessities to lead a reasonable life with reasonable medicare facilities.

(b) "Near relation" means child or children and parents or either of them.

(c) "Source of income" includes income received as maintenance from the divorced husband.

(d) "Widow" means any widow having no independent source of income other than family pension sufficient to lead a reasonable life and to have a shelter.

3. *Categories of widows.*—For the purposes of this Act, the widows may be classified as,

(a) Widows having no issues but having parents or any of them alive.

(b) Widows having a minor child or children and having parents or any of them alive.

(c) Widows having a major child or children and parents or any one of them alive.

(d) Widows having no issues nor parents alive.

4. *Duties of parents and issues of widows.*—(a) In the case of widows falling under clauses (a) and (b) of Section 3, it shall be the duty of the parents or any of them to provide shelter and maintenance to the widow and to her child or children:

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Provided that if the parents or any of the parents or children have no income, it shall be the duty of the State to provide shelter and maintenance to the widow.

(b) In the case of widows falling under clause (c) of Section 3, it shall be the primary duty of the child or children jointly and or severally to provide maintenance and shelter to the widow:

Provided that if the child or children have no source of income, it shall be the duty of the parent or any of them to provide maintenance and shelter to the widow:

Provided further that if the parents have no income, it shall be the duty of the State to provide shelter and maintenance to the widow.

(c) In the case of widows falling under clause (d) of Section 3, it shall be the duty of the State to provide shelter and maintenance to the widow on her application and after conducting such enquiries regarding her eligibility to claim the rights under the Act in accordance with the Rules prescribed under the Act.

5. *Government to nominate an officer of the Revenue to function as the authority to perform the duties under Section 4 of the Act.*—(a) Government may nominate an appropriate officer or officers of the Revenue Department in each district to perform the duties of entertaining, disposing of and arranging the shelter if any allotted to the widow and maintenance under the Act and as per the Rules.

(b) On order being passed for providing shelter and maintenance, the amount of which has to be fixed as per the order; the appropriate authority shall take immediate steps to implement the orders within a maximum period of two months from the date of order.

6. *Constitution of Widow's Fund.*—The Government shall constitute a separate fund for meeting the expenses to be incurred for implementing the orders passed under Section 4 of the Act within 6 months from the date of the commencement of the Act.

7. *Cessation of the rights acquired under the Act.*—(a) In the case of widows the shelter provided by the State shall on the death of the widow, revert back to the state and shall vest in the State free of encumbrances.

(b) The right to maintenance enjoyed by such widow would also automatically cease from the date of death of the widow.

8. *Rule making power.*—Government may make rule for implementing the provisions of this Act by notification published in the official Gazette.

The Kerala Widow's Right to (Shelter and Maintenance) Bill

Statement of objects and reasons

Article 21 of the Constitution guarantees as a fundamental right to every citizen to live in dignity. The plight of destitute widows in the country is indeed pitiable. By a stroke of cruel destiny, one becomes a widow and neglected by near relations and hated by the society. Widows with minor children to feed find in very difficult situations financially and otherwise. Taking note of the desperate situation of the widows, the Commission felt that it is necessary to draft a Bill providing maintenance and shelter to the widows in distress. The primary duty to support the widows has been cast on her parents. Only in cases where the parents themselves are helpless that a duty is enjoined on the State to provide maintenance and shelter to the widows. In the present state of affairs, an enactment is not only desirable but essential. Hence the Bill.

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COMPASSION FOR LIVING CREATURES BILL

Preamble.—Our Constitution provides for humanism as a fundamental duty in its amplest signification. So too are fundamental rights. More importantly, Article 51A uniquely inscribes, as a fundamental duty, compassion for all living creatures. This extraordinary dimension of Constitutional compassion is imperfectly met by the SPCA working under the Prevention of Cruelty to Animals Act. These insitutions are often indifferent, indigent, unaccountable and ineffective and rarely invigilated by State agencies. The result is tragic failure of the public duty towards sub-human creatures in the land of Buddha, Chaithnya and Gandhi. The negtivity can be corrected only by law reform taking positive steps to create institutional remedies and vibrant public involvement.

These and other grounds justify a legislative Bill sensitizing and activising people's consciousness, conscience, rights and duties under the Constitution and the Laws. These deficiency is made up by the above Bill.

Now therefore this bill is being enacted.

1. *Short title, extent and commencement.*—(1) This Act may be called Compassion for Living Creatures Act ——.

(2) It extends to the whole of State of Kerala.

(3) It shall come into force at once.

2. *Public Policy of showing compassion towards all creations.*—The welfare of all living creatures is the concern of the State and Society as an expression of reverence to life in all its forms and as a cultural recognition of the fellowship of all created beings. This fundamental value shall be hallowed by the State and society, except in exceptional cases where avoidance of injury to human life necessitates infliction of pain on animals and birds. Such infliction shall be kept to the minimum, judging by veterinary standards certified by the Veterinary Director of the State; in all slaughter houses and all animal experimental stations and all festivals religious or other or sports and competitions.

3. *Birds or animals shall not be made generally the victims of experiments.*—No bird or animal shall be the victim of experiments for medical or other purposes except with the approval of the veterinary department of the Government or any other expert body authorized fit by the Government of India in this behalf.

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Compassion for Living Creatures Bill

4. *Conditions for slaughtering of animals and birds.*—(1) The slaughter of animals and birds shall be an offence under this Act except in slaughter houses certified by the State Government under conditions and restrictions with reference to age, health and environment prescribed by Rules in that behalf under this Act. No meat shall be sold or offered for sale except such as is obtained from a sanctioned slaughter house or hotel or restaurant which has the sanction of the health department of the Government for killing and selling or otherwise making meat for consumption.

(2) No animal or bird slaughtered for the purpose of eating meat of such animal or bird shall be displayed in any public place open to the vision or gaze of the public.

(3) The killing of animals and birds permitted under this Act shall be done only in licensed slaughter houses without inflicting indiscriminate pain and torture.

(4) Any Act or omission in violation of the provisions of this Act shall constitute an offence punishable with imprisonment for five years and of with fine. The Judicial First Class Magistrate of the area shall have jurisdiction to take cognizance of the offences under this Act, try and punish the offenders.

5. *No bird or beast shall be used for entertainment etc.,.*—No bird or beast shall be used for entertainment or competitive display except with the sanction and subject to the conditions prescribed by authorities appointed in that behalf by the State Government.

6. *Use of certain animals and birds only subject to conditions.*—No pig, cattle, frog or fowl or other living creature shall be subjected to cruelty or pain for any purpose whatsoever including export or interstate transport save with sanction of the State Government except fish. No animal shall be used for getting milk if it is in a state of illness or otherwise, too sick to yield healthy milk. It shall be the duty of the keeper of every head of cattle or pig or draft animal to keep them safely and in good health conditions and it is his duty to give them proper treatment for diseases like soar neck limping leg etc.

7. *Duty of keepers of animals to take care of the animals.*—No keeper of an animal shall neglect the proper feeding and maintenance of his keep or its proper medical attention when it is ill or old. Any inspector of a Society for Prevention of Cruelty to Animals (SPCA) within whose jurisdiction an animal is kept and any veterinary officer shall have the powers of entry, inspection, seizure and other measure of protection of an animal with all the powers of police vis a vis a cognizable offence.

8. *Facilities and necessities needed for Elephants.*—Elephants shall have all the freedoms of wild life animals and shall be afforded all the facilities and necessities for fair survival of such needs—like water, jungles for shelter, fodder and other fruits and commodities, palm leaves and bamboo available for such needs. No hunters, visitors or other intruders shall be allowed into the wild life sanctuaries and forest except with the permission and supervision of the conservator of forests. Any cruelty or hardship or deprivation of limb or life of elephants shall be permitted and every such act shall be a crime under the Wild Life Protection Act. No elephant or other wild life shall be killed by anyone on the ground of encroachment and damage to cultivation or safety of domestic life. Any violence calculated to scare away such animals for the purpose of the safety of domestic life of the people including killing shall be permissible only with due information to the concerned forest official.

9. *Capturing of elephants only subject to conditions.*—No elephant shall be captured by trapping or other strategy without great care for the safety and survival of the animal. Training and domesticating of any captive elephant shall be with due care for its health and safety. Elephants used for carrying wood or other commercial purposes shall not be subjected to any undue hardship or violation of its natural needs.

10. *Restrictions on the use of Elephants during festivals and other entertainments.*—(a) No elephant shall be used for any purpose connected with festivals in any private or public place of worship or where any public ceremony is conducted continuously at a stretch of more than a maximum period of 4 hours without giving a rest period of not less than 2 hours. Even after giving such rest period no elephant can be used for a period more than 8 hours during a continuous period extending to 24 hours.

(b) The authority who conducts festivals and other functions shall seek and obtain prior permission for use of elephants from the officer nominated by the Government in this behalf. On receiving the request the authority shall conduct such enquiries as he deems fit regarding the suitability of the elephant concerned for the purpose and issue certificate of fitness accordingly.

(c) If during the festivals, any fire work is conducted, elephants if any present at the festival place, shall be taken to their resting place and properly chained so that the elephants may be under control of the mahouts so that breach of peace can be avoided.

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THE KERALA AD HOC AND ITINERANT COURTS BILL

An Act to provide for the establishment of Ad hoc and Itinerant Courts with a view to accelerate the disposal of cases pending in Courts and for matters connected therewith.

BE it enacted in the 59th year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called The Kerala Ad hoc and Itinerant Courts Act——

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

(3) It shall extend to the whole of the State of Kerala.

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

(a) "Ad hoc Court" means a Court established under section 3 of this Act over and above the regular District Courts and other subordinate courts both Civil and Criminal.

(b) "Judicial Member" means a retired Judicial Officer namely District Judge, Subordinate Judge or Munsiff appointed as a member of the Ad hoc court.

(c) "High Court" means High Court of Kerala.

(d) "Member" means a member including the Presiding member of an Ad hoc Court.

(e) "Notification" means a notification published in the Official Gazette.

(f) "Prescribed" means prescribed by rules made under this Act.

(g) All other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure and in the Code of Criminal Procedure shall have the meanings respectively assigned to them in the Code of Civil Procedure/Code of Criminal Procedure.

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CHAPTER II
AD HOC COURTS

3. *Establishment of Ad hoc Courts.*—(1) For the purpose of exercising the jurisdiction and powers conferred on an Ad hoc Court, the State Government, after consultation with the High Court shall as soon as may be after the commencement of this Act, establish in every City, Corporation, Municipality, Block Panchayats and in any other territorial area as determined by the Government, sufficient number of Ad hoc courts by notification.

(2) The State Government shall, after consultation with the High Court specify, by notification, the local limits of the area to which the jurisdiction of Ad hoc Courts shall extend and may, at any time, increase, reduce or alter such limits.

4. *Appointment of members of the Ad hoc Courts.*—(1) The State Government may, with the concurrence of the High Court, appoint one or more persons to be members of the Ad hoc Court to exercise the powers vested in the court.

(2) When an Ad hoc Court consists of more than one member, the judicial member shall act as presiding member and in case there arise difference of opinion regarding the decisions to be taken in the case the majority decisions will prevail.

(3) A person shall not be qualified for appointment as a member of the Ad hoc Court unless he –

(a) is a retired judicial officer

(b) is an Advocate of not less than ten years standing

(c) possesses such other qualifications as the State Government may, with the concurrence of the Chief Justice of Kerala, prescribe.

5. *Selecting persons for appointment as members.*—(a) In selecting persons for appointment as members every endeavour shall be made to ensure that persons committed to the need to promote settlement of disputes by mediation and conciliation are selected.

(b) The salary or honorarium and other allowances payable to a member shall be such as the State Government may in consultation with the High Court prescribe.

CHAPTER III
JURISDICTION

6. *Subject to the other provisions of the Act, Ad hoc Courts shall.*— (a) have and exercise jurisdiction exercisable by any district court or any other subordinate civil or criminal court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Schedule hereto:

Provided that all suits and proceedings shall be filed before the District Courts and other Civil and Criminal Courts and shall be forwarded to the Ad hoc courts as provided in this Act and Rules framed under this Act.

(b) be deemed for the purpose of exercising such jurisdiction and for the purpose of appeal revision etc., to be a District Court or as the case may be, such subordinate Civil/Criminal Court for the area to which the jurisdiction of the Ad hoc Court extends.

CHAPTER IV
MISCELLANEOUS

7. *Transfer of cases to Ad hoc Courts and their disposal.*—(a) On after the commencement of this Act, the Sheristadars of all District Courts and other Subordinate Civil and Criminal Courts shall as soon as suits and proceedings of the nature specified in the schedule are filed, get orders from the Judge/Munsiff concerned for transfer of such cases to Ad hoc Courts and shall do so for trial and disposal.

(b) On receipt of records from the District and Subordinate Courts, the Ad hoc courts shall acknowledge the receipt of the records and enter the particulars in a register maintained by it as prescribed.

(c) Trial and disposal of cases transferred to Ad hoc Courts shall be conducted in accordance with the procedure followed by the ordinary Civil and Criminal Courts under the Civil Procedure Code and the Criminal Procedure Code.

(d) On disposal of the suits and proceedings the Ad hoc courts shall furnish a free copy of the order, judgment or decree passed in the suit or proceedings to the parties and forward the full records to the court from which the case was transferred to the Ad hoc Court.

8. *Special powers of the Ad hoc courts.*—(1) Ad hoc court may go on circuit and hold courts at such places and on such dates as determined by the Ad hoc Court after giving due notice to all parties concerned sufficiently early.

(2) Ad hoc courts may function at such places and at such times as may be fixed by the court with prior notice to all parties and all others concerned.

9. *Custody of the records*.—The custody of the records of the cases referred to Ad hoc courts shall be with District court or the subordinate courts, Civil or Criminal as the case may be when they are sent back by the Ad hoc Courts after disposal of the cases. But it shall be the duty of the officer in charge of hearing of the cases before the Ad hoc court to ensure safe custody of the records of the cases pending in the Ad hoc court.

10. *The State Government's power to make rules*.—(1) The State Government may, after consultation with the High Court, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions contained in Sub-section (i), such rules may provide for all or any of the following matters, namely:—

(a) The salary or honorarium and other allowances payable to and terms and conditions of Judges/members of the Ad hoc courts.

(b) The salary or honorarium and other allowances payable to the staff attached to the Ad hoc courts.

(c) The hours of work of the Ad hoc courts if the Ad hoc courts sit as Evening Courts after the regular office hours of the courts.

(d) The procedure to be followed while the Ad hoc courts go on circuit and hold courts.

(e) Any other matter which is required to be, or may be prescribed by rules.

(3) Every rule under this Act shall be laid as soon as may be after it is made or issued before the legislative assembly for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the legislative assembly makes any modification in the rule or decides that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Kerala Ad Hoc and Itinerant Courts Bill

Statement of Objects and Reasons

The ordinary Civil and Criminal Courts in the State are faced with heavy arrears of work and consequent delay in the disposal of cases has become inevitable. The arrears are mounting day by day and if the present situation continues without being remedied, the faith of the public in the judiciary will be eroded. Hence it has become necessary to enact a Bill for creating Ad hoc courts manned by retired District Judges, Sub Judges and Munsiffs. The Bill also envisages establishing Evening Courts after the usual working hours. Ad hoc Courts are also permitted to go on circuit and hold sitting in different places at different times. Through the functioning of the Ad hoc and Evening courts, a considerable volume of work in the regular courts can be reduced with minimum administrative expenses. Hence this Bill.

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THE KERALA TERMINALLY ILL PATIENTS (MEDICAL TREATMENT AND PROTECTION OF PRACTITIONERS AND PATIENTS) BILL

A

BILL

to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally ill.

BE it enacted in the Fifty Ninth Year of the Republic of India as follows:

1. *Short title, extent and commencement.*—(1) This Act may be called The Kerala Terminally Ill Patients (Medical Treatment and Protection of Practitioners and Patients) Bill ——

(2) It extends to the whole of State of Kerala.

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

2. *Definitions.*—Unless the context otherwise requires,—

(a) 'best interests' means and include the best medical and other considerations like ethical, social, moral, emotional etc., of a patient who is either an incompetent patient or a competent patient but who has not taken an informed decision;

(b) 'competent patient' means a patient who is not an incompetent patient, as defined in clause (c);

(c) 'incompetent patient' means a patient who is a minor or person of unsound mind or a patient who is unable to understand, retain and use the information relevant for making an informed decision about his or her medical treatment and communicate the same to the Medical Practitioner in any recognized mode;

(d) 'informed decision' means the decision as to continuance or withholding or withdrawing of medical treatment taken by a patient who is competent and who is, or has been informed about all relevant matters like the nature of the illness, alternative form of treatment that may be available and their consequences and the consequences of remaining untreated;

(e) 'Medical Council of India' means the Medical Council of India constituted under the Indian Medical Council Act, 1956 (102 of 1956);

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(f) 'medical practitioner' means a medical practitioner registered under the Travancore—Cochin Medical Practitioners Act 1953 or any other corresponding Act in force on the date of Commencement of this Act;

(g) 'medical power-of-attorney' means a document executed by a person delegating to another person (called a surrogate), the authority to take decisions in future as to medical treatment which has to be given or not to be given to him or her if he or she becomes terminally ill and becomes an incompetent patient;

(h) 'medical treatment' means treatment intended to sustain, restore or replace vital functions which, when applied to a patient suffering from terminal illness, would serve only to prolong the process of dying and includes

(i) life-sustaining treatment by way of surgical operation or the administration of medicine or the carrying out of any other medical procedure and;

(ii) use of mechanical or artificial means such as ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;

(i) 'minor' means a person who, has not attained the age of majority as provided in Majority Act, 1875 (4 of 1875);

(j) 'palliative care' includes making of provision for food and water, reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and psycho-social suffering;

(k) 'Patient' means a patient who is suffering from terminal illness;

(l) 'terminal illness' means

(i) such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause untimely death of the patient concerned, or

(ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient.

3. *Refusal of medical treatment by a competent patient otherwise than by advance medical direction or directive given through Power of Attorney and its binding nature on medical practitioners.*—Every competent patient has a right to take an informed decision for withholding or withdrawing of medical treatment supplied to himself or herself or for starting or continuing medical treatment to himself or herself and when communicated to a medical practitioner will be binding on him:

Provided that the medical practitioner is satisfied that the patient is a competent patient and that the patient has taken an informed decision based upon a proper exercise of his or her free will.

4. *Withholding or withdrawing of medical treatment by medical practitioner in relation to a competent patient who has not taken an informed decision and in relation to an incompetent patient.*—Subject to the provisions of Section 5 and adhering to the guidelines if any issued under Section 11 by the Indian Medical Council, a medical practitioner may take a decision to withhold or withdraw medical treatment

(a) from a competent patient who has not taken an informed decision, or

(b) from an incompetent patient:

provided that the medical practitioner is of the opinion that such action will be in the best interests of the patient after consulting with the parents or relatives of the patient.

5. *Expert medical opinion to be obtained by medical practitioner for purposes of Section 4.*—(1) No decision to withhold or withdraw medical treatment in respect of patients referred to in Section 4 shall be taken by medical practitioner unless such medical practitioner has consulted and obtained the opinion in writing of three medical practitioners selected by him from the panel of medical experts referred to in Section 6, who are experts in relation to the illness of the patient and the majority opinion of the experts is in favour of withholding or withdrawing the medical treatment.

(2) Where there is difference in the opinion of the three medical experts, the majority opinion shall prevail.

6. *Authority to prepare panel of medical experts for purposes of Section 5.*—(1) The Director of Medical Services shall prepare a panel of medical experts for purposes of Section 5.

(2) The panels referred to in sub-section (1) shall include medical experts in various branches of medicine, surgery and critical care medicine.

(3) The medical experts referred to in sub-section (1) shall be experts with not less than fifteen years experience.

(4) While empanelling medical experts on the panels, the authorities mentioned in sub-section (1) shall keep in mind the reputation of the expert and shall exclude from the panel, experts against whom disciplinary proceedings are pending with the State Medical Council concerned or the Medical Council of India and those experts who have been found guilty of professional misconduct.

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(5) The panels prepared under sub-section (1) shall be published in the Official Gazette and website of the Government and the panels may be reviewed and modified by the authority specified in sub-section (1) from time to time and such modifications shall also be published in the Gazette and the websites from time to time.

7. *Duties of Medical Practitioner.*—(1) The medical practitioner who is bound to follow the decision of a competent patient given under Section 3 or who takes a decision under Section 4, shall maintain a record in a register as to why he is satisfied that

(a) the patient is competent or incompetent;

(b) the competent patient has or has not taken an informed decision about withholding or withdrawing or starting or continuance of medical treatment;

(c) the best interests of an incompetent patient or of a competent patient who has not taken an informed decision, require medical treatment to be withheld or withdrawn; and shall maintain record of age, sex, address and other particulars of the patient and as to the expert advice received by him under Section 5 from the three experts selected by him out of the panel referred to in Section 6.

(2) Before withholding or withdrawing medical treatment under Section 4, the medical practitioner shall inform in writing the patient (if he is conscious), his parents or other relatives or guardian about the decision to withhold or withdraw such treatment in the patient's best interests.

(3) A photocopy of the pages in the register with regard to each such patient shall be lodged immediately, as a matter of information, on the same date with the Director of Medical Services of the State and acknowledgement obtained and the contents of the register shall be kept confidential by the medical practitioner and not revealed to the public or media.

(4) The authority referred to in sub-section (3) shall on receipt of such photo copies, maintain the said photocopies in a register in the offices of the said authority and shall keep the information confidential and shall not reveal the same to the public or the media.

(5) If any person or body including the media violates the mandate contained in clause 4 of this section, such person shall be liable to be proceeded against by way of civil or criminal action in accordance with law.

8. *Palliative care for competent and incompetent patients.*—Notwithstanding anything contained in Sections 3, 4 and 5 of this Act palliative care shall be provided to all patients by all Medical Practitioner whose assistance is sought for by the patients or their relatives.

9. *Protection of competent patients from criminal action in certain circumstances.*—Where a competent patient refuses medical treatment in circumstances mentioned in Section 3, notwithstanding anything contained in the Indian Penal Code (45 of 1860), such a patient shall be deemed to be not guilty of any offence under that Code or under any other law for the time being in force.

10. *Protection of medical practitioners and others acting under their direction, in relation to competent and incompetent patients.*—Where a medical practitioner or any other person acting under the direction of the medical practitioner withholds or withdraws medical treatment in respect of any patient under Sections 3 or 4, such action shall be deemed to be lawful, provided that the provisions in Sections 5, 6 and 7 are duly coupled with.

11. *Medical Council of India to issue Guidelines.*—(1) Consistent with the provisions of this Act, the Medical Council of India shall prepare and issue guidelines, from time to time for the guidance of medical practitioners in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.

(2) While preparing such guidelines, the Medical Council of India may consult medical experts or bodies consisting of medical practitioners who have expertise in relation to withholding or withdrawing medical treatment to terminally ill patients or experts or bodies having experience in critical care medicine.

(3) The Medical Council of India may review and modify the guidelines from time to time.

(4) The guidelines and modifications thereto, if any, shall be published in the Official Gazette of India and on its website.

12. *Rule making power.*—Government may make rules for effectively implementing the provisions of this Act by publishing the same in the official Gazette.

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The Kerala Terminally Ill Patients (Medical Treatment and Protection of Practitioners and Patients) Bill

Statement of Objects and Reasons

It is a well-known fact that certain diseases like cancer are killer diseases for which medical science has not so far succeeded to provide an effective treatment. The terminally ill patients entertain no hope of survival despite the best medical attention and treatment. Many suffer from acute pain unable to eat, drink or sleep with reasonable comfort. Prolonging to be in such cases involves expensive treatment without any positive results. It is not uncommon that some patients wish that it is better to die rather than live a worthless and painful existence. It is in view of the above circumstances that the above Bill has been drafted by the Commission to deal with such cases and subject to expert medical opinion to allow them to put an end to their lives. Built-in safeguards have been provided in the Bill to prevent misuse or of abuse of the provisions contained in the Bill. This Bill is perhaps the first of its kind in India and indeed in Kerala.

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AN ACT FOR FAIR NEGATION, SALUTARY REGULATION AND SPECIAL LEGITIMATION, IN PUBLIC INTEREST, OF HARTALS AND VALIDATION OF WORKERS RIGHT TO STRIKE BILL

A

BILL

in order generally to prohibit and largely to regulate the conduct of hartals, and expressly to affirm the workers' right to strike in our Socialist Republic.

BE it enacted in the 59th Year of the Republic of India as follows:—

1. *Short title, application and commencement.*—(1) This Act may be called the Act For Fair negation, Salutary Regulation and Special Legitimation, in Public Interest, of Hartals and Validation of Workers' Right to Strike Bill——.

(2) It applies to whole of the State of Kerala;

(3) It will come into force on such date as may be notified by the Government of Kerala in the Gazette.

2. *Definition.* —In this Act, unless the context otherwise requires:—

(a) 'Hartal'

Hartal, by whatever nomenclature expressed or vogue-word used, means and includes any form of forced cessation of activity or diversion of business or occupation in its widest comprehension, such cessation being at the instance of any other person or organization, to create public pressure, social tension, economic intimidation or apprehension of violence to advance a cause or campaign sponsored by the organizers of the hartal:

Provided that Hartal, under this Act, shall not include any strike by workers or organized by any trade union or professional body which otherwise complies with the provisions of the Industrial Disputes Act, The Trade Union Act and other law governing trade union activity and workers' rights and functions:

Provided further that the right of workers to go on strike is confined to the purpose of advancing a worker issue, agitational demand, alleged grievance, social welfare dispute, trade union problem, without interfering with the freedom of any other person's trade or business or undertaking or other lawful activity, other extraneous or non-trade union violation shall not be eligible for immunity under this Act.

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3. *Control of Hartals* —(a) On and after the commencement of this Act, no person, group or organization shall have a right to call or conduct any hartal except in the manner permitted by this Act.

(b) No person shall organize, or abet the conduct of, a hartal for any reason whatever without ten days public notice promulgated adequately through the media and to the fair knowledge of public bodies likely to be affected by the proposed hartal.

4. *Hartals to be conducted only subject to conditions.—(1)* (a) before 6 A.M. or after 6 P.M. or thwart the movement of any person, agency, business or instrumentality by use of force or threat thereof or other means by which freedom of action of another is in any manner forbidden or obstructed.

(b) Directly or indirectly deter, hamper or disable the normal functioning of any public institutions or utility services including any centre or organization, educational, charitable, pro bono or otherwise giving relief to a human being or compassionate succour to any living creature.

(2) No trade, business or undertaking, no transport vehicle or facility shall be closed or stopped totally or partially out of apprehension of or actual use of violence caused or threatened by operation of any hartal or strike by the organizers or sympathizers thereof. The State shall in every reasonable manner forbid or prevent such behaviour or conduct adversely affecting the fundamental rights of members of the public.

5. *Hartals to be prohibited by the Government.*—Hartals, when they cause stoppage of business or activity essential for the life of the community, shall be effectively prohibited by the State Government directly or through other delegated authority even though 10 days notice has been given.

6. *Police to render Assistance needed to exercise legal rights.*—The State police and other law and order authorities of the State shall, on request by any person, help him to exercise his lawful rights during the hartal hours if any one prevents such exercise using or threatening force for such purpose.

7. *Offences and Punishments.*—It shall be an offence punishable with imprisonment upto 6 months if any one is prevented by any other, on the ground of a hartal, from visiting a hospital or hotel or educational institution or fuel delivery station or transport process. Free access in such cases shall be provided by the police and other state agencies. Failure to help any person in such need shall be a dereliction of duty by the State agency punishable with fine upto Rs.10,000.

8. *Abetment of Hartal and consequence.*—If the Government or any administrative officer under the Government in any manner connives at or abets hartals which are an offence as defined in this Act the affected person may move the court having jurisdiction for ordering compensation under Section 9.

9. *Constitution of Compensatory Fund and payment of compensation.*—(1) A fund shall be constituted by the Government for the purpose of paying damages to persons who are affected by any such hartal conducted in spite of the prohibition, if so ordered by judicial process.

10. Government shall frame Rules for effectively implementing the provisions of this Act.

Statement of Objects and Reasons

India has been passing through developmental decades after winning Independence and liberating itself from imperialist inhibitions holding up national progress. Kerala with its caste lunacy and religious divisiveness is unable to advance notwithstanding its educational status and socialistic ethos. Unless the entire Kerala people work hard with a developmental dimension and vision a better tomorrow may remain a dream. Unfortunately, we have too many holidays in the name of plurality of religions. This situation is aggressively aggravated by hartals and bandhs which keep the community lazy doing no work and keeping society in stagnancy. Therefore hartals are a hindrance to human advance and deserve to be regulated and even prohibited although the right to strike by workers may still remain. It is significant to note that there has been considerable expression of adverse opinion by the leading media and vehicles of social justice in support of the prohibition of hartals. It is in this background the Bill has been drafted.

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THE KERALA ESSENTIAL COMMODITIES AND SERVICES (REGULATION) BILL

A

BILL

to ensure the due availability at all times of essential commodities and services at a fair and reasonable price especially for low income and below poverty line group of people.

BE it enacted the Fifty ninth Year of the Republic.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Essential Commodities and Services (Regulation) Act.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may notify.

2. *Definitions.*—(1) "Essential Commodity" means and includes all kinds of products which are essential for life, health and all such other products notified by the Government as such for the purpose of this Act.

(2) "Essential service" means and includes all kinds of services rendered by a person to another person for consideration monetary or otherwise which are essential for life, health, freedom of movement, securing justice and such other services as may be notified by the Government.

(3) Person includes an individual, group of individuals incorporated or otherwise or any organization institution or any other entity.

(4) Commissioner.—the officer notified by the Government for the purpose of fixing fair price of commodities and services under section 3.

(5) "Government" means the Government of Kerala.

(6) "Dealer" means a person carrying on the business of purchase or sale of all or any of the essential commodities whether wholesale or retail and whether or not in conjunction with any other business and includes a member, manufacturer and a Commission agent engaged in any such business.

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(7) "Enforcement Inspector" means any person appointed by order of the State Government as Enforcement Inspector in respect of such area as may be specified in such order and where no such person has been appointed in any area, any officer of the Civil Supplies Department not below the rank of Rationing Inspector or any officer of the Police Department not below the rank of Sub Inspector having jurisdiction in the area.

(8) "Maximum price" means the fair and reasonable price fixed by the Commission or exercising powers under the Act for buying or securing essential commodities and services.

3. *Government to take time bound steps to implement the provisions of this Act.*—(1) Within one month from the date of commencement of this Act the Government shall take all necessary steps to notify an officer not below the rank of a Secretary to function as Commissioner to exercise the powers and to perform the duties conferred on the Commissioner under the provisions of the Act. The Government shall also notify suitable member of officers to be 'enforcement inspectors' as defined in clause (7) of section 2.

(2) The Commissioner and Inspectors so appointed shall be provided with all facilities within a further period of one month from the date of their appointment to exercise their powers and perform their duties under the Act on an urgent basis.

4. *Powers of the Commissioner*—(1) The Commissioner shall have exclusive authority to fix the maximum value and maximum price of essential commodities and services under the Act.

(2) The Commissioner shall have full powers to collect all informations found relevant and necessary to fix the maximum price of essential commodities and services from any individual or from the public generally.

(3) For the purpose of collecting information the Commissioner may call upon any person by individual notice or by public notice or in any other manner to inform him in writing the probable maximum value or cost as the case may be which according to the person giving information is a fair value or cost of each essential commodity or service as the case may be. For collecting such information Commissioner may also hold sittings or discussions or conferences with any person or group of persons at any place or places giving wide publicity so that all persons interested in providing information in the matter may take part and express their views to him within the shortest time possible.

(4) For the purpose of collecting such information the commissioner may authorize the Inspectors also to take such steps as the Commissioner may deem fit.

(5) After conducting all the steps indicated in Clauses (3) and (4) and after due consideration of all the facts and circumstances having a bearing on the question of arriving at the maximum price of essential commodities and services he may fix such price and publish the same as the maximum price so that the public may be informed about such fixation, within a maximum period of 3 months or such other extended period the Government may grant on the application of the Commissioner.

5. *Appeal against the order of fixation by the Commission.*—Any person aggrieved by the fixation of maximum price of any or all the essential commodities or services may challenge such fixation by moving the High Court under Article 226 of the Constitution of India and such petition shall be disposed of by a Division Bench of the High Court and such orders passed by the Division Bench shall be final in respect of any or all of the price fixed by the Commissioner and challenged or considered and determined by the Division Bench. While considering the petition filed against the order of the Commissioner, the Division Bench may either increase or decrease the price fixed by the Commissioner appropriately for reasons to be stated in the order.

6. *Prohibition against demand and receipt of more than the maximum Price.*—On and after the date of publication of the maximum price fixed by the Commissioner or if challenged before the High Court the price as approved by the Division Bench or refixed by the Bench.

No person shall demand and receive more than the maximum price fixed by the Commissioner for sale and purchase of any essential Commodity or for rendering any essential services for which maximum price is fixed by the Commissioner or the Division Bench of the High Court under Section 5 of the Act.

7. *Punishment.*—(1) If any person violates the prohibitions contained in Section 6, he shall be committing a cognizable offence punishable by a fine of Rs. 5000 for the first offence and for a second and any subsequent offence with imprisonment upto period of 3 months or fine of Rs 10,000 or with both.

8. *Powers of Enforcement Inspector to search and find out violations and initiate prosecutions.*—(a) The Enforcement Inspectors may enter and examine any premises from where any essential commodity is sold or any essential service is rendered to consumers for the purpose of ascertaining whether any violation of the provisions in section 6 is taking place therein.

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(b) If on enquiry he is satisfied that a violation of the prohibition contained in Section 6 has occurred he may collect materials to establish the violation and file a complaint before the Court of the Judicial Magistrate of the Ist Class within whose jurisdiction, the violation has taken place.

(c) Enforcement Inspector may also file a complaint on receipt of a written information supported by evidence, prima facie sufficient, to establish a violation of the prohibition under Section 6, from any consumer of commodities or a person who has secured service from a provider of service, before the Judicial Magistrate of the Ist Class within whose jurisdiction the violation is alleged to have taken place.

(d) On receipt of a complaint from the Inspector, the Court may initiate proceedings against the person accused of violation of the prohibition.

(e) On filing of a complaint before the Court, the Inspector shall furnish a copy of the same to the Assistant Public Prosecutor in charge of the cases before the Court and the Assistant Public Prosecutor shall prosecute the same and the Inspector shall assist him in conducting the prosecution as directed by the Assistant Public Prosecutor.

(f) The Inspector may send half yearly reports to the Commissioner giving briefly the details of the actions taken by him especially the details of the violations detected by him, if any, and the details of the complaints filed by him and the result thereof .

(g) The Court while passing a sentence of fine may direct payment of not more than 25% of the fine collected from the convicted person to the Inspector who has detected the offence and filed the complaint.

9. *Inspectors to assist the Commissioner and to perform the duties entrusted to them*—The Inspectors shall function under the Commissioner and shall perform all the duties assigned to them by the Commissioner with due diligence.

11. *Basic principle to be followed while fixing the maximum price* —When fixing the maximum price of any commodity or service, the primary perspective shall be the fact that the social justice and socialist economy are basic features of public price fixation.

12. *Other matters to be taken into consideration by the Commissioner while fixing the maximum price*—(1) The Commissioner while fixing the maximum value of a commodity shall take note of all material and relevant facts and circumstances which may aid and assist him to arrive at a fair and reasonable value of the Commodity concerned; such as the following:

(a) the cost of production of the commodity and preservation of the same in the condition in which it is offered for sale.

(b) the charges for conveyance from the place of production to the place where it is offered for sale.

(c) tax, fees and other charges imposed by Government, Central or State or any other local authority on the commodity at or before it is offered for sale.

(d) the maximum price for which the commodity was sold two successive years before the date of enquiry by the Commissioner.

(e) is the Commodity one mainly bought by consumers belonging to below poverty line or having low income.

(f) facts and circumstances brought out by producers and dealers of the commodities or their representative bodies.

(g) facts and circumstances brought out by the consumers or their representative bodies or the local bodies.

(2) While fixing the maximum price of any essential service, the Commissioner shall take note of all material and relevant facts and circumstances which may aid and assist him to arrive at a fair and reasonable price of the essential services concerned such as the following:

(a) if the provider of service is a member of any association, organization, institution or union, then, the price declared by such representative bodies,

(b) the relevant facts and circumstances if any brought to the notice of the Commissioner by any consumer, consumers or any forum or association of consumers.

13. *The limit of maximum price.*—The maximum price fixed by the Commissioner for any commodity or service shall not exceed the maximum price of any such essential commodity or service two years prior to the date of fixation of the maximum price by the Commissioner.

14. *Commissioner's power to revise the maximum value or price in appropriate cases.*—(a) The Commissioner may on an application filed by any person interested; revise the maximum value or cost fixed and refix the same after the expiry of a minimum period of two years increasing or decreasing the same for justifiable reasons to be recorded in the order refixing the value or price.

(b) If any person is aggrieved by the order refixing the maximum value or price the order can be challenged before the High Court and a Division Bench of the High Court shall hear and dispose of the petition and the order passed by the Division Bench shall be final.

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15. *Government and local bodies to encourage consumers of Essential Commodities and service to form Associations*—Government and local bodies may persuade the consumers generally and especially though Residential Associations to form consumer forums to act vigilantly to control prices of essential commodities and services by implementing the provisions of this Act.

16. *Overriding effect of the provisions in the Act* —Notwithstanding anything contained in any other law for the time being in force the provisions in this Act shall have full force and effect as far as the fixation and implementation of the maximum price and cost of essential commodities and services are concerned.

17. *Rule making power.*—(1) The Government may frame Rules by publishing in the Gazette for implementing the provisions of this Act.

(2) Every rule under this Act shall be laid as soon as may be after it is made or issued before the legislative assembly for a total period of fourteen days which may be comprised in one session on in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the legislative assembly makes any modification in the rule or decided that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Objects and Reasons

There has been abnormal price increase in essential commodities such as rice, wheat and other consumable goods which are essential to support life on this planet. Likewise, there are many services rendered by a plethora of persons and bodies which are essential for a proper living. The persons who suffer most are those below the poverty line and to some extent, the lower and upper middle class people whose income is more or less fixed. To them, spiraling prices make life extremely difficult to make both ends meet.

The Bill seeks to fix the maximum price for essential commodities and to create a machinery to lay down the maximum price of such commodities and enforce the distribution of essential commodities at reasonable prices.

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THE KERALA ILLEGITIMATE CHILDREN BILL

A

BILL

To regulate the rights and privileges of Illegitimate Children

Be it enacted in the 59th year of our Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Illegitimate Children Act, ——.

(2) It extends to the whole of Kearla.

(3) It shall come into force at once.

2. *Definitions* :—

Child: means a boy or a girl who has not attained the age of 18 years.

Illegitimate Child: means a child born out of wedlock between a man and a woman whose marriage had been declared.

Null and void or whose marriage is voidable or who, though living as husband and wife had not gone through a ceremony of marriage.

3. Right of inheritance to the properties of putative parents: Every illegitimate child is entitled to inheritance in the properties, whether movable or immovable, of his putative parents just as a legitimate child with an equal share to which a legitimate child is entitled under law irrespective of the community or religion of either of the parents.

4. Privileges and either facilities of illegitimate children: Every illegitimate child shall be entitled to the same privileges and facilities regardless of the community or religion to which the parents or either of his parents belong, which a legitimate child is entitled to under the law.

5. Illegitimate children entitled to the rights and privileges even after ceasing to be a child: Notwithstanding anything contained in any provision of law, an illegitimate child shall continue to have all the rights and privileges even after ceasing to be a child.

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The Kerala Illegitimate Children Bill

6. Rights not settled before the commencement of this Act: An illegitimate child shall be entitled to the rights and privileges conferred by this Act, if at the commencement of this Act, such rights have not been settled among the legal heirs of the putative parents.

Provided that the rights to inheritance settled prior to the commencement of this Act shall not be reopened for the purpose of claiming rights conferred by this Act on illegitimate children.

Statement of Objects and Reasons:

Adequate provisions of law do not exist at present to secure the rights and privileges of illegitimate children. The status of children, whether legitimate or illegitimate, is determined by the nature of relationship between a man and a woman out of whom the children are born. If a marriage is valid, the children born out of them are legitimate; if not, the children are illegitimate. The children are illegitimate if a man and a woman live as husband and wife without going through a ceremony of marriage.

There are several instances of a man and a woman living together as husband and wife and beget children.

There is no reason why the illegitimate children should suffer forno fault of theirs without being able to inherit the properties of their putative parents. A recent Division Bench decision in MACA has suggested the enactment of a suitable law to protect and secure the interests of illegitimate children putting them on the same status as of legitimate children to succeed to the estate of their deceased parents. Hence the Bill.

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THE KERALA PRESERVATION OF SECULAR ETHOS AND PREVENTION OF ANTI-SECULAR ACTIVITIES BILL

A

BILL

to preserve and strengthen the secular ethos among the people and to prevent all forms of a Anti-secular activities and for other connected purposes hereinafter referred to.

Whereas the Constitution mandates as per Article 51A (E) that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and

Whereas in spite of the above constitutional mandate, in various parts of the country including State of Kerala several kinds of activities derogatory to secular ethos are being committed on a large or small scale which destroy or threaten to destroy harmony and the spirit of brotherhood among the people and create an atmosphere of violence, fear and hatred, religious disharmony and disturbances leading to personal injury, loss of life and damage to property of the people and

Whereas it is thought expedient to enact a law containing provisions to make it an enforceable duty of the State to carry out various programmes which would promote harmony and the spirit of brotherhood among the people of Kerala transcending religious, sectarian, regional and other diversities and

Whereas it is necessary to prevent by law the attempt to commit or actual commission of anti-secular activities which are against the spirit of brotherhood and harmony among the people of Kerala

BE it enacted in the Fifty-ninth Year of the Republic.

1. *Short title, extent and commencement.*—(1) This Act may be called The Kerala Preservation of Secular Ethos and Prevention of Anti-Secular Activities Act, ——.

2. It shall extend to the whole of the State of Kerala.

3. It shall come into force on such date as the Government may notify in the official Gazette.

34/420/2008—140a

The Kerala Preservation of Secular Ethos and Prevention of Anti-Secular Activities Bill

2. *Definitions.*—(1) "Anti-Secular Activities" means any act or omission, the effects of which directly or indirectly goes against the constitutionally recognized principle of secularism as defined in clause (3) of this section and includes

(a) Any action or omission causing breach of peace, disharmony or hatred among people belonging to different religions, faith, sects, castes or communities within the same religion or otherwise, and

(b) Training, organizing or encouraging any person to act against the harmony and common brotherhood of the people of the State generally or in any particular locality or localities, and

(c) Any activities causing destruction or damage to any institutions, establishments and properties owned or controlled by religious, denominations, sects, castes or majority or minority communities and objects of worship, statues, idols, or symbols considered as sacred by them which may lead to breach of peace and harmony among the people; and

(d) Act of conversion from one religion to another in any manner other than free and voluntary adoption by a person belonging to one religion, of any another religion and

(e) Malicious outraging of religious feelings of any group of people by any act or omission

(2) 'Person' includes an individual or body of individuals incorporated or not or companies private or public

(3) 'Secularism' means moral-mental philosophical disposition which transcends infiltration of religiosity into temporal affairs and material concerns.

3. *Government shall take all necessary steps to promote, preserve and strengthen secular ethos among the people.*—(a) It shall be the primary duty of the Government to take all necessary steps to preserve and strengthen the secular ethos among the people of the State by encouraging the people to imbibe the spirit of common brotherhood and effectively preventing the commission of or attempt to commit anti-secular activities and preserve harmony among the people.

(b) To perform the duty of the Government under clause (a) above, the Government may.

(i) conduct awareness programmes to make the people realize the absolute necessity of maintaining and strengthening harmony and brotherhood among the people irrespective of the religious, sectarian, caste and communal diversity existing between them.

(ii) Government may constitute or recognize at State level and District levels appropriate organizations to spread the message of brotherhood or oneness of human being belonging to different religions, regions, caste, creed, etc., by holding seminars in which scholars of all religions and cults are invited to participate for an open discussion to bring out the truth about the ultimate aim of all religions, namely, the ultimate goodness or welfare of human beings whatever may be the difference in the customs and practices followed by the different religions, sects, castes and communities.

(iii) While constituting or recognizing the organization under clause (ii) of this section, every care shall be taken to select persons who firmly believe in secularism and work for promoting harmony and brotherhood among people.

(iv) District level organization shall function under the State level organization and shall perform the prescribed functions following the guidelines issued by the State organization.

(v) State Level Organisation shall submit an annual report to the Government containing details of the activities conducted during the year by itself and the District Level Organisations after obtaining reports from the District Organisation.

(vi) Such report submitted to the Government shall be placed before the legislature without any delay.

4. *Prevention of Anti-Secular Activities.*—(i) Government may take all precautionary steps as well as follow up actions to prevent any anti-secular activities being committed and in cases where it is committed to punish the perpetrators and to assist the victims of the activities as occasion demands.

(ii) Government may constitute a Special Wing of the police preferably by choosing officers from the Vigilance Wing of the State to closely monitor the condition of harmony and brotherhood prevailing among the people in the State as a whole and in every District as far as possible with a view to prevent any attempt to commit any anti-secular activities as defined in the Act.

(iii) The special wing constituted as per clause (ii) above shall take all necessary steps to prevent anti-secular activities from being committed on the basis of any information obtained by them or received by them from any source whatsoever.

(iv) Government may frame appropriate rules prescribing the procedure to be followed in the matter of constitution of the Special Wing as provided in clause (ii) of this section, and the manner in which the wing shall function and such other matters connected with the special wing.

5. *Duty of communicating informations regarding the commission of Anti-secular activities.*—It shall be the duty of every person who gets any reliable information regarding either the likelihood of committing anti-secular activities or about the fact of commission of any such activity to any officer of the 'Special Wing' or of the nearest police station without causing undue delay.

6. *Offence, abetment of offence and Punishment.*—(1) It shall be an offence to commit any anti-secular activities as defined in section 2 of the Act punishable with imprisonment upto a period of three years with or without fine which may extend to Rupees One lakh.

(2) Any person abetting the commission of an offence under section 6 shall also be punished with the same punishment provided under section 6 of the Act.

7. *Right to Compensation.*—(1) Persons suffering any injury to the body and/ or property as a direct or indirect result of commission of any Anti-secular activity are entitled to get reasonable compensation as determined under this Act.

Provided that in case any person opts to claim the compensation under this Act, he will not be entitled to claim any compensation under any other law for the time being in force.

(2) Any claim for compensation under this section shall be filed before the District and Sessions court within whose jurisdiction the cause of action has arisen.

(3) While entertaining and disposing of the claims filed under this Act, the District and Sessions Judge shall be treated as a Special Court.

(4) A claim may be filed before the concerned Special Court in the prescribed form within 30 days from the date of cause of action affixing a fixed court fee of Rs.25 irrespective of the quantum of compensation claimed in the petition. On the filing of the petition, the Special Court shall entertain and dispose of the same following the procedure prescribed in the Civil Procedure Code as far as possible. The Special Court shall at the outset itself make an earnest attempt to dispose of the claim applying the provisions in Section 89 of the Civil Procedure Code.

(5) The claim petition may be filed impleading the persons who have committed the offence under section 6 if any identified by the Special Wing. In case it has not been possible for the Special Wing or any other investigating agency to identify the name or names of the perpetrators of the offence, the claim may be made against the State. Special Wing for Anti Secular Activities may also be made a party to the claim proceedings so that they can also make available all relevant materials before the Special Court and assist the court in the discharge of its functions duly.

(6) In appropriate cases if the claimant applies for legal assistance in the conduct of the claim, the Special Court may allow such prayer and pass appropriate orders.

(7) The Special Court shall finally dispose of the claim quantifying the amount due if any and stating the name and details of the person or persons from whom the amount is realizable etc., On the disposal of the claim, a copy of the order passed by the court shall be furnished to the parties free of charge.

(8) Parties aggrieved by the decision of the Special Court may file an appeal to the High Court within 30 days from the date of receipt of copy of the order with the seal of the court under sub-section (7) of this section.

(9) The order passed by the Special Court or the order passed by the High Court in Appeal shall be final and shall be deemed to be a decree of a civil court and executable as such.

(10) Government may frame necessary rules for effectively implementing the provisions of this Act by issuing notification in the official Gazette.

Statement of Objects and Reasons

The Constitution of India in its preamble and provisions contained in the Directive Principles of State Policy have emphasized the need for promoting harmony and spirit of brotherhood among the people and establishing unity in divinity which is the hallmark of our ancient culture. Of late, however, there have been several reports of communal disturbances endangering the unity of the people in different parts of the State. It is therefore expedient and necessary to curb such mischievous tendencies at the earliest stages itself and to promote a sense of respect for each other which is the essence of secularism, a basic structure of the Constitution. The Act also provides an effective machinery for making a claim for compensation in the event of injury, loss of life and property due to communal disturbances.

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THE KERALA INFORMATION TECHNOLOGY (ADDITIONAL PROVISIONS) BILL, 2008

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BILL

for incorporating further provisions to control, regulate and strengthen the system of electronic communication and electronic commerce in the State of Kerala.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Information Technology (Supplementary Provisions) Bill, ——.

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into force on such date as notified by the State Government in the Gazette.

2. *Definitions.—(1) In this Act, unless the context otherwise requires.—*

(a) "Cyber-smearing" means using the Internet to tarnish the reputation of any person or a company or its product;

(b) "Cyber-stalking" means indulging in repeated harassment or threat of harassment of any individual, individuals, firms or companies through the Internet;

(c) "Cyber-terrorism" means the use of cyber space to wreak large scale destruction to national infrastructures such as power plants, pipelines, transportation and communication systems and even defence infrastructure.

(d) "Spams" means unsolicited mass advertisements sent using internet;

(e) "spoofing" means impersonation, where the person gives a return address other than his own while communicating through the computer network;

(2) Words used in this Act, which are not defined in this Act shall be having the same meaning as assigned to them in the Information Technology Act, 2000. (Act 21 of 2000).

3. *Presumption of authentication of electronic records.*—Notwithstanding anything contained in section 3 of the Information Technology Act, 2000 (Act 21 of 2000), if any electronic record contains sufficient indications as to the identity of the person who has generated the record and the fact of his approval of the same expressed using any known technology; it shall be treated as his authentification.

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4. *Power to take copy of confiscated records.*—Save as otherwise provided in the Information Technology Act, 2000 (Act 21 of 2000) or any other law for the time being in force, on the confiscation of computer and other accessories in a case, the authorities are also empowered to retain a copy of any data stored in the computer confiscated and render such data inaccessible, while maintaining the integrity of the data.

5. *Penalty for breach of privacy of personal information.*—Save as otherwise provided in the Information Technology Act, 2000 (Act 21 of 2000) or any other law for the time being in force, if any person who, has secured any personal information including that of ethnic, religious, marital, educational, employment, medical and similar information of a personal nature, unauthorizedly discloses such information to any other person or to the public in general; shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

6. *Penalty for online fraud.*—Whoever unauthorizedly collects the information of others and makes use of the same for the collection of funds by impersonation and causes damages to the original owners, shall be liable for imprisonment upto five years or fine up to ten lakhs or with both;

7. *Possession of illegal devices with intent to commit any offence under the Act is also an offence.*—(a) Any person possessing any illegal device with intent to facilitate the Commission of any offence under the Act, shall be prosecuted and punished with fine, which may extend to the amount of fine which is provided as a punishment for the Commission of the offence.

(b) where many such devices are possessed by a person, there shall be a presumption of intent to commit any offence unless rebutted by the person proceeded against.

8. *Penalty for spoofing, cyber-smearing, cyber-stalking, etc.*—Whoever sends any hoax messages, or indulges in any Spoofing, Cyber-smearing, Cyber-stalking or Spams shall be liable for punishment which may extend to imprisonment up to five years or fine upto ten lakhs or with both, unless the accused proves that the concerned activity was one carried on by him as a legitimate activity.

9. *Penalty for Cyber terrorism.*—Whoever commits or abets the Commission of a Cyber-terrorism as defined in this Act shall be punished with imprisonment for a period of 15 years or fine of Rs.25 lakhs or with both.

Statement of Objects and Reasons

The Information Technology Act, 2000 (Act 21 of 2000) has recognized the paperless world. The extensive use of the electronic media required some more safeguards for which certain amendments are required. The amendments proposed are intended to achieve the said purposes in the State of Kerala.

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THE KERALA CODE FOR CUSTODIAL, CORRECTIONAL AND HABILITATIVE JUSTICE TO WOMEN BILL

A

BILL

to enact a complete code laying down the various measures to be adopted by the State and its officers to eliminate discriminatory and deleterious practices in judicial, custodial and correctional processes which handicap women in the enjoyment of their human rights or undermine their correction and habilitations in such situations.

Preamble.—Recognizing the value orientation and gender solicitude enshrined in the Constitution of India and the need to extend their application to the law and practice within the incarcerative and quasi-custodial situations;

Taking meaningful note of the solemn commitment on criminal justice, and custodial, correctional and habilitative standards contained in international instruments;

Acknowledging the wholesome directions and interpretations on human rights and Constitutional guarantees arising from the court decisions vis-a-vis custodial care;

Fulfilling the Constitutional promise of special provisions for women in providing equal justice;

Considering the small but growing numbers of women in custody and the need for the protection of womanhood in various custodial situations;

Realizing the inadequacies of existing law and practice in criminal justice and correctional administration;

BE it enacted in the Fifty Ninth Year of the Republic.

1. *Short title, extent and commencement of the Code.*—(1) This Act shall be called the Kerala Code for Custodial, Correctional and Habilitative Justice to Women Bill—

(2) It shall extent to the whole of Kerala.

(3) It shall come into force on such date as the Government may notify in the Gazette.

CHAPTER I

PRELIMINARY

2. *Interpretation.*—The Declaration contained in the National Policy Statement on Custodial Justice to women and the United Nations Conventions and Declarations on status and treatment of women to which India is a signatory shall inform the interpretation and application of the provisions of this Code.

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Without prejudice to the principles and policies enshrined in the above-mentioned documents, in all cases of doubt, such interpretation may be adopted which is favourable to the special status and dignity of the woman. In general, a construction which would promote the broad legislative purpose will be preferred to one which does not.

CHAPTER II
WOMEN AND THE POLICE

3. *Policy regarding arrest and detention of females.*— Taking note of the special role of the women in the family, the greater probability of her being available for assisting the criminal process, the potential for abuse of her person in custody, and the lesser threat posed by her to the security of the society; it shall be the policy of the State including the police to avoid the arrest and detention of females excepting when there are special reasons recorded in writing to disregard this policy in specific situations.

4. *No male police officer to arrest woman.*—Whenever arrest is to be made, women's submission to custody shall be presumed unless proved otherwise; there should be no occasion for a male police officer arresting a woman to touch her person.

5. *Arrest between sunset and sunrise.*—Except in unavoidable circumstances, no woman need to be arrested between sunset and sunrise.

6. *Particular officer to arrest women.*—Only officers of and above the rank of Assistant Sub Inspector should effect the arrest of a woman.

7. *Bail on personal bond in bailable offences.*—In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves.

8. *In Non-bailable cases also bail to be granted unless special circumstances exists to refuse.*—As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a different course, in which case, the arrested woman shall be remanded to judicial custody with utmost expedition.

9. *Custody in separate police lock-up.*—Such custody shall only be in a separate police lock-up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.

10. *Basic amenities to be provided while in Custody.*—In all places of police custody, basic amenities such as living space, water, toilet, food, medical examination and care, and provisions to meet the special needs of women shall be provided.

11. *Duty to draw up a charter of minimum standards of treatment etc.*—The state shall, as soon as may be, draw up a charter of minimum standards of treatment, including amenities which shall obtain in police custody for custodial inmates as well as staff. The standards shall also spell out the rights and duties of inmates and staff, and shall serve as a manual of instructions and be enforceable in the, manner indicated.

12. *Duty of the State to make arrangements for the children of the woman arrested.*—When arresting a woman, proper arrangements for the protection and care of her children shall be the responsibility of the State. Children who need to be custodialized jointly with their mothers shall enjoy rights justly needed, while in custody, in terms of food, living space, health, clothing and visitation.

13. *Searching the body of the woman arrested.*—The person of a woman shall not be searched except by a woman duly authorized by law, and in a manner strictly in accordance with the requirement of decency. Whether in custody or in transit, the arrested woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted to accompany the female arrestee.

14. *Examination of a woman by police.*—Whenever a woman is to be examined by the police or other investigative agency as a witness, it should be done only at her residence; nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.

15. *Taking woman into custody should be done only after making necessary entries in the register.*—Before taking a woman into custody, the police shall record the fact in relevant records and responsible officers shall ensure that 'detention' without making formal entries is strictly avoided.

16. *Senior police officers visiting the jail should enquire personally into conditions of woman in custody.*—All senior police officers visiting police stations in their official rounds must, as a working rule, enquire personally into conditions of woman taken into custody and check the promptness with which entries are made, information forwarded, grounds of arrest furnished to the accused, etc. The result of the enquiry must be recorded by the officers.

17. *Supply of information regarding woman in custody.*—Information on women in custody should be made available to recognized social organizations and individuals on request. Persons and institutions accredited as visitors should be allowed, as of right, free access to police stations and records.

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18. *Arrest without warrant.*—Whenever a woman is arrested by the police without warrant, she must be immediately informed of the grounds of arrest and the right of bail.

19. *Information with Legal Aid Authority.*—In exceptional circumstances when a woman arrestee is taken to a police lock-up, the police should immediately give intimation to the nearest Legal Aid Authority or recognized legal services body which must render all necessary legal services at State expense.

20. *Obtaining of the name of a relative or friend of the arrested woman.*—On arrest, the police should immediately obtain from the arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.

21. *Number of woman component of the Police to be increased.*—A substantial increase shall be effected in the woman component of the police at all levels and adequate training given.

22. *Exclusive police stations or booths and counter shall be set up.*—In endemic female crime areas, or wherever otherwise desirable exclusive police stations, shall be set up to deal with women needing protection of, or coming in conflict with, law. Such booths and police stations shall be managed by an integrated cadre of men and women police specially trained and sensitized to deal with women.

23. *Separate streams of information on woman and men should be kept by police.*—Crime and arrest data gathered by the police should maintain separate streams of information on men and women. Sex-wise data should be compulsorily compiled and displayed in all police stations and reflected in all reports on crime, arrest and disposal.

24. *Violations of any of the provisions in Section 3 to 23 is an offence punishable under the Code.*—Any violation or deviation or action on the part of any officer which defeats the policy of the above provisions shall be punished after due enquiry by a Judicial Magistrate of the First Class. The nature and quantum of the punishment shall be decided by the Session's Judge having the requisite jurisdiction. An appeal to the High Court shall be available for any aggrieved party.

25. *Fair reparation to the victim.*—Where the wrong is proved, the wrong-doer and whether proved or not, the State shall make fair reparation to the victim to be determined by the Session's Judge.

CHAPTER III
WOMAN AND THE JUDICIARY

26. *Duty of the officers of the judiciary to protect the rights of the woman involved in the criminal proceedings.*—In protecting the rights of the women in the criminal justice process from arrest through release, the judiciary has special responsibility to ensure that the principles and purposes of this Code are implemented. Judicial Officer shall always respond to the distressed call of women in custody irrespective of their jurisdiction or status in the judicial hierarchy.

27. *Magistrate should ask about the treatment of the police while in custody.*—When produced before the Magistrate, he or she shall invariably ask the woman of the treatment given to her by the police and of any other special problems she encounters in her situation. Every effort shall be made to resolve those special difficulties and in cases where an immediate solution is not possible within the law, the Magistrate may explain the position to her, and initiate appropriate action for redress.

28. *Releasing on bail.*—Except in extreme situations when detention is desired, the Magistrate shall release the woman on her own bond, the conditions of which shall be explained to her by the Magistrate.

29. *Judicial Remand how ordered.*—No judicial remand of women will be allowed except into those institutions of which are completely under the control of women officials.

30. *Actions to be taken to protect the safety and freedom of the arrested woman.*—If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements, demand detention in public institutions, bail shall be refused to the woman in her own interest, unless she specially states her willingness to be thus released even after being alerted to the above considerations.

31. *Actions to be taken to ensure the welfare of the children of the arrested woman.*—In the disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.

32. *Speedy trial of cases involving woman.*—Speedy trial of all cases involving women is a legal and moral requirement. All Magistrates shall proceed with such trials with utmost expedition, with due regard to the principle of limitation where applicable. Special tribunals and procedures to carry out this directive shall be organized by Government in consultation with the High Court.

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33. *Setting up of women's Courts.*—To the extent possible, the State shall set up Women's Courts to try women offenders. Where joint trial with man is involved, the Courts may use their discretionary power whether to hold joint or separate hearings.

34. *Rights to Legal Aid.*—Rights to legal aid in criminal proceedings is a fundamental right. In the case of women, free legal aid shall be given from the time of arrest and Magistrate shall ensure that adequate legal services are provided.

35. *Information regarding right to legal aid to be given.*—Magistrate shall inform women, when first produced, of their right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.

36. *Case to be taken while examining woman in Court.*—When women are examined in court as accused or as witnesses, due courtesy and decency shall be shown. If circumstances so demand in the interest of modesty and privacy of women, the trial may be held in camera or the woman may be examined on commission through women advocates.

37. *Long Cross-examination to be avoided.*—Long cross-examinations and repeated examinations may be avoided in the case of women and if necessary, information may be sought by affidavit and/or interrogatories.

38. *Representation of women at all levels in the judiciary.*—Representation of women at all levels in the judiciary is essential to promote gender justice and women may be appointed in adequate numbers, among others, for processing cases involving women.

39. *Processing of cases in Courts.*—In courts processing cases involving women, the court staff should consist of sufficient number of women employees in order to avoid personal difficulties which women accused or women witnesses may face in the male dominated institutions and cadres.

40. *Sentences and sentencing in respect of woman offenders.*—Sentences and sentencing in respect of women offenders may have to take note of the solidarity of the family and the woman's unique role and needs. Except when unavoidable, custodialization shall not be resorted to. Community based treatment of women being ideal for them, their children and society; it is desirable to prefer such disposition.

41. *Arrangements to be made while sentencing for imprisonment.*—While sentencing women to imprisonment or any form of custodialisation, suitable arrangements should be made for the custody and welfare of their children.

42. *Courts to take continuing interest in the welfare of the sentenced woman.*—Courts will take continuing interest in the welfare of women in custody and ensure that they receive proper treatment, including psychiatric and habilitative services.

43. *Magistrates to make frequent visits to jail.*—Magistrates shall make frequent visits to jails and custodial institutions within their jurisdiction and shall file periodic reports to the superior judicial officers on the status and condition of women in such institutions.

44. *Premature release, parole and other forms of release to be considered.*—In case of women in custody for long periods, premature release by reducing the sentence by courts may be considered. Parole, furlough and other forms of supervised release may be widely resorted to.

45. *Short term imprisonment and simple imprisonments to be avoided.*—Short term sentences of less than 6 months may be totally avoided in case of women. Similarly simple imprisonment which is demoralizing and wasteful shall be avoided.

46. *When custodialisation becomes solitary confinement, the prisoner should be released.*—Where, owing to small numbers, the woman's custodialisation amounts to solitary confinement, the court shall move for her immediate release unconditionally, or on probation or parole as may be deemed fit.

47. *Investigation to be held in the case of woman offenders.*—In the disposition of women offenders, courts should mandatorily call for and give due regard to the probation officer's report and to the report of medical/psychiatric examination. Where probation officers are not available, probation investigation should be entrusted to recognized and accredited institutions and individuals.

48. *Imposition of fine.*—Women, unless economically independent, shall not be sentenced to fine and alternatives such as admonition, conditional discharge, probation under supervision etc. should be resorted to.

49. *Mentally sick women should not be sentenced.*—The courts shall not sentence any mentally sick woman or retardates to prison and shall ensure the immediate transfer of any existing cases of non-criminal and criminal lunatics to mental homes for therapeutic and habilitative care.

50. *Postponing of hearing to be avoided.*—Insufficient staff or facilities shall not be used as grounds for postponing the hearing or disposition of women. Whenever necessary surrogate escorts should be used. In addition, the State Government through the Social Welfare Department should develop an escort corps to serve the escorting requirement of female inmates in various custodial situations.

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CHAPTER IV
WOMEN AND PRISON ADMINISTRATION

51. *Environment of custodial premises.*—All custodial premises for women prisoners should have a private, secured and therapeutic environment.

52. *Separate jails for woman.*—As far as possible each State should have at least one or more separate jail for women.

53. *Separate jails for convicts and undertrials.*—There should be separate custodial facilities for convict and undertrial women. Separate institutions or reception centres where undertrial and remanded women when necessary may be kept, should be set up in larger cities, district headquarters, and in female crime endemic areas. Where convicts and undertrials are currently housed in one institution, they must be kept apart in separate wings until independent facilities are set up.

54. *Medical facilities to be provided.*—Proper medical facilities and medical examination of women inmates on admission and periodically thereafter are to be ensured in all custodial centres including prisons, jails, sub-jails, etc.

55. *Lady Doctors and nurses to be provided.*—Qualified lady doctors and nurses should be attached on a visiting basis to every female prison and custodiall centre with women inmates.

56. *Special consideration for expectant mothers in custody.*—Expectant mothers in custody shall be shown special consideration by way of medical and nutritional care, education in child rearing and mother craft and assigned work in accordance with their expectant status.

57. *Woman suffering from contagious diseases.*—Women suffering from contagious diseases shall be placed in isolated care or at a health facility centre if necessary until they recover.

58. *Scale of diet of woman prisoners.*—Scale of diet for women prisoners shall be strictly according to medical norms and special extra diet shall be given if medically prescribed.

59. *Standard clothing to be provided.*—Standard clothing should be allowed to every female prisoner and extra clothing to sick and old may be granted as medically advised.

60. *Personal hygiene etc.*—For personal hygiene, female prisoners may be provided with comb, mirror, washing soap, bath soap, oil, sanitary napkins, etc.

61. *Accommodation, cleanliness etc.*—The accommodation, cleanliness and sanitation provided to female prisoners shall conform to prescribed standard and norms.

62. *Work in prison.*—Work in prison shall not be treated as punishment but as habilitative therapy.

63. *Equitable remuneration for work done.*—Female prisoners shall be paid equitable remuneration for their work in prison. Wages paid shall be of a habilitative value. Out of their earnings, they will be allowed to purchase essential articles for their use while in custody, and to save and/or remit to their families.

64. *Menial duties not to be given.*—The menial duties in the female prisons or ward shall not be assigned to inmates and no monetary or non-monetary incentive should be applied to such work. The prison budget should provide for this function as a routine staff expense.

65. *Training to be given to make female prisoners self sufficient.*—As far as practicable, women prisoners shall be imparted training which will take them economically self-sufficient and capable of functioning independently in society. Choice of skill taught will be related to marketability and independent earning potential. Some representative trades are: home science, mother craft, nursing, handloom weaving, hosiery, toy-making, ceramics, stationery articles, gardening, fruit preservation, electronics, etc. in addition, socially useful knowledge such as use of bank, post office, health centre, employment exchange, saving schemes, etc., will be imparted to the prisoners. Educating women in their rights, status, role and capabilities will be mandatory.

66. *Reasonable number of interviews to be provided with relatives* —A reasonable number of interviews with the relatives and unlimited opportunities to write letters to them and receive letters from them should be allowed to the female prisoners.

67. *Compulsory education to illiterate prisoners.*—Compulsory education for illiterate prisoners shall be provided. Literate prisoners will be motivated to pursue further learning.

68. *Recreational facilities, books, etc. to be provided.*—Recreational facilities, books and reading materials, etc., should be provided to female prisoners and they should be encouraged to use them. This should include the use of religious books of the prisoner's choice. Pursuit of painting, music, theatre, etc., shall be encouraged as part of correctional therapy.

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69. *Classification of prisoners.*—Female prisoners shall be classified on the basis of the age groups, nature of crime, type and length of sentence, etc. and correctional treatment of prisoner shall be related to her specific problem and situation. For this purpose, treatment personnel trained in correctional approaches shall be appointed.

70. *Girl prisoners not be kept along with woman prisoners.*—In no circumstances should girls be imprisoned or kept in mixed custody with adult women.

71. *Habitual offenders etc. should be kept separately.*—Habitual offenders, prostitutes and brothel keepers must be kept separate from other inmates in prisons.

72. *Mentally afflicted woman should not be kept in prison.*—No mentally afflicted women should be placed in prison and steps for their immediate transfer to mental homes must be affected.

73. *Victims and others kept in protective care should be transferred to protective houses.*—Women and children held as victims or in protective custody or required for purpose of giving evidence must not be kept in jails and should be transferred to designated welfare and protective homes.

74. *Children of prisoners need special care.*—Inmates with children require special attention of prison authorities and suitable orders may be taken from court to ensure the interest of both mother and child.

75. *Children to be kept separately as far as possible.*—As far as possible, children of inmates may not be kept within adult jails and visits by children to the inmates may be liberally allowed. In cases where imprisonisation is unavoidable, children of prisoners must have rights per se in terms of food, spare clothing, education, recreation, visitations, etc.

76. *Release of children on attainment of maximum age.*—At the time of release of the child, on account of reaching maximum permissible age, the court and the prison/custodial management shall ensure that the mother-child link is not severed.

77. *Corrective treatments.*—Probation, parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders, save in exceptional cases where specified considerations of prisoner's or state security limit such options.

78. *Woman to be kept in open jails.*—Woman who pose no security risk and meet other suitability criteria may be housed in open jails where work facilities related to their agricultural or other occupational background should be available.

79. *Woman to be rehabilitated.*—Women illegally detained in jails on grounds of destitution, seeking arms or vagrancy may be rehabilitated in appropriate institutional and community based services and modalities.

80. *Female prisoner not be given corporal punishment or use handcuffs.*—No female prisoner shall be liable to any form of corporal punishment or use of handcuffs, fetters or isolation as a form of disciplining.

81. *How punishment may be awarded for bad conduct.*—No female prisoner shall be punished without being informed of her offence and allowed an opportunity to explain her conduct. Exceeding the sentence is illegal. For any custodial excess or neglect, the responsible staff shall be dealt with severely and promptly.

82. *Search of the body of woman prisoner.*—Female prisoners shall be searched by female wardens in the presence of other senior women personal with strict compliance to privacy and decency.

83. *Complaints from prisoners to be registered.*—Complaints from female prisoners shall be registered investigated and promptly remedied. A grievance box may be provided for this purpose. No harm should come to any complainant as a result of articulating her grievances or for deposing against custodial staff.

84. *Prison manual should be physically available in prisons.*—The prison manual must be physically available in every jail for easy reference by inmate and staff or accredited visitors.

85. *Prison manual should be circulated to all prisons.*—A separate volume of the prison manual should deal with the custody and treatment of female and should be circulated amongst staff and inmates or for reference by accredited visitors.

86. *Rights and privileges should be publicized.*—Rights, special privileges and duties of women prisoners, should be widely publicized within the prison and each inmate should have full right of access to information in this regard.

87. *Release of prisoner to be informed to relatives if any.*—Before a female prisoner is released, her relatives shall be informed and where no relatives exists or shows up, the released prisoner shall be sent with a female escort.

88. *Assistant to be rendered on release of woman prisoners.*—Appropriate assistance shall be rendered to every female prisoner on release whether during or after completion of sentence. For this purpose, a centre for assisting released prisoner shall be set to service a cluster of prisoners and custodial institutions on an area-wise basis. Even without the centre, the prison authorities shall take necessary steps to arrange the rehabilitation of the released prisoner either through the family, the relief centre or a voluntary organization.

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89. *Establishing after care and short stay houses.*—Aftercare and short-stay homes for women prisoners may be established in every state to serve those prisoners who are homeless or rejected by their families.

90. *Women's representation in prison services should be increased.*—Women's representation in prison services must be enhanced and adequate compensation given to them in lieu of lack of promotion opportunities on account of fewer job opening and in recognition of the demanding and stressful nature of their work. Adequate training and retraining should be provided for female custodial and prison staff to enable them to update their skills.

91. *A woman D.I.G. should be posted in the State Headquarters.*—Apart from female staff in women's jail, there shall be a women D.I.G. in the State Headquarters, preferably from the prison service, to specially look after the work relating to women prisoners.

92. *Democratization of prison administration.*—Democratization of prison administration must be systematically engendered and a new prison culture based on human and constitutional values developed. For this purpose, both pre-service and in-service training and sensitization are necessary of male and female cadres associated with the administration of prisons.

93. *Legal aid and counseling to be provided.*—Legal aid and counseling through professional bodies assisted by para-legal and social workers should be institutionalized in every prison and custodial institutions. Law schools and schools of social work should be encouraged and permitted to render socio-legal counseling service to the inmates.

94. *Constitution of visiting Committees.*—Visiting Committees to jails should be constituted in consultation with professional bodies and university departments of law, criminology, social work and social sciences from the neighboring area. Visitor should be nominated on the basis of merit, public spiritedness, activist record and actual time likely to be made available to the visitorial function.

CHAPTER V

WOMAN AND NON-PENAL CUSTODIAL INSTITUTION

95. *Custodial conditions in non-penal institutions should be superior.*—The custodial conditions in non-penal institutions shall be superior to those in penal institutions and in no event shall be below the standard prescribed for female prisons.

96. *A manual for non-penal institutions should be developed.*—A manual for non-penal custodial institutions shall be developed and all institutions and their inmates, as well as accredited visitors shall have access to copies of it.

97. *Institutions shall be developed in a specialized manner.*—Institutions shall be set up to service specified client groups in a specified manner. No indiscriminate mixing of various categories of client shall be allowed. Undertrail or convicted women shall not be placed in such institutions under any circumstances.

98. *Model rescue homes to be established.*—Model rescue homes and the beggar home shall be set up for women in every metropolitan area and in such urban or district centres where the need to service these categories of women is greater.

99. *Beggar homes and other institutions to be established.*—Beggar homes for women and like institutions shall be centres of corrective treatment and rehabilitation and not for mere detention.

100. *Existing Socio-economic assistance should be extended to women in non-penal institutions also.*—All existing programmes of socio-economic assistance to women shall also encompass women in non-penal custodial institutions both while in custody and on release.

101. *Inmates Councils to be established in every custodial institution.*—Inmate's Councils should be set up in every custodial institutions to enable inmates to interface meaningfully with each other and with the custodial staff.

102. *Socio-legal Counseling Cells to be established.*—Socio-legal counseling cells should be set up in every non-penal custodial facility for women to assist in their socio-economic and emotional rehabilitation.

103. *Legal aid camps and Lok Adalats to be organized.*—Legal aid camps and wherever possible Lok Adalats should be organized periodically in custodial centres. Voluntary agencies may be encouraged to give legal literacy and to assist in securing redress for inmates both in civil and legal matters.

104. *Accredited voluntary organizations to visit and invigilate the enforcement of the code in all institutions.*—Accredited voluntary organizations should be allowed to visit and invigilate the wholesome enforcement of the Code and the manual in the institutions.

105. *Visitors to be appointed should be eminent peoples.*—Visitors appointed should be eminent people and should be selected in consultation with professional bodies and university departments of law and social work, and with due regard to active, activist record and actual availability of time.

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106. *Services to inmates of non-penal institutions should be allowed to be provided.*—Women students of law and social work, and women's groups should be encouraged and permitted to render services to inmates of non-penal custodial institutions.

107. *Special steps to be taken at the time of release of inmates of non-penal institution.*—Special steps should be taken by custodial authorities at the time of release of inmates to assist in their rehabilitation through close liaison with their families and/or recognized voluntary organizations.

108. *Strict accreditation process needed.*—A very strict accreditation process and machinery should be operative in order to discourage delinquent institutions and honour competence.

109. *Children of inmates to be given special care.*—Children of women inmates require considerable handling and all endeavors in custody shall be toward reinforcing the inmate's links with the child.

110. *Custodialised child must be provided all facilities to enjoy life in a reasonable manner.*—Wherever children need to be custodialised with the inmate mother, the institution shall make adequate provisions either in the institution or elsewhere. In all such cases, the custodialised child shall enjoy rights per se to food, space, clothing, care, education, etc.

111. *Literacy and skills training to be provided.*—Literacy and skills training shall be mandatory for all inmates irrespective of their grounds or nature of custody.

112. *Sensitization of custodial staff a must.*—Custodial staff shall be sensitized towards a humanist approach to management of the inmates and to pay due regard to their innocence in law.

113. *Custodial neglect etc. to be dealt with strictly and the victim to be compensated.*—Custodial neglect, abuse or excess shall be dealt with due severity and the management or the State shall be liable for compensation to the victim.

114. *Specially trained persons to be provided.*—The state social welfare departments should develop and escort corps of specially trained persons who can service the escorting needs of various institutions.

CHAPTER VI
WOMEN AND MENTAL HEALTH CUSTODIAL INSTITUTIONS

115. *Medically disturbed women entitled to medical care etc.*—Mentally disturbed women are entitled to proper medical care and to education, training and rehabilitation. A companion right of the female retardate is freedom from sexual or other exploitations.

116. *Mentally disturbed women should not be detained in prison.*—Mentally disturbed women shall not be detained in prison and they shall be given proper treatment in mental hospitals. Those that are currently into prison shall be immediately transferred to a mental health facility.

117. *Mentally disturbed woman should not be left unguarded.*—At no time shall mentally ill women be left unguarded by women escort or guards.

118. *Juvenile girls mentally disturbed entitled to proper medical treatment and case.*—Juvenile girls who are mentally sick must receive special therapeutic attention and protection from physical or other exploitation, and custodialised separately from adult female retardates.

119. *Institutional facilities in accordance with Mental Health Act should be established.*—Institutional facilities in accordance with the Mental Health Act should be established in every state for rendering psychiatric justice to patients.

120. *Conditions in Mental Hospitals should conform to the medical standards.*—Conditions in mental hospitals should strictly conform to the medical standards and supervisory staff should be personally responsible for ensuring them.

121. *Watchdog committees to be constituted.*—Watchdog committees of social activists should be constituted for each mental home or hospital and they should file reports after periodic inspection. Such reports should be a basis for continued recognition and accreditation of the concerned institutions.

122. *Neglect of staff to be severely dealt with.*—Medical and custodial staff in mental homes and hospitals found negligent must be severely dealt with.

123. *Legal aid camps to be organized.*—Legal aid camps must be organized in mental homes and all reprocessual and legal help rendered to inmates to overcome any difficulties arising from their custodialisation.

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124. *State to encourage research about the present distribution between criminal and non criminal lunatics.*—The present distinction between criminal and non-criminal lunatics is unsatisfactory and ought to be substantiated or disproved through appropriate mental health research. The State should encourage research in that direction.

125. *Treatment of mentally distressed inmates.*—Custodialization and treatment of the mentally distressed should appropriately reflect the new care and therapeutic approaches. Greater use of community based and supervised options, including day care centres for the mentally ill, and open, non-cellular custodial residences, etc., should be promoted.

126. *In the therapy and treatment, family should be consulted.*—In the therapy and habilitation of the mentally ill women, their families shall be consulted and closely associated wherever possible.

127. *Staff should be trained to deal sensitively with mentally ill persons.*—Training should be given to custodial as well as medical staff in mental homes and hospitals to understand and deal sensitively with the mentally ill. Similar sensitization will be necessary in case of staff of all penal and non-penal custodial centres (viz., police, prisons, welfare homes, etc.).

CHAPTER VII

WOMEN IN CUSTODY AND LEGAL AID

128. *Free legal aid at state expenses to be provided with.*—Free legal aid at state expense is the fundamental right of every woman in custody. All custodial institutions should arrange for systematic delivery of legal services to every inmate ~~in need of such~~ service.

129. *Legal aid includes access to all kinds of justice.*—Legal aid includes access to medical justice, rehabilitative justice and informational justice in addition to processual justice.

130. *Legal aid to be given at all stages.*—Legal aid is to be provided not only during trial but also in the pre-trial and post-conviction stages.

131. *All in custody should be informed of their rights including legal aid.*—All women in custody must be informed of their rights in custody including their right to demand legal aid if needed.

132. *Legal literacy programmes prisoner's Adalats and legal aid camps to be conducted.*—Legal literacy programmes prisoner's adalats and legal aid camps should form custodial modalities for rendering services to women in prison and other custodial centres.

133. *Legal aid authority or other appropriate authority should devise and implement schemes to prevent custodial injustices.*—Legal aid boards shall devise and implement schemes to prevent custodial injustices and to recommend modalities for redress and victim's compensation, as well as deterrent punishment to delinquent custodial staff.

134. *Legal aid workers and para-legal workers should ensure compliance with the provisions in the code.*—Legal aid workers and para-legal workers should ensure strict compliance of the provisions of this Code and promote humane approaches among all operators of the criminal justice and correctional system.

135. *Legal aid counters to be established.*—Taking not of the continuing need for legal services in custodial conditions, State Governments may set a regular legal aid counters in larger custodial institutions, or to serve for a cluster of institutions. Such counters to be run as socio-legal cells may be managed jointly by law schools and schools of social work under supervision of Legal Aid Boards. Placement with such cells may be given accredited status as graded field work by the concerned faculties.

136. *Legal aid authority and legal aid clinics in law colleges should be encouraged to serve the inmates.*—Legal aid Committees and Legal aid clinics based in law colleges must be encouraged and permitted to extend legal services to women in custody.

137. *Representation of women in the staff should be increased.*—There should be increased representation of women in the legal aid machinery. Legal aid workers deputed to women's institutions should be preferably women.

138. *Women's organization shall have consultative status with legal aid authority and committees.*—Women's organizations and activist women must have consultative status with legal aid committees.

139. *Power of the Government to make Rules.*—For the purpose of effectively implementing the provisions of this Act the Government may frame appropriate rules by notifying the same in the official Gazette.

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The Kerala Code for Custodial, Correctional and Habilitative Justice to Women Bill

Statement of objects and reasons

Women constitute nearly one-half of the population and their welfare is matter of utmost concern to the State. As a matter of fact women constitute weaker sections of the society and need special care and treatment while in the custody of the police or authorities in jails. In most cases, they become victims of their circumstances and find themselves caught between the devil and deep sea. With a view to safeguard rights and interests of women and to prevent them from being harassed while in custody, the Commission has drafted a comprehensive code for correction and rehabilitation of women in custody. The Commission has taken case to ensure that the Dowry Prohibition Act is made stricter and to extend the benefit of concession in the payment of Court fee to the women belonging to the BPL category.

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THE KERALA MUSLIM MARRIAGE AND DISSOLUTION BY TALAQ AND KHULA (REGULATION) BILL

A

BILL

to declare that, among the Muslims in Kerala, Monogamy shall be the general rule and Polygamy an exception, permissible only in rare circumstances and to provide further that divorce by Talaq or Khula can be effected only subject to special conditions,

BE it enacted in the Fifty Ninth Year of the Republic.

1. *Short title, extent and commencement of the Act.*—

(i) This Act may be called The Kerala Muslim Marriage and Dissolution by Talaq and Khula (Regulation) Act.

(ii) It shall extend to the whole of the State of Kerala.

(iii) It shall come into force at once.

2. *Definition.*—(a) 'Conciliation Council', hereinafter referred to as Council, means a body constituted under Section 4(a) of the Act.

(b) 'Chairperson' means the Chairperson appointed under Section 4(b) of the Act.

(c) 'High Court' means the High Court of Kerala.

(d) 'Person' means any major Muslim male.

(e) 'Registrar of marriages' means the Local Registrar of marriages (Common) as defined in Rule 5 of The Kerala Registration of marriages (Common) Rules 2008.

3. *The Act to override other laws etc.*—The provisions of this Act shall have effect notwithstanding any law, custom or usage followed hitherto, in the matter of contracting another marriage during the subsistence of a marriage already conducted and for effecting dissolution of marriage by talaq and khula.

4. *Constitution of Conciliation Councils.*—(a) Government shall constitute in each District a Council consisting of a Chairperson and two other members to perform the powers conferred under this Act.

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(b) For each Council, Government shall, after having prior consultation with the Chief Justice of the High Court, appoint a retired Judicial Officer of the Subordinate judiciary Civil or Criminal but not below the grade of a Munsiff belonging to the Muslim Community as Chairperson on such terms and conditions as may be prescribed.

(c) The other two members shall be scholars of Islam one each chosen by the parties to the application as their respective nominees in each case.

(d) The expenses of the proceedings, including the payments, if any, to be made to the nominated members of the Council shall be borne by the parties or in case of dispute, as directed by the Chairperson of the Council.

(e) The Council may frame its own rules of procedure in accordance with the principles of natural justice and fair play.

(f) The Council shall not be bound by the procedures applicable to ordinary Courts or Arbitral Tribunals as prescribed in the Code of Civil Procedure or The Arbitration Act 1996 or any other Act or Rules.

5. *Monogamy shall be the Rule.*—Monogamy shall be the rule binding on every Muslim, man or woman, but polygamy is permissible to Muslim male only to the extent provided for by this Act.

Provided that a Muslim husband may remarry during the subsistence of his first marriage only if the following rare grounds exist,

(1) Adultery of the wife;

(2) Frigidity of the wife;

(3) Wife is unable to give birth to a Child;

(4) If the wife gives her consent in writing.

Provided further that if a dispute regarding such marriage exists, the wife shall raise the same before the Council and the decision taken by the Council. Unanimously or by majority shall be binding on both parties.

6. *Duties of husband on second marriage under the Act.*—The husband, in the event of his marrying again under the proviso to Section 5, shall be liable to provide reasonable accommodation and privacy as well as just alimony or maintenance sufficient for the first wife to sustain herself in reasonable comfort. The affected spouse shall be entitled to seek redress by petitioning the Court of the Magistrate of First Class having jurisdiction over either party. No Court fee shall be payable for such proceedings and free legal aid shall be provided to her by the Legal Services Authority or by any Advocate in the panel approved by the District Court. The fee for such legal services shall be made available by the Legal Services Authority concerned.

7. *Compensation payable on violation of the provisions in Section* 6.—Notwithstanding anything contained Section 6 of this Act, it is hereby declared that any marriage contracted in contravention of Section 5 shall be void but the victim of such second marriage shall be eligible for such compensation as the Judicial Magistrate having jurisdiction over either party, deems just and proper.

8. *Marriage of Muslim shall be a contract.*—Marriage of Muslims shall be a contract entered into orally or in writing with the free consent of both spouses and shall be entered in the Register maintained by the concerned Jama-ath.

Provided that any pressure social, economic, political or environmental which makes the marriage a forced marriage shall be deemed to be invalid notwithstanding formal free consent.

9. *Decree for divorce on the basis of a written agreement.*—In cases where both spouses enter into an agreement to have divorce on the ground of irretrievable breakdown and such agreement is attested after due enquiry by a Civil or Criminal Judicial Officer, a court of competent jurisdiction may grant divorce without any further enquiry.

10. *All marriages conducted after the Act to be Registered.*—All marriages and divorces of Muslims taking place after this Act comes into force, shall be registered before the Registrar of marriages as defined in Section 2(e) of this Act, who shall register the marriage in terms of the entries in the register maintained by the Jama-ath. Alternatively, the Jama-ath shall register the marriage before the Registrar of marriage within one month of the marriage.

11. *Divorce by 'Talaq' or 'Khula'.*—(1) Either of the spouses may divorce the other in a proceeding initiated for that purpose before the Council in accordance with the rules prescribed in that behalf seeking approval of the Council on any one or more of the following grounds:—

(a) Leading an adulterous life.

(b) Incompatibility of temperament leading to an irretrievable break down of marriage.

(c) Solemnization of marriage by practicing fraud, misrepresentation or coercion.

(d) Willful refusal to comply with a decree for restitution of conjugal life obtained by the other spouse.

(e) Ceased to be a Muslim by conversion to any other religion.

(f) Insanity.

(g) Any other just and reasonable ground.

(2) If the approval is declined by the Council, the party affected may prefer a revision before the District Court within whose jurisdiction the Council concerned is constituted and the decision of the District Court shall be final and binding on the parties.

12. *Rule making power of the Government.*—Government may frame appropriate rules for regulating the procedure for nomination of the scholar members by the parties and initiation of proceedings under Section 5 and 11 of the Act by publishing in the Gazette following the normal procedure to be followed in the matter.

13. *Effect of the provisions in the Act on existing Acts and Rules.*—The provisions in this Act shall be in addition to the provisions in any existing Act or rules and none of the provisions in this Act will have any derogatory effect on any provisions in any other Act or Rules in force at present as far as marriage and divorce among the Muslims in Kerala are concerned.

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THE KERALA RIGHT TO A SMALL FARM AND SHELTER BILL

A

BILL

to provide a minimum extent of 5 cents of land and a small shelter to the landless and shelter less belonging to Below Poverty Line category of people as part of the constitutional right to lead a life with dignity.

BE it enacted in the Fifty Ninth Year of the Republic.

1. *Short title, extent and commencement of the Act.*—(1) This Act shall be called The Kerala Right to Small Farm and Shelter Bill—

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come in to force on such date as the State Government may notify in the Gazette.

2. *Definitions.*—(a) *For the purposes of this Act unless the context otherwise requires.*—'Collector' means the District Collector.

(b) 'Family' means a person his wife and minor children belonging to below poverty line category of families.

(c) 'Person' means a person belonging to the below poverty line category.

(c) 'Shelter' means a residential accommodation to accommodate an individual or a family consisting of not more than 4 persons, the cost of construction of which is not more than Rs. 50, 000 or such other amount which the Government may fix from time taking note of the cost of construction materials, the area in which the shelter is going to be put up etc.

(d) 'Shelter Committee' means a Committee constituted under Section 3 of this Act.

(e) 'Small farm' means a plot of land not exceeding 5 cents in extent and either suitable or which can be made suitable for putting up a shelter.

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The Kerala Right to a Small Farm and Shelter Bill

3. *Constitution of Shelter Committees.*—(a) Within a maximum period of 6 months from the date of Commencement of this Act, every Collector shall constitute for each Grama Panchayat within his jurisdiction, a Committee called 'Shelter Committee' consisting 5 members. Of the 5 members, three shall be the president, opposition leader and the secretary of the Grama Panchayat for which the Committee is constituted. The other two members may be nominated from a list of members of the village Panchayats situated within the area of the Grama Panchayat concerned preferably the presidents of two such Village Panchayats.

(b) The terms and conditions of the members of the Committee may be as prescribed by the Government by rules.

(c) Shelter Committees shall function under the Collector in accordance with the Rules framed under this Act.

4. *Application for allotment of land and or shelter.*—(a) Any person or family having no land or land less than 3 cents in extent and no shelter may apply to the shelter committee in the prescribed form for allotment of a farm as defined in this Act with or without a shelter therein for the use of himself or his family. In the case of applicants owning land below 3 cents only such extent of land sufficient to make the total extent to be 5 cents, need be allotted.

(b) On receipt of an application under clause (a) above, the Committee shall cause such enquiries to be conducted as may be prescribed and pass orders after giving the parties an opportunity to be heard, giving reasons for their finding.

(c) In case an application is found to be allowable the Committee may direct allotment of 5 cents of land or such extent of land sufficient to have a farm to put up a shelter incurring an expenditure to the extent of Rs.50, 000 or such other amount determined by the Committee as reasonably sufficient for putting up a shelter for the applicant taking note of his or her needs.

(d) Any person aggrieved by an order passed under clause (b) may prefer an appeal before the collector within whose jurisdiction the Committee is functioning. The Collector may dispose of the appeal after hearing the parties, making such enquiries as he may consider fit to do and going through the report of the Committee if any submitted by the Committee on his request. The order passed by the Collector shall be final.

(e) Orders passed under this section shall be executed by the officer of the revenue notified by the Government for that purpose within a maximum period of 6 months from the date of the order.

(f) If any order passed under this Section remains unexecuted for more than 6 months the same can be brought to the notice of the Collector by the affected party and the Collector shall in such cases call for explanation from the concerned officer responsible for enforcement of the order and shall take appropriate disciplinary proceedings against him and if found guilty be dealt with appropriately.

5. *Application for assistance to put up shelter.*—(a) Any person or family having land not more than 5 cents may apply for financial assistance for putting up a shelter in the land scheduled to the application for an amount not exceeding Rs. 50, 000 or such other sum determined by the Committee for use as a shelter for himself and his family in the prescribed form along with an affidavit stating that he has no financial capacity to put a shelter within a reasonable period.

(b) On receipt of an application under clause (a) the Committee shall conduct such enquires as may be prescribed and shall give the applicant a fair opportunity of being heard and pass appropriate orders allowing or rejecting the application within a maximum period of 6 months, giving reasons for its finding. The Committee may take its decision unanimously or by majority. If the application is found to be allowable an order for allotment of funds not more than Rs. 50, 000 or such other amount as determined by the Committee subject to such terms and conditions prescribed may be passed.

(c) Any person aggrieved may file an appeal before the Collector who shall dispose of the appeal after making such enquiries as found necessary. The order passed by the Collector in the appeal shall be final.

(d) The orders passed by the Committee under clause (b) or in the appeal under clause (c) shall be executed by the concerned officers of the revenue as early as possible at any rate within 3 months from the date of the order failing which the Collector shall take steps to call for explanations from the concerned officials and take appropriate disciplinary proceedings against the officer for dereliction of duty if any found.

6. *Any person interested in the proceedings under Sections 4 and 5 may get impleaded in proceedings either to support or oppose it.*—(a) Any person interested in opposing or supporting the prayer made in any application under Section 4 and 5 may intervene in the proceedings with the permission of the Committee and may bring to the notice of the Committee facts and circumstances in support of the prayer or to oppose it.

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(b) If the Committee finds that the intervention was not bonafide, the intervener may be directed to pay costs to the applicant or the State as decided fit by the Committee.

7. *Government may constitute Free Shelter Fund.*—(a) On and after the commencement of this Act the Government may constitute a fund called Free Shelter Fund for acquiring land if Government land is not available for allotment and for allotting funds needed for putting up shelter in the land allotted to the applicants under this Act by making appropriate provisions in the budget or in any other manner found fit by the Government.

(b) Out of the fund constituted under clause (a) Government shall allocate such funds as are fund necessary by the Government to each Collector so that orders for allotment of land and money passed by the shelter Committees can be executed in time avoiding delay.

(c) To enable the Collector to make necessary requisition for amounts estimated to be needed for implementing the orders passed by the committee, the Secretary of the Committee shall forward copies of executable orders passed by the Committee as soon as the order is pronounced.

8. *Shelter Committee shall keep a register of farm and shelters provided under the Act.*—(a) The Shelter Committee shall keep a registrar containing the prescribed details of the farm or/and shelter granted by it under the Act. The Committee shall also annually submit a report to the Collector and the Government containing the details of the applications filed before it and the farms and shelters allotted by it under the Act.

(b) On receipt of such report from the Committee, Government shall place a copy of such report before the Assembly.

9. *Rule Making Power.*—Government shall have power to frame appropriate Rules found necessary for implementing the provisions of the Act effectively

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THE KERALA PROPERTY DEALERS (LICENSING AND REGULATION) BILL

A

BILL

to provide for licensing and regulating the business dealings of Property Dealers known by whatever names like property consultants, real estate dealers, real estate agents etc. and to protect the interests of the persons receiving services rendered by such property dealers and for matters connected therewith or incidental thereto.

BE it enacted in the Fifty nineth year of the Republic of India.

1. (1) This Act may be called The Kerala Property Dealers (Licensing and Regulation) Act

(2) It shall extend to the whole of the State.

(3) It shall come into force on such date as the Government may notify in the Gazette.

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

(a) "Collector" means the collector of the District or any other officer specially appointed by the Government under this Act.

(b) "Commission" means the sum received by the Property Dealer as remuneration for service rendered to the customers at the rates notified by the Government from time to time.

(c) "Commissioner" means any officer nominated by the Government at the State level or zonal level consisting for two or more districts as determined by the Government.

(d) "Immovable property" includes land, buildings of all kinds including apartments both residential and non-residential.

(e) "License" means a license granted under this Act.

(f) "Property Dealer" means any person, a group of persons, firms. Companies Private or Public engaged in the business of negotiating and finalizing transactions with reference to immovable properties such as sale, purchase, exchange, lease or license or any such dealing for remuneration in kind or cash, by whatever name it may be called.

(g) "Government" means Government of Kerala.

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3. *Licensing of Property Dealers and fixation of rates of Commission for transactions*.—(a) On and after the commencement of this Act no property dealer either personally or through his agent shall enter into any transaction of sale, purchase, exchange, lease, license etc. in respect of any immovable property with any body without obtaining a license under this Act.

(b) On and after the commencement of this Act, no property dealer shall accept any remuneration by way of Commission or otherwise for the services rendered by him in connection with any transaction negotiated or finalized by him with any person or persons except at the rates notified by the Government from time to time under this Act.

4. *Application for the grant of license*.—(a) Application for the grant of renewal of license under this Act may be submitted to the Collector within whose jurisdiction the applicant intends to function as property dealer.

(b) On receipt of an application the Collector shall conduct such enquiries and grant or refuse license applied for.

(c) In cases where the Collector on enquiry finds no justification to grant the license he may grant the applicant an opportunity to be heard before passing final orders in the application.

(d) Government may frame rules prescribing the form in which the application is to be filed and the terms and conditions subject to which the license shall be granted and notify the same for information of the public.

5. *Grant of license*.—A license shall be granted on such terms and condition, as may be prescribed.

6. *Collector shall adjudicate the disputes between the property dealer and parties*.—Any dispute arising between the property dealer and any of the parties to the deal under this Act or the rules framed thereunder shall be decided by the collector on an application made by the aggrieved person in such form and manner as may be prescribed.

7. *Appeal*.—Any person aggrieved by an order made by the collector may within a period of sixty days of communication to him of such order prefer an appeal to the Commissioner within whose jurisdiction the Collector is functioning if there are Commissioner's more than one in the State. Order passed by the Commissioner shall be final in such form and manner, as may be prescribed:

Provided that the Commissioner may entertain an appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

No civil court shall have jurisdiction to entertain, proceed, settle, decide or deal with any matter which is required to be settled, decided or dealt with under this Act by the authorities empowered thereunder.

8. *Amount payable under the Act to be recovered as Revenue due.*—The amount or other sum payable under this Act and the amount of any penalty imposed under this Act may be recovered as arrears of land revenue.

9. *No suit or other proceedings against the officers.*—No suit prosecution or other proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or any rules made thereunder.

10. *Officers to be public servants.*—Every officers and officials acting under or in pursuance of the provisions of this Act or any rules made thereunder shall be deemed to be a public servant with in the meaning of section 21 of the Indian Penal Code 1860 (Central Act 45of 1860).

11. *Powers of Collector in enquiries.*—In all enquiries and proceedings under this Act the Collector shall have such powers and follow such procedures as may be prescribed.

12. *Power to correct mistakes etc.*—Clerical or arithmetical mistakes in any order passed by any officer or authority under this act or errors occurring therein form any accidental slip or omission may at any time be corrected by such officer or authority either on his own motion or on an application received in this behalf from any of the parties.

13. *Powers of Civil Courts.*—Any officer or authority holding an enquiry or hearing an appeal under this Act shall have the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), relating to—

(a) Proof of facts by affidavits

(b) Enforcing attendance of any person and his examination on oath.

(c) Production of documents.

And every such officer or authority shall be deemed to be a civil court.

14. *Offences and penalties*.—(1) Any person who contravenes any provision of this Act or any rule made thereunder shall be punishable on first conviction with imprisonment of either description for a term which may extend to six months and with fine which may extend to ten thousand rupees and in the event of second or subsequent conviction with imprisonment for a term of not less than one year but which may extend to two years and also with a fine not less than twenty-five thousand rupees which may extend to fifty thousand rupees.

(2) Any person or company or society found indulging in the property consulting business, without having a valid license under this Act shall be punished by such authority as may be prescribed with a fine of fifty thousand rupees in the case of an individual or one lakh rupees in case of a society company or any organization and shall also be liable to pay all the benefits so received and the damages suffered by the affected party while dealing with the property for which commission has been paid by any party to the deal.

15. *Power to frame Rules*.—(1) The State Government may by notification in the official gazette make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for.

(a) The form and manner and the fee for grant or renewal of license under section 4;

(b) The terms and conditions of grant of license under section 5;

(c) The form and manner for filling application under section 6;

(d) The form and manner for filling appeal under section 7;

(e) The powers and procedures for enquiries and proceeding under section 14;

(f) Any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after is made before the house of State legislature while it is in session.

Statement of Objects and Reasons

It had become essential to regulate the functioning of property dealers so that the people accessing their services are not harassed and to put in place a proper system and procedure for compulsory registration of property dealers/agent and the manner in which they conduct their business.

The present measure seeks to regulate the functioning of property dealers, property consultants and estate agents to promote appropriate standards of conduct and competency for persons engaged in property dealings and to protect the interests of persons using the services of the property dealers, property consultants and estate agents and for matters connected therewith or incidental thereto.

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THE KERALA PUBLIC INTEREST LITIGATION PROCEDURE CODE

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BILL

for codifying the special procedures to be followed in the matter of Public Interest Litigations.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Public Interest Litigation Procedure Code, ——.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, specify in this behalf.

2. *Definitions.*—In this Act, unless the context otherwise requires:—

(a) "Officer" means the officer designated by the Registrar of the High Court for the purpose of examining the communications as contemplated under Sec.6 (1) of this Act.

(b) "Public Interest Litigation" means and includes any litigation filed by any person under Sec.3 of this Act.

3. Public Interest Litigation. - (1) Public Interest Litigation includes any writ petition filed under the Constitution of India to pursue any cause for the benefit of the public or a section of the public.

(2) Litigations concerning the following matters can be classified as Public Interest Litigation.

(a) Bonded labour;

(b) Neglect of women and children;

(c) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual cases).

(d) Complaints of harassment, requests for pre-mature release, death in jail, transfer, release on personal bond, speedy trial as fundamental right;

(e) Complaints against police for refusing to register a case, harassment by police and death in police custody;

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(f) Complaints on atrocities on women, in particular, harassment of bride, wife-burning, rape, murder, kidnapping, etc.;

(g) Harassment or torture of villagers by co-villagers or of persons belonging to Schedule Castes and Schedule Tribes and economically backward classes including harassment or torture by police;

(h) Environmental pollution, disturbance of ecological balance, drug abuse, food adulteration, failure to maintain heritage and culture, antiques, forest and wildlife and other matters of public importance:

(i) Violation of Human Rights;

(j) Reliefs to Riot-victims;

(k) Corruption including the grabbing of public property.

(l) Cruelty to animals;

(m) Violation of any enactment, including subordinate legislations, infringing the rights of citizens.

(n) Non-performance of constitutional or statutory obligation or misperformance.

(3) No Public Interest Litigation shall, however, be entertained on the following matters:

(a) Litigation for enforcement of civil or contractual obligations between parties.

(b) Litigation for securing admission to any educational institutions, establishments or employment.

(c) Litigation for enforcement of service conditions like seniority, promotion, denial of pension and gratuity, etc.

4. *Who can file a Public Interest Litigation.*—(1) Public Interest Litigation may be filed by (a) One or more citizens of India; and

(b) A registered or unregistered organization or a group of people.

(2) The court may also take *suo motu* proceedings against any action that affects public interests adversely.

5. *Reversal of Burden of Proof.* —(1) In all Public Interest Litigations concerning air, water or noise pollution, the burden to prove the absence of injurious effect on the public or a section of the public shall be upon the party against whom the complaint is made.

(2) No court shall dismiss an application complaining air, water or noise pollution for non-production of evidence at the threshold.

6. *Duty to examine the letters, telegrams, e-mails, etc.*—(1) The High Court shall specially empower an officer for the purpose of examining the letters, fax messages, telegrams, e-mails, newspaper report and other communications on public interest issues.

(2) If the said Officer is of the opinion that there is prima facie reliable allegation regarding genuine infringement of public interest in the said communication, he shall direct the person concerned to produce the materials to substantiate the same.

(3) The said Officer shall thereafter request the Kerala Legal Services Authority to provide the services of an Advocate to draft a petition in accordance with the procedure for filing a proper original proceeding before the court.

(4) If the Officer is of the opinion that the issue concerned ought to be brought to the notice of the concerned authority in the first instance, he shall forward the incriminating material with his comment to the said authority with a specific request to submit a reply within a reasonable time on the action taken and thereafter take such further action as may be found necessary including filing a Public Interest Litigation.

7. *Pleadings.*—(1) Every petition under this Code shall be in the same format as that of a writ petition under Article 226 of the Constitution of India.

(2) Writ petitions relating to suo motu matters and matters arising out of communications referred to in Section 6 and received by the Registry shall be drafted in the prescribed format by the Officer nominated under Section 6 (1) of this Act.

8. *No costs in Public Interest Litigations.*—(1) The court shall not direct payment of costs on any person while dismissing a Public Interest Litigation save in cases of proven mala fides on the part of the party filing a Public Interest Litigation.

(2) If a Public Interest Litigation was found motivated by ulterior motives and suppression of material facts, the petitioner shall be made liable for payment of costs not exceeding five thousand rupees.

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9. *No withdrawal or dismissal of Public Interest Litigation.*—(1) No person shall ordinarily be allowed to withdraw any Public Interest Litigation.

(2) No Public Interest Litigation shall be dismissed for default of the person/ persons at whose instance the Public Interest Litigation was initiated.

Statement of Objects and Reasons

In the nature of Public Interest Litigation, it is felt that the general procedural rules applicable to proceedings in the High Court may not be sufficient to prosecute the Public Interest Litigations at least in some cases. The Supreme Court of India has laid down several rules for the purpose of dealing with the said litigations. This enactment is intended to streamline and formulate a procedure so that a uniform procedure can be followed for all the Public Interest Litigations.

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THE SECULAR NORMS FOR ADMINISTRATION OF PLACES OF PUBLIC WORSHIP BILL

A

BILL

to provide for the establishment of a course of study and lifestyle of sacerdotal sanctity geared to training persons for performing 'pujas' and other holy functions in all Hindu places of worship and hallowed shrines, and to give appointments to be performing priests to any successful Hindu trainee irrespective of caste differences and to allow access to persons regardless of their faith to all places of worship belonging to different religions, subject to solemn obligations consistent with the dignity, decorum, reverence and submission to the sublime conditions prescribed by respective religious authorities.

Be it enacted in the Fifty ninth Year of the Republic of India.

1. Short title, extent and commencement of the Act.

(1) This Act may be called the Secular Norms for Administration of Places of Public Worship Act.

(2) It shall extend to the whole of the State.

(3) It shall come into force on such date as the Government may notify in the Gazette.

2. Definitions.—

(a) 'Board' means the authority consisting of persons referred to in section 3 (2) of the Act.

(b) 'Government' means Government of Kerala.

(c) 'Place of Public Worship' means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein; and includes-

(i) all lands and subsidiary shrines appurtenant or attached to any such place;

(ii) a privately owned place of worship which is, in fact, allowed by the owner therof to be used as a place of public worship, and

(iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;

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(d) 'Purohithan' means any person who has successfully completed the course of study conducted in any of the institutions established or allowed to be established by the Government or has successfully completed any course conducted in any institution outside the State but recognized by the Government as equivalent to the course conducted by the institutions established in the State:

Provided that no person shall claim to be a Purohithan on the ground of family heritage, succession or other extraneous consideration.

However, the Melsanthis, Keezsanthis and other assistants in service as on the date of commencement of this Act shall continue as such till the period of their appointment expires. It is also made clear that Thantris who are entitled to attend on special occasions and Festivals shall be entitled to continue to exercise their limited rights.

Provided that the lifestyle, cultural and dietary habits of persons seeking appointment as Purohit are consistently vegetarian and allergic to non-vegetarian food habits as well as total abstinence from alcoholism, drug addiction, smoking or other use of tobacco in any form over a period of not less than five years as well as absolute purity by way of celibacy or clean monogamous conjugal life and other sex non-deviances shall be imperative conditions for qualifying to be a priest.

Provided further that the candidate for appointment shall be free from gambling and other suspicious illicit financial antecedents or other misconduct.

(e) 'Prescribed' means prescribed by rules framed under the Act.

(f) 'Tribunal' means the Tribunal constituted under Section 8 of the Act.

3. *Establishment of institutions for training in conducting poojas.*— (1) Government shall at least within one year from the date of commencement of this Act establish one or more institutions for giving training to lead a life of moral cleanliness, Hindu philosophy based on the Vedas, Upanishads and other great teachings of Hindu Theology and to perform poojas and other holy functions according to legally and spiritually accepted religious principles in all the places of public worship and hallowed shrines belonging to Hindus.

Provided that the Government shall adopt as the course of study any scheme or project prepared by the Board in this behalf.

(2) Government shall constitute a Board consisting of Chairman/Presidents of all the Devaswom Boards and three outstanding Hindu religious/personalities.

(3) The Government may frame Rules prescribing the minimum qualification for admission to the institutions duration of the course, syllabus to be followed for the course/courses, the qualification of the teaching staff to be appointed, the fees payable by the trainees admitted to the course, terms and conditions of service of the teaching and non-teaching staff and the form and contents of the certificate, diploma or degree to be awarded to the successful candidates and such other matters as the Government may decide. In discharging this function, the Government shall have the concurrence of the Board mentioned in Section 3(1).

4. *Admissions to the* course.—Admission to the course shall be open to all Hindus satisfying the prescribed qualification for admission, irrespective of their caste with due representation to Hindu Dalit, conventionally considered Sudras and Andhyodhaya communities.

5. *Future appointment of purohithans can only be, of candidates trained in the institutions.*—On and after the completion of the first course of study and declaration of the result, only persons who have passed in the course be appointed as Purohithans in the vacancies in all Hindu public places of worship including Sabarimala temple and Guruvayoorappan temple. No fresh appointments other than as 'purohitan' shall be permitted in future.

6. *Appointments of Purohithans only through the Board.*—(1) Appointment of Purohithans after the commencement of this Act shall be made only through the Board from among applicants who have successfully completed the course conducted by the institution established under this Act.

(2) All Dakshinas and other presents given to purohithans shall be accountable to the Board which shall have the power to direct disposal thereof subject to emoluments due to the purohithan, for the purposes of improving the facilities of worshippers and other requirements of the temple or shrines.

(3) Against any decision of the Board under clause (1) an appeal shall lie to the District Court within whose jurisdiction the place of public worship is situated.

7. *Entry to places of public worship are open to all without religious differences.*—(1) It shall be the State policy to permit all persons to enter into all places of public worship irrespective religion, caste, sect or other differences subject to rules laid down by the authority in management of the place of worship and not opposed to law and intended to maintain public order, decency, morality or beliefs considered as essential attribute of the religion to which the concerned place of worship belongs and affirmation of reverence for the religious institutions concerned.

(2) It shall be the duty of the person or persons in charge of the administration of the place of public worship to see that the provisions in sub-clause (1) of Section 7 is strictly complied with and not violated by any of the staff under him or any other person with or without the knowledge of any of the staff functioning under him.

8. *Constitution of the Tribunal for places of public worship.*—(1) Government shall in consultation with Chief Justice nominate a judicial officer of the cadre of District Judge in each district as the Tribunal for exercising the functions conferred on the Tribunal under the Act.

(2) The Tribunal constituted under sub-section (1) shall have jurisdiction to entertain any complaint and to initiate appropriate proceedings for violation of the provisions contained in sections 4,5,6(2), 7 and to impose appropriate penalties including removal treating the acts of violation as failure to comply duties with or perform the functions cast under the Act upon the persons against whom the complaint is filed.

(3) Any person affected by the decision of the Tribunal may file a revision before the High Court and the decision of the High Court shall be final.

9. *Rule making power.*—The Government may frame rules found necessary for implementing the provisions of this Act effectively by publishing it in the official Gazette.

Statement of Objects and Reasons

Article 51 A of the Constitution provides that it shall be the duty of every citizen of India to promote harmony and spirit of brotherhood among all people transcending religious, linguistic, regional or sectarian diversities. As a matter of fact, there has been a steady deterioration of harmony and unity in the society. Communalism, religious orthodoxy, anti-secular and more recently, terrorist activities have been escalating beyond tolerable limits endangering the lives and sensibilities of people leading to violence and bloodshed.

Salutary provisions have been made in the Bill imposing a duty on the State to take adequate measures to promote and build harmony among the people and at the same time to prevent Commission of acts amounting to disruption of peace in the society. As right has been given to the victim to claim compensation for the injury sustained as a result of anti-secular activities. The offender can be proceeded against and directed to pay compensation to the victims. In the opinion of the Commission a bill of this kind is a felt necessity and needs to be accepted and made into an enactment

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THE KERALA CHRISTIAN CHURCH PROPERTIES AND INSTITUTIONS TRUST BILL

A

BILL

to promote the more democratic, efficient and just administration of the temporal affairs and properties of the Churches (Sabha) to constitute Christian Charitable Trusts and Committees for controlling the resources and finances and for the management of the properties of the churches and to provide for election to the Committees at different levels of the administrative units, viz., Parish / Basic Units, Diocese / Central / Revenue District, and State levels —

BE it enacted in the Fifty-ninth year of the Republic.

1. *Intention.*—(i) Even though the religious assets of the Christian Churches in Kerala have been handled from the ancient times as if they had been Trusts, they have not been till now registered as such, and this has given rise to various legal intricacies. In this context, the present Bill is intended to bring in a democrate frame-work in the administration of temporal assets of the various churches at the same time as these temporal properties are brought within the Biblical and thereby truly Christian modality in their administration.

(ii) It is further envisaged through this Bill that representatives from the basic unit (Parish) be elected to the Parish / Basic Unit, Diocese / Central / Revenue District and State levels, and through this process set up Trust Committees, Trustees and Managing Trustees at various levels.

2. *Disclaimer.*—The present Act doesn't propose to get involved in or to formulate opinions or to make decisions on any matters connected with the teachings and practices of the various Churches about faith and theology.

3. *Short title, extent and commencement.*—(i) This Act will be called 'The Kerala Christian Church Properties and Institutions Trusts Act, 2009.

(ii) It extends to the whole of the State of Kerala.

(iii) It shall come into force at once.

4. *Definitions.*—(i) "Christian" means a person who believes in Jesus Christ as His Lord and Saviour.

(ii) "Church" means the body of persons who congregate to worship Christ as Their Lord at the local and denominational level as well as a building made for public worship by Christians.

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(iii) "Local Level" means Parish/Basic unit level.

(iv) "Denomination level" means churches such as Catholic, Jacobite or Marthomite.

(v) "Church Property" means and includes,

(a) The whole or part of a church or chapel building or any building fit to be used or intended to be used as a church or a chapel.

(b) Land acquired for the purpose of putting up a church or chapel or for constructing a new church or chapel in the place of an existing church.

(c) Land acquired for providing a churchyard or extending an existing churchyard and / or burial ground.

(d) Any land, building or other assets acquired by or for the purpose of a church.

(e) Land, building or other assets donated or gifted or sold by any person or persons in favour of the church for being used as church property.

(f) Land acquired and / or used for providing access to or for improving the amenities of any church, churchyard or burial ground.

(g) Land procured for the use by the church and institutions such as seminaries, religious universities, hospitals, schools, colleges, orphanages, priest homes, retreat centres, commercial buildings, agricultural farms, estates, training centres, work-shops, media and publishing enterprises, catechetical institutes, rehabilitation centres and other movable properties.

(vi) "Prescribed" means prescribed by rules made under this Act.

5. *Constitution of Christian Church Properties and Institutions Trusts for each Parish Church.*—(i) Notwithstanding anything contained in any law including ecclesiastical law, custom, usage or practice, every parish church shall be registered as a Christian Charitable Trust in the name of that particular church within a period not exceeding six months from the date of commencement of this Act.

(ii) The Parish Trust Assembly shall prepare a Memorandum and Bye-laws of the Trust at a meeting specially convened for the said purpose.

(iii) The day-to-day administration of the Trust shall be carried out by the Trustee Committee in accordance with the provisions contained in this Act and the Rules.

6. *The General Assembly of the Parish / Basic Unit, Diocese / Central / Revenue District, and State Level Trusts and the Trustees thereof.*— (i) All heads of families and all those who are above eighteen years of age and are members of the Parish / basic unit shall constitute the Trust Assembly with right to vote.

(ii) The Trust Assembly is to elect the Managing Trustee and other trustees and three internal auditors from among members of each parish / basic unit.

(iii) On the basis of the number of families in the parish / basic unit, at the ratio of one member each to the Diocese / Central / Revenue District level for three hundred families or part thereof members to the second tier of Trust (Diocese/ Central/ Revenue District Level Trust) should be elected from the parish / basic unit Trust Assembly.

(iv) Each Parish / basic unit Assembly should elect one member to the State level Trust.

(v) On the basis of the number of families in the parish / basic unit Trust, seven Trustees including the Managing Trustee for a parish / basic unit Trust Assembly having families within a hundred number, and thereafter three more Trustees for each additional hundred families and part thereof should be elected.

(vi) The Diocese / Central / Revenue District Trust Assembly should elect the Diocesan / Central / Revenue District Managing Trustee and the Trustees and three Internal Auditors.

(vii) Twentyfive Trustees shall be elected in the Diocesan /Central / Revenue District Trust.

(viii) Three internal auditors and a hundred and one Trustrees should be elected in the Trust of the State Trust Level.

(ix) The right to remove for justifiable reasons and thereafter elect new Managing Trustee or Trustees or internal auditors or Trust functionaries is vested with the respective Trust Assemblies.

7. *Disqualifications.*— (i) Those who are against Christian faith, and those who are atheists or convicted criminals are disqualified from holding any responsible positions under the Christian Charitable Trusts.

(ii) Also disqualified for the same are psychiatric patients, the mentally – retarded, those who are alcoholics and given to the use of narcotics, those that lead an immoral life and anyone who is not a member in the Trust itself.

8. *Donor of the Trust.*—(i) The Managing Trustee of each Trust will be the donor (the person responsible for executing the registration of the Trust) in the case of each respective Trust.

(ii) The subject-matter of each Trust will be the institutions, assets and movable and immovable properties and riches; on these all members of the Trust will have joint ownership and authority.

9. *Registration of the Christian Charitable Trusts.*—All Christian Charitable Trusts shall be registered under the provisions of the Societies Registration Act of 1866 / Kerala Public Charitable Societies Act.

10. *Fees Payable for Registration.*—The Government may prescribe the fee payable for registration of the Trust.

11. *Vesting of Church Properties.*—Upon Registration of a Trust under Section 9 of this Act, all properties of the church, movable and immovable assets and cash shall be vested with the Board of Trustees.

12. *Duties of the Christian Charitable Trusts.*—(i) The Christian Charitable Trusts shall manage all the assets and properties of the Trust and collect and receive:

(a) All income therefrom;

(b) All money received by the Trusts by way of contributions from the parishioners and donations to the church.

(c) Sums of money realized by way of loans, sale, exchange etc., of immovable and movable properties.

(d) Any other sum received by or on behalf of the church from any person or persons;

(e) The Trustee Committee shall defray all reasonable expenses in ~~relation to the~~ management and administration of the Trust.

13. *Accounts and Audit.*—(i) The Trustee Committee shall maintain all books of accounts and other books in relation to the accounts and prepare an annual statement of accounts in such form as may be decided by the Trustee Committee.

(ii) The accounts of the Trust shall be audited by one or more Internal Auditors appointed by the Annual Trust Assembly of the respective Trust.

(iii) The Trust Committee shall forthwith remedy any defect or irregularity pointed out by the Internal Auditors and report the action taken to the next Annual Trust Assembly of the respective Trust.

14. *The Constitution of the Diocese / Central / Revenue District Level Christian Charitable Trusts.*—(i) The Diocese / Central / Revenue District level Christian Charitable Trust shall elect a Trustee Committee consisting of 25 members.

(ii) The Diocese / Central / Revenue District Christian Charitable Trust shall manage all the assets and properties of the Diocese / Central / Revenue District level Trust, collect all income therefrom and defray all reasonable expenses in relation to the management and administration of the same Trust.

(iii) The Diocese / Central / Revenue District level Trust shall maintain all books of accounts and other books in relation to the accounts of the same Trust and prepare an annual statement of accounts is such form as may be decided by the same Trustee Committee itself.

(iv) The Diocese / Central / Revenue District level Trust shall forthwith remedy any defect or irregularity pointed out by the Internal Auditors and report the action taken to the Trust Assembly of the same level.

(v) Besides internal audit, the accounts of the said Trust shall be audited by a Chartered Accountant or a firm of Chartered Accountants nominated for the purpose by the Annual Trust Assembly of the Diocese / Central / Revenue District level Trust.

15. *Constitution of the State Level Christian Charitable Trust.*—(i) The State level Christian Charitable Trust shall consist of the Major Arch Bishop / Arch Bishop / Bishop / Head of the Church as its Chairman and 10 members elected by each of the Diocese / Central / Revenue District Trust at the Trust Assembly of each of the respective Trust.

(ii) The State level Christian Charitable Trust shall thereafter constitute a State Trustee Committee consisting of 101 members elected by the State Trust Assembly.

(iii) The State Trustee Committee shall manage all the assets and properties of the State level Trust, collect all income therefrom and defray all reasonable expenses in relation to the management and administration of the State level Trust of the respective Church.

(iv) The State Trustee Committee shall maintain all books of accounts and other books in relation to the accounts at the State level and prepare an Annual Statement of Accounts in such from as may be decided by the State Trustee Committee itself.

(v) The accounts of the state level trust shall be audited by one or more internal auditors appointed at the Annual Trust Assembly of the State level Trustee Committee.

(vi) The State Trustee Committee shall forthwith remedy any defect and irregularity pointed out by the Internal Auditors and report the action taken to the State level Christian Trust Assembly.

(vii) Besides internal audit, the accounts at the state level shall be audited by a Chartered Accountant or a firm of Chartered Accountants nominated for the purpose by the Annual Trust Assembly of the State.

16. *Church Commissioner.*—(i) There shall be a Church Commissioner for supervising the functions of the various Trust Committees constituted under this Act and the implementation of the provisions of this Act.

(ii) The Church Commissioner shall be an officer not below the rank of a Secretary to the Government appointed by the Government.

(iii) The Parish / basic unit Trustee Committees, the Diocese / Central / Revenue District Trustee Committees and the State Trustee Committee shall submit their annual statements of accounts to the Church Commissioner.

(iv) The Parish / basic unit Trustee Committees, Diocese / Central / Revenue District Trustee Committees / State Trustee Committee shall pay an amount of Rs..... to the Government.

17. *Presiding Officers of Trusts.*—(i) The Vicar / Pastor / Spiritual Minister of each parish / basic unit will preside over the parish level Trust Assembly and Trustee / Committee. With the approval of the Parish / basic unit level, the person of the same category immediately below the former's rank can preside over the above-mentioned Assemblies and Meetings.

(ii) The bishop / pastor / spiritual minister of each diocese / central / Revenue District level will preside over the Diocesan / Central / Revenue District Trust Assembly and Committees of Trustees. With the approval of the Bishop / Pastor/ Spiritual Minister of the Diocese / Central / Revenue District level Trust, the person of the same category immediately below the rank of the former can preside over the above-mentioned Assemblies and Meetings. The persons thus deputed could be Auxiliary Bishops or Priests / Pastors / Spiritual Ministers.

(iii) At the State level Trust Assembly and the State level Trustees Committee, the State level Spiritual Head / any Bishop / Priests / Pastor deputed by the former can preside.

(iv) In the event of anyone designated by this Bill to preside over the three tier Assemblies or Trustees Committees declining to do so, the respective Managing Trustees will have the right to preside over Assemblies and Trustee Committees.

(v) Further, in the event of either those that are legally designated to preside or the Managing Trustees declining to preside, members of each respective Assembly can elect a President by means of the mandate of simple majority and depute that same person as the President for each particular session of the Assembly or Committee meeting.

18. *Administration.*—(i) As envisaged under this Act, the day-to-day administration of the three-tier Trust will be vested with the respective Trustee Committees.

(ii) All money, gold, silver, other materials and riches that are denoted or gifted from members of the Trust and persons of other communities.

(iii) Assets, money and materials accrued or acquired from movable and immovable properties by means of rent, share, cess, mutual exchange or sale.

(iv) Donations, gifts, shares, grants-in-aid received by institutions, endowments etc. that are received from either one person or several persons or from the Govt. or from foreign countries.

19. *Rights of the Trustees of the three-tier Trusts.*—(i) All reasonable expenses that are met with for the administration of the Christian Charitable Trusts are to be borne by the respective Trusts.

(ii) The Trustees of the three-tier Trusts can receive allowances as determined by the respective Trusts and such amounts can be received as per vouchers.

(iii) When engaged in the official execution of the objectives of the Trust, such travelling allowances and dearness allowances as required can be received by the Managing Trustee and other Trustees who are involved in it, and it may be done as per vouchers.

20. *The Rights and Duties of the three-tier Trusts.*—(i) The formation and practice of Christian faith according to Christian principles is the duty of each Christian. The exercise of the same is a fundamental right and duty of the three-tier Trusts.

(ii) Another important obligation of the three-tier Trust is to protect the fundamental and human rights, as well as to ensure the freedom and natural justice of all members and render all the necessary spiritual services to the members of the Trust who have accepted Christ as their Saviour.

(iii) It is yet another important duty of the Trusts to see to it that the civil liberties and other rights guaranteed under the Constitution of India to the citizens are protected, and further to keep a vigil over these aforesaid rights as well as the human rights of the members of the Trusts and the spiritual ministers of the Church.

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(iv) The three-tier Trust Committees have to execute the below – mentioned obligations in keeping with the general spiritual ministry of the Churches.

(a) Proper facilities and arrangements are to be provided for the services of the spiritual ministers, and financial remuneration as they deserve is to be compensated for the same.

(b) In the case of spiritual ministers that serve in parish churches / basic ecclesiastical units in Diocese / Central / Revenue District units / the State level, and in Christian Universities, seminaries, catechetical institutions or in other service centres they are to be compensated financially in keeping with the present living conditions and such should include monthly allowances, travelling allowances, dearness allowance etc.

(c) Facility for residence in keeping with the times should be arranged for Spiritual Ministers at the behest of the Trusts.

(d) The Trusts are bound to ensure that the Spiritual Ministers do not default in the spiritual ministers that they are to render to the members of the respective Trust members, till they (the former) legally or voluntarily retire from the ministry.

(e) The Trusts are bound to pay salary / allowances to all spiritual ministers and other employees who do not receive salary / allowances from the Govt. but work in institutions under the three-tier Trusts.

21. *Budget, Income-cum-expenditure Accounts, Reports of Activities.* — (a) By Budget what is meant in this Act is the official statement of the Income and Expenditure Accounts that are envisaged for the ensuring financial year by the parish / basic unit, diocese / central / revenue District level / the State level Trusts for the activities and enterprises during the said period by the said units.

(b) It is mandatory that the Budget for the ensuing year, the report of activities and income-cum-expenditure statements of the financial year ended along with the Report of the Internal Audit and the certified Audit Report of the Chartered Accountant be presented in the respective Trust Assembly for discussion and approval by this body.

22. *Penalty.*—Violation of any of the provisions of this Act shall be actionable under the civil / Criminal law of the land notwithstanding anything contained in any ecclesiastical law or custom or usage.

23. *Power to prescribe Rules.*— The State Govt. may, by notification in the official Gazette, prescribe rules to carry out the provisions of this Act.

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THE KERALA CHRISTIAN ADOPTION BILL

(Act .....of 2009)

An Act to amend and codify the law relating to adoptions among Christians in Kerala and matters connected therewith or incidental thereto.

BE it enacted in the .....Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. *Short title and extent.*—(1) This Act may be called the Kerala Christian Adoptions Bill, 2009.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Application of Act.*—(1) This Act applies to any person, who is a Christian by religion having domicile in the State of Kerala.

3. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) 'Christians' mean persons professing the Christian religion;

Explanation.—A person who received baptism in accordance with the precepts of a Christian denomination shall be deemed to profess the Christian religion.

(b) "Court" means the Family Court or a District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

(c) "Father" and "mother" do not include an adoptive father, adoptive mother, step-father and step-mother.

(d) "Guardian" means a person having the care of the person of a child or of both his person and property and includes a guardian appointed by the will of the child's father or mother; and a guardian appointed or declared by a court.

(e) "Minor" means a person who has not completed his or her age of eighteen years.

4. *Overriding effect of Act.*—Save as otherwise expressly provided in this Act.—

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(a) Any text, rule or interpretation of Christian personal law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

(b) Any other law in force immediately before the commencement of this Act shall cease to apply to Christians in so far as it is inconsistent with any of the provisions contained in this Act.

CHAPTER II

ADOPTION

5. *Adoptions to be regulated by this Chapter.*—(1) No adoption shall be made after the commencement of this Act by or to a Christian except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption, which is void, shall neither create any rights in the adoptive family in favour of any person, which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. *Requisites of a valid adoption.*—No adoption shall be valid unless—

(i) The person adopting has the capacity, and also the right, to take in adoption;

(ii) The person giving in adoption has the capacity to do so;

(iii) The person adopted is capable of being taken in adoption; and

(iv) The adoption is made in compliance with the other conditions mentioned in this Chapter.

7. *Capacity of a male Christian to take in adoption.*—Any male Christian who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption;

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind.

Capacity of a female Christian to take in adoption.—Any female Christian—

(a) Who is of sound mind,

(b) Who is not a minor, and

(c) Who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

8. *Persons incapable of giving in adoption.*—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian or custodian of the child may give the child in adoption with the previous permission of the court to any person including the guardian or custodian himself.

(5) Before granting permission to a guardian or custodian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

9. *Persons who may be adopted.*—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:

(i) He or she has not already been adopted;

(ii) He or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iii) He or she has not completed the age of eighteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of eighteen years being taken in adoption.

10. *Other conditions for a valid adoption.*—In every adoption, the following conditions must be complied with:

(i) If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) If the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a daughter or sons daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) If the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted.

(iv) If the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted.

(v) The same child may not be adopted simultaneously by two or more persons;

(vi) The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up, to the family of its adoption:

Provided that the performance of any religious ceremony shall not be essential to the validity of adoption.

11. *Effects of adoption.*—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes including matters relating to succession with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) Any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) The adopted child shall not divest any person of any estate, which vested in him or her before the adoption.

12. *Right of adoptive parents to dispose of their properties.*—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

13. *Determination of adoptive mother in certain cases.*—(1) Where a Christian who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where a widower or a bachelor adopts a child, any wife whom he subsequently married shall be deemed to be the step-mother of the adopted child.

(3) Where a widow or an unmarried woman adopts a child, any husband whom she married subsequently shall be deemed to be the step-father of the adopted child.

14. *Valid adoption not to be cancelled.*—No adoption which has been validly made can be cancelled by the adoptive father or mother of any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

15. *Presumption as to registered documents relating to adoption.*—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

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16. *Prohibition of certain payments.*—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment, which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorized by the State Government in this behalf.

17. *Procedure for adoption.*—Where a minor child is given in adoption by the father or mother or the guardian, as the case may be, on being satisfied that it is for the welfare of the minor that the child is given in adoption, the Court shall accept the request for adoption without insisting upon further procedural formalities and the application shall be disposed of within thirty days from the date of application as far as possible.

18. *Power of State Government to make rules.*—The State Government may make rules for carrying out the purposes of this Act without prejudice to the generality of the provisions of this Act. Until such rules are framed, the general procedure followed in applications under the Guardians and Wards Act (Central Act 8 of 1890) may be followed by the Court.

CHAPTER IV
SAVINGS

19. *Savings.*—(1). Where a person had been appointed as guardian under the provisions of the Guardians and Wards Act, 1890 (Central Act 8 of 1890), and where such order of appointment was made before the commencement of this Act and the parties intended that such appointment should have all the effects of an adoption, the appointment made as such guardian be treated as an order of valid adoption.

(2) Nothing contained in this Act shall affect any adoption made before the commencement of this Act.

THE KERALA WOMEN'S CODE BILL

A

BILL

to add new provisions to supplement the law relating to protection and safeguard the rights of women against violence and sexual exploitation and protect the rights of victims and witnesses of crimes in order to further the ends of justice.

1. *Short title, extent and commencement.*—(1) This Code shall be called The Kerala Women's Code, ——.

(2) It extends to the whole of Kerala

(3) It shall come into force at once.

2. *Definitions.*—in this Code, unless the context otherwise requires.—

(a) "Appropriate provisions" include legislative, administrative, social, educational and cultural measures.

(b) "Women" includes girl child also.

(c) "Government" means Government of Kerala.

(d) "Notification" means a notification published in the Kerala Gazette.

(e) "Rights of women" means the fundamental and other rights recognized under the various provisions of this code and in other legislations in force.

(f) "Sexual abuse" means commission of any illegal sexual act by a person on a woman and includes molestations, incest or rape as defined in S. 375 of the Indian Penal Code.

(g) "Child" means a girl child who has not completed 18 years of age.

(h) "Trafficking in persons" shall mean.—(i) The recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force, or coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or by giving or receiving payments and benefits to achieve the consent of a person, for the purpose of exploitation.

(i) Exploitation.—shall include exploitation by prostitution of others or other forms of sexual abuse, forced labour or services, slavery or practices similar to slavery or servitude.

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(j) "Victim" means and includes.—(i) Children who have not completed the age of 18 years who are performing sex acts under the management, direction and control of adult persons, regardless of whether or not the children claim that they are voluntarily engaging in such acts.

(ii) Similarly situated adolescents whether or not they are voluntarily engaging in such acts.

(iii) Women above the age of 18 who claim that they, through force or threat of force, were required to perform sex acts with or without their consent by any person.

(k) "Witness" Means any person including a child who has witnessed or has knowledge or information on the commission of a crime relating to trafficking for commercial exploitation or sexual abuse and has testified or is about to testify before any judicial or quasi-judicial authority or before any investigating authority.

(l) "Competent Authority" means any judicial magistrate nominated by the Government under this Act for performing the functions assigned to competent authority under the Act.

3. *Protection and facilities to be provided to the witnesses.*—It shall be the duty of the State to provide the following facilities and protection to witnesses of trafficking, commercial exploitation or other sexual abuses.

(a) Residence facilities.—To be placed in a residence facility which is also a place of safety until he/ she has testified or until the threat, intimidation or harassment disappears or is reduced to manageable or tolerable level.

(b) Special protection.—To have special protection form the authorized law enforcement agency or any authorized Government agency including an NGO for herself/himself and members of the family.

(c) Economic support.—To provide economic support for him/her in such account as the Competent Authority shall decide.

(d) Medical treatment.—To be provided free medical treatment, hospitalization and medicines for injury/illness incurred or suffered by him/her because of being a witness.

4. Steps to be taken to ensure safety of the victims and to enable them to prosecute the prosecution proceedings against the offender.

The State shall ensure the following procedures in respect of victims rescue operation and during the post-rescue period including the period of pendency of legal proceedings.

(i) Separation of victims from the accused.

(ii) Victims should be treated with respect and dignity by the police and other authorities.

(iii) Victims are immediately taken to a certified place of safety.

(iv) Access to victims under the supervision of a recognized NGO or a Social worker.

(v) Legal representation for the rescued victim.

(vi) Arrangement for recording the detailed statements of victim from the place of safety in the presence of the Superintendent of the Rescue Home/or a lawyer/or a Probation Officer for use in court proceedings, against the accused.

(vii) The state shall ensure that no rescued victims should be sent back to family without ensuring social acceptance, family support to prevent re-trafficking and further commercial exploitation.

(viii) The State shall ensure alternate livelihood options like Employment Guarantee Scheme medical support, subsistence allowance to the families of trafficked child victims.

(ix) All efforts should be made to persuade and motivate victims of trafficking and commercial exploitation to be reintegrated and re-habilitated in society to lead a dignified life.

5. *Establishment of shelter homes for victims.*—(1) The State shall establish in each revenue District a Shelter Home for housing the victims.

(2) Separate Shelter Homes may be established for children or separate wings shall be provided for adults.

(3) The Shelter Home shall be insulated against indiscriminate access/entry of unauthorized individuals.

6. *Free Legal Aid to inmates.*—The Shelter Homes shall have facilities to provide services of professional legal advisors at every stage, free of cost to the victims.

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7. *Fast Track Courts to hear and dispose of the complaints from victims.*—Government shall issue necessary orders in consultation with the Chief Justice of the High Court empowering the Fast Track Courts wherever they function to entertain and dispose of the complaints relating to sexual harassment and other sexual abuses. In places where there is no Fast Track Court already established, local Judicial Magistrate Court may be empowered to entertain and disposes of such cases within a maximum period of 6 months.

8. *Constitution of special police cell to deal with the cases involving sexual harassment and other sexual abuses.*—(a) Government shall with a maximum period of 6 months from the date of commencement of this Act, constitute in each District a Special Cell of Police Officers under the control of an officer nominated by the District Superintendent of Police consisting of mainly woman police officials having special training to deal with cases involving women especially victims of sexual harassment and other sexual abuses.

(b) Government shall also pass necessary orders establishing a center at State level for giving special training to police officials preferably women police officials to deal with cases involving sexual harassment and abuses against women and girl children.

9. *Establishment of Special Call Centres.*—Government shall establish Special Call Centres to begin with at district level and later in rural areas also so as to enable on-line transmission of information about the commission of sexual offence and communication of complaints relating to such offences against women and girl child to police and other authorities and providing necessary protection and speedy legal assistance to the victims involved in the offence and the witnesses to such offences.

10. *Right of the victim to claim compensation.*—Notwithstanding anything contained in any other Act or decisions of any court, the Victims of the offence of sexual harassment or abuses shall be entitled to claim compensation invoking the provisions of the Right to Justice for Victims of Criminal Injuries Act 2008. subject to the conditions and limitations in that Act.

11. *Rule making power.*—Government may frame appropriate Rules for the purpose of implementing the provisions of this Act.

Statement of Objects and Reasons

Indian humanity, in its grand story of cultural majesty, regards its sisterly half as sacred. Indian womanhood in its dignity and divinity, its indefeasible freedom from gender discrimination and molestation, is hallowed, enjoys sublime human right, transcending religion and region and transforming its status and stature and ensuring an impregnable immunity from violation, vie and vulgarity. This glory of famine felicity gains great sanctity in the vision of Indian Jurisprudence, civil and penal, regardless of age from cradle to grave, since such is the Constitutional magnanimity of gender justice. The degeneracy, which has overtaken this noble tradition, has led to a lawless situation where the weaker (?) sex is victimized in various ways although the exalted personality of girl to grandmother has a title to egalite in society, in official and public life, in marital status, inheritance and succession and in monogamous excellence. Human rights, if they show less legal reverence to the female gender, are less civilized and more barbarian. This shall not be.

The person of a sister or mother is no less a cultural value, no poorer in the protection of law, no surer in the right to justice, social, economic and political, than that or the brother or father in the family or in the community. The penal law, in its stern insistence, shall defend the physical, psychic, moral and spiritual values of the womanhood so that she will never be regarded as a sex commodity for man's pleasure but ever give reverence as a solemn member of India's humanity. To police, justice, punish and build a glorious gender culture is the paramount duty of State and society. Conjugal dignity and sex-equal humanity of Indian Womanhood, whatever the religion or caste, shall be integral, inviolable jurisprudence, if need be, by a powerful scheme of Law Reform. Hence the Bill.

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THE NAVA KERALA AGRO CUM BIOSPHERIC DEVELOPMENTAL AND DEMOCRATIC UTILISATION OF RURAL PHENOMENAL RESURRECTION BILL

An Act to provide for the protection and promotion of the food security by conservation of the agricultural biological diversity in the State of Kerala and for the sustainable use of natural resources like rivers, backwaters, ground waters , high range areas.

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Nava Kerala Agro cum Biospheric Developmental and Democratic Utilization of Rural Phenomenal Resurrection Act ——.

(2) It extends to the whole State of Kerala ;

(3) It shall come into effect on such date as the Government may by notification in the official gazette appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,–

(a) "agro-biological diversity" means plants, animals and micro organisms or parts thereof, found in rivers, backwaters, ground waters , high range areas and other ecologically fragile areas located within the State of Kerala which are necessary for the sustainable use of food security;

(b) "agro-biodiversity area" means places which are rich in agro-biological diversity;

Explanation.—Places like Kuttanad, Waynad, Thekkady, Silent Valley etc. are places which are rich in agro biological diversity.

(c) "Chairperson" means the Chairperson of the State Biodiversity and Food Security Board constituted under this Act;

(d) "conservation farming movement" means "a plan of action aimed at improving the ecological foundations such as land, water, biodiversity and climate essential for sustainable agriculture."

(e) "Food Security Awards" means awards granted by the Government to individuals or tribal or farming families for their outstanding success in conservation of the rich agro-diversity of Kerala in genetic gardens in their homesteads by growing rice, tuber crops, vegetables and animal breeds which helps in increasing the productivity, profitability and sustainabiolity of rice farming system so as to re-establish Kerala as a agricultural biodiversity paradiseand includes methods used for food conservation of food articles of all kinds;

(f) "Mixed farming Systems" means "system of farming involoving crop-livestock-fish integrated production system which gives multiple livelihood for persons involved in each of the field of farming."

(g) "member" means a member of the State Bio-diversity and Food Security Board and includes the Chairperson;

(h) "sustainable food technology" means the use of agricultural crops of the State in such manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;

(i) "Special Agricultural Zones" means "areas where conservation farming involving either organic farming or green agriculture is promoted based on integrated applications of the principles of ecology, economics, social and gender equity and employment generation."

CHAPTER II

CONSTITUTION OF STATE AGRO CUM BIODIVERSITY BOARD

3. *Constitution of State Agro cum Biodiversity Board.*—8. (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established by the State Government for the purposes of this Act, a body to be called the State Agro cum Biodiversity Board.

(2) The State Agro cum Biodiversity Board shall consist of the following members,

(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological agro-biodiversity and in matters connected therewith

(b) seven ex officio members to be appointed by the State Government to represent respectively the Department of the State Government dealing with—

(i) Agricultural Research and Education;

(ii) Biotechnology;

(iii) Fisheries;

(iv) Agriculture and Co-operation;

(v) Indian Systems of Medicine and Homoeopathy;

(vi) Science and Technology;

(vii) Health and Environment.

(c) five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of agricultural biological diversity, sustainable use of agro-biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge holders of biological resources.

4. *Conditions of service of Chairperson and members.*—(1) The term of office and conditions of service of the Chairperson and the other members other than *ex officio* members of the State Agro-Biodiversity Board shall be such as may be prescribed by the State Government.

(2) The State Government is empowered to make rules for the purposes of effective functioning of the said Board;

5. *Removal of members.*—11. The State Government may remove from the State Agro-Biodiversity Board. Any member who, in its opinion, has—

(a) been adjudged as an insolvent; or

(b) been convicted of an offence which involves moral turpitude; or

(c) become physically or mentally incapable of acting as a member; or

(d) so abused his position as to render his continuance in office detrimental to the public interest; or

(e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.

CHAPTER III

FUNCTIONS AND POWERS OF THE STATE AGRO-BIODIVERSITY BOARD

6. *Functions and powers of the State Agro-Biodiversity Board.*—(1) The State Agro-Biodiversity Board shall—

(a) advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of agro-biological resources;

(b) formulate appropriate action plan for the sustainable food security;

(c) perform such other functions as may be necessary to carry out the provisions of this Act.

CHAPTER IV

DUTIES OF THE STATE GOVERNMENTS

7. *State Government to develop State Policies, Plans, Awards etc., for conservation of agro-biological diversity.*—(1) The State Government shall develop strategies, plans, programmes, awards for the conservation and promotion and sustainable use of agro-biological diversity including measures for identification and monitoring of areas rich in biological resources, for the conservation of biological resources, incentives for research, training and public education to increase awareness with respect to agro-biodiversity.

(2) Where the State Government has reason to believe that any area rich in agro-biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned District Collectors to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The State Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of agro-biological diversity into relevant sectoral or cross sectoral plans, programmes and policies.

8. *Declaration of Agro-Biodiversity areas.*—(1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies notify areas of agro biodiversity importance as agro biodiversity areas under this Act.

(2) The State Government, in consultation with the Agro-Biodiversity Board may frame rules for the management and conservation of all agro-biodiversity areas.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

9. *Schemes to "bridge the yield gap".*—Government shall implement appropriate schemes to help farmers to bridge the gap between potential and actual productivity through supporting technologies, services and public policies designed to ensure an assured remunerative price for farm products.

10. *Government to take steps to encourage and ensure involvement of farmers in conservation farming movement and mixed farming systems.*—Government shall take all necessary steps through the Commissions and Committees constituted under this Act involve farmers in conservation farming as defined in Sec.2 (d) of this Act and to adopt mixed farming systems as defined in Sec.2 (f) to the maximum extent possible.

11. *Institution of Food Security Awards to farmers.*—Government shall institute at State, District and different Panchayath levels annual food security awards on the recommendation of the commission after obtaining detailed reports in that behlf from Committees under whose jurisdiction concerned farmers are having their farms.

12. *Establishment of Special Agricultural Zones.*—Government shall establish in consultation with the commission special agricultural zones as defined in Sec.2 (i) of this Act at places found suitable after conducting due enquiries.

13. *Prior sanction for making construction and other development of agro-biodiversity area.*—(1) No persons shall develop or make any construction in any agro-biodiversity area without the prior sanction of the State Agro-Biodiversity Board.

(2) Any person who is aggrieved by an order as referred to above shall file an appeal before the High Court within ninety days of the order. The order passed by the High Court shall be final.

14. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the State Government or any officer or any member, officer or employee of the State Agro-Biodiversity Board for anything which is in good faith done or intended to he done under this Act or the rules or regulations made thereunder.

15. *Penalties.*—Whoever contravenes or to or abets the contravention of the provisions of section 9 or violates any direction issued by the State Agro Diversity Board shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees and where the damage caused exceeds one lakh rupees such fine may commensurate with the damage caused, or with both.

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

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

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

17. *Offences to be cognizable and non-bailable.*—The offences under this Act shall be cognizable and non-bailable.

18. *Act to have effect in addition to and not in derogation of other Acts.*—The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, including the Biological Diversity Act, 2002 (Central Act) for the time being in force, relating to forests or wildlife.

19. *Cognizance of offences.*—No Court shall take cognizance of any offence under this Act except on a complaint made by—

(a) the State Government or any authority or officer authorized in this behalf by that Government; or

(b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the State Government or the authority or officer authorized as aforesaid.

20. *Power to remove difficulties.*—The State Agro-biodiversity Authority shall, with the previous approval of the State Government, by notification in the Official Gazette, make regulations for exercising its powers and performing its functions under this Act.

21. *Power of State Government to make rules.*—(1) The State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

(a) terms and conditions of service of the Chairperson and members under section 4;

(b) powers and duties of the Chairperson under section 6;

(c) the functions to be performed by the State Agro-biodiversity Board;

(d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 9;

(e) the form and manner of making an application under sub-section (2) of section 9;

(f) the formats to be used for communication and orders to be passed;

(g) the manner of maintaining and auditing the accounts of the State Agro Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished to the State Government

(h) management and conservation of agro biodiversity area; or regulation.

(3) Every rule made by the State Government under this section shall he laid, as soon as may be after it is made, before the State Legislature.

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2008-ലെ കേരള ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളെ നിർണ്ണയിക്കുന്നതിനുള്ള ബിൽ

ഒരു
ബിൽ

പീഠിക.—ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളെ സംരക്ഷിക്കുന്നതിനും അവരുടെ ഉന്നമനത്തിനുമായി പല പദ്ധതികളും കേന്ദ്രസർക്കാരും കേരളസർക്കാരും മറ്റു സംഘടനകളും നടത്തി വരുന്നതിനാലും;

ആയതിലേക്കായി ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ളവരെ നിർണ്ണയിക്കുന്നതിനുള്ള മാനദണ്ഡം വിവരിച്ചുകൊണ്ട് ഒരു നിയമം കൊണ്ടുവരുന്നത് യുക്തമായിരിക്കുമെന്ന് സർക്കാരിന് ബോദ്ധ്യം വന്നതിനാലും;

ഭാരത റിപ്പബ്ളിക്കിന്റെ അമ്പത്തിഒൻപതാം സംവത്സരത്തിൽ താഴെ പറയും പ്രകാരം ഒരു നിയമം ഉണ്ടാക്കുന്നു.

1. *ചുരുക്കപ്പേരും പ്രാരംഭവും.*—(1) ഈ ആക്റ്റിനെ ——-ലെ കേരള ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളെ നിർണ്ണയിക്കുന്നതിനുള്ള ആക്റ്റ് എന്ന് പറയാം.

(2) ഇതിന് കേരള സംസ്ഥാനം മുഴുവൻ വ്യാപ്തി ഉണ്ടായിരിക്കുന്നതാണ്.

(3) ഇത് ഉടൻ പ്രാബല്യത്തിൽ വരുന്നതാണ്.

2. *നിർവചനങ്ങൾ.*—ഈ ആക്റ്റിൽ സന്ദർഭം മറ്റുവിധത്തിൽ ആവശ്യപ്പെടാത്തപക്ഷം.—(1) 'തദ്ദേശസ്ഥാപനം' എന്നാൽ 1994-ലെ കേരള പഞ്ചായത്ത്രാജ് ആക്റ്റിൽ നിർവ്വചിച്ച പ്രകാരമുള്ള ഒരു പഞ്ചായത്തെന്നോ 1994-ലെ കേരള മുനിസിപ്പാലിറ്റി ആക്റ്റിൽ നിർവ്വചിച്ച പ്രകാരമുള്ള ഒരു മുനിസിപ്പാലിറ്റി എന്നോ അർത്ഥമാക്കുന്നു.

(2) 'നിർണ്ണയിക്കപ്പെട്ട' എന്നാൽ ഈ ആക്റ്റിന്റെ കീഴിൽ പുറപ്പെടുവിച്ചിട്ടുള്ള ചട്ടങ്ങളിൽ പറയുന്ന പ്രകാരം.

(3) 'വെയിറ്റേജ് മാർക്ക്' എന്നാൽ ഈ ആക്റ്റിന്റെ അനുബന്ധം രണ്ടാം കോളത്തിൽ പറയുന്ന മാർക്ക്.

3. *ദരിദ്രവിഭാഗം കുടുംബം.*—ഈ ആക്റ്റിന്റെ അനുബന്ധമായി ചേർത്തിട്ടുള്ള പട്ടികയിൽ വിവരിക്കുന്ന സൂചകങ്ങൾ പ്രകാരം ഓരോ കുടുംബത്തിന്റേയും വെയിറ്റേജ് മാർക്ക് നിശ്ചയിക്കേണ്ടതും, അങ്ങനെ നിശ്ചയിക്കുമ്പോൾ 18 മുതൽ 25 വരെ മാർക്ക് ലഭിക്കുന്ന കുടുംബങ്ങളെ ദരിദ്രവിഭാഗം കുടുംബങ്ങളായി കണക്കാക്കേണ്ടതുമാണ്.

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4. *അതിദരിദ്രവിഭാഗം.*—ഈ ആക്റ്റിൽ അനുബന്ധമായി ചേർത്തിട്ടുള്ള പട്ടികയിൽ വിവരിക്കുന്ന സൂചകങ്ങൾ പ്രകാരം ഓരോ കുടുംബത്തിന്റേയും വെയിറ്റേജ് മാർക്ക് നിശ്ചയിക്കേണ്ടതും, അങ്ങനെ നിശ്ചയിക്കുമ്പോൾ 26 മുതൽ 100 വരെ മാർക്ക് ലഭിക്കുന്ന കുടുംബങ്ങളെ അതിദരിദ്രവിഭാഗം കുടുംബങ്ങളായി കണക്കാക്കേണ്ടതുമാണ്.

5. *ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളെ നിർണ്ണയിക്കുന്നതിന് തദ്ദേശ സ്വയംഭരണ സ്ഥാപനങ്ങളിൽ അപേക്ഷ സമർപ്പിക്കണമെന്ന്.*—(1) ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളെ നിർണ്ണയിക്കുന്നതിനായി നിർണ്ണയിക്കപ്പെട്ട ഫാറത്തിൽ അതാത് കുടുംബം സ്ഥിതിചെയ്യുന്ന സ്വയംഭരണ സ്ഥാപനങ്ങളിൽ അപേക്ഷ സമർപ്പിക്കേണ്ടതാണ്.

(2) ഒന്നാം ഉപവകുപ്പുപ്രകാരം ലഭിക്കുന്ന അപേക്ഷകൾ പരിശോധന നടത്തി അർഹരായ അനുവദിച്ചുകൊണ്ട് പ്രസിദ്ധീകരിക്കേണ്ടതാണ്.

(3) കരട് പട്ടികയുടെ മേലുള്ള അഭിപ്രായങ്ങളും ആക്ഷേപങ്ങളും പരിശോധിച്ച് തീരുമാനം അതാത് അപേക്ഷകരെ അറിയിക്കേണ്ടതാണ്.

(4) മൂന്നാം ഉപവകുപ്പു പ്രകാരമുള്ള തീരുമാനത്തിൽ ആക്ഷേപമുള്ളവർക്ക് നിശ്ചിത സമയത്തിനുള്ളിൽ നിർണ്ണയിക്കപ്പെട്ട അധികാരിക്ക് അപ്പീൽ നൽകാവുന്നതാണ്.

(5) തദ്ദേശ സ്വയംഭരണസ്ഥാപനങ്ങൾ (1)-ാം ഉപവകുപ്പു പ്രകാരം ലഭിക്കുന്ന അപേക്ഷകൾ ഉപവകുപ്പുകൾ (2), (3), (4)-ൽ പറയുന്ന നടപടികൾക്കുശേഷം ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങളുടെ അസ്സൽ പട്ടിക എല്ലാവർഷവും ജനുവരി 1-ാം തീയതി പ്രസിദ്ധീകരിക്കേണ്ടതാണ്.

(6) കേന്ദ്രസർക്കാരും കേരളസർക്കാരും മറ്റു സംഘടനകളും ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങൾക്കായി ആവിഷ്ക്കരിക്കുന്ന പദ്ധതികളുടെ ഉപഭോക്താക്കൾ 5-ാം വകുപ്പ് (5) ഉപവകുപ്പുപ്രകാരമുള്ള പട്ടികയിൽ ഉൾപ്പെട്ട കുടുംബങ്ങൾ ആയിരിക്കും.

(7) *ചട്ടങ്ങൾ ഉണ്ടാക്കുന്നതിനുള്ള അധികാരം.*—(1) സർക്കാരിന് ഗസറ്റ് വിജ്ഞാപനം വഴി ഈ ആക്റ്റിലെ വ്യവസ്ഥകൾ നടപ്പാക്കുന്നതിലേക്കായി ചട്ടങ്ങൾ ഉണ്ടാക്കാവുന്നതാണ്.

(8) ഈ ആക്റ്റിൻ കീഴിൽ ഉണ്ടാക്കിയ ഏതൊരു ചട്ടവും, അതുണ്ടാക്കിയതിനുശേഷം കഴിയുന്നത്ര വേഗം, നിയമസഭ സമ്മേളനത്തിലായിരിക്കുമ്പോൾ അതിന്റെ മുമ്പാകെ, ഒരു സമ്മേളനത്തിലോ തുടർച്ചയായ രണ്ടു സമ്മേളനങ്ങളിലോപെടാവുന്ന ആകെ പതിനാലു ദിവസക്കാലത്തേക്ക് വയ്ക്കേണ്ടതും അപ്രകാരം അത് ഏത് സമ്മേളനത്തിൽ വയ്ക്കുന്നോ, ആ സമ്മേളനമോ തൊട്ടടുത്തുവരുന്ന സമ്മേളനമോ അവസാനിക്കുന്നതിന് മുൻപ് നിയമസഭ ചട്ടത്തിൽ എന്തെങ്കിലും രൂപഭേദം വരുത്തുകയോ, ആ ചട്ടം ഉണ്ടാക്കേണ്ടതില്ലെന്ന് തീരുമാനിക്കുകയോ ചെയ്യുന്ന പക്ഷം ആ ചട്ടത്തിന് അതിനുശേഷം, അതതു സംഗതിപോലെ, അങ്ങനെ രൂപപ്പെടുത്തിയ രൂപത്തിൽ മാത്രം പ്രാബല്യമുണ്ടായി

രിക്കുകയോ അല്ലെങ്കിൽ യാതൊരു പ്രാബല്യവും ഇല്ലാതിരിക്കുകയോ ചെയ്യുന്നതുമാകുന്നു. എന്നിരുന്നാലും, അങ്ങനെയുള്ള ഏതെങ്കിലും രൂപഭേദപ്പെടുത്തലോ റദ്ദാക്കലോ ഈ ആക്റ്റ് പ്രകാരം മുൻപുചെയ്തിട്ടുള്ള ഏതെങ്കിലും സംഗതിയുടെ സാധുതയ്ക്ക് ഭംഗം വരാത്ത വിധത്തിലായിരിക്കേണ്ടതാണ്.

അനുബന്ധം		വെയിറ്റേജ് മാർക്ക്
	സൂചകങ്ങൾ (എ)	
1.	സ്ത്രീ ഗൃഹനാഥയായ കുടുംബം (65 വയസ്സിനു താഴെ)	.. 5
2.	അവിവാഹിതയായ അമ്മ / ഭർത്താവ് ഉപേക്ഷിച്ച സ്ത്രീ / വിധവ	.. 5
3.	മാരകമായ രോഗങ്ങൾ—ക്യാൻസർ, വൃക്കകളുടെ തകരാറ്, പക്ഷാഘാതം, എയിഡ്സ്, സ്ഥിരമായ കുഷ്ഠം, ഹൃദ്രോഗം എന്നിവ	.. 5
4.	സർക്കാർ-അർദ്ധസർക്കാർ സ്ഥാപനങ്ങളിലോ സ്വകാര്യ മേഖലയിലോ ഒരാൾക്കുപോലും സ്ഥിരമായ ജോലിയില്ലാത്ത കുടുംബം	.. 5
5.	സ്ക്കൂൾ വിദ്യാഭ്യാസം ഉപേക്ഷിച്ചവർ (20 വയസ്സിനു താഴെ)	.. 5
6.	ശാരീരിക-മാനസിക വെല്ലുവിളി നേരിടുന്നവർ	.. 10
7.	പട്ടികജാതി-പട്ടികവർഗ്ഗ വിഭാഗം	ഏതെങ്കിലും ഒരു വിഭാഗം മാത്രം
8.	പരമ്പരാഗത മൽസ്യത്തൊഴിലാളി / കശുവണ്ടി, കയർ, കൈത്തറി, ബീഡി, ഈറ, പനമ്പ്, മുള, കല്ലുപണി മേഖലകളിലെ തൊഴിലാളി/ ഗ്രാമീണ മേഖലകളിലെ ഇതര തൊഴിലാളി/ തോട്ടം മേഖലയിലെ താൽക്കാലിക തൊഴിലാളി	.. 10
9.	ആശ്രയഗുണഭോക്താവ്	.. 5
	ആകെ (എ)	.. 55

ഏതെങ്കിലും ഒന്നു മാത്രം

അനുബന്ധം	വെയിറ്റേജ് മാർക്ക്	
സൂചകങ്ങൾ (ബി)		
1. വീട് വയ്ക്കുന്നതിന് ഭൂമിയില്ല	. . 10	ഏതെങ്കിലും ഒന്നുമാത്രം
2. പുറമ്പോക്കിൽ താമസിക്കുന്നവർ	. . 20	
3. വീടിന്റെ സ്ഥിതി		
(എ) വീടില്ല	. . 10	
(ബി) കുടിൽ	. . 7	
(സി) ഓല / പുല്ലുമേഞ്ഞത്	. . 5	
(ഡി) ഭാഗീകമായി പൂർത്തിയായത് / ജീർണ്ണിച്ചത്	. . 3	
4. സുരക്ഷിതമായ കക്കൂസില്ല	. . 5	
5. 500 മീറ്റർ ചുറ്റളവിൽ കുടിവെള്ളം ലഭ്യമല്ല / കുന്നിൻപ്രദേശങ്ങളിൽ 100 മീറ്ററിനുള്ളിൽ കുടിവെള്ളം ലഭ്യമല്ല.	. . 5	
6. വൈദ്യുതി ലഭ്യമല്ല	. . 5	
ആകെ (ബി) പരമാവധി	. . 45	
ആകെ (എ+ബി) പരമാവധി	. . 100	

ഉദ്ദേശകാരണങ്ങൾ

ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ള കുടുംബങ്ങൾക്ക് പലവിധത്തിലുള്ള സംരക്ഷണങ്ങൾ നൽകുന്നതിനും അവരുടെ സർവ്വതോമുഖമായ ഉന്നമനത്തിനുമായി പല പദ്ധതികളും കേന്ദ്രസർക്കാരും കേരളസർക്കാരും മറ്റു സംഘടനകളും നടത്തിവരുന്നുണ്ട്. ആയതിലേക്കായി ദാരിദ്ര്യരേഖയ്ക്ക് താഴെയുള്ളവരെയും അവരിൽപ്പെടാതെയുള്ള മറ്റു ദരിദ്ര വിഭാഗത്തിൽപ്പെടുന്ന കുടുംബങ്ങളേയും നിർണ്ണയിക്കുവാൻ സർക്കാർ പലപ്പോഴുമായി ഉത്തരവുകൾ ഇറക്കുകയാണ് നിലവിലുള്ള പതിവ്. ആശാവഹമല്ലാത്ത ആ നില മാറ്റി ഈ കാര്യത്തിൽ ഉചിതമായ നിയമവ്യവസ്ഥകൾ ഉണ്ടാക്കുക എന്നുള്ളതാണ് ഈ നിയമത്തിന്റെ ഉദ്ദേശ കാരണങ്ങൾ.

****

AMENDMENT BILLS

THE KERALA STAMP (AMENDMENT) BILL

A

BILL

Further to amend the Kerala Stamp Act, 1959;

Preamble.—WHEREAS it is expedient further to amend the Kerala Stamp Act, 1959 (17 of 1959) for the purpose hereinafter appearing,

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Stamp (Amendment) Act—

(2) It shall come into force at once.

2. *Amendment of Schedule 12.* — For the entries under serial No.12 in the schedule to the Kerala Stamp Act, 1959 (17 of 1959), the following entries shall be substituted, namely:—

(a)	Where the amount or value of the property to which the award relates as set forth in such award does not exceed ten crores rupees	Rs. 150/-
(b)	Where the amount exceeds Rs.Ten crores a maximum of	Rs. 300/-

Statement of Objects and Reasons

The stamp duty leviable under Article 12 of the schedule attached to the Act on arbitration awards is unreasonably high when compared to stamp duty levied on Awards of the same type by all other States especially States like Bombay, Madras, Gujarat, Goa, Calcutta, Andhra Pradesh. In Bombay, Madras and Gujarat a fixed amount of Rs.100 alone is the Stamp Duty whatever may be the amount involved in the award in Goa the amount of maximum stamp duty is only Rs.50 whatever may be the total amount involved in the award. In Calcutta and Andhra Pradesh again the stamp duty leviable is a fixed amount of Rs.150 and Rs.300 respectively. As such it is only proper and just that the maximum amount of stamp duty available for awards under the Act is also fixed as Rs.300/- if the amount involved exceeds Rs.10 crores. In this connection it is felt that adopting such a moderate rate of stamp duty will encourage people to resolve the dispute by arbitration.

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THE CODE OF CIVIL PROCEDURE (KERALA AMENDMENT) BILL

A

BILL

to amend the Code of Civil Procedure, 1908 in its application to the State of Kerala;

Preamble.—**WHEREAS** it is expedient to amend the Code of Civil Procedure, 1908, in its application to the State of Kerala for the purposes hereinafter appearing;

1. *Short title, extent and application.*—(1) This Act may be called the Code of Civil Procedure (Kerala Amendment) Act.....

(2) It extends to the whole of Kerala.

(3) It shall come into force at once.

2. *Deletion of Section 80.*—Section 80 of the Code of Civil Procedure, 1908 (Central Act of 1908), (hereinafter referred to as the Principal Act) shall be deleted.

3. *Amendment of Section 89.*—(a) Sub-section (1) of Section 89 of the Principal Act shall be deleted and the following shall be added as sub-section (1)

"The Courts shall generally in all suits, but excluding suits coming within the purview of the provisions in order XV of the Principal Act and suits where any substantial question of law is raised for consideration; formulate as far as possible on the date to which the suit is adjourned on the first hearing date; the terms of a possible settlement after hearing both parties and after complying with the provisions in Order X; and refer the dispute in accordance with relevant rules for

(a) Arbitration or

(b) Conciliation or

(c) Judicial Settlement including settlement through Lok Adalat; or

(d) Mediation.

4. *Amendment of Rule 1-A, 1-B and 1-C of Order X of the Principal Act.*—(a) Rule 1-A shall stand deleted and the following provision shall be added as Rule 4-A after Rule 4 of the Principal Act.

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"At the first hearing of the suit, or at any rate, before the matter is listed for trial, the court shall after recording the admissions and denials made by the parties and formulating the terms of a possible settlement after hearing the parties, direct them to opt either of the modes of settlement outside the court as specified in sub-section (1) of Section 89. On the exercise of option by the parties or at least by one party the court shall fix the date for appearance before such forum or authority as may be opted by the parties or fixed by the court following the relevant rules."

(b) Rule 1-B and 1-C of Section 89 of the Principal Act shall be renumbered as 4B and 4C respectively and added after 4A incorporated as per clause (a) of this section.

5. Amendment of Section 115 of the Principal Act shall stand deleted.

Statement of Objects and Reasons

Law Commission of India in its 54th report dated 6-12-1973 has recommended the deletion of Sections 80 and 115 of the Civil Procedure Code for reasons stated in detail in its report. Law Reforms Commission, Kerala is also of the view that the above two sections should be deleted from Civil Procedure Code. The said provisions would only cause delay and protraction of the proceedings and may not advance the cause of justice. Hence provisions have been included in the Bill to delete Sections 80 and 115 from the Civil Procedure Code.

In the light of the provisions in the newly amended Section 89, the Commission feels that it will be expedient to direct the Government to constitute an Alternative Dispute Redressal Forum for deciding matters referred by the Civil Courts as provided in Section 89. If such Forums are constituted in each District, on a permanent basis the object sought to be achieved by incorporating the new provision in Section 89 can be achieved more effectively without causing undue delay.

Hence the amendments.

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THE LAND ACQUISITION (KERALA AMENDMENT) BILL

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BILL

to amend the Land Acquisition Act, 1894, in its application to the State of Kerala.

Preamble.—WHEREAS it is expedient to amend the Land Acquisition Act, 1894, in its application to the State of Kerala for the purposes hereinafter appearing;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*— (1) This Act may be called the Land Acquisition (Kerala Amendment) Act, ——.

(2) It extends to the whole of Kerala.

(3) It shall come into force at once.

2. *Insertion of Section 6A.*— After Section 6 of the Land Acquisition Act, 1894 'Central Act 1 of 1894' (hereinafter referred to as 'the Principal Act'), the following sections shall be inserted, namely:—

"6 A. *Rehabilitation schemes.*—(1) Government shall declare a rehabilitation scheme for the owner/owners of the land residing in any building therein in respect of which a declaration is made under Section 6 and whose annual income does not exceed Rs. 60,000 or the annual salary income of a last grade employee in State Service.

(2) The rehabilitation scheme under sub-section (1) shall be published simultaneously with the declaration under Section 6 and shall contain the following provisions to mitigate the difficulties and inconvenience caused as a result of dispossession as a result of acquisition;

(a) An offer to hand over ownership and actual possession of a minimum of 3 cents of land on or before the date of dispossession to the persons from whom the land and residential building is proposed to be taken possession of. Provided that it may be made clear that the offer is optional and it is upto the owner to accept the offer or to receive the compensation amount in full.

(b) in addition to the above, an offer to pay at least 90% of the amount of compensation estimated as payable to the persons whose lands and buildings are proposed to be acquired so that the same can be used for the construction of a residential building in the 3 cents of land handed over to the owner of the land. The market value of the acquired land and buildings may be deducted from out of the compensation payable to the owner pursuant to the acquisition.

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(c) A provision that a residential building shall be constructed by the owner of the land as early as possible.

(d) A provision that in cases where the land is taken possession under Section 16 before the completion of the construction of the residential building, the owner of the land shall be paid an amount equal to a reasonable rent for a residential building for the occupation of the owner for a period of six months from the date of declaration:

Provided that if the building cannot be completed within the said period of six months for reasons beyond his control, the District Collector may in his discretion grant such rent for such further period as he deems fit."

3. *Insertion of Section 50A.*—After Section 50 of the Principal Act, the following section shall be inserted, namely:—

"50A. (1) If for any reason the Government or company for whom the land was acquired has not utilized any land acquired by it for the purpose for which it was acquired within a period of ten years from the date on which the Collector has taken possession of the land or if the purpose for which the land was acquired ceases to exist such land shall be held by the Government subject to the following provisions and the result of the proceedings.

(2) The original owner from whom the land was acquired or his legal representative, as the case may be, may file an application before the District Court in such form as may be prescribed, within a period of six months after the expiry of ten years from the date on which the land was taken possession, expressing his readiness and willingness to get back the property on refunding the award amount received by him, with interest at 12% per annum or at such other rate as fixed by the District Court based on the interest rate levied by Nationalised Banks.

(3) The District Court shall, take a decision on the application filed under sub-section (2) within a period of six months from the date application with notice to the Government and other affected parties.

(4) If the District Court decides to restore the land to the owner or his legal representative, they may be directed to deposit the full amount received originally as compensation with 12% interest or as such other rate as may be fixed by the District Court.

(5) In cases where the District Court decides to allow the Government or the company to retain the land for a public purpose other than the one for which land was acquired, the Government shall by order, direct the District Collector to determine the award amount afresh as on date as if land is acquired on the basis of a notification issued under Section 4 on the date of order of the District Court. The difference in the amount between the original and the present award shall be paid to the owner or his legal representative within the time fixed by the District Court.

Statement of Objects and Reasons

Acquisition of large extents of land especially thickly populated results in large scale of displacement of people especially of Below Poverty Line group and lower middle income group having monthly income less than Rs.5,000 or that of a last grade employee in Government service. Such persons displaced by acquisition for development of State needs immediate protection by rehabilitation in a reasonable manner. The Commission is of the considered view that responsibility of providing a project for rehabilitation in such cases should be taken up by the State as a social obligation and should make suitable arrangements for rehabilitating the persons going to be displaced as far as possible simultaneously or at least soon after the disposition within a period of three or six months. In this view, a new Section 6A is recommended to be incorporated in the Land Acquisition Act by a Kerala amendment making it a statutory obligation of the acquisition authorities to declare a rehabilitation scheme or project to persons going to be affected by the acquisition in appropriate cases.

Similarly, lands acquired by the Government for itself and for companies, for declared public purposes remains unutilized for decades and decades either for the declared purpose or for any other public purpose. Such a situation is unjust and totally undesirable. The Commission after due deliberation considered to be expedient to make a new provision in the Act which would dissuade the Government and the public companies from acquiring land for public purposes which are not going to be given effect to within a reasonable time or at least within a decade. The new provision namely Section 50A confers a statutory right on the person from whom the land was originally acquired or his legal representatives to move the District Court within the jurisdiction of which the land is situated to re-convey the acquired but so far not utilized land to him if it was not used for ten years from the date of taking possession of land by the Government under the Act on expressing his willingness to deposit the full compensation amount received by him together with 12% interest or at such other

rate of interest determined by the court. If for any reason the District Court finds that it is necessary to allow the Government or the company itself to own and possess the land, then the court shall direct that a fresh award should be passed fixing compensation as if the land is acquired afresh on the date on which the District Court passes the order in the matter. Such newly fixed compensation shall be paid to the applicant after deducting the compensation amount originally paid.

Thus, the object and reasons for the amendments to the Act are avoidance of undue hardship resulting from land acquisition proceedings to the poor and downtrodden and to put an end to the practice of invoking the power under the Act to acquire lands without any immediate use for the land acquired.

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THE KERALA INDUSTRIAL SINGLE WINDOW CLEARANCE BOARDS AND INDUSTRIAL TOWNSHIP AREA DEVELOPMENT (AMENDMENT) BILL

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BILL

further to amend the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (5 of 2000).

Preamble.— WHEREAS it is expedient to amend the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act for the purposes hereinafter appearing;

Be it enacted in fifty-ninth year of the Republic of India as follows—

1. *Short title and commencement.*— (1) This Act may be called the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development (Amendment) Act.

(2) It shall come into force at once.

2. *Amendment to Section 5.*—After clause (b) of sub-section (3) of Section 5 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (5 of 2000) (hereinafter referred to as the "principal act"), the following shall be added as follows:—

"The President of the Grama Panchayat or the Chairperson of the Municipality where the industrial undertaking is being established."

3. *Amendment of Section 10.*— Section 10 of the Principal Act, shall be numbered as sub-section (1) and after the section so numbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in any judgment, decree, order or direction, the power to renew, cancel, suspend, withdraw, modify, revoke, extend etc., of licenses, certificates, clearances and permits issued on the recommendation of the Boards under this Act, shall continue to vest with the authorities which issued the same and shall be governed by the provisions of the respective State enactment under which the same was issued."

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The Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development (Amendment) Bill

Statement of Objects and Reasons

This amendment bill is being recommended to get over the difficulty created by the decision of a Division Bench of the High Court of Kerala reported as .....and to avoid similar issues being raised in future. The new provision recommended to be incorporated into the parent act would certainly ensure the power of the panchayat to cancel the license which it has granted to an industrial concern even if the concern is situated in an industrial area unless that area is excluded from the jurisdiction of the panchayat themselves specifically.

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THE KERALA CONSTRUCTION WORKERS' WELFARE FUND (AMENDMENT) BILL

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BILL

further to amend the Kerala Construction Workers' Welfare Fund Act, 1989 for the purpose hereafter appearing;

BE it enacted in the Fifty-ninth year of the Republic of India;

1. *Short title and commencement.*—(1) This Act may be called the Kerala Construction Workers' Welfare Fund (Amendment) Act,—

2. It shall come into force at once.

2. *Amendment of Section 4.*—After sub-section (1) of Section 4 of the Kerala Construction Workers' Welfare Fund Act, 1989 (hereinafter referred to as the principal Act), the following proviso shall be added, namely:—

"Provided that any construction worker who has been engaged for even a day may also be eligible for associate membership in the Scheme; but shall not be eligible for any benefits till he becomes a full member".

3. *Amendment of Section 7.*—After Section 7 of the principal Act, the following section shall be inserted, namely:—

"7A. *Every construction worker to be registered.*—(1) Every employer who employs any worker for his construction work shall get his worker registered with the Welfare Fund Scheme on payment of such fees as may be prescribed.

(2) Every worker who applies for registration shall be given associate membership in the Scheme till he becomes eligible for full membership".

(3) Any employer who violates the provisions in sub-section (1) shall be liable to pay a fine of Rs.1,000 for each day of violation.

4. *Amendment of Section 14.*—After clause (11) of section 14 of the principal Act, the following clause shall be added namely:—

"(11 A). for the construction of dormitory, canteen and to provide other facilities for the workers."

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Subject of Objects and Reasons

The object and reason for recommending the amendment Bill is to put an end to the malpractice perpetrated by the employees of construction workers immediately on their engagement in service and thus depriving of their benefits as registered workers. Another reason for the recommendation is the pitiable and dangerous condition in which the workers are now forced to work exposing themselves to all kinds of injuries including death.

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THE KERALA COURT FEES & SUITS VALUATION (AMENDMENT) BILL

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BILL

further to amend the Kerala Court Fees and Suits Valuation Act, 1959.

Preamble.—WHEREAS it is expedient further to amend the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960) for the purposes hereinafter appearing;

Be it enacted in the fifty-ninth year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Court Fees and Suits Valuation (Amendment) Act,—

(2) It shall come into force at once.

2. *Amendment of Section 45 of the Act.*—In Section 45 of the Kerala Court Fees and Suits Valuation Act, 1963 (hereinafter referred to as the Principal Act) (10 of 1963), for the words and figures "section 14 of the Madras Survey and Boundaries Act, 1923, Section 13 of the Travancore Survey and Boundaries Act, 1094, or section 14 of the Cochin Survey Act, II of 1074", the words "Section 14 of the Kerala Survey and Boundaries Act, 1961 (37 of 1961)" shall be substituted.

3. *Insertion of Section 75A.* — After Section 75 of the Principal Act, the following section shall be inserted, namely:—

"75B. *Exemption from fees.*— The following persons shall be exempted from remitting fees under this Act, namely:—

(1) Persons Below Poverty Line

Explanation.—For the purpose of this section, the annual income limit for deciding the below poverty line category of persons shall be Rs. 12,000.

(2) Prisoners

(3) Persons suffering from mental illness or other grave diseases, certified by a registered medical practitioner of any system of medicine accepted by the Government."

4. *Amendment of Section 76.* — In Section 76 of the Principal Act, for the word "one percent", the words "two percent" shall be substituted.

5. *Amendment of Schedule I.* — In Schedule I of the Principal Act:

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The Kerala Court Fees and Suits Valuation (Amendment) Bill

(i) For the items (i) to (vi) of Article 1 under column (2) and the corresponding entries in column (3) thereof, the following items and entries shall be substituted, namely:—

(i) Does not exceed rupees ten million, for every one hundred rupees or part thereof three rupees

(ii) Exceeds rupees ten million, for every one hundred rupees, or part thereof, in excess of rupees ten million one rupee

(ii) For the entries under column (3) against Article 5, the following entries shall be substituted, namely:—

"Five rupees"

(iii) For the entries under column (3) against Article 6, the following entry shall be substituted, namely:—

"Hundred rupees"

(iv) For the entries under column (3) against Article 7, the following entry shall be substituted, namely:—

"Hundred rupees"

6. *Amendment of Schedule II.*—In Schedule II of the Principal Act for the entries under column (3) against item (iii) of clause 1 (l), the following entries shall be substituted, namely:—

"Twenty-five rupees per petitioner"

Statement of Objects and Reasons

Liability to pay court fee as a condition precedent for having access to courts in many cases creates undue hardship. In some cases at least, it may lead to denial of justice even. Though the indigent has a right to file a suit without paying the court obtaining permission from the Government the proceeding seeking such permission itself is a protracted one apart from time consuming. So it is in public interest to reduce the court fee and fix it minimally. The majority of the amendments suggested are to reduce the court fee payable under various articles in the schedules I & II. A unique and important amendment having great social relevance in State where people belonging to below poverty line group are millions and billions is recommended to incorporate a new provision exempting three categories of litigants namely:

Persons below the poverty line having annual income not more than Rs.12,000, prisoners, persons suffering from mental illness or other grave diseases certified by a registered medical practitioner.

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THE KERALA LAND REFORMS (AMENDMENT) BILL

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BILL

to put an end to the system of making reference under Section 125 (3) of the Kerala Land Reforms Act by the Civil Courts to the Land Tribunals which is found to be one of the main reasons for increasing the number of cases pending before the Land Tribunals and the Civil Courts,

Be it enacted in the Fifty-ninth year of the Republic.

1. *Short title and commencement of the Act.*—(1) This Act may be called the Kerala Land Reforms (Amendment) Act, —

(2) It shall come into force on such date as the Government may notify.

2. *Amendment of Section 125 of the Kerala Land Reforms Act.*— (1) Sub-sections (1) of Section 125 shall be amended as follows:

"No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government except any question regarding the rights of a tenant or a kudikidappukaran (including the question whether a person is a tenant or a kudikidappukaran)".

(2) Sub-sections 125 (3) to (7) shall be deleted and the the following provision may be added as sub-section (3) to (7).

(3) On and after the commencement of Kerala Land Reforms (Amendment) Act,— if in any suit or other proceeding any question regarding the rights of a tenant or kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappukaran) arises the Civil Court itself shall have jurisdiction to decide the same.

(4) All cases pending on the date of commencement of this Act, before any Land Tribunal as references made by the Civil Court shall stand transferred to the file of the respective Civil Court which has referred the cases to the Land Tribunal; to be disposed of in accordance with the provisions contained in Section 125 as amended by this Amending Act.

(5) On receipt of the files from the Land Tribunals the Civil Courts shall post the suits for hearing and disposal after ordering notice to the parties.

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(6) Notwithstanding the amendment of sub-section (1) of Section 125 and the deletion of sub-sections (3) to (7) of Section 125 of the Kerala Land Reforms Act, all the findings already recorded by the Land Tribunals in proceedings referred to it under Section 125 (1) and (3) of the Kerala Land Reforms Act would stand unaffected for all purposes as valid findings recorded under Section 125 (3) before its amendment.

(7) All actions validly taken by the parties to the proceedings and the Land Tribunals in proceedings referred to it and pending on the date of repeal of sub-section (3) of Section 125 of the Kerala Land Reforms Act would stand subject to the right of the Civil Court to examine the correctness of such actions and to interfere with them in appropriate cases after hearing the parties.

Statement of Objects and Reasons

In the decision reported in **Arulu** v. **Vellachy** (ILR 1994 (3) Kerala 460) and other earlier cases the High Court has sounded to the Government to consider the desirability of retaining the system of reference under Section 125 (3) of the K.L.R Act, 1963 any further since it has become a haven for contumacious litigants and indulgers in dilatory tactics. In a Division Bench decision reported in **Sundaran** v. **Mohammed Koya** (1995 (2) KLT 115) the court has requested the Government again "to consider whether suitable amendment can be made on Section 125 of the KLR Act." Now the High Court has in the recent decision rendered on 3-12-2007, specifically brought to the notice of the Kerala Law Reforms Commission by forwarding a copy of the judgment rendered by it in W.P. (C) No.27578/2005 (G) specifically pointing out the pathetic situation created by the existing system of making reference to the Land Tribunals under Section 125 (3) of the K.L.R Act and for the amendment of which the High Court has made several requests to the Government repeatedly through various judgments for the last 15 years and more. The Commission has examined the problem in all its aspects are and satisfied that the present system of reference to the Land Tribunal under Section 125 (3) need not be continued in the changed circumstances after the expiry of 45 years from the date of commencement of KLR Act and so Section 125 has to be amended suitably by conferring jurisdiction on the Civil Court to try and decide the issues referred to the Land Tribunal under Section 125 (3). Bill is intended to achieve this object.

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THE KERALA LOK AYUKTA (AMENDMENT) BILL

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BILL

to further amend the Kerala Lok Ayukta Act, 1999 (8 of 1999) for the purposes hereafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:

1. *Short title and commencement of the Act.*—(1) This Act may be called Kerala Lok Ayukta (Amendment) Act _____

(2) It shall come into effect at once.

2. *Amendment to the long title.* —In the long title to the Kerala Lok Ayukta Act, 1999 (8 of 1999) (hereinafter referred to as the principal Act), after the words "enquiries", the words "and adjudicate" shall be inserted.

3. *Amendment to the Preamble.*—In the preamble of the principal Act after the word "enquiries" the words "and adjudicate" shall be inserted.

4. *Amendment to Section 2.* —In sub item (D) of item (vii) of sub-section (o) of Section 2 of the principal Act, the words "and which is notified, in this behalf, in the Gazette" shall be deleted.

5. *Amendment to Section 3.* —In sub-section (1) of Section 3 of the principal Act, for the words "Lok Ayukta and two other persons" the words "Lok Ayukta and two persons as determined by the Government from time to time" shall be inserted.

6. *Amendment of Section 5.*—In sub-section (1) of Section 5 of the Principal Act, after the words "he enters upon his office" the words "or till he attains the age of 70 years which ever is earlier" shall be inserted.

7. *Special provision for the existing members.* —The existing members may continue in office for five years from the date on which they entered upon their office even if they attain the age of 70 years within that period.

8. After sub-section (3) of section 7 of the Principal Act the following sub-section shall be inserted, namely:—

"(3a) The Lok Ayukta and the Upa Lok Ayuktas shall have suo motu power to investigate any action:

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Provided, that before initiating suo motu investigation, the Lok Ayukta and all the Upa Lok Ayuktas shall conduct a preliminary enquiry jointly and in case a decision is taken unanimously it may proceed with the investigation. But if there is no unanimity in the decision, the proceedings initiated shall stand terminated."

9. *Amendment to Section 12.*—In Section 12 of the Principal Act.—

(i) the words 'report', 'recommend to', and "recommendations" wherever they occur shall be substituted by the words 'order' 'direct' and "directions" respectively;

(ii) Sub-section (2) shall be substituted by the following, namely:—

(2) "On receipt of an order under sub-section (1), the competent authority shall execute the order and send a report to the Lok Ayukta or Upa Lok Ayukta as the case may be to the effect that order has been fully executed or that it has not been possible to execute the order for the reasons stated in the report";

(iii) Sub-sections (4) and (5) shall be substituted by the following, namely:—

"(4) On receipt of an order under sub-section (3), the competent authority shall execute the order and send a report to that effect or if for any reason the order is not executed, stating reason for non-execution of the order.

(5) On receipt of the report from the competent authority under sub-section (2) or (4), the Lok Ayukta or Upa Lok Ayukta as the case may be shall issue an order closing the complaint in cases where the order has been executed. In cases where the competent authority reports that the order has not been executed, the Lok Ayukta or Upa Lok Ayukta may for reasons recorded in writing, without prejudice to the powers under Section 19 of the Act, pass appropriate orders against the persons who had knowingly resisted the execution, imposing punishment of a fine upto Rs. 20,000 or imprisonment for a period not exceeding 3 months and forward the same to any Judicial Magistrate of the Ist class to execute the order in accordance with law and forward a report to the Lok Ayukta or Upa Lok Ayukta";

(iv) Sub-section (7) shall be deleted.

(v) Sub-section (8) may be renumbered as sub-section (7).

Subject of Objects and Reasons

Amendments proposed to the Kerala Lok Ayukta Act is mainly intended to confer on Lok Ayukta and Upa Lok Ayuktas power to initiate proceedings under the act suo motu subject to certain conditions specified in the Act. As retired Chief Justices of the Supreme Court or the High Courts and the judges of the above courts are only to be appointed as Lok Ayuktas and Upa Lok Ayuktas, Commission is of the view that it is only reasonable and proper that they are given suo motu power to take up and investigate cases coming within the purview of the act with a view to remove mal-administration and corruption which are now considered as prevalent on a large scale in all spheres of administration. The other amendments are sought to be introduced is to confer jurisdiction for the Lok Ayukta and Upa Lok Ayuktas to pass orders and directions enforceable by themselves instead of issuing recommendatory reports to the competent authorities notified under the Act in their discretion.

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THE KERALA HIGH COURT (AMENDMENT) BILL

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BILL

to provide for more effective enforcement and execution of the writs, directions or orders inclusive of orders and directions for payment of monies by way of costs or otherwise, issued by the High Court while exercising powers under Articles 226 and 227 of the Constitution of India.

WHEREAS at present, failure to comply with the writs, directions or orders issued by the High Court while exercising powers under Articles 226 and 227 are sought to be redressed mainly by instituting applications to initiate proceedings under the Contempt of Courts Act, in the High Court itself, and

WHEREAS it is expedient to provide further modes of enforcement of writs, directions and orders, deeming them to be decrees for execution through Civil Courts;

BE it enacted in the Fifty ninth Year of the Republic.

1. *Short title, extent and commencement.*—(i) This Act may be called the Kerala High Court (Amendment) Act.

(ii) It shall extent to the whole of the State.

(iii) It shall come into force on such date as the Government may notify in the official Gazette.

2. After Section 8 of the Kerala High Court Act 1958, the following Section may be incorporated as Section 8A:

"8A. (1) Notwithstanding anything, contained in any other law for the time being in force or any instrument having effect by virtue of any such law, or decisions of any court; any writ, direction or order issued by the High Court shall be deemed to be a decree passed by a civil court, to be executable as such through the District Court within whose jurisdiction either all or any of the parties to it resides:

Provided that the provisions of this section shall be in addition to and not in derogation of the rights of the holder of such writ, direction or order to have recourse to the provisions of any other law for the time being in force, for its enforcement and execution and to complain of neglect or disobedience, either willful or otherwise, of the authority of Court.

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(2) The result of any execution as aforesaid shall be intimated to the High Court by the Court executing such decree."

Statement of Objects and Reasons

At present, the only method by which a judgment of the High Court rendered in a writ petition under Article 226 and 227 of the Constitution of India is enforced is by filing petition under the contempt of Courts Act in the High Court itself to punish the violator of the judgment. The present amendment is to treat the decision in such cases as a decree passed by a Civil Court and executable through the District Court within whose jurisdiction either all or any of the parties reside. The present amendment will help the litigants to obtain quick and in expansion remedy to redress their grievances.

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THE KERALA PRESERVATION OF TREES (AMENDMENT) BILL, 2008

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BILL

to amend the Kerala Preservation of Trees Act, 1986.

Preamble.—WHEREAS it is expedient to amend the Kerala Preservation of Trees Act, 1986 (35 of 1986) for the purposes hereinafter appearing;

1. *Short title and Commencement.*—(1) This Act may be called the Kerala Preservation of Trees (Amendment) Act, —

(2) It shall come into force at once.

2. *Amendment of Preamble.*—In the Kerala Preservation of Trees Act, 1986 (hereinafter referred to "the principal Act") after the existing preamble, the following shall be added namely:—

"AND WHEREAS Article 48A of the Constitution of India provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country;

AND WHEREAS Article 51A promotes as a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures";

3. *Amendment of Section* 2.—In section 3 of the principal Act, the following shall be added to clause (e) after the words "Cheeni (tetramiles nudiflora), namely:—

"(e) Bamboo and medicinal plants and other ornamental or other useful plants".

4. *Amendment of Section 6.*—In section 6 after sub-section (2) the following may be added as sub-section (3).

"(3) The authorized officer shall before granting permission for cutting any tree or trees take an undertaking from the owner of the tree or land where it stands that he will plant any two trees chosen from the list of trees mentioned in Section 2 (e) of the Act in the same land or in any other land owned by him with in a specified period not exceeding one month from the date of cutting."

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5. *Amendment of Section 9.*—(1) Section 9 of the principal Act shall be numbered as sub-section (1) of that section and after sub-section (1) so numbered, the following provision shall be inserted as sub-section (2).

"(2) In cases any tree or substantial portions of a tree is cut by any person, the authorized officer and any other functionary who is to any extent responsible for protection of such tree shall be punishable with a fine which may extend to Rs. Ten thousand:

Provided that such officer shall not be liable for punishment if it is proved that the tree or substantial portions of the tree was cut without his knowledge or that he had exercised all due diligence to prevent the cutting of the tree or portions thereof he has other just grounds to be excused.

(3) Any person who willfully buys the tree cut shall also be liable for punishment for an amount which may extend to Rs. Ten Thousand".

Statement of Objects and Reasons

In split of the enactment of the Kerala Preservation of Trees Act, 1986 with the avoided object of preserving the trees, cutting of trees is taking place on a large scale and no effort is made to plant fresh trees to maintain the ecological balance. Cutting of trees without an objection to plant fresh trees is liable to be trated as an offence. In this view it is thought expedient to in corporate suitable provisions in the Act to permit cutting of trees only subject to the condition of planting two fresh trees for a tree permitted to be cut under the Act. A new provision is also sought to be incorporated in the Act to punish the officers who are found responsible for allowing trees to be cut illegally without taking permits. Further purchasing of trees cut illegally is also made a punishable offence as per the provisions newly added. Thus the main object and reasons for amendment is the need for making the parent enactment more effective.

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THE KERALA ABKARI WORKERS' WELFARE FUND (AMENDMENT) BILL

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BILL

further to amend the Kerala Abkari Workers' Welfare Fund Act, 1989 for the purposes hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Abkari Workers' Welfare Fund (Amendment) Act —

(2) It shall come into force at once.

2. *Insertion of Section 3A.*—After Section 3 of the Abkari Workers' Welfare Fund Act, 1989, the following section shall be inserted, namely:—

"3A. *Publication of the list of members of the Abkari Workers.*—(1) The Chief Executive of the Board shall maintain a register of workers enrolled as members of the Welfare Fund showing the name of their employer.

(2) The Chief Welfare Fund Inspector of the Board shall publish a list of members on the first day of January of every year in the notice board of his office and in all other subordinate offices for general information and for filing objections if any to the list.

(3) Any objection to the list published may be filed within thirty days from the date of publication of the list to Chief Welfare Fund Inspector of the Board.

(4) The Chief Welfare Fund Inspector of the Board shall place all the objections before the Chairman of the Board.

(5) The Chairman shall consider the objections and take a decision after affording an opportunity to the affected parties and correct the list according to the decision.

(6) If the Chairman on enquiry finds that the inclusion of any name in the list or omission to include any name in the list is intentional, the Chairman shall place the matter before the Board for appropriate action against the Chief Welfare Fund Inspector.

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(7) The Board may after affording an opportunity to be heard the Chief Welfare Fund Inspector may "impose" fine not exceeding ten thousand rupees on him.

(8) In case the Chief Welfare Fund Inspector is aggrieved by the decision of the Board, he may file appeal to the Government against the decision.

(9) The Government may after giving an opportunity to the Chief Welfare Fund Inspector and to the Board take a decision, which shall be final."

Statement of Objects and Reasons

The object of the bill is to recommend incorporation of necessary provisions in the parent Act to put an end to the mal-practice perpetrated by the employers of the workers coming within the purview of the Act in not registering his workers in time before the welfare fund authorities and thus denying the workers from getting their legitimate benefits from the fund and to benefit themselves by such omissions. The Chief Welfare Fund Inspector is made responsible for maintaining a list of employees engaged by all employers and to publish such list in the office as well as in all the offices functioning under him in the month of January every year so that every worker may know whether his employer has registered his name with the authority or not and to object to the omission in registration of his name and to get it corrected in time. The employer who fails to get the employee registered is liable to be punished with a fine of Rs.1,000 each violation.

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THE KERALA PANCHAYAT RAJ (AMENDMENT) BILL

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BILL

to amend the Kerala Panchayat Raj Act, 1994 for the purposes hereinafter appearing;

Preamble.—WHEREAS it is expedient further to amend the Kerala Panchayat Raj Act, 1994 (13 of 1994) for the purposes hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title and commentcemnt of the Act.*—(1) This Act may be called the Kerala Panchayat Raj (Amendment) Act —

(2) It shall come into force at once.

2. *Amendment of Section 1.*—In section 1 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) (hereinafter referred to as the principal Act) for sub-section (2), the following sub-section shall be substituted, namely:—

"It extends to the whole of the State of Kerala except the areas which are within the limits of the Cantonment, Nagar Panchayats, Municipal Councils, Municipal Corporations notified industrial areas of the State to the extent specifically exempted from the operation of this Act.

Explanation.—It is hereby clarified that the provisions of this Act will apply to the industrial areas as defined under any law of the State and would be governed by the provisions of this Act."

3. *Amendment to Section 21.*—In Section 21 of the principal Act, after sub-section (2), the following explanation shall be added, namely:—

"*Explanation.*—A person who is detained as an undertrial prisoner in a jail or in custody of police or any other agency or as an inpatient in any hospital shall be considered as a person absenting himself temporarily from his residence."

4. *Amendment to Section 76.*—In Section 76 of the principal Act, in sub-section (5), for the words "or otherwise or in the lawful custody of the Police", the words "for a period more than one year or for an offence involving moral turpitude" shall be substituted.

5. *Amendment to Schedule* 3.—In Schedule 3 (A) Mandatory Provisions.— after entry 26 the following may be added as entry 26A and 26B.

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"26A. Prohibition of manufacture, sale and use of Alcohol or any other substance containing Alcohol, Panmasala, Narcotic Drugs and Psychotropic substances within the entire area coming within the jurisdiction of the Panchayat or any particular Ward or any other specified area of the Panchayat.

26B. Issuance and cancellation of Licence for sale, manufacture and use of Alcohol or any substance containing Alcohol, Panmasala and Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances subject to such conditions as the Panchayat Committee decides."

Objects and Reasons for the Amendment

In prisons there may be number of persons detained as under trial prisoners. Similarly there may be persons detained in the custody of police or other agencies but who have not been convicted of any offence. Such persons may be persons enrolled as voters entitled to vote in the wards in which they have been residing ordinarily. So long as they are not convicted of any offence by any competent court, the presumption of law is that they are innocent of the offence or offences charged against them.

That apart, persons in the custody of police or other agencies even before framing charge sheet cannot be treated even as persons accused of any offence. As far as the above two categories of persons are concerned if they are voters enrolled in the electoral rolls in any of the wards they should be treated as voters qualified to vote in that ward.

In the circumstances, unless it is made clear that such persons living in jails and police custody shall be deemed to be residents of the locality from where they were removed and put in jail or in the custody of police or other agencies; there may be difficulties for them to exercise their right to vote at the elections in the constituency where they were residing originally. They may not also be entitled to vote in the constituency where they are living in jails or in the custody of police or other agencies at the time of election in view of clause (4) of Sec. 21.

The undertrial prisoners and persons in custody are now disqualified from voting at election by the provision in sub-section (5) of Sec.76. So long as such persons are not convicted of any offence by a competent court, it may be illegal and unconstitutional to disqualify them for voting and thus deny them of their right to vote. Schedule 3 is amending for preventing the manufacture, sale and use of Alcohol, or any other substance containing Alcohol, Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances within the whole or any particular area of the jurisdiction of the Panchayat or any particular ward of the Panchayat. Power to issue licence for manufacture, sale and use and cancellation of such licence is also being given to the Panchayat as part of the process of decentralization.

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KERALA HIGHWAY PROTECTION (AMENDMENT) BILL

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BILL

to amend the Kerala Highway Protection Act, 1999.

Preamble.—WHEREAS it is expedient to amend the Highway Protection Act, 1999 for the purpose hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title and Commencement.*—(1) This Act may be called the Kerala Highway Protection (Amendment) Act, —.

(2) It shall come in to force at once.

2. *Amendment of Section 2.*—In Section 2 of the Kerala Highway Protection Act, 1999 (6 of 2000) (hereinafter referred as the Principal Act),—

(i) For clause (c), the following clause shall be substituted, namely:—

"(c) 'Building line' the stretch of 35 meters of land from the central line of the National Highways, 20 meters from the State Highways and 15 meters from the District roads";

(ii) For clause (e), the following clause shall be substituted, namely:—

(e) "control line" means the stretch of 45 meters of land from the control line of the National Highways, 25 meters from the State Highways and 20 meters from the District road."

3. *Substitution of Section 18.*—Section 18 of the Principal Act shall be substituted with the following namely,—

"18. *Publication of building line and control line.*—The distance of the building line and control line of different categories of roads shall be published by the competent authority in the Gazette for information of the public."

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Kerala Highway Protection (Amendment) Bill

Statement of Objects and Reasons

Vacant spaces adjacent to National Highways, State Highways and District roads need to be protected from encroachment by powerful elements for construction of buildings and other structures prevented for providing smooth traffic with provision for future expansion of roads. The distance from the roads to the buildings assumes great importance. This amendment seeks to achieve the above said purpose.

THE KERALA EDUCATION ACT (AMENDMENT) BILL

To ensure a fair, just and unified method of selection of teachers in educational institutions it is necessary to confer power of selection of teachers in Educational Institutions coming within the purview of the Education Act to Public Service Commission.

BE it enacted by Kerala State Legislative Assembly in the Fifty ninth year of the Republic of India as follows:—

1. This Act may be called The Kerala Education (Amendment) Act —.

2. Amendment of Sec. 11 of the Kerala Education Act, 1958.

In the place of Section 11 of the Education Act the following provision shall be substituted.

"11. *Appointment of teachers in Government and Aided Schools.*— (1) The Public Service Commission shall, as empowered by this Act, select candidates for appointment as teachers in Government and aided schools, before the 31st May of each year. The Public Service Commission shall select candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year. The candidates shall be selected for each district separately and the list of candidates so selected shall be published in the Gazette. Teachers of aided schools shall be appointed by the manager only from the candidates so selected for the district in which the school is located; provided that the manager may, for sufficient reason, with the permission of the Public Service Commission, appoint teachers selected for any other District. Appointment of teachers in Government schools shall also be made from the list of candidates so published.

(2) In selecting candidates under sub-section (1), the Public Service Commission shall have regard to the provisions made by the Government under clause (4) of Article 16 of the Constitution."

Statement of Objects and Reasons

Articles 14 & 16 of the Constitution guarantee equality of opportunity in matters of employment by the State and State aided institutions. While selections to the Government service are made by the Kerala Public Service Commission, selections to the aided educational institutions are made by the Managers of such institutions. There have been several instances of malpractices in making appointments in such institutions. In order to ensure fairness and eliminate arbitrary action on the part of the Managements, the Bill seeks to entrust selections of teachers with the Kerala Public Service Commission.

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THE KERALA PROTECTION OF RIVER BANKS AND REGULATION OF REMOVAL OF SAND (AMENDMENT) BILL

The present Act is intended to protect River ecology but the Act needs new provisions for effectively implementing it as a whole so that the avowed object sought to be achieved by the Act can be realized in a more satisfactory and speedy manner.

BE it enacted in the fifty ninth year of the Republic of India.

1. *Short title and commencement of the Act.*—(1) This Act may be called the Protection of River Banks and Regulation of Removal of Sand (Amendment) Act——

(2) It shall come into force on such date as the Government may notify in the Gazette.

2. *Amendment to Section 9.*—(1) The existing provision may be numbered as sub-section (1) of that section and the following may be added as sub-sections (2), (3) and (4).

"(2) The District Expert Committee shall not allow sand mining from any Kadavu unless the condition specified in Section 12 of the Act are capable of implementation and actually implemented also.

(3) No quantity of sand shall be allowed to be mined in excess of the quantity fixed by the Centre for Earth Science Studies or Centre for Water Resources Development and Management.

(4) If any local authority fails to obtain any expert body report as contemplated by Section 9 (1) (b) of the Act for the concerned period, no sanction shall be allowed for mining of the sand from the Kadavu concerned by the centrally Empowered Committee."

3. *Amendment to Section 12 of the Act.*—In sub-section (5) of Section 12 instead of the figures and words "500 meters" the figure and words "1 k.m.." may be substituted. Further the following Explanation may also be added to the sub-section.

"*Explanation.*—The term 'Irrigation Project' shall have the same meaning as in the Travancore Cochin Irrigation Act, 1956."

4. *Amendment to Section 15 of the Act.*—After sub-section (4) of Section 15 the following sub-sections may be added as sub-sections (5), (6) and (7).

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"(5) All places other than the places where the Kadavus are permitted, should be closed by putting up chains or pillers so as to ensure that no vehicles are taken to River Banks and illegal mining and removal of sand are allowed to be carried on.

(6) The area from where sand is permitted to be mined shall be demarcated by visible marks.

(7) All boats and such other conveyances used for mining shall be given a separate identity number and only such boats and conveyances shall be allowed to be used for removal of sands from the mines."

5. *Addition of two new sections as section 17 A and Section 17B after Section 17 of the Act.*—After Section 17 of the Act the following sections may be added:

"17 A. *Constitution of River Management Authority.*—(1) There shall be a River Management Authority for the protection of the River ecology and to regulate the uncontrolled mining of sand from the rivers in Kerala."

(2) The River Management Authority shall be headed by a chairman and two other members. The chairman shall be a person who is capable of understanding the River ecology and environment, preferably a retired High Court Judge. The other two members shall be environmental experts who are well versed in River ecology and environment.

(3) The River Management Authority shall take appropriate decisions at the appropriate time to protect the rivers in Kerala.

(4) The River Management Authority is empowered to overrule any decision taken under Section 13 or Section 30 of the Act.

(5) No Court shall entertain any suit or other proceeding in respect of any decision taken by the River Management Authority and the decision by them shall be final and binding.

(6) The River Management Authority shall be the custodian of the River Management Fund and shall utilize such fund for the protection of the Rivers and the river ecology.

17B. *Prohibition of Construction Activities.*—(1) No person shall be allowed to make any construction within 100 meters from the River boundaries:

Provided that if the construction is intended for the protection of the River or the adjoining property, such construction can be carried out after obtaining written permission from the River Management Authority.

6. *Amendment to Section 23 of the Act.*—Section 23 may be substituted with the following side heading and provision of law:—

"23. *Prohibition of the transport of illegally extracted sand.*—(1) No Vehicle shall be used to carry or transport any sand without valid passes given for the extraction of sand by the competent authority.

(2) Any Police officer not below the rank of a Sub Inspector is authorized to seize the vehicle which is found to carry any illegally mined sand.

(3) As soon as the vehicle is seized, the same shall be reported to the nearest Magistrate. The vehicle shall be kept under safe custody of the concerned police station.

(4) The concerned Magistrate shall pass appropriate orders summarily either releasing the vehicle on furnishing of security or pass appropriate orders for the confiscation of the vehicle, if it is found that such vehicle has indulged in transporting illegally mined sand.

(5) If any person is found carrying sand without any valid passes in contravention of sub-section (1) above, the owner of the vehicle shall be equally liable as if he has committed the offence.

(6) The driver and the owner involved in the offence as stated above, shall be liable to punishment of imprisonment upto one year or fine upto three lakhs of Rupees. This will be in addition to the confiscation of the vehicle involved in the case."

7. Add a new provision as 45B in the Water (Prevention and Control of Pollution) Act, 1974.

45B. *Offender must pay damages for the losses suffered.*—Whoever commits any act or omission in contravention of any of the provisions in this Act shall be liable to compensate the losses suffered by any person as a direct consequence of such act or omission.

Such persons affected may apply for damages for losses suffered by them before the authority constituted by the Board as per rules and in the manner and within the time prescribed by rules. The authority may after hearing both sides and following a fair and just procedure determine the losses caused if the claim is established and pass an award.

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Such awards shall be treated as a decree passed by the Civil Court and can be executed applying the procedure under the Revenue Recovery Act.

Any person aggrieved by such award may prefer an appeal before the District Court within whose jurisdiction the violation has taken place and the decree passed in the appeal shall be final and binding on both parties."

Statement of Objects and Reasons

Prevention of indiscriminate mining of sand from rivers has become necessary in Kerala State in view of the large scale illegal mining operations being carried on in the rivers. A strict law in this regard is a felt necessity not merely to prevent illegal sand mining but also to preserve the rivers and punish the offenders. Hence the Commission feels that an amendment of the existing enactments is necessary. Rivers should be dealt with as national assets and utilized for national good under the direct control of technocrats. The Bill contemplates the Constitution of a River Management Authority. Offenders are also sought to be made liable for damages for the losses suffered by contravention of the provisions of the Act. The Bill seeks to achieve the above objects.

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THE INDIAN PENAL CODE (KERALA) AMENDMENT BILL

A

BILL

to delete Section 309 of the Indian Penal Code, to accord legal sanction for Euthanasia thereby eliminating the culpability of this manner of deprivation of life from the scope of homicide under Section 300 of Indian Penal Code and for the purposes hereinafter appearing:—

Be it enacted in the Fifty Ninth Year of the Republic of India.

1. *Short title, extend and commencement of the Act.*—(i) This Act may be called the Indian Penal Code (Kerala) Amendment Act—

(ii) It shall extend to the whole of the State.

(iii) It shall come into effect on such date as the State Government may notify in the Gazette after obtaining the assent of the President of India.

2. *Definition.*— For the purpose of this Act.

"Euthanasia" means and includes deprivation of life by oneself or by any other person at the instance of the person whose life is lost or by any medical practitioner doing any act or omission resulting in the termination of life."

3. *Deletion of Section 309 of the Indian Penal Code.*—Notwithstanding anything contained in the Indian Penal Code, Section 309 thereof shall stand repealed and any attempt to commit suicide shall not be an offence:

Provided that any action or omission amounting to attempt at commission of suicide or any abetment thereof shall be punishable as an attempt to commit murder if it is proved that the act, omission or abetment thereof was done frivolously, vindictively or for socially vicious purposes.

4. *Recognition of the Act of Euthanasia.*—Notwithstanding anything contained in the Indian Penal Code, no person shall be guilty of murder or other form of homicide or attempt to commit such offence if the life of the person is extinguished by way of euthanasia as defined in this Act.

No euthanasia shall be legal or be considered less than homicide if before the commission or omission referred to above takes place without the written sanction of the 3 Doctors recognized by the State as entitled to medical practice, certify in writing that the case of the patient who is to be subjected to euthanasia is a fit case where, all things considered, death is the only salvation and preservation of life would be medically impossible and visited with insufferable pain physical or mental.

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The Indian Penal Code (Kerala) Amendment Bill

5. *Amendment to Section 354.*—In Section 354 for the words "to two years" the words "to five years" shall be substituted.

6. *Addition of a new Chapter and a new Section 498B.*—After Chapter XXA, add a new chapter as Chapter XXB with the name 'of offences relating to Cyber Crimes" and add Section 498B in the said Chapter.

"CHAPTER XXB

OF OFFENCES RELATING TO CYBER CRIMES

498B *Cyber crimes and punitive action.*—(a) Every violation of the regulations and obligations provided for in the Information Technology Act shall be an offence punishable with not more than three years imprisonment or Rs.10,000 fine or both.

(b) Every abetment of the aforesaid offence shall carry a similar sentence.

(c) The offence under this Section shall be cognizable and non-bailable."

Statement of Objects and Reasons

Every Indian citizen has a guaranteed right to life under the Constitution. The right to life is not a formal declaration or ritual proclamation, but a fundamental right of paramount significance. The Supreme Court and eminent jurists have explained and expanded the dimensions of this substantive right. The right to life has many solemn facets. The right to live in dignity, to live in good health, to secure on reasonable terms, the right to be given medical aid and relief from distress and disability and more than that the right to endurable existence free from escalating pain and poignant sufferings which in its intensity frustrates freedom of survival. Life has a positive dimension which is the basis for the longing to live. The negation of freedom of this liberty by infliction of intolerable torture, poignant pain and dreadful anguish extinguishes the desire to live, mars the meaning of mental, moral and physical continuance. Such an unbearable degree of torment overwhelmingly commands the deprivation of life as a desideratum, frustrates the right to life itself and out of this grievous state of situation, a mood of exasperation justly mandates the view that life is void of value and every moment of its furtherance is an unjustified terror. The innocence of a human being should not be subjected to all that stage. The victim of suffering and his closest relatives after taking responsible medical opinion about the irrecoverability of pain-free normality creates the right to euthanasia. Solace, compassion, justice and humanism make euthanasia a legally permissible farewell to life in its misery and desperation.

The Indian Penal Code (Kerala) Amendment Bill

The Indian Penal Code of Victorian Vintage was enacted and drafted by McCauley, a great jurist limited by fossil vision which today has ceased to be humanity's spiritual and temporal norm. Necessarily, law must change when social philosophy changes. It is in this context that two basic Penal mutations have become necessary. (A) By way of abolition of the offence of attempt to commit suicide under certain circumstances and (B) by recognizing the claim to extinguish the right to life in its irrecoverably extreme stage.

The present bill serves the above twin purposes of abolition of Section 309 of IPC which creates an offence of attempt to commit suicide and the grant of legal sanction for euthanasia thereby eliminating the culpability of this manner of deprivation of life from the scope of murder under Section 300 IPC or otherwise under Indian Penal Code.

There is no adequate provision in the Indian Penal Code which effectively commensurate the gravity of sexual assault made on women and children by the opposite sex. The evil can be curbed to a certain extent at least by effecting amendment to the sentence for the offence suitably. The Constitution emphasizes the need to protect women and children by enacting adequate laws and provision has been added in the Bill to achieve the above object also.

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34/420/2008—170a

THE CRIMINAL PROCEDURE CODE (KERALA) AMENDMENT BILL

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BILL

to amend Section 378 of the Criminal Procedure Code to avoid duplication of the procedure firstly seeking leave to appeal against an order of acquittal before the High Court and again for posting the case for admission. This is actually duplication of the procedure.

Be it enacted in the Fifty-ninth year of the Republic of India

1. *Short Title and Commencement.*—(1) This act may be called the Code of Criminal Procedure (Kerala) Amendment Act,—

(2) It shall extend to the whole of Kerala.

(3) It shall come into force on such date as the State Government may notify in the Gazette after obtaining the assent of the President of India.

2. *Amendment of Section 378.*—After Section 378 (6) the following may be inserted as sub-section (7).

"(7) If leave is granted under sub-section (3) of the Act the appeal memorandum shall be entertained in the Registry and notice shall be issued as soon as it is received."

Statement of objects and reasons

This Act is intended to make an amendment to Section 378 of the Criminal Prodedure Code to avoid duplication of the procedure in posting the appeal for hearing after bear is granted court to file and appeal against an order of acquittal.

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THE KERALA PROHIBITION OF RAGGING (AMENDMENT) BILL

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BILL

to amend the Kerala Prohibition of Ragging Act, 1998.

Preamble.—WHEREAS, it is expedient to amend the Kerala Prohibition of Ragging Act, 1998 (10 of 1998) for the purposes is hereinafter appearing;

BE it enacted in the Fifty-ninth Year of the Republic of India.

1. *Short title and commencement.*—(1) This Act may be called the Kerala Prohibition of Ragging (Amendment) Act,—

(2) It shall come into force at once.

2. *Amendment of section 2.*—In Section 2 of the Kerala Prohibition of Ragging Act, 1998 (10 of 1998) (hereinafter referred to as the 'principal Act'), after item (ii) of clause (b) of Section 2, the following items shall be inserted, namely:—

"by any act with voluptuous implications which upsets the mental condition of a student; or"

3. *Amendment to Section 3.*—To Section 3 of the Principal Act, the following explanation shall be added, namely:—

"*Explanation.*—For the purposes of this section, educational institution shall mean and include,—

(i) Any educational institution by whatever name called whether or not maintained and managed by the State Government;

(ii) The premises or the campus of the educational institutions; or

(iii) The hall, that is to say, the unit of residence for students maintained by the educational institutions; if any,

(iv) The hostel that is to say, the unit of residence for students if any not maintained by the educational institutions but recognized under any law for the time being in force; and

(v) Private lodges mainly occupied by the students of any one or more educational institutions."

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4. *Addition of new Sections.*—After Section 3 of the Principal Act the following Sections may be added as Section 3A, 3B and 3C.

"3A. *Constitution of Anti Ragging Committee.*—(1) The head of each institution shall constitute an Anti Ragging Committee consisting of the following members among others as chosen by him if found necessary.

(a) Two representatives elected by the faculty members of the institution among themselves.

(b) Two representatives each of students belonging to fresher's category as well as the senior's of the institution.

(c) Two representatives elected by the non teaching staff of the institution from among themselves.

(d) If the institution in situated in a Panchayat two members of the Panchayat nominated by the President of the Panchayat.

(e) If the institution is situated in a municipality or corporation two councilors nominated by the Chairperson of the Municipality or Corporation.

(f) A police officer not below the rank of Sub Inspector nominated by the Circle Inspector within whose jurisdiction the institution is situated.

(g) One representative each of the visual and other Medias chosen by the head of the institution.

(h) Two representatives of non governmental organizations involved in youth activities chosen by the head of the institution.

(2) The head of the institution shall constitute and notify the names of the members of the Anti Ragging Committee in every academic year as early as possible at any rate before admission commences.

(3) The Committee newly constituted or reconstituted shall meet at least once before the commencement of admission each year and shall meet as frequently as required and chalk out necessary plan of action to prevent ragging activities sufficiently early.

(4) The Head of the institution shall send half yearly or annual reports to the District Level Committee constituted under Section 3B regarding the functioning of anti ragging committee in the institution concerned.

3B. *Constitution of Anti Ragging Committee at District Level.*—(1) The District Collector of each district shall constitute an anti ragging committee for the district consisting of the following members among others with himself as the President.

(a) The heads of all higher educational institutions in the District.

(b) Superintendent of the Police of the District concerned.

(2) The district level committee shall be constituted or reconstituted for every year before or during the summer vacation and shall hold preparatory meetings before the reopening of the institution after summer vacation. During the meetings of the Committee it shall be the duty of the Committee to take stalk of the preparedness of each institution and its compliance with the Policies and directions or guidelines issued by the appropriate authorities like the university and other State and Central Authorities including the Supreme Court of India.

3C. *Joint sensitization programmes and counseling courses.*—The District level Anti Ragging committees shall frame and implement joint sensitization programmes and Counseling courses at all educational institution at the Commencement of each academic year.

Statement of Objects and Reasons

The object of the Bill is to make the existing Act more rigorous by incorporating further provisions to control the evil practice of ragging in educational institutions defined very widely in the Bill. By Section 3 of the Kerala Prohibition of Ragging Act, ragging is prohibited in educational institutions. But there is no definition of the word educational institutions in the present Act. Ragging takes place mainly in hostels or in the premises of the colleges and hostels. Hence it is expedient to add an explanation to Section 3 which defines educational institutions in an inclusive manner taking in the premises of the colleges, hostels and its premises. Further Commission is of the view that it is necessary to expand the definition of the word ragging contained in this Act by including the doing of any act with exotic implications as an act of ragging.

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34/420/2008—172

THE KERALA GOVERNMENT LAND ASSIGNMENT (AMENDMENT) BILL

A

BILL

to amend The Kerala Government Land Assignment Act, 1960.

Preamble.—State is the trustee of the natural resources which are by nature meant for public use and enjoyment. The public at large are the beneficiary of the sea-shores, running waters, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Therefore these lands cannot be assigned. This amendment is intended to achieve the above purpose.

BE it enacted in the Fifty Ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called The Kerala Government Land Assignment (Amendment) Act,—

(2) It shall come into force on such date as may be notified by the Government in the Gazette.

2. *Amendment of Section 3.*—In Section 3 after sub-section (2) the following may be added as sub-section (3).

"(3) No part of public road, streets, lanes and paths, bridges, ditches, culverts, dykes and fences, the bed of sea and of harbours, and creek below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, back-waters, and water courses shall be assigned to any person by virtue of the powers confirmed under sub-section 1 of Section 3."

Statement of objects and reasons

Public Trust doctrine has been declared as part of the Indian legal system by the Supreme Court of India as per the decision in M.C.Mehta v. Kamal Nath, (1997)1 SCC 388. In order to give effect to the law laid down in the said judgment this amendment to the Kerala Government Land Assignment Act, 1960 is proposed to prohibit assignment of any part of the public road, adjacent lands, river banks, water-courses, lands adjacent to the sea etc., which are vested in the Government/local authorities. This Bill seeks to achieve the said purpose.

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34/420/2008—172a

THE INDIAN REGISTRATION ACT (KERALA AMENDMENT) BILL, 2008

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BILL

As the provisions in Section 294 of the Indian Succession Act, 1925 has been amended by Indian Succession (Kerala Amendment) Act, 2008 by treating all the offices of District Registrars as Public Registry of wills it has become necessary to amend same of the provisions of the Indian Registration Act and for that purpose.

Be it enacted in the Fifty ninth year of the Republic of India,

1. *Short title, extent and commencement.*—(1) This Act may be called Indian Registration (Kerala Amendment) Act, —

(2) It extends to the whole of State of Kerala.

(3) It shall come into force at once.

2. *Amendment Section 66 of the Indian Registration Act hereinafter referred to as the Parent Act.*—(1) In Sub-Section 1 of Section 66 of the Parent Act after the word 'immovable property' the following words and phrases may be inserted "or a copy of the probate or letters of Administration together with the original Will" and after the word 'memorandum of such document' the following words and phrases may be added "a copy of the probate or letter of administration together with the copy of the original will received by him shall be added".

3. *Amendment of Section 89 of the Parent Act.*—In Section 89 of the Parent Act before the existing Sub-Section (2) insert the following Sub-Section as Sub-Section 1A.—Every District Judge, or District Delegate shall send a copy of the probate or letter of administration with the original will to the Registrar of the District and such officer shall file the same in his Book 1, irrespective of whether it relates to immovable property or not.

4. *After Section 89 A the following Section shall be inserted as Section 89 B* —"89B. Power to make Regulations for the preservation and inspection of wills and connected documents forwarded under Section 294 of the Indian Succession Act, 1925.

(1) The State Government may make Regulations for all purpose connected with the filing of true copies of probates and letters of Administration in Book 1.

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(2) In particular and without prejudice to the generality of the foregoing power, such Regulations may provide for:—

(a) the manner in which true copies and extra copies to other Registrars shall be prepared and forwarded.

(b) the manner of filing of such copies and wills.

(c) the manner in which extra copies and Memoranda shall be sent.

(d) generally regulating the proceedings of the Registrars and Sub Registrars.

(3) All the Regulations made under this Section shall be published in the Official Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(4) Every Regulations made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the regulations or decides that the Regulations should not be made, the regulations shall thereafter have effect only in such modified form or be of no effect, as the case may be: so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Regulation.

Statement of Objects and Reasons

Section 294 of the Indian Succession Act, 1925, enjoins that a public Registry of wills shall be established and Regulations shall be made for the preservation and inspection of the wills filed by the District Judges and District Delegates. Office of the Registrar of the District is considered as the appropriate office of Registry for preserving the wills. As such by the Indian Succession (Kerala Amendment) Act Section 294 of the succession Act has been amended constituting all offices of the District Registrars as public Registry of wills. Since the wills are operative from the date of death of the testator, those wills are to be deemed as non-testamentary Title deeds and hence it is proper to file them in Book 1, even though it does not relate to immovable property, so that the public can inspect the same in the light of Section 57 (1) of the Registration Act, 1908, either at the office of the Registrar or Sub Registrar through the procedure prescribed in section 66 of the Registration Act, 1908. Hence this Bill.

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THE KERALA MUNICIPALITIES (AMENDMENT) BILL, 2008

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BILL

further to amend the Kerala Municipalities Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipalities Act, 1994 (20 of 1994) for the purposes hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title and commencement of the Act.*—(1) This Act may be called the Kerala Municipalities (Amendment) Act—

(2) It shall come into force at once.

2. *Amendment to Section 77.*—In Section 77 of the Kerala Municipalities Act, 1994 (hereinafter referred to as the Principal Act), after sub-section (2) the following explanation shall be added, namely:—

"*Explanation.*—a person who is detained as an under trial prisoner in a jail or is in the custody of police or any other agency or as an inpatient in any hospital shall be considered as a person absenting himself temporarily from his place of residence."

3. *Amendment of Section 132.*—In Section 132 of the Principal Act, in sub-section (5), for the words "or otherwise, or is in the lawful custody of the Police", the words "for a period more than one year or for an offence involving moral turptitude" shall be substituted.

4. *Amendment of Section 320.*—The existing Section 320 of the Principal Act shall be numbered as sub-section (1) and after the sub-section so numbered, the following sub-sections shall be inserted, namely:—

"(2) Ward Committees or Ward Sabhas may take decisions for the establishment of public latrines and recommend to the council for implementation.

(3) The Ward Committee or Ward Sabhas shall consider if representation signed by more than 25 persons for the establishment of public latrines is received and take decisions on merits with in a maximum period of three months.

(4) The Council shall on receipt of recommendations from the Ward Committee or Ward Sabha for the establishment of public latrines, the Council shall establish the same as early as possible as but not later than six months."

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5. *Amendment of Section 327.*—In Section 327 of the Principal Act, to sub-section (2A), the following proviso shall be added, namely:—

"Provided that plastic waste shall be segregated from other waste."

6. *Amendment of Section 331.*—In Section 331 of the Principal Act, to sub-section (3), the following shall be added, namely:—

"and for the generation of electricity and biogas"

7. *Amendment of Section 332.*—The existing Section 332 of the Principal Act, shall be numbered as sub- section (1) and after sub-section (1) so numbered the following sub-sections shall be inserted, namely:—

"(2) All institutions like Hotels, Restaurants, Catering Units, Marriage halls, Hospitals, Canteens, Meet and Fish processing units etc. which produce large quantity of waste shall provide their own waste processing arrangements. Issue of licence or its renewal shall be made only after satisfying that they have made the necessary facilities for the processing of waste.

(3) There shall be provision for Vermi compost production or biogas production with every residential building. Making such a provision shall be a condition precedent for issuing building permit to any person.

(4) All institutions like Hotels, Restaurants, Catering Units, Marriage Halls, Hospitals, Canteen, Bakeries etc., where energy required in large quantities shall install appropriate installations or systems or units suitable to produce the energy required from alternative sources of energy like sunshine, wind, geothermal etc., within such time as the Municipality may grant failing which the Municipality is empowered to take steps to cancel the licence issued to the institution concerned."

8. *After Section 345 of the Principal Act, the following section shall be added, namely:*—

"345 A. *Constitution of monitoring committee.*—(1) Government shall constitute in every Municipality a monitoring committee for the effective implementation of the provisions of sections 326 to 345.

(2) The committee shall consist of the MP or MP's of the area representing the Municipality and the MLA's of the areas representing the Municipality.

(3) The Government shall nominate the MP and if there is more than one MP representing the area of the Municipality, one of the MP as the Chairman of the Committee.

(4) The Secretary of the Municipality shall be the Convener of the Committee.

(5) The Committee shall meet once in two months to monitor the implementation of the provision of Sections 326 to 345.

(6) The Committee is empowered to give directions to the Secretary for the effective implementation of the provisions.

(7) The Committee shall be responsible for the implementation of the provision of the Act aforesaid. The Committee may also give publicity through newspaper and other media the actions taken by them for the effective implementation of the provisions."

9. *In Section 381, after sub-section (1) the following shall be added*:—

"(2) No rules or notification or orders shall be made or issued, regularizing unauthorized constructions, if the said construction has got the effect of adversely affecting the public safety, public convenience and public health."

10. *After 383A of the Principal Act, the following section shall be added, namely:*—

"383B. *Regulation on the construction of flats*.—(1) Notwithstanding anything contained in this Act, no person shall construct any flat without complying with the safety measures as may be prescribed.

(2) Government, while prescribing the safety measures, the following aspects shall be taken into consideration:—

(a) The safety of the inhabitants, especially the conditions imposed under the Kerala Municipality Building Rules, 1999 and the National Building Code.

(b) The safety of the neighbours including free flow of air without pollution, light and ventilation.

(c) The safety of the neighbouring buildings.

(d) The minimum distance from the neighbouring building.

(e) Neighbours right to know about the proposed building.

(f) Sufficient vacant space to be left on the four sides of the building for easy access to fire engines.

(g) Parking area for vehicles.

(h) Minimum floor area ratio to be maintained.

(3) Every application for permit for construction of flat shall be accompanied by environment impact assessment report prepared by an agency approved by the Science and Technology and Environment Department of the State of Kerala:

Provided that if the cost of the project is more than five crores, the agency by whom the Environment impact assessment report is to be prepared shall be selected by the Science and Technology and Environment Department of the State of Kerala.

343B. *Flats not to be kept vacant.*—(1) No person shall be allowed to keep any flat vacant to which completion certificate has been issued for more than three months, continuously.

(2) If any flat owner refuses to pay the monthly maintenance charges to the concerned Association/Organisation which is in charge of the maintenance of the building, for more than three months, it shall be presumed that the flat is not needed for his bona fide occupation of himself or for letting out to others.

(3) On receipt of a communication from the other flat owners of the building or the association, the Municipality/Municipal Corporation shall send a notice in writing directing the landlord to occupy the building and pay the said arrears of maintenance charges.

(4) On receipt of the said notice as per sub-section (3) above the landlord may explain the reasonable cause for non occupations if any.

(5) If the explanation offered by the landlord under sub-section (4) is not satisfactory or no explanation is offered, the Secretary or such other officer empowered shall take possession of the said flat for the purpose of letting out.

(6) The Secretary of the Municipality shall entrust such flats taken to any person for a period not exceeding eleven months, for a reasonable rent to be fixed by the Municipality. The Municipality/Municipal Corporation is empowered to retain such percentage of the rent received towards its service charges as fixed by the Municipality and the balance amount should be paid to the landlord.

(7) For the purpose of letting out the flat in accordance with sub-section (6) the Municipal Committee may frame regulations.

(8) If after letting out the flat by the Municipality, the landlord establishes satisfactorily or offers sufficient explanation before the Municipality that he requires bona fide the building for own occupation, the Secretary, Municipality shall give vacant possession to the landlord after evicting the tenant, the lapse of the tenancy period.

(9) Notwithstanding anything contained in the Kerala Buildings (Lease and Rent Control) Act, 1965, or any other corresponding law or other law for the time being in force, no person occupying the flat as entrusted by the Municipality under this section shall have any right to continue in the flat after the expiry of the period of entrustment or after earlier termination of the entrustment by notice giving 30 days time to vacate and the Municipality shall be entitled to take possession of the flat forthwith after such expiry of time.

387A. *Provision for putting up systems or installations for generating energy from alternative sources is essential in plans for buildings of all kinds.*— (1) In every plan of building, residential or non-residential there shall be appropriate provision for installing appropriate units or systems for generating energy from alternative energy sources like biomass, hydropower, wind, sunshine, waves, and waste. The completion certificate in respect of such buildings shall be issued only on installation of such units or systems as indicated in the plan submitted.

(2) All public buildings, and other commercial buildings which are using electricity shall use only compact fluorescent light bulb (CFL) or Lighting Emitting Diodes (LED) for illumination.

(3) No lighting shall be permitted for any hoarding other than those using energy generated from alternative sources of energy.

(4) All new buildings which are above four floors shall be designed in such a manner as to minimize the use of energy.

(5) No commercial establishment shall be allowed to use electricity for the purpose of water heaters.

(6) An amount equal to 3% of the electricity charges shall be payable by the consumers of electricity who consumes more than 300 units per month as carbon tax.

11. *Amendment of Section 438.*—For section 438 of the Principal Act, the following section shall be substituted namely:—

"438. *Power to dispose of stray cattle, pigs, dogs and poultry.*— (1) Municipality shall not allow to stray cattle, pigs, dogs and poultry in public roads and public places.

(2) Municipality shall make arrangements for the seizure and disposal of stray cattle, pigs, dogs and poultry. Animals carrying virus of rabies or suspected to carry virus of rabies shall be put to death.

(3) Any person who comes across with stray cattles, pigs, dogs and poultry in the public roads and public places may file complaint to the Secretary of the Municipality and the Secretary shall immediately take necessary action for the redressal of the complaint.

(4) The Secretary or the officer of the Municipality who fails to carry out the provisions of sub-sections (1), (2) and (3) shall liable to be punished for a fine not exceeding Rs. 2,500."

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The Kerala Municipalities (Amendment) Bill

12. *Amendment to Schedule 1.*—In Schedule 1 (A) Mandatory Provisions—After entry 26 the following may be added as entry 26A and 26B.

"26A. Prohibition of manufacture, sale and use of Alcohol or any other substance containing Alcohol, Panmasala, Narcotic Drugs and Psychotropic substances within the entire area coming within the jurisdiction of the Municipality or any particular Ward or any other specified area of the Municipality.

26B. Issuance and cancellation of Licence for sale, manufacture and use of Alcohol or any substance containing Alcohol, Panmasala and Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances subject to such conditions as the Municipality decides."

Statement of Objects and Reasons

In the light of the provisions in Sections 77 and 132 as it now stands, the voters whose names are on the electoral rolls but are living in jails as undertrial prisoners or in Police stations or in Hospitals situated outside the localities where they were ordinarily residing at the time of preparation of the rolls, are not allowed to vote in the elections to the Municipalities and Corporations on the ground that they are not ordinarily resident in the place where the jail, police station or hospitals are situated and on the ground that they are either in jail or police custody even though they are not convicted of any offence. Such denial cannot be constitutionally justified though the ratio of the decision by the Supreme Court in the decision reported in **Anukul Chandra Pradhan** v. **Union of India** (1997) 6 SCC 1, would apparently justify such a denial. None of the reasons stated by the Supreme Court in the above decision seems to be constitutionally valid and as such it is necessary to remove the effect of the said decision by amending Section 77 and Section 132 of the Act.

It is considered necessary to have some more provisions for the disposal of waste. It is felt necessary to constitute a committee consisting of MP and MLA representing the municipal area for the monitoring of the disposal of rubbish, solid waste and filth by the Municipality. Hence it is decided to make provision for the same in the Act. No unauthorized construction shall be regularized at any time which has to the effect of adversely affecting the public safety, public convenience and public health. Hence Section 381 has to be amended on that line. Schedule 1 is amended being for preventing the manufacture, sale and use of Alcohol, or any other substance containing Alcohol, Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances within the whole or any particular area of the jurisdiction of the Municipality or any particular ward of the Municipality. Power to issue licence for manufacture, sale and use and cancellation of such licence is also being given to the Municipality as part of the process of decentralization.

A number of flats owned by Non-resident Indians and others remain unoccupied for continuously long period even without remitting the maintenance charges to the Association of owners. It is an undesirable development in various ways. To put an end to the above undesirable tendency a provision has been included giving power to the Municipality to take over such flats and to let them out to persons who are in need of accommodation on rent subject to strict conditions safeguarding the interest of the landlord also.

Another provision added is to make it compulsory, to provide a provision for installation of appropriate systems for generating energy from alternative sources of energy in all plans submitted to Municipality for putting up all kinds of buildings residential or otherwise. The provision has been incorporated specially for encouraging the use of energy produced from alternative sources and thus to avoid dependence on one source of energy alone.

Yet another provision makes its obligatory on the part of the Municipality to make effective arrangements to seize and dispose of stray animals and animals carrying virus of rabies or suspected to carry any virus of rabies.

The Bill is intended to achieve the above objections

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34/420/2008—175

Land Reforms Amendment Bill No. 2

THE KERALA LAND REFORMS AMENDMENT BILL, 2008

A

BILL

Further to amend the Kerala Land Reforms Act, 1963.

Preamble.—WHEREAS it is expedient further to amend the Kerala Land Reforms Act, 1963 for the purposes hereafter appearing;

BE it enacted in the Fifty ninth year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Land Reforms Amendment Act, —

(2) All sections except section 2, 3 and 5 shall come into force at once. Sections 2, 3 and 5 shall be deemed to have come into force on the 18th day of October, 2006.

2. *Substitution of section 7E.*—For section 7E of the Kerala Land Reforms Act, 1963 (1 of 1964), (hereafter referred to as 'the Principal Act'), the following section shall be substituted, namely.—

7E. Certain persons who acquired excess land to be deemed tenants—(1) Notwithstanding anything to the contrary contained in section 74 or section 84 or in any other provisions of the Act, or in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any Court, tribunal or other authority, a person who, on the 18th day of October, 2006 is in possession of any land, acquired by him or his predecessors-in-interest, during the period between the date of commencement of the Kerala Land Reforms Act, 1963 (1 of 1964) and the 1st day of January, 1977, by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area shall be deemed to be a tenant in respect of such extent of land which would, together with other lands if any in his possession make the total extent of such land to be one acre.

(2) Notwithstanding any thing to the contrary contained in any other provisions of this Act or in any other law, for the time being in force where a person is in possession of land acquired by him or his predecessors-in-interest under a transaction described in sub-section (1), so much extent held by him, in excess of the area, as determined under sub-section (1), shall be deemed to be a void transaction coming within the purview of sub-section (1) of section 84 of the Act and such extent of land shall be deemed to be land in excess of ceiling area within the meaning of this Act.

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3. *Amendment of section 84.*—In section 84 of the Principal Act, after sub-section (1 A), the following sub-section shall be inserted, namely:—

"(1B) Notwithstanding anything to the contrary contained in sub-section (1) or in any judgment, decree or order of any court, tribunal or other authority, no acquisition of land as specified in sub-section (1) of Section 7E shall be deemed to be invalid or ever to have been invalid by reason only of the fact that the land so acquired was found included as or forming part of, the land liable to be surrendered by the transferor as excess land under the provisions of this Act.

Explanation.—For the purposes of this sub-section "Transferor" means the person who was liable to surrender such land as excess land to Government, as on the date notified under section 83."

4. *Insertion of new sections 84A, 84B, 84C, 84D and 84E.*—After section 84 of the Principal Act, the following new sections shall be inserted namely:—

"84A. Certain persons to file statement before the land Board.—(1) Notwithstanding anything to the contrary contained in any other provisions of this Act, every persons claiming to be a deemed tenant under section 7E shall file a detailed statement before the Land Board within three months from the date of commencement of the Kerala Land Reforms (Amendment) Act, 2008 (.... of 2008) indicating the location, total extent of the lands acquired and such other particulars as are essential to identify all lands acquired and held by him on the date of filing of the statement:

Provided that the Land Board may entertain a statement filed after the said period of the three months, if it is satisfied that there was sufficient grounds for not filing the statement within the said period:

Provided further that the Land Board shall not entertain any application filed after a period of one year from the date of publication of the Kerala Land Reforms (Amendment) Act, 2008(...of 2008).

(2) On receipt of the Statement under sub-section (1), the Land Board shall transfer such statement to the concerned Taluk Land Board where the property is situate or to the Taluk Land Board where the ceiling case in respect of that land is pending for enquiry and disposal, after giving all parties having interest in the land an opportunity of being heard, in accordance with the provision of this Act and the rules made thereunder.

"84B. *Initiation of suo moto proceedings.*—The Land Board may either suo moto or on the basis of a complaint received by it or the Taluk Land Board on the basis of a written direction from the Land Board may initiate proceedings against any person who, in its opinion has failed to submit a statement under Section 84 A within

the time allowed, with a view to ascertain the total extent acquired on the basis of transfers as specified in sub-section (1) of Section 7E and the total extent of land liable to be treated as excess land and such other matters as are relevant in this regard. Such proceedings may be initiated generally on the basis of materials already available with it or collected after conducting appropriate enquiries, sufficient to form a prima facie opinion that the person concerned has acquired lands, under a transfer made by a person having excess land during the said period, to defeat the provisions of the Act.

84C. *Special rule of evidence*.—In proceedings under Sections 84 A and 84 B the burden of proving that the land involved in the proceedings is not excess land liable to be included in the account of the transferor shall always be on the transferor or his successor in interest, as the case may be.

84D. *Order in proceedings under section 84A and 85B*.—(1) In proceedings under Sections 84A and 84B, the Land Board or the Taluk Land Board shall after issuing notice to all parties interested and conducting such enquiries, as may be prescribed, shall pass final orders containing the following particulars, namely—

(a) The total extent of land owned and/or possessed by the person against whom the proceedings are initiated;

(b) The land measuring such extent opted by the applicant, if any, as land entitled to be retained by the person as deemed tenant under Section 7E of the Act.

(c) Total extent of land in excess of the area determined under sub-section (1) of Section 7E found to be in the possession of the person against whom the proceeding is initiated, and which is liable to be treated as land vested in the Government as per Section 86 of the Principal Act;

(d) If the person against whom the proceedings are initiated has transferred any portion of the land acquired by him the extent of such land and the rights if any, to which such transferee is entitled to, in case the land in his possession is to be taken over by the Government as excess land either wholly or partly;

(e) The amount of compensation determined in accordance with section 88 of the principal Act and the persons to whom such amount is payable and the amount payable to each, if there are more than one person to whom, amounts, are due;

(f) The particulars of the land which is liable to be vested in the Government under section 86 of the principal Act, such as survey number and extent, the person in whom possession of the land is remaining etc;

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(2) If a person is found eligible to retain any extent of land under clause (b) of sub-section (1), he shall, notwithstanding anything contrary contained in any other provisions of this Act, be entitled to get a certificate of it in accordance with the provisions of this Act.

"84E. *Application of sections 86 and 88 to 92 of the Act to apply to excess lands determined in proceedings under section 84A and 84B.*—Sections 86 and 88 to 93 (both inclusive) shall, as far as practicable, apply to excess land determined in proceedings under section 84A and 84B for the purpose of regulating the vesting of such land in Government, determination of compensation payable and the persons to whom such compensation is payable and the rights of all persons interested in such excess lands".

5. *Amendment of section 106B of the principal Act.*—For section 106B of the principal Act, the following section shall be substituted, namely:—

"106B. *Special provisions for issue of certificate of title.*—Notwithstanding anything to the contrary contained in any other provision of this Act, or in any other law for the time being in force, a person entitled to retain any land as per an order passed under section 84D, may apply, within such time and such manner as may be prescribed, to the Land Tribunal having jurisdiction over the area in which such land is situate, for a certificate of title in respect of the land held by him and the Land Tribunal shall issue a certificate of title in such form, as may be prescribed, within a maximum period of 6 months from the date of application.

6. *Transitory provisions.*—Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority, if any final order is passed in any application filed by any person under section 106B of the principal Act, during the period between the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005(21 of 2006) and the date of commencement of this Act it shall be reopened and fresh orders shall be reopened and fresh orders shall be passed in accordance with the provision of the principal Act as amended by this Act:

Provided that no order shall be passed under this Section, without giving the person affected thereby, an opportunity of being heard in this matter

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THE DOWRY PROHIBITION (KERALA AMENDMENT) BILL

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BILL

to amend the Dowry Prohibition Act, 1961, in its application to the State of Kerala.

Preamble.—Whereas it is expedient to amend the Dowry Prohibition Act, 1961, in its application to the State of Kerala for the purposes hereinafter appearing;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Dowry Prohibition (Kerala Amendment) Act,—

(2) It shall come into force on such date as the Government may notify in the Gazette.

2. *Insertion of Section 2A.*—After Section 2 of the Dowry Prohibition Act, 1961 (Central Act 28 of 1961) (hereinafter referred to as the Principal Act) the following section shall be inserted namely:—

"2A. *The parents of bride and bride groom to file affidavits before the Marriage Registrar.*—The parents of bride and bride groom shall swear an affidavit to the effect that directly or indirectly overtly or covertly no dowry in cash or kind or other material consideration has been given for or in connection with the marriage between the bride and bride groom. Such affidavit separately sworn by the parents above said shall be exchanged between them and the originals thereof shall be filed before the Registrar of Marriages having jurisdiction to register the marriage. The Registrar shall on application by the parties to the marriage or their close relatives or any other person or institution interested in the abolition of dowry supply the applicant a copy of such affidavits. Any violation of this provision shall be deemed to be an offence under Section 2."

3. *Substitution of Section 3.*—Section 3 of the Principal Act shall be substituted as follows:—

"*3. Punishment for giving or taking dowry.*—Any person or institution, religious or otherwise abetting the grant of dowry shall be guilty of an offence under Section 2 and 2A. But the punishment shall be confined to a fine of not exceeding Rs. 50,000."

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The Dowry Prohibition (Kerala Amendment) Bill

Statement of Objects and Reasons

The Constitution promises social and economic justice to women, but the law, however, has not cared to redeem these promises. Anti-dowry law, like many other welfare laws, is only a preference. No attempt is ever made to enforce it. In the marriage market, Indian woman is bought and sold for a price. The Commission felt that it is necessary to bring in an amendment to the Dowry Prohibition Act, 1961 to discourage the practice of payment and acceptance of dowry and to make giving and taking dowry in any form an offence. Hence this Amendment Bill.

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THE KERALA ANIMALS AND BIRDS SACRIFICES PROHIBITION (AMENDMENT) BILL

A

Bill

to amend the laws relating to prohibition of sacrifice of animals and birds in or in the precincts of Hindu Temples in the State of Kerala.

BE it enacted in the 59th Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Animals and Birds Sacrifices Prohibition (Amendment) Act,—

(2) It shall come into force on such date as the Government may notify in the official Gazette.

(3) It shall extent to the whole of the State of Kerala.

2. *Insertion of Explanation to Section 3.*—After Section 3 of the Kerala Animals and Birds Sacrifices Prohibition Act 1968 (Act 20 of 1968) hereinafter referred to as 'the Principal Act', the following Explanation shall be inserted, namely:—

"Explanation.—A temple or precincts thereof shall include any holy or hallowed bush or area regarded by a person or body of persons as sanctified or capable of giving religious benefit through any act of sacrifice of any living creature."

3. *Insertion of Section 3A.*—After Section 3 of the Principal Act, the following section shall be inserted, namely:—

"3A. (1) Any police officer of and above the rank of Sub Inspector or Revenue official of and above the rank of Revenue Inspector shall have the power to enter any place falling within the definition of Section 3 if he has reasonable grounds to believe that any animal or bird has been or is likely to be sacrificed, seize all materials relevant to such offence and arrest any person who commits or abets any commission of the offence under Section 3.

(2) Any person who witnesses or has reasonable grounds to believe that a crime under Section 3 is likely to be committed or has been committed may file a petition to the nearest police station whereupon any officer in such station shall take prompt action under this Act.

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The Kerala Animals and Birds Sacrifices Prohibition (Amendment) Bill

(3) Any Society for Prevention of Cruelty to Animals (for short the Association) Inspector or other officer under the Association, if any, in the locality shall have the same powers as the Sub Inspector of Police vis-a-vis an offence under Section 3.

(4) Any person under sub-section 2 or 3 may move the nearest Magistrate setting out a complaint under Section 3 against any person accused of an offence under Section 3."

Statement of Objects and Reasons

"Farewell to violence is a great vision", said Justice V.R. Krishna Iyer in a judgment of the Supreme Court of India. Violence in any form is denial of Justice. Like human beings, planet, every living being birds, animals etc. has a right live a life without any interference from any quarters. Article 51 A of the Constitution mandates a duty on the part of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife to have compassion for living creatures". Indiscriminate killing of birds and animals for human consumption, for sacrifice or for sport should be prevented at all costs. It is an offence under this Bill to indulge in such inhuman acts .The Amendment Bill seeks to achieve the above purposes.

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THE DIVORCE ACT (KERALA AMENDMENT) BILL

on amendment of Section 10 of the Indian Divorce Act by the amending Act 51 of 2001, right to seek a decree for divorce under the Act has been conferred to District Court alone and as such there is no legal justification to continue Section 16 of the Divorce Act. Therefore,

Be it enacted in the Fifty ninth year of the Republic of India, as follows:—

1. *Short title, extent and Commencement.*—(1) This Act may be called The Divorce Act (Kerala Amendment) Act,—.

(2) It extends to the whole of the State of Kerala

(3) It shall come into force at once.

2. *Deletion of Section 16 of Divorce Act* 1869.—On after the commencement of this Act Section 16 of Divorce Act 1869 shall stand deleted.

3. *Amendment has only prospective effect.*—Notwithstanding the deletion of Section 16 by this Act any decree nisi passed before the commencement of this Act will be governed by Section 16 of the Parent Act itself.

Statement of Objects and Reasons

As amended Section 10 of The Divorce Act confers power to apply for Divorce under the Act only to District Courts and not to High Court as such there is no justification to continue the provisions in Section 16 of The Divorce Act which allows the High Court to pass a decree nisi for divorce. For the above reason to achieve the object of deleting the provisions in Section 16 of the Act the Bill has been drafted.

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34/420/2008—177a

THE INDIAN SUCCESSION ACT (KERALA AMENDMENT) BILL

A

BILL

to implement the direction embodied in Sub-Section (2) of Section 294 of the Indian Succession Act to establish public registry for wills,

BE it enacted in the Fifty ninth year of the Republic of India,

1. *Short title extent and commencement.*—(1) This Act may be called Indian Succession (Kerala Amendment) Act,—

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *After Sub-section (1) of Section 294 the following provision shall be added as sub-section (1A).*—On and after the commencement of this Act every office of the District Registrar shall be treated as public registry for wills established as directed by Sub-Section (1) above.

Statement of Objects and Reasons

The object of the Bill sought to be achieved is the implementation of the direction contained in Sub Clause (1) Section 294 for establishing public registry of wills.

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34/420/2008—178

THE SPECIAL MARRIAGE (KERALA AMENDMENT) BILL

A

BILL

to expressly enable foreign nationals to solemnize marriages in Kerala under the Special Marriage Act, 1954 (Act 43 of 1954) and to indicate the special conditions to be complied with before solemnization of such marriages.

BE it enacted in Fifty ninth year of the Republic of India as follows:—

1. *Short title and Commencement.*—(1) This Act may be called the Special Marriage (Kerala Amendment) Act ——

(2) It extends to the whole of State of Kerala.

(3) It shall come into force at once.

2. *Amendment of Section 6 Act 43 of 1954.*—In the Special Marriage Act, 1954 (43 of 1954), hereinafter referred to as the Act, in section 6, after sub-section (3) the following sub-section shall be inserted namely:—

(4) Where any party is a foreign national, he shall cause it to be published in the following manner:—

(a) By affixing a true copy thereof under his seal and signature to some conspicuous place in his office.

(b) By forwarding true copies thereof under his seal and signature to the parents of the parties to the marriage by any mode of communication including e-mail at the expense of the parties if so requested.

Provided that when service of notice is effected through any internet process 'a print out' of the 'delivery note' which appears in the computer system when communication is sent through the system shall be kept in the file and will be deemed to be evidence of acknowledgment of notice sent by the person to whom notice is issued.

(c) By publishing it in a newspaper having circulation:—

(i) In the State or States in India to which the parties or, as the case may be, the Indian party, to the marriage belong or belongs; and

(ii) In the country or countries in which the parties are ordinarily resident.

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The Special Marriage (Kerala Amendment) Bill

3. *Amendment of Section 7 of the Act.*—In sub-section (1) of Section 7 after the words "under section (2)" the following words shall be inserted namely:

"Or sub-section (4) of Section 6"

4. *Amendment of section 8 of the Act.*—After sub-section (1) of Section 8, the following explanation shall be added namely.—

Explanation.—Where the publication of the notice by affixation under clause (a), (b) and (c) of sub section (4) of section (6) is on different dates the period of thirty days shall be, for the purpose of this sub section, be computed from the later date

5. *Amendment of Section 14 of the Act.*—(1) In heading of Section 14 after the words "three" the following shall be inserted namely:

"or six"

(2) In Section 14, after the words "Three months", the following shall be inserted, namely:—

"And in the case of foreign nationals, six Calendar months."

Statement of Objects and Reasons

The object of the Bill is to expressly enable solemnization of marriages of foreign nationals under The Special Marriage Act 1954. At present such marriages are being held only on the basis of orders issued by the High Court of Kerala individual cases. The Bill specifically provides the conditions to be completed with before solemnization of a marriage of foreign national to avoid the difficulties felt generally in the matter of solemnization of such marriages.

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THE KERALA ABKARI (AMENDMENT) BILL

An Act to give power to the District Magistrates to direct every licensee of a liquor shop or other public places of entertainment falling under Section 54 not to sell or serve or allow to carry home any alcohol, or other intoxicating drug or psychotropic substances on any festival day or holiday or wage disbursement day.

BE it enacted in the Fifty ninth year of the Republic.

1. *Short title extend and commencement.*—(1) This Act may be called The Kerala Abkari (Amendment) Act, —.

(2) It extends to the whole of State of Kerala.

(3) It shall come into force at once.

2. *Amendment of Section 54 of the Kerala Abkari Act.*—After Section 54 of the Abkari Act the following Section may be added as Section 54A and 54B.

"54A. (1) The District Magistrate shall direct every licensee of a liquor shop falling under Section 54, every club or hostel or other place of entertainment or hotel or restaurant not to sell or serve or consume or allow to carry home any alcohol, or other intoxicating drug or psychotropic substance for consumption on any festival day or holiday or wage disbursement day or such other days as may be considered as dry days.

(2) For the successful exercise of the above prohibition it shall be open to the District Magistrate or any police officer of and above the rank of Sub Inspector of Police to take any precautionary measure, conduct raid, enter any premises, examine the books and records of the licencee, with a view to ensure the effective implementation of the prohibition.

(3) No medical organization for whatever reason or any agency for tourism on whatever ground shall be provided with any exemption from the obligation to observe the ban imposed by the above provision."

"54B. The Beverages Corporation or other liquor manufacturing organ run by the State or private agencies shall not do any act or omission which may facilitate or abet the violation of the provisions in Section 54 or 54A of the Abkari Act.

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Explanation.—A dry day shall include any day of entertainment or sports, music concert or other event which in the opinion of District Magistrate is likely to be used for enjoyment by consumption of any of the above intoxicating substances."

Statement of Objects and Reasons

Article 47 of the Constitution enjoins that the State shall endeavour to bring about prohibition of consumption of alcohol or other intoxicating drug or other psychotropic substance which are injurious to health except for medical purposes. In view of the fact that alcoholism and drug habits have disastrously spreading among the poor categories of people including even juveniles and women, it has become necessary to make provision for effective implementation of prohibition. Even medical certificates or authorization on the ground of promotion of tourism as a ground for liquor consumption shall not allowed on dry days in view of the easy abuse under those guises.

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THE EXPLOSIVE SUBSTANCES (KERALA AMENDMENT) BILL

Preamble.—The Explosive Substances Act 1908 was enacted to supplement the then existing law on the subject namely The Explosives Act 1884, in the light of the events which took place immediately prior to its enactment. That Act was amended by The Explosive Substances (Amendment) Act 2001. By the amending Act, the definition of the word "explosives substances" was widened by including various substances coming within the special categories indicated in Section 2 (b) of that Act. Provisions in the parent Act dealing with punishments were also amended enhancing the punishments for various kinds of offences.

In spite of the provisions of law existing in the above two enactments, the recent events in India and in Kerala would show that they are insufficient to curb the use of all kinds of latest explosives on a large scale by anti-social elements to threaten social security and to create a State of insecurity for the State and its people. The loss and damage caused to the public as a result of explosions caused by using highly explosive substances is devastating. The menace is not only confined to cities and urban areas but in rural areas also. As such, for effectively controlling possession and use of explosive substances only by authorized persons and that too only for legal purposes and not for illegal purposes, it is necessary that statutory powers are conferred on police, other governmental and non-governmental agencies recognized by the Government for conducting searches, raids, seizure and filing of complaints before appropriate authorities. It is also necessary to declare statutorily that it is the duty of every citizen to communicate timely the informations obtained by them citizen about the illegal activities involving the use of explosives to appropriate authorities so that immediate action can be taken to prevent such illegal activities. It is further necessary that special police cells are constituted at various levels starting from grama panchayats to take preventive and follow up actions in respect of activities involving the use of explosive substances. For the above purposes, it is expedient and necessary to amend the Explosive Substances Act. Therefore,

BE it enacted in the Fifty ninth Year of the Republic

1. *Short title, extent and commencement of the Act.*—(a) This Act shall be called the Explosive substances (Kerala Amendment) Bill

(b) It shall extend to the whole of the State.

(c) It shall come into operation at once.

2. Inclusion of a new Chapter in the Explosives Substances Act 1908 immediately after the existing section 5 and before section 6 as shown below.

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CHAPTER II

Section 5 A.—Constitution of a special police unit/cell under the Act.

(1) Government shall constitute a special police unit/cell consisting of a Sub Inspector of Police and such number of police constable to aid and assist him to perform the special duties and responsibilities conferred on the unit/cell under the Act, at different levels commencing from Grama Panchayat, Municipality, District and State levels.

(2) The police unit/cell so constituted under clause (1) shall be notified as the authority having primary responsibility to accept information from any source about the illegal possession and use of explosives by any person in violation of the provisions of the Act and to conduct appropriate enquiries and take appropriate steps in the matter of prevention of such illegal activities in appropriate cases without any delay.

Section 5B.—Citizen's duty to convey information regarding violation of the provisions in the Act.—Every citizen is under a duty to inform appropriate authority under the Act about any information received regarding the illegal possession and use of explosive substances.

Section 5C.—Enquiry on the information received within 24 hours.—(1) If any information is received by the special unit/cell, from any person regarding any act or violation of the provisions of the Act, it shall be registered in the Register of Complaints to be maintained by the unit/cell and enquiry shall be held in the matter within 24 hours and a report should be submitted to head of the cell. He will in turn take further appropriate steps without any delay.

(2) If any officer of the cell/unit fails to comply with any of the requirements of clause (1) above without reasonable justifications he can be proceeded against for dereliction of duty and punished appropriately by the disciplinary authority.

Section 5D.—Powers of inspection, search, raid, seizure, detention and removal.—(1) Government shall by notification in the Gazette authorize appropriate officers of the Government at State, District, Municipal and Grama Panchayat levels subject to conditions.

(a) to enter any premises public private and search for explosives therein;

(b) to take samples of any explosive found therein on payment of the value thereof; and

(c) to seize, detain and remove any explosive or ingredient thereof found therein and, if necessary, also destroy such explosive or ingredient;

(2) The provisions of the [Code of Criminal Procedure 1983 (2 of 1974)], relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorised by rules under this section.

Section 5E. —Government may frame appropriate rules to effectively implement the provisions of the Act by publishing the same in the official Gazette.

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AMENDMENT TO RULES

THE KERALA MINOR MINERAL CONCESSION (AMENDMENT) RULES

GOVERNMENT OF KERALA

———DEPARTMENT

NOTIFICATION

G.O. (R) No. Dated, Thiruvananthapuram

SRO.....In exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957) and all other powers enabling in this behalf the Government of Kerala hereby make the following rules further to amend the Kerala Minor Mineral Concession Rules, 1967, namely:—

RULES

1. *Short title and commencement.*—(1) These rules may be called the Kerala Minor Mineral Concession (Amendment) Rules ——

(2) It shall come into force at once.

2. *Amendment of rule 8.*— In rule 8 of the Kerala Minor Mineral Concession Rules, 1967,—

(i) In clause (a) of sub-rule (1), the following words shall be added at the end, namely:—

"or below ground water level whichever is less"

(ii) After sub-rule (2), the following sub-rules shall be inserted, namely:—

"(2A) Before granting permit, the Competent Authority shall obtain the Environment Impact Assessment report from an expert body recognized by the Government.

(2B) In cases where forest land lies within a radius of one kilometer from the quarry, the consent of the Forest Department shall be obtained."

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AMENDMENT TO REGISTRATION RULES (KERALA)

In clause (ii) of Rule 30A of the Registration Rules (Kerala) the "words and phrases" "and that of the witnesses who attest the document" may be added after the word 'document' and before the word 'are'.

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GOVERNMENT OF KERALA

..... DEPARTMENT

NOTIFICATION

G.O (Rt) No. ..... Dated, Thiruvananthapuram

SRO No..... In exercise of the powers conferred by Sections 26, 28, 38, 65, 96, 107, 111, 138, 159, 176 and 213 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the Government of Kerala hereby make the following rule, the same having been previously published as per Notification No——, as required by sub-section (1) of Section 212 of the said Act, namely:—

AMENDMENT

1. *Short title and Commencement.*— (1) This rules may be called the Kerala Motor Vehicles (Amendment) Rules 2008.

(2) It shall come into force at once.

2. *Amendment to the Rules.*—After rule 232 of the Kerala Motor Vehicles Rules, 1989, the following rules shall be inserted, namely:—

"232A. *Constitution of Inspection Committee.*—(1) Government shall constitute one or more inspection Committees to inspect and verify whether speed Governors fitted in the Stage Carriages and Heavy Transport Vehicles, with the following members, namely:—

(a) A Retired employee of the Motor Vehicles Department not below the rank of an Inspector.

(b) One person of integrity nominated by the Chief Minister.

(c) One person of integrity nominated by the Leader of Opposition.

(2) The Committee members shall have all the powers to stop and inspect any Stage Carriage Vehicle and Heavy Transport Vehicle to satisfy that these Vehicles have been fitted with speed Governor conforming to the standard AIS: 018, as amended from time to time. The Committee is also empowered to inspect for verifying whether Kerosene is mixed with Diesel and Petrol used in the Vehicles.

(3) Government shall issue proper identity cards for the Committee members to show then the authority for inspecting the Vehicle.

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(4) If the Committée members find any violation, they may report the matter to the concerned authorities for imposing the fine specified in the Act.

232 B. (1) Every owner of a stage carriage or heavy vehicle shall obtain a certificate of fitness of the speed governor fitted in the said vehicle from the concerned dealer or distributor of the same.

(2) The said certificate of fitness will have validity for a period of six months only.

(3) The dealer or distributor while issuing the said certificate of fitness shall certify that the speed governor is in working condition and has not been tampered with.

(4) If any dealer or distributor issues a false certificate of fitness, the State Government shall after hearing him black list such dealer or distributor for a period of not less than six months. In case of successive lapse on the part of the dealer or distributor, then such black listing can even extend beyond six months and upto three years. During the period of black listing the said certificate of fitness will not have any validity."

By order of the Governor

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AMENDMENT PROPOSED TO BE EFFECTED IN THE MUNICIPALITY CONDUCT OF ELECTION RULES, 1995

For existing Rule 21 the following Rule may be substituted:

"Application for Postal Ballot Paper.—If an elector on election duty or an undertrial prisoner but not as a convict or in the legal custody of any authority otherwise than as a person convicted of an offence; wishes to vote by post at an election shall send an application in Form 15 to the Returning Officer so as to reach him at least seven days before the date of Poll or before such shorter period as the Returning Officer may allow and if the Returning Officer is satisfied that the applicant is an elector on duty or living in jail or custody as stated above, a postal ballot paper shall be issued to him."

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34/420/2008—182a

AMENDMENT TO THE "SPECIAL RULES FOR THE POSTS OF DEPUTY DIRECTOR OF PROSECUTION AND SENIOR ASSISTANT PUBLIC PROSECUTOR, ASSISTANT PUBLIC PROSECUTOR GRADE I AND ASSISTANT PUBLIC PROSECUTOR GRADE II, 1996"

In exercise of the powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 68) the Government of Kerala hereby make the following amendment to the Special Rules for the posts of Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade-II, 1996.

1. After Rule 3, the following Rule may be added as Rule 3A.

"3A. *Procedure for Direct recruitment of Assistant Public Prosecutor Grade-II.*—(1) Appointment of Assistant Public Prosecutors Grade II shall be made from a rank list prepared by a Committee consisting of the Judge of the High Court in administrative charge of the District concerned and the Sessions Judge of that District on the basis of the result of a viva voce test, conducted by the above Committee. On conclusion of the viva voce test, the Committee shall prepare a rank list of the candidates on the basis of the marks secured by them in the test.

(2) Rank list so prepared shall be forwarded to the Government.

(3) The Government may make appointment taking note of the ranking given by the Committee and applying the principle of reservation as mentioned in rule 5 of the rules."

2. After rule 12; the following new rule may be added as Rule 12 A:—

"12 A. *In-service Training.*—Directorate of Training functioning in the High Court for imparting training to the subordinate judicial officers shall in consultation with the Chief Justice and the Judge in charge of the Directorate, conduct in-service training at least once in two years to Public Prosecutors of Grade-I & II on the following subjects, among others, found necessary.

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A. Human Rights as enumerated in the Constitution of India Part III, IV and IV A.

B. The essentials of Civil Justice System substantive and procedural.

C. The anatomy of Criminal Justice administration in India.

D. The Basic Structure of the Constitution.

E. The jurisdiction and jurisprudence of the Indian judicature.

F. The Executive and the Legislature—their inter-relationship—Role and powers of the judiciary—their limitations vis-a-vis the legislature."

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AMENDMENT TO THE GUIDELINES FOR FUNCTIONING OF STATE PRISON REVIEW COMMITTEE

On a detailed consideration of the judgment rendered by the Division Bench of the High Court of Kerala in Criminal M.C Nos. 400 of 2001 and 1059 of 2005 dated 16-10-2006 especially the concluding observations of the Division Bench in paragraph 30 of the judgment, the Commission find that paragraph 4 (i) of the Guidelines for functioning of the State Prison Review Committee issued as per G.o. (P) 238/07 Home dated 23-10-2007 needs amendment.

At present the Prison Review Committee will have power to recommend the premature release of the life convicts who have completed 14 year of actual imprisonment including set off if any rendered by a competent authority and excluding remission of any kind. After considering the various aspects mentioned in the said paragraph of the judgment, the Division Bench in the judgment referred to above has while dealing with the parameters of clemency power under Article 61 of the Constitution stated thus: "The principles laid down in Swaran Singh's case (supra) and Laxman Naskar's Case (supra) make it very clear that the Government shall frame Rules for its own guidance in the exercise of pardon power keeping a large residuary power to meet special situation or sudden development. It is also trite law that the Rules of guidelines shall be consistent with the legal position. The State cannot frame guidelines by passing the prohibition contained in Section 433A of Cr.P.C except in exceptional cases. Of course, there may be exceptional cases in which a convict may have to be released immediately after his conviction as held in Maru Ram's Case (supra)." (underline given by the Commission)

In the light of the above clear observations of the High Court with which the Commission wholly agrees, the criteria included in paragraph 4 (i) has to be modified thus: "The Committee will recommend the premature release of life convicts who have completed 14 years of actual imprisonment including set off, if any, ordered by a competent court and excluding remission of any kind considering the nature of the offence committed by the inmate, nature of crime, possible effects on the community, the conduct of the inmate and suitability of the inmate for his/her reformation, rehabilitation and reintegration to the society except in exceptional case in which a convict may have to be released immediately after his conviction as held in Maru Ram's case 1981 (1) SCC 107."

As such, the Commission strongly recommends acceptance of the above amendment of the guideline contained in para 4 (i) of the guidelines.

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GOVERNMENT OF KERALA
———— DEPARTMENT

NOTIFICATION

G.O. (R) No. ———— Dated, Thiruvananthapuram

SRO No.—— In exercise of the powers conferred by sub-section (4) of Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960) read with Section 85 thereof, the Government of Kerala hereby make the following rules to amend the Kerala Legal Benefit Fund Rules, 1999, namely:—

RULES

1. *Short title and commencement.* — (1) These rules may be called the Kerala Legal Benefit Fund (Amendment) Rules, 2008.

(2) It shall come into force at once.

2. *Amendment of Section 4.* — In sub-section (3) of Section 4 of the Kerala Legal Benefit Fund Rules, 1999, (hereinafter referred to as the "said rules") after clause (g), the following clause shall be added, namely:—

"(h) One member working in the field of Legal aid or social justice organization, nominated by the Government".

3. In rule 12 of the said rules, in item (v), before the words "Kerala High Court" the words "Supreme Court" shall be inserted.

By order of the Governor.

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34/420/2008—184

THE KERALA CAPTIVE ELEPHANTS MANAGEMENT AND MAINTENACE (AMENDMENT) RULES,

This enactment is intended to amend the Kerala Captive Elephants (Management and Maintenance) Rules, 2003.

After rule 12 the following rule shall be inserted

"Rule 13. *Complaints about cruelty.*—(1) If any person is found to be violating any of the provisions of these rules, the Chief Wild Life Warden or the District Collector can take action against such violators in accordance with law.

(2) If any person makes a complaint in this regard either to the Chief Wild Life Warden or the District Collector and if they fails to act within fifteen days from the receipt of the same, any person can file appeal before the High Court of Kerala."

Explanatory Note

The above amendment is intended to make effective implementation of the said Rules which is intended to prevent cruelty to the elephant.

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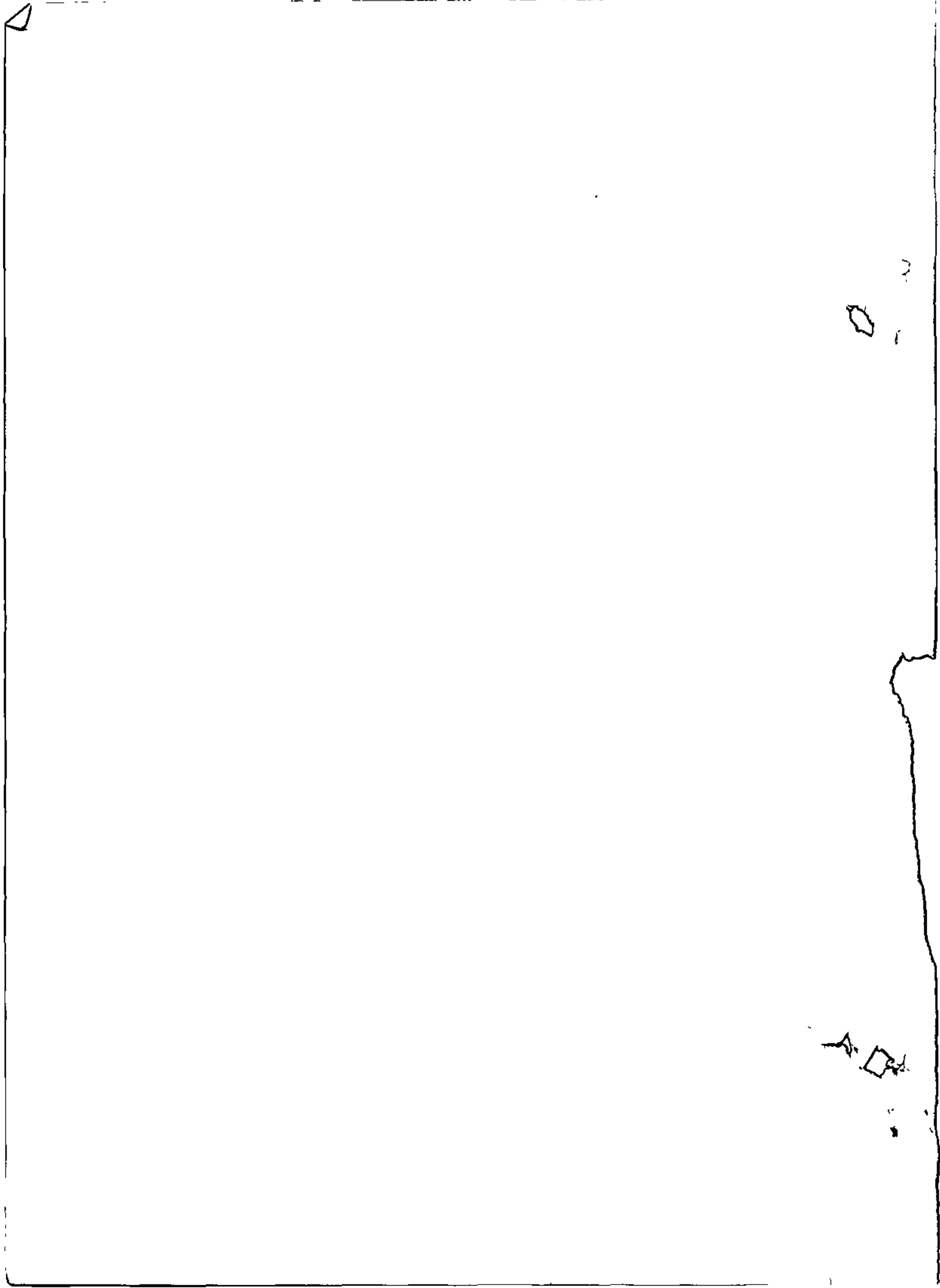

AMENDMENT TO RULE 184 OF THE CRIMINAL RULES OF PRACTICE

Rule 184 of Criminal Rules of Practice 1982 deals with the maintenance of Property Register. In Rule 184 clause (3) it says "The register shall be renewed every year and the undisposed of items in the previous year shall be carried forward under the same number".

It is represented by the Kerala Criminal Judicial Staff Association that the Rule creates considerable strain, work load and responsibility due to the following reasons:

(i) In almost all Criminal Courts in Kerala, the pending property items extends from 2000 to 5000 and above normally.

(ii) In addition to the normal work, the carry forwarding of pending property items in every year to the new register requires huge work load and wastage of stationery, which are waste process, as property register is a permanent record and more over it will take, normally, more than six months to renew the register.

(iii) Only four clerks are available in a Magistrate Court, who are inadequate to cope with the situation including the comparison of the renewed register.

(iv) Huge numbers of registers are required for the process, which occupy considerable space in the office.

Hence, in order to avoid the aforesaid difficulties and inconvenience, we humbly request that recommendations may kindly be issued to amend the aforesaid Rule for carry forwarding and renewing of registers once in every five years.

The Commission on a serious consideration of the matter represented, is of the view that it is just and proper to recommend amendment of existing Rule 184 as shown below:

In Rule 184 (3) for the words "every year", the words "every five years" may be substituted.

As the Rules have been framed by the Hon'ble High Court of Kerala, Government may take up the matter amending the Rule with the High Court appropriately.

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34/420/2008—185a