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CONTENTS

	Page
1. The Kerala Free and Compulsory Education Bill ..	1—8
2. The Kerala Public Canals and Backwater (Protection and Navigation) Bill ..	9—23
3. The Kerala Corrupt Public Servants (Forfeiture of Property) Bill ..	25—40
4. The Kerala Christian Marriage Bill ..	41—55
5. The Kerala Prohibition of Plastic Articles Bill ..	57—60
6. The Kerala Disposal of Confiscated and Other Vehicles Bill ..	61—63
7. The Kerala Emergency (Control, Supply and Distribution of Essential Commodities) Bill ..	65—68
8. The Kerala Preservation and Protection of Mangroves Bill ..	69—71
9. The State—Appointment of Commissions (Regulation of Authority, Status, Powers, Functions, Accountability, Conditions of Service and Related Matters) Bill ..	73—75
10. The Kerala Public Grievance Redressal Tribunal Bill ..	77—82
11. The Kerala Vexatious Litigation (Prevention) Bill ..	83—86
12. The Kerala Urban Land (Ceiling and Regulation) Bill ..	87—104
13. The Kerala Recovery and Distribution of Government Land Bill ..	105—113
14. The Kerala Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill ..	115—117
15. The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill ..	119—136

	Page
16. The Kerala Regulation to Control Noise Generated from Loudspeakers, Fireworks Display and other Plural Sources Bill	.. 137—140
17. Creative Communication between Supreme Court and High Court on the One Hand and The Kerala Government on the Other Hand—A Courier Bill	.. 141—143
18. The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill	.. 145—162
19. The Kerala Unorganised Workers (Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill	.. 163—185
20. The Kerala Public Health Code	.. 187—308
21. The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill	.. 309—315
22. The Kerala Energy Self-Sufficiency Bill	.. 317—318
23. The Kerala Equal Opportunities Commission Bill	.. 319—338
24. The Kerala Police Bill	.. 339—409
25. The Kerala Clean Air Bill	.. 411—413
26. The Kerala Disposal of Garbage and Waste Management Bill	.. 415—416
27. The Kerala Muslim Women (Relief on Irretrievable Breakdown of Marriage and Prohibition of Talakul Bidaat) Bill	.. 417—419
28. The Kerala Public Servant's Right to Medical Attendance and Reimbursement Bill	.. 421—423
29. The Kerala Panchayat Courts Bill	.. 425—450

THE KERALA (FREE AND COMPULSORY) EDUCATION BILL

A BILL

to provide free and compulsory education to children of the age group of five to fourteen years and to prevent the malpractices of receiving money by way of donations or in any other form at the time of admission of students and appointment of teachers.

Preamble.—WHEREAS Article 21 A of the Constitution of India mandates the State to provide free and compulsory education to all children of the age of five to fourteen;

AND WHEREAS Article 51A (k) of the Constitution of India has made it a fundamental duty on the parent or guardian or ward to provide opportunities for education to his child between the age of six and fourteen;

AND WHEREAS the provisions in the Kerala Education Act, 1958 (1 of 1958) for providing free and compulsory education are insufficient to meet the needs of the present scenario on education;

AND WHEREAS it is expedient to provide more effective provisions to ensure free and compulsory education to children of the age group of five and fourteen and to prevent malpractices committed at the time of admission of students and appointment of teachers.

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 (Free and Compulsory Education) Act, —

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

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

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

(a) “Child” means a Child who attained the age of six years at the beginning of an academic year.

(b) “Government School” means School run by Government.

(c) “Aided School” means a Private School that is recognized and is receiving aid from the Government.

The Kerala (Free and Compulsory) Education Bill

(d) “Recognized School” means a Private School recognized by the Government.

(e) “Free Education” means freedom for the child and his parent or guardian from liability to,—

(i) Pay any fee or charges to the School where the child or ward is studying or to an examining body or any external body providing any service through the School.

(ii) Incur expenditure for textbooks, notes books, and other study materials and for uniforms.

(iii) Incur expenditure towards bus fare, but limited to BPL families alone.

(f) “Local authority” means a Panchayat at any level constituted under Section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under Section 4 of the Kerala Municipality Act, 1994 (20 of 1994).

(g) “Free Education Fund” means the Fund constituted under Section 7.

(h) “Education Committee” means the Committee constituted under sub-section (2) of Section 8.

(i) “Below Poverty Line Family” means the families so published by the Local Authority as per the provisions of the Act, —

(j) “Prescribed” means prescribed by rules.

3. *Right to Education.*— The Government shall provide free and compulsory education to all children of the age of six and fourteen years.

4. *Responsibility of the parent or guardian.*— It shall be the duty of every parent or guardian of a child to enroll his child or ward in a school and facilitate his completion of education.

5. *Category of Schools.*— For the purposes of this Act, schools in the State are classified as category 1, 2 and 3 as follows, namely:—

Category 1. Government School

Category 2. Aided School

Category 3. Recognised School.

The Kerala (Free and Compulsory) Education Bill

6. *Responsibility of Schools to provide free and compulsory education.*—

(1) In Category 1 Schools, all the expenses for free education shall be met directly by the Government.

(2) In category 2 and 3 Schools, all the expenses for free education shall be met by school management in the first instance and reimbursed by the local authority of the area where the school is situated, in such manner as may be prescribed:

Provided that the local authority may make available sufficient funds in advance to the school management to meet the expenses for providing free education to the students subject to settlement of the final accounts annually.

(3) No child shall be denied admission to any educational institution within the State for any course or class including plus 1 and plus 2 and no fee shall be levied for admission or tuition. Any violation of the provision shall be liable to fine for the first fault and if repeated for the second time the recognition of the institution shall be liable to be cancelled. The Director of Public Instruction may issue any direction to the head of any education institution under public or private management if otherwise the applicant for admission is duly qualified without reference to any communal reservation or religious consideration.

(4) Any applicant if refused admission on the ground of non-availability of seats or non-payment of admission or capitation fee or communal minority consideration may move the District having jurisdiction over the School for an order directing admission if otherwise qualified.

7. *Constitution of Free Education Fund.*— (1) Government shall constitute a fund by name “Free Education Fund” to meet the expenditure of the free education of the children.

(2) The following amount shall be credited to the Free Education Fund constituted under Sub-section (1), namely:—

(a) Grant from Government.

(b) Two per cent additional building tax collected by the local authority under Section 8 of this Act.

(c) Any donations to the fund made by any voluntary organizations, charitable societies, companies or other public sector undertakings.

(d) Donation from any individual.

The Kerala (Free and Compulsory) Education Bill

(3) Government while preparing the annual demand for grants, due consideration shall be given for providing sufficient fund to the Free Education Fund.

8. *Additional Building Tax.*—(1) Local Authority shall collect two percent additional building tax from the owner whose annual building tax exceeds Five hundred rupees.

(2) The amount collected by the local authority shall be credited to the Free Education Fund.

9. *Responsibility of the Local Authority.*— (1) Subject to the responsibility of the Government; Local Authority shall be primarily responsible for the imparting of free and compulsory education to all the children within the local area.

(2) For imparting free and compulsory education, the local authority may constitute a committee by name 'Educational Committee' with the following members, namely:—

- (a) Chairman/ President of the Local Authority.
- (b) Chairman of the Finance Committee of the Local Authority.
- (c) Headmaster of two Schools within the Local Authority.
- (d) PTA President of two Schools in the Local Authority.

(3) One of the Commissioner / Secretary of the Local Authority shall be designated as the convener of the Committee.

(4) The Committee shall have a record of all children in its area who are in the age group of 1-14.

(5) The Committee shall ensure that every child in the age group of 6-14 years residing within its jurisdiction is enrolled in the School and is enabled to complete the education upto the 10th standard.

(6) The Committee shall prepare an estimate for free education of all the children in its area in September for the next academic year.

(7) The estimate prepared by the Committee shall be sent to Government before 30th November.

The Kerala (Free and Compulsory) Education Bill

10. *Admission of students below poverty line.*— (1) Every category of schools shall admit in all classes twenty five percent of its total strength, students belonging to families Below Poverty Line.

(2) In the academic year after the commencement of this Act, twenty five percent of the admission to the lowest classes in a school shall be from the families Below Poverty Line. This shall be extended to the higher classes in the subsequent years.

(3) If sufficient number of student are not available from the Below Poverty Line families, those seats may be filled up by other students.

11. *Payment of due salary and prohibition of donation.* — (1) No manager or other authority in management of any school whether aided or unaided shall receive or cause to be received any amount from any student at the time of admission or at any time either as donation or in any other manner.

(2) No manager or any other authority in management of any school whether aided or unaided shall receive or cause to be received any amount from any teachers and other staff appointed in the school at the time of appointment or at any time while in service either as donation or in any other manner.

(3) Manager or any other authority in management of the school aided or unaided shall pay monthly salary to the teachers and other staff appointed in the school in accordance with the scale of pay fixed by the Government for such teachers and staff working in Government school without making any deduction or diminution on any account whatsoever. A mere consent of the teacher or other staff for deduction of amounts from the salary may not be a legal justification for paying any lesser amount as salary if a dispute arises as to whether full salary as prescribed by the Government was paid to the teacher or not.

(4) Violation of any of the provisions in sub-sections 1 to 3 above shall be an offence punishable, with imprisonment for a term of 6 months and a fine of fifty thousand rupees or with both.

12. *Constitution of Tribunal.*—(1) Government shall constitute a Tribunal in every district for deciding complaints against school authorities under the provision of this Act.

(2) The Tribunal shall have power to take suo moto action against the management of a School apart from hearing and disposing of cases initiated on the basis of complaints filed before it.

The Kerala (Free and Compulsory) Education Bill

(3) A retired District Judge or Sub Judge who is ready and willing to accept the post receiving only a reasonable honorarium be selected and appointed by the Government as the Tribunal.

(4) The Tribunal shall have all the powers of a First Class Judicial Magistrate.

(5) The terms and conditions of the Tribunal shall be as prescribed by the Government.

(6) A retired Police Officer not below the rank of a Circle Inspector shall be appointed by the Government as the Chief Executive Officer of the Tribunal.

(7) The Government shall provide in consultation with the Tribunal such officials and staffs as may be necessary for carrying on its functions effectively.

(8) The terms and conditions of the officers and staff of the Tribunal shall be as prescribed by the Government.

13. *Responsibility for administration and Accounts of the Tribunal.*—

(1) The Chief Executive Officer shall be responsible for the general administration of the office of the Tribunal and to maintain proper accounts.

(2) The Chief Executive Officer may submit before the Government an estimate of the total funds required for meeting the expenses of the Tribunal annually sufficiently early, so that the Government may scrutinize the same and make allotment in the budget each year.

(3) The Government may prescribe the manner in which the accounts are to be maintained and audited.

(4) The Tribunal shall submit annual report to the Government detailing the actions taken by the Tribunal under the provisions of the Act.

14. *Punishment.*— If any management of a School refuses to give admission to a student or collect fees or any other amount from the parent/guardian or children for the education, the manager or person responsible for management of the School shall be liable for imprisonment for a period of 6 months and payment of a fine of ten thousand rupees.

The Kerala (Free and Compulsory) Education Bill

15. *Effect of the provision in the Act on other laws on the subject.*—On and after the commencement of this Act, the provisions in this Act shall be given effect to in addition to the provisions in the Kerala Education Act and the Rules and wherever there occurs any inconsistency between the provision of this Act and the provisions of the Kerala Education Act and the Rules; the provisions in this Act shall prevail over all other laws.

16. *Power to make rules.*—(1) Government may make rules either prospectively or retrospectively to carry out the provisions of this Act.

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

(a) The manner of payment of advance and the final settlement of accounts in the matter of free education of students by the management of category 2 and 3 schools.

(b) Procedure of meeting of the Education Committee, manner of preparing the record of children and preparations of estimate for free education.

(c) The terms and conditions of service of the Tribunal including the monthly honorarium payable to the Chairman.

(d) The terms and conditions of the service of the executive officer, other officers and staff of the Tribunal.

(e) The manner in which the accounts of the Tribunal are to be maintained and audited.

(f) Any other matter which may be prescribed.

(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 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.

The Kerala (Free and Compulsory) Education Bill

Statement of Objects and Reasons

Providing free education to all children of the age of five to fourteen is a constitutional mandate contained in Article 21 A. Similarly it is a constitutionally mandated duty of every parent or guardian to provide opportunities for education to his children between the age of six and fourteen under Article 51 A (K) of the constitution. Though under the provisions of the Kerala Education Act free education is stated to be given to all students upto the 10th standard. The commission is of the view that the provisions in the Education Act are insufficient in very many respects and there is a need to have a new enactment dealing with the subject having more effective provisions. This is the main reason why the commission is recommending the Bill for adoption as an enactment in due course. Various provisions have been included in the Bill to avoid malpractices now rampant in the education field like receiving donation for admission of children in schools and for appointment of teachers.

THE KERALA PUBLIC CANALS AND BACKWATER (PROTECTION AND NAVIGATION) BILL

A BILL

to consolidate and amend the laws relating to Public Canals and Ferries of the State of Kerala;

Preamble: Whereas it is expedient to make better and effective provisions for the management of Canals and Backwaters in the State of Kerala and to ensure safe navigation through them it is hereby enacted as follows.

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called The Kerala Public Canals and Backwaters (Protection and Navigation) 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 by notification in the Gazette appoint.

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

(a) “Authority” means the authority prescribed by the Government under this Act.

(b) “Canal” means a line of navigation declared to be subject to the provisions of this Act.

(c) “Channel” includes any waterway, whether natural or artificial.

(d) “Ferry” means a place at which goods, animals or passengers are conveyed across a channel by means of a vessel.

(e) “House Boat” means a boat which is constructed in accordance with the specification prescribed containing furniture normally used by the people and includes all constructions made on a platform or otherwise on the top of the navigable water.

(f) “Line of Navigation” means any navigation channel or series of connected navigation channels.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

(g) “Local Authority” means a Panchayat at any level constituted under Section 4 of the Kerala Panchayat Raj Act, 1994 (Act 13 of 1994) or a Municipality constituted under Section 4 of the Kerala Municipality Act, 1994 (Act 20 of 1994).

(h) “Master” means any person having for the time being the charge or control of a vessel.

(i) “Owner” includes any agent or hirer using the vessel.

(j) “Passenger” includes any person carried in a vessel other than the master and crew.

(k) “Prescribed” means prescribed by rules made under this Act.

(l) “Public Ferry” means a ferry across a public canal, which is declared to be subject to the provisions of this Act.

(m) “Vessel” includes any ship, barge, boat, house boat, raft, timber logs, cluster of or such other bamboo, floating materials propelled in any manner.

CHAPTER II

PUBLIC FERRIES

3. *Power to define, declare and establish.*—(1) The State Govt. may from time to time

(a) Declare which ferries and canals be deemed public ferries and public canals;

(b) Establish new public ferries and canals where it is deemed necessary;

(c) Define the limits of any public ferry and canal;

(d) Change the course of any public ferry and canal;

(e) Discontinue any public ferry and canal whenever it is deemed not necessary;

(2) Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the Official Gazette.

4. *Power to fix rates of fare.*—(1) State Government may, through a notification, fix the rates of fare leviable upon passengers, animals, vehicles and goods conveyed across such ferries and conveyed through the canals.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

CHAPTER III

LICENSING AND REGISTRATION

5. *Necessity for registration.*—No person shall ply any vessel and no owner of vessel shall cause or permit the vessel to be plied in any canals unless the vessel is registered with the authority as may be prescribed.

6. *Registration where to be made.*—Every owner of a vessel shall cause the vessel to be registered with the registering authority in whose jurisdiction he has the residence or place of business.

7. *Registration has to be made.*—(1) An application by or on behalf of the owner of vessel for registration shall be in such form and shall be accompanied by such documents and fees within such period as may be prescribed by the State Government.

(2) Registration made under sub-section (1) in respect of a vessel, subject to the provisions contained in this Act, be valid only for a period of five years from the date of registration and shall be renewable.

(3) An application by or on behalf of the owner of a vessel, for renewal of registration shall be made within such period and in such form, containing such particulars and fee as may be prescribed by the State Govt.

8. *Power to suspend or cancel license or registration.*—If any registering authority has reason to believe that any vessel within its jurisdiction:—

(a) is in such a condition that its use in a canal would constitute a danger to the public or that it fails to comply with the requirements of this Act or the rules made thereunder, or

(b) has been, or is being used for hire or reward without a valid permit for being used as such the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address), suspend the license or registration; reasons being recorded and communicated to him.

9. *Appeal.*—(1) Any person aggrieved by an order of the registering authority under section 8, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority (appellate authority).

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

(2) The appellate authority after giving notice of the appeal to the original authority and the appellant shall hear the appeal and are pass such order as it considers necessary.

(3) An order passed by the appellate authority shall be final.

10. *Revision.*—(1) The prescribed authority/officer may of his own motion call for the record of any proceedings which are pending before or have been disposed off by any authority subordinate to it for the purpose of satisfying himself as to the legality of such order in relation thereto as he may think fit.

(2) No order shall be passed under sub-section (1) of this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

11. *Power to fix fee/tax.*—State Government may from time to time fix rates of fees for the licensing or registration of vessels or any tax it deems fit.

CHAPTER IV

SAFETY AND RESCUE MEASURES

12. *Safety and rescue measures.*—(1) The local authority shall ensure the safety of the people who uses the vessel.

(2) The local authority will implement all the safety and rescue measures as may be prescribed by the Government from time to time.

(3) Wherever: -

(a) any accident to a vessel or to the boiler or machinery or to any apparatus attached thereto which is calculated to weaken the strength of such vessel is caused, or

(b) by reason of any casualty happening on board of any vessel death or grievous hurt is caused to any person, or

(c) any vessel has caused loss or material damage to any other vessel, or

(d) any vessel has been wrecked, abandoned or materially damaged.

It shall be the duty of every master or other person in charge of a vessel to report in writing, within six hours of the occurrence, such accident, casualty, death, hurt, wreck, abandonment or damage, to the nearest Regional Transport Officer/Local Administration or Police Officer .

13. *Appointment of Inspectors.*—State Govt. may, from time to time, appoint Inspector or inspectors for a local authority or one or more local authorities as may be considered necessary for the purpose of this Act.

14. *Vessel not to navigate without certificate of fitness.*—No vessel shall navigate in any public ferry unless it has obtained a certificate of fitness under this act.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

CHAPTER V

CONTROL

15. *Power of Inspector.*—(1) For the purpose of inspection under section 14, the inspector may, at any reasonable time, go on board any vessel and may inspect the vessel and every part thereof, including the engine and other machinery, and all equipments and article on board:

Provided that he shall not unnecessarily hinder the loading or unloading of the vessel or unnecessarily detain or delay it from proceeding on any voyage.

(2) The owner and the master of the steam vessel shall afford to the Inspector all reasonable facilities for inspection and all such information respecting the vessel and other machinery or any part thereof, and all equipments and articles on board, as he may require for the purpose of inspection.

16. *Fee in respect of inspections.*—Before an inspection commences the owner or master of the vessel shall pay to the local authority a fee as may be prescribed from time to time

17. *Grant of certificate.*—When an examination of the vessel under the provisions of this Act is completed the inspector appointed under this Act shall forthwith, if satisfied, give to the owner or master of the vessel examined; a certificate in the form prescribed under the rules which should contain among others the following particulars namely: -

(a) That the hull and machinery of the vessel are sufficient for the service intended and are in good condition;

(b) that the equipments of the vessel and the license (certificate) of the engine driver are in such conditions as required by the rules framed under this Act;

(c) The limit of time (if any) beyond which as regards the hul, machinery and equipments, the vessel could not in the judgment of the inspecting officer, be permitted to ply;

(d) The number of passengers the vessel is licensed to carry as per the rules framed under this Act; and

(e) Any other prescribed particulars.

18. *Power of the prescribed authority to order a second inspection.*—
(1) If the inspector making an inspection of a vessel refuses to give a certificate or gives a certificate with which the owner or master is dissatisfied the prescribed

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

authority may on the application of the owner or master and the payment given by him of such fee not exceeding twice the amount of the fee payable for the previous inspection as the prescribed authority may require direct two other inspectors to inspect the vessel.

(2) The inspectors so directed shall forthwith inspect the vessel and may after the inspection decide that the certificate shall be returned or that such certificate as may under the circumstances seem to them proper be issued.

(3) Any decision given under sub-section (2) shall be final. The decision shall be communicated to the inspector who made the previous inspection and he shall give effect to such decision as if it were passed by himself and grant a certificate or revise the one issued by him under Section 17.

19. *Certificate to be affixed in the vessel.*—The owner or Master of every vessel for which a certificate of inspection in the form prescribed under the rules has been granted by the inspector shall on receipt of the certificate and after obtaining necessary license cause such certificate and license to be affixed and kept affixed so long as it remains in force and the vessel is in use on some conspicuous part of the vessel where they may be easily read by all persons on board thereof.

20. *Terms of certificate of inspection/fitness.*—A certificate of fitness/inspection shall be valid for one year from the date of issue.

21. *Renewal of certificate of inspection.*—After certificate of inspection has ceased to be in force, the same shall be renewed after fresh inspection of the vessel to which the certificate relates has been held in accordance with the provisions of this Act.

22. *Power to suspend or cancel certificate of inspection.*—A certificate of inspection may be suspended or cancelled by the local authority if it has reason to believe:

(a) that the certificate by the inspector as to the sufficiency and good condition of the hull, boilers, engines or other machinery or about any of the equipments of the vessel has been fraudulently or erroneously granted; or

(b) That the certificate has been granted upon and/or false or erroneous information; or

(c) That since the granting of the certificate, the hull, boiler, engine or other machinery or any of the equipments of the vessel have sustained any material damage, or have otherwise become insufficient.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

23. *Appointment of examiners for testing qualifications of masters/ driver.*— State Government may from time to time appoint examiner for the purpose of examining the qualifications of person, desirous of obtaining certificates to the effect that they are competent to act as masters or engine drivers, as the case may be on board vessel and may also fix fees to be paid by the applicants for such examination.

24. *Grant of master's or engine driver's certificate of competency.*— The prescribed authority appointed in this behalf may grant to every person reported by the examiners to possess necessary qualifications a certificate of competency in such form as may be prescribed by the rules to be framed under this Act to the effect that he is competent to act as a master or engine driver, as the case may be, of a vessel.

25. *Grant of master's/engine driver's certificate of service.*—(1) The prescribed authority may in his discretion, grant, without examination, to any person who has served as a master or engine driver of a vessel before the date of passing the Act, a certificate (hereinafter called a certificate of service) to the effect that he is by reason of his having so served competent to act as a master or an engine driver, as the case may be, on board a vessel.

(2) A certificate of service so granted shall have the same effect as a certificate granted under this Act after examination.

26. *Certificate to be made in duplicate.*—Every certificate of competency or service granted under this Act shall be made in duplicate and one copy shall be delivered to the person entitled to the certificate and the other shall be kept and recorded in the prescribed manner.

27. *Copy of certificate to be granted in certain cases.*—Whenever a master or engine driver, proves to the satisfaction of the authority which granted his certificate that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which, according to the record kept under Section 26, he appears to be entitled, shall be granted to him and shall have the same effect as the original.

28. *Power to suspend or cancel certificate in certain cases.*—(1) Any certificate granted under Section 26 or 27 may be suspended or cancelled by the prescribed authority: -

(a) if the holder of such certificate is proved to have been convicted of any non-bailable offence, or

(b) if the wreck or abandonment of or loss or damage to any vessel or loss of life has been caused by the wrongful act or default of the holder of such certificate or if the holder of such certificate is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, or

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

(c) if in the case of a person holding a certificate of competency or service such person is or has become, in the opinion of the prescribed authority, unfit to act as master or engine driver as the case may be.

(2) The prescribed authority may at any time revoke an order of suspension or cancellation made under sub-section (1), or grant without an examination to any person whose certificate was so cancelled, a new certificate.

(3) A certificate granted under sub-section (2) shall have the same effect as a certificate of competency granted under this Act after examination.

29. *Obligation to deliver suspended or cancelled certificate.*—Every certificate of inspection which has expired or which has been suspended or cancelled under Section 22 and every certificate of competency or service which has been suspended or cancelled under Section 28 shall be delivered by the owner, master or engine driver, as the case may be, to the prescribed authority or to any officer empowered by him in this behalf.

CHAPTER VI

ISSUE OF PERMIT

30. *Necessity of Permit.*—(1) No owner of vessel shall use or permit the use of the vessel in any canal or public ferry whether or not such vessel is actually carrying any passengers or goods in accordance with conditions of a permit granted by a local authority.

(2) No vessel shall be considered validly registered unless it obtains a permit in such form as may be prescribed.

31. *Application for a permit.*—(1) Every application for a permit shall be made to the local authority of the area in which the vessel is proposed to be used.

(2) An application referred to in sub-section (1) shall be accompanied by such documents and fee as may be prescribed.

(3) A holder of a permit shall abide by the terms and conditions of the permit.

(4) A permit shall be issued in the form as may be prescribed.

(5) The local authority may refuse to grant a permit to any owner of a vessel if it appears to the authority that there are sufficient numbers of permits already issued on a particular ferry or canal.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

32. *Duration of a permit.*—(1) A permit issued under Section 33 shall be valid for three years from the date of issue.

(2) A permit may be renewed on an application made not less than 10 days before the date of expiry.

(3) Notwithstanding anything contained in sub-section (2), the local authority may, entertain an application for the renewal of permit upto one month of its expiry if he is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) An owner of vessel, who makes an application for renewal of permit after one month of its expiry, shall be liable to pay penalty at the rate as may be specified by the Government.

33. *Cancellation and suspension of permit.*—(1) The local authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit under the following circumstances:—

(a) On the breach of any condition of a permit, or

(b) If the holder of the permit uses or allows a vessel to be used in any manner not authorized by the permit, or

(c) If the holder of the permit ceases to own the vessel covered by the permit, or

(d) If the holder of the permit has obtained it by fraud or misrepresentation, or

(e) If holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) Where a local authority cancels or suspends a permit, it shall give to the holder in writing its reasons for action taken.

34. For the purpose of this act, when a canal or ferry lies within the limits of two or more local authorities, the local authority shall be the local authority of the area in which the major portion of the canal or ferry lies and in case the portion of the canal or ferry in each of the region is approximately equal, it shall be decided by mutual consent of the concerned local authorities.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

35. *Appeal.*—Any person:

(a) Aggrieved by the refusal of the authority to grant a permit or any condition attached to a permit, or

(b) Aggrieved by the cancellation/suspension of permit, or

(c) Aggrieved by the refusal of renewal of a permit may within the prescribed time and prescribed manner, appeal to the authority as may be notified by the Government, who shall, after affording an opportunity of being heard to the parties give a decision thereon which shall be final.

CHAPTER VII

HOUSE BOAT

36. *Necessity of certificate of fitness from the special officer.*—No House Boat shall navigate or be used for any purpose in any navigable waters unless it has obtained a certificate of fitness under this Chapter.

37. *Appointment of special officer.*—State Government may appoint one or more persons having the prescribed qualification as special officer for controlling the functioning of House Boats in the State.

38. *Power of the special officer.*—The special officer may at any reasonable time, go on board any House Boat and inspect the House Boat and every part thereof including all equipments and article on board and the crew members, for ascertaining whether any action or omission is there in carrying out the provisions of the Act and Rules.

39. *Inspection and issue of certificate.*—The special officer shall inspect the House Boat before issuing the certificate of fitness.

40. *Grant of Certificate.*—Before issuing the certificate of fitness, the special officer shall satisfy himself that the following conditions are fulfilled, namely:

(1) That the House Boat is in good condition and is suitable for the stay and convenience of the tourists and passengers.

(2) That the telephones and such other modern communication equipments are provided in the House Boat.

(3) That the sufficient numbers of life buoys are there and which are kept in convenient places ready for instant use.

(4) That adequate numbers of chemical and other fire extinguishers are provided in a ready to use condition.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

41. *Crew of the House Boat.*—(1) House Boat shall be manned by sufficient number of crew and no person who is not fully qualified or who is not accustomed to the use of boat, or is inefficient, shall be employed as a master, tindal or driver.

(2) Two or more experienced divers and swimmers shall be included in the crew of each House Boat.

(3) No House Boat shall navigate without one person at least on board competent to steer and manage her and acquainted with the rules regarding the navigation of the vessel. No vessel shall tie up or be left without a competent person on board to take charge of her.

42. *Safeguard for prevention of environmental pollution.*—(1) No master of the House Boat shall discharge or emit or permit to be emitted or discharged any environmental pollutants in to the navigable water.

(2) No master of the House Boat shall discharge or emit or permit to be discharged or emitted any sewage or any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses or to the life and health of animals or plants or of aquatic organisms.

43. *Action to be taken when accident on board a House Boat.*—(1) Whenever any accident causing serious hurt to any person or material damage to any property occurs on board of, or by means of any House Boat, the master or the person in charge of the House Boat shall at once inform the nearest police station and report the circumstances connected with the accident to the officer in charge of the police station. He shall also report to the special officer appointed under this Act.

(2) In case of sinking of House Boat due to accident or otherwise the master or operating personal shall take immediate steps to rescue the persons in the House Boat and also take immediate steps to salvage the House Boat.

(3) In case his failure to salvage the House Boat, the prescribed authority shall take immediate steps for its salvage and the expenses incurred therefore shall be recovered from the House Boat owner.

44. *Penalty for contravention of the provisions of this Chapter.*—Whoever operating a House Boat in contravention of any of the provisions of this chapter or fails to comply with any order or direction given under this chapter, shall be punished with imprisonment which may extent to two years or a fine of ten thousand rupees or both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

CHAPTER VIII

OFFENCE AND PENALTIES

45. *Navigating in a ferry in contravention of Section 5.*—An owner or a master of any vessel navigating in public ferry or canal in contravention of Section 5 of this Act shall be punishable with fine not exceeding rupees five thousand.

46. *Evasion of tax/fees.*—Any person who fails or refuses or evades payment of any tax/fees leviable under this Act, shall be punishable with a fine not exceeding rupees five thousand.

47. *Using expired license or certificate.*—The owner and the master of a vessel who uses or retains fraudulently any expired license shall be punishable with fine not exceeding rupees three thousand, or with imprisonment for a term not exceeding four months, or with both.

48. *Using a vessel without certificate of inspection.*—If any vessel navigates in a public ferry or canal or is used for any service in contravention of section 19, the owner and the master of the vessel shall each be punishable with fine not exceeding rupees three thousand or with imprisonment for a term not exceeding four months, or with both.

49. *Excess number of passengers.*—If a vessel has number of passengers more than the number specified in the license or certificate of inspection, the owner and the master shall, for every passengers over and above that number, be punishable with a fine of rupees hundred per passenger.

50. *Failure to affix certificates at a conspicuous part of the vessel.*—If the certificate of inspection granted under this Act or the license is not kept affixed in any vessel as required by section 21 the owner and the master shall each be liable to a fine not exceeding one thousand rupees.

51. *Failure to produce certificate of competency.*—Any master or engine driver of a vessel fails to produce any certificate of competency or service when asked to do so by an inspector or any officer authorized by the Govt. shall be punishable with a fine not exceeding rupees two thousand and such vessel may be impounded by the prescribed authority.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

52. *Failure to give notice of wreck or casualty.*—If owner or master of a vessel fails to inform the wreck or accident of vessel within the prescribed time, such owner or master shall be punishable with a fine not exceeding to rupees two thousand.

53. *Misconduct of a master or engine driver.*—If any person employed or engaged in any vessel, by willful breach of duty, or by neglect of duty or by reason of drunkenness, does any act of misconduct or misbehaviour or refuses to do any lawful act, shall be punished with fine which may extend to four thousand rupees, or with imprisonment for a period of four months, or with both.

54. *Vessel without registration.*—Whosoever plies a vessel or allows a vessel to be plied in contravention of the provisions of section 8 shall be punishable with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees. The prescribed authority may impound the vessel also.

55. *Using vessel without permit.*—Whosoever plies a vessel or allows a vessel to be used in contravention of the provisions of Section 32 or in contravention of any condition of a permit, shall be punishable for the first offence with a fine which may extend to three thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with a fine which may extend to six thousand rupees but shall not be less than three thousand rupees. The prescribed authority may seize the vessel.

56. *Compounding fee.*—The vessels seized/impounded under this Act shall be released after payment of compounding fee as may be fixed by the Government.

CHAPTER IX

GOVERNMENT'S POWER TO MAKE RULES

57. *Power to make rules.*—(1) The Government may by notification in the Gazette, make the 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.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

CHAPTER X

REPEAL AND SAVINGS

58. *Repeal and Saving.*—The Travancore Public Canals and Public Ferries Act, 1096 (Regulation VI of 1096), The Madras Canals and Public Ferries Act, 1890 (Act 11 of 1890), the Cochin Ferries and Tolls Act, 1082 (Act III of 1082) and The Cochin Public Canals and Backwaters Navigation Act, 1092 (Act 1 of 1092) are hereby repealed.

Provided that such repeal shall not effect

(a) The previous operation of the said enactments or anything duly done or suffered thereunder;

(b) Any right, privilege, obligation or liability acquired or incurred under the said enactments;

(c) Any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; 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 has not been passed.

Statement of Objects and Reasons

The object of the Bill is to unify the four different enactments applicable in the matter of protection of public canals, backwaters and ferries and the navigation through them. The four existing enactments which are recommended to be repealed on making the bill an Act are the following:—

(i) The Travancore Public Canals and Public Ferries Act, 1096 (Regulation VI of 1096).

(ii) The Madras Canals and Public Ferries Act, 1890 (Act XI of 1890).

(iii) The Cochin Ferries and Tolls Act, 1082 (Act III of 1082) and

(iv) The Cochin Public Canals and Backwaters Navigation Act, 1092 (Act I of 1092).

Apart from unifying the laws, the bill contains provisions defining the word “House Boat”, conditions subject to which house boats can be registered, licensed and navigated without causing environmental pollution to canals and backwaters.

The Kerala Public Canals and Backwater (Protection and Navigation) Bill

Stringent provisions are incorporated to ensure safe navigation through the canals and backwaters to avoid tragedies like Thattekattur and Alappuzha boat tragedies. House boats can be a source of pollution as far as canals and backwaters are concerned. As such detailed provisions have been incorporated in the bill to deal with the various aspects regarding registration, licensing, fitness and safe voyage using house boats in Chapter VII. Section 41 of the bill makes it mandatory to have at least two divers and swimmers in each house boat if not more. Section 42 of the bill deals with safeguards to be taken to prevent environmental pollution while using the house boats. Violation of any provisions in Chapter VII makes the violator liable for a punishment of imprisonment upto two years and a fine of Rs.10,000.

Need for ensuring the safety of the boats, safe journey through canals and strict enforcement of the provisions in the Bill are the main objects and reasons of the Bill.

THE CORRUPT PUBLIC SERVANTS (FORFEITURE OF PROPERTY) BILL

A BILL

to provide for the forfeiture of illegally acquired properties of corrupt public servants and for matters connected therewith or incidental thereto.

WHEREAS for the effective prevention of corruption by public servants which is having a deleterious and deadening effect on administrative efficiency, developmental activities and programmes it is necessary to devise effective and prompt-measures to deprive persons engaged in such activities of their ill-gotten gains;

AND WHEREAS many such public servants are stashing away their ill-gotten gains in numbered accounts in foreign banks and in many other ways outside the territory of India and whereas it is necessary to identify and seize those assets for being utilised for public purposes and whereas it is necessary for achieving the said purpose to declare the very holding or possession of illegally acquired properties an offence;

AND WHEREAS prosecution of corrupt public servants under the provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 has become difficult on account of various systemic defects and as a result of which the number of prosecutions and more so the number of convictions of corrupt public servants is ridiculously low compared to the widespread corruption prevailing every level of administration;

AND WHEREAS such public servants have been augmenting such gains by violations of Wealth Tax, Income Tax and other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

AND WHEREAS such persons have in many cases been holding the properties acquired by them through such gains in the name of their relatives, associates and confidants;

AND WHEREAS it is necessary to forfeit all such properties ignoring all kinds of devices and transactions;

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 Corrupt Public Servants (Forfeiture of Property) Act.

The Corrupt Public Servants (Forfeiture of Property) Bill

(2) It extends to the whole of Kerala.

(3) It shall come into force on such date as may be notified by the Government.

2. *Application.*— The provisions of this Act shall apply to the following persons, namely:—

(a) Every public servant—

(i) Who has been found guilty of corruption in a disciplinary/departmental enquiry or by a court; or

(ii) Who is holding or is in possession of illegally acquired properties; or

(iii) Who is found holding or in possession of properties whether in the course of a search, raid or survey by an authority or in any other manner whatsoever, which are disproportionate to his known means of income;

(b) Every person who is a relative of the public servant referred to in clause (a);

(c) Every associate of the public servant referred to in clause (a);

(d) Any holder of any property which was at any time previously held by the public servant referred to in clause (a), unless such holder proves that he was a transferee in good faith for adequate consideration;

(e) Any person who has deposited any amounts or other movable properties in any bank or any other concern outside the territory of India, or has acquired any properties outside the territory of India without the requisite permission of the appropriate authority in India.

Explanation.—1 For the purposes of clause (b) of this sub-section, “relative” in relation to a public servant means—

(i) Spouse of the public servant;

(ii) Brother or sister of the public servant;

(iii) Brother or sister of the spouse of the public servant;

(iv) Any lineal ascendant or descendant of the public servant;

(v) Any lineal ascendant or descendant of the spouse of the public servant;

(vi) Spouse of the person referred to in clause (i), clause (iii) or clause (v);

(vii) Any lineal descendant of the person referred to in clause (ii) or clause (iv).

The Corrupt Public Servants (Forfeiture of Property) Bill

Explanation.—2 For the purposes of clause (c), “associate”, in relation to a public servant means—

(i) Any individual who had been or residing in the residential premises (including outhouses) of such public servant;

(ii) Any individual who had been or is managing the affairs or keeping the accounts of such public servant;

(iii) Any association of persons, body of individuals, partnership firm or private company within the meaning of the Companies Act, 1956, of which such public servant had been or is a member, partner or director;

(iv) Any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at any time when such public servant had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) Any persons who had been or managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii);

(vi) The trustee of any trust, where—

(a) The trust has been created by such public servant; or

(b) The value of the assets contributed by such public servant (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(vii) Where the competent authority, for reasons to be recorded in writing, considers that any properties of such public servant are held on his behalf by any other person, such other person.

Explanation.—3 For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

3. *Definitions.*—(1) In this Act, unless the context otherwise requires—
(a) “Competent authority” means the competent authority designated under sub-section (1) of Section 5 and shall include the competent authorities designated as such under sub-section (2) of Section 5.

The Corrupt Public Servants (Forfeiture of Property) Bill

(a) “Corruption” includes (i) conduct of the nature specified in any of the offences mentioned in the Prevention of Corruption Act and the offences mentioned in Sections 166 to 169, 197, 217 to 219, 409, 477-A and 489-A to 489-E of the Indian Penal Code, 1860 and (ii) such conduct as is inconsistent with the integrity, a public servant is expected to possess and which causes or likely to cause loss or prejudice to the interest of the State or to the public interest, as the case may be.

(b) “Government” means the Government of Kerala.

(c) “Illegally acquired property”, in relation to any person to whom this act applies, means—

(i) Any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force. [Relating to any matter in respect of which State Legislature has power to make laws; or]

(ii) Any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) Any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) Any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

(v) Any property held by or in possession of such person, whether before or after the commencement of this Act, which is disproportionate to his known lawful sources of income or for which he cannot satisfactorily account for and includes.

(A) Any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

The Corrupt Public Servants (Forfeiture of Property) Bill

(B) Any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

Explanation.—(1) If the value of illegally acquired property increases after it was acquired or if a different property or asset is acquired or created out of or with the aid of or by transfer of the illegally acquired property, all such increase in value or other property or asset so acquired or created shall be and shall be treated as illegally acquired property. If however the value of the property diminishes after it is acquired, the person concerned shall be liable to make good the diminution in value.

Explanation.—(2) Illegally acquired property includes property acquired or held by, or in possession of, a person to whom this Act applies, outside the territory of India,

(d) “Public servant” means a person holding or who has held an office or post in the State Government or any statutory corporation, agency or company subject to the control of the State Government financed wholly or partly by it or a local body or University and shall include—

Any person who has held or is holding the office of the Chief Minister, or is or has been a member of State Legislature, or is holding or has held any office in the personal staff of a Ministers.

(e) “Prescribed” means prescribed by rules made under this Act.

(f) “Person” includes a public servant within the meaning of clause (c) and his/her relative and/or associate referred to in Section 2.

(g) “Property” includes cash, jewellery or any article of value and any interest in property movable or immovable;

(h) “Trust” includes any other legal obligation.

4. *Prohibition of holding illegally acquired property.*—(1) as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

The Corrupt Public Servants (Forfeiture of Property) Bill

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1) such property shall be liable to be forfeited to the Government in accordance with the provisions of this Act.

(3) Notwithstanding anything contained in sub-section (2), a person holding or in possession of illegally acquired property in contravention of the provisions of sub-section (1) shall, on conviction by a criminal court, be liable to be punished with imprisonment which shall not be less than one year but which may extend to seven years. In any such trial, the provisions contained in Section 20 of the Prevention of Corruption Act, 1988 shall apply.

5. *Competent Authority.*—(1) Government shall designate the Director, Vigilance Department as the competent authority to exercise the powers and perform the functions of the competent authority under this Act.

(2) The Director of Vigilance Department shall be entitled to delegate his powers and functions to the officers subordinate to him and not below the rank of Deputy Superintendent of Police in respect of such public servants or class or classes of public servants, as the case may be, as may be specified by him. On such delegation, such officers shall exercise all the powers, and perform all the functions of the competent authority under this Act in respect of the public servants or cases or the class or classes of public servants or cases as may have been specified by the Director of Vigilance Department.

6. *Power to call for Information.*—(1) If the competent authority has reason to believe that any person is in possession of or holding illegally acquired properties, whether within the State or outside the State or abroad, it may serve a notice upon such person to disclose, by way of an affidavit, a true, full and up-to-date list of properties held by him or in his possession and those held by or in possession of his relatives and associates. The competent authority may after making such enquiry as it may think fit, take such action on the basis of the information so furnished and the other material, if any, gathered by it including the action contemplated by Section 7.

Explanation.—The death of the public servant or the person to whom this Act applies, whether before the issuance of a notice under this section or under section 7 or any other provision of this Act or during the pendency of any proceedings under this Act shall not prevent the initiation or continuation of the proceedings under this Act and all or any proceedings under this Act can be initiated or continued against the relatives or associates of the public servant or against the legal representatives of the person to whom this Act applies, as the case may be.

The Corrupt Public Servants (Forfeiture of Property) Bill

(2) Any person furnishing false information under sub-section (1) and any person refusing to furnish information called for under sub-section (1) shall on conviction by a criminal court, be liable to be punished by imprisonment of either description for a term which may extend to three years or fine or both.

(3) Notwithstanding anything contained in the Criminal Procedure Code, 1973, the offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

7. *Notice of Forfeiture.*—(1) If, having regard to the value of the properties possessed or held, whether within the territory of India or anywhere else, by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under Sections 6, 17, 18 or 13 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Government under this Act,

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) (a) Simultaneously with the issuance of the notice under sub-section (1) or at any time thereafter, the Competent Authority may attach all the properties generally, or any of the properties specified in the notice, held by or in possession of the person to whom the notice under sub-section (1) is issued. Such attachment shall be effective till the passing of the final orders by the Competent Authority, unless vacated by the Competent Authority earlier.

Explanation.— An order of attachment issued under this clause shall also operate as an injunction against the person restraining him from transferring or dealing with the attached properties in any manner, except under the orders of the Competent Authority.

The Corrupt Public Servants (Forfeiture of Property) Bill

(b) An order under clause (a) can also be directed to any person or bank or any other institution, authority or organization, holding properties for and on behalf of the person to whom the notice under sub-section (1) is or has been issued. On being apprised of such order, the person, the bank, the institution, authority or organisation shall hold all the properties of the person to whom the notice under sub-section (1) is issued or the specified properties, as the case may be, subject to the orders of the Competent Authority and shall not part with those properties except under the orders of the Competent Authority.

(4) (a) Where any claim is preferred to, or any objection is made to the attachment of any property under sub-section (3) on the ground that such property is not liable to such attachment, the competent authority shall proceed to investigate the claim or objection,

Provided that no such investigation shall be made where the competent authority considers that the claim or objection was designedly or unnecessarily delayed.

(b) The claimant or objector must adduce evidence to show that the property attached is not liable to be forfeited under the provisions of this Act.

(c) Where upon such investigation, the competent authority is satisfied that such property is not liable to be forfeited under the provisions of this Act, he shall release the same from attachment. In case he is not so satisfied, he shall disallow the claim or the objection.

(d) Where a claim or objection is preferred, the party against whom the order is made may institute a suit in a Civil Court to establish the right which he claims to the said property but subject to the result of such suit, if any, the order of the competent authority shall be conclusive.

8. *Forfeiture of property in certain cases.*—(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under Section 7 and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

The Corrupt Public Servants (Forfeiture of Property) Bill

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties, which, to the best of its judgment, are illegally acquired properties and record a finding accordingly, under sub-section (1).

(3) Where the competent authority records a finding under this Section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to provisions of this Act stand forfeited to the Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Government under this Act, then, the company, shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Government as the transferee of such shares.

9. *Burden of Proof.*—In any proceedings under this Act, the burden of proving that any property specified in the notice served under Section 7 is not illegally acquired property shall be on the person affected.

10. *Fine in lieu of Forfeiture.*—(1) Where the competent authority makes a declaration that any property stands forfeited to the Government under Section 8 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be—

(a) In the case of any part of income or earnings, the amount of such part of income or earnings:

(b) In the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets;

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

The Corrupt Public Servants (Forfeiture of Property) Bill

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under Section 8 and thereupon such property shall stand released.

11. *Procedure in relation to certain trust properties.*—In the case of any person referred to in clause (vi) of Explanation 2 of Section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under Section 7 and all the other provisions of this Act shall apply accordingly.

Explanation.—For the purposes of this section “illegally acquired property” in relation to any property held in trust, includes –

(i) Any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) Any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

12. *Certain transfers to be null and void.*—Where after the issue of a notice under Section 7 or under Section 11, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Government under Section 8, then the transfer of such property shall be deemed to be null and void.

13. *Appeal to the High Court.*—(1) An appeal shall lie to the High Court within whose territorial jurisdiction the competent authority is located against an order passed under Sections 8, 10 or 11.

(2) The appeal under sub-section (1) shall be heard by a Division Bench, as may be designated by the Chief Justice of the High Court.

(3) The appeal shall be preferred within 45 days of the date on which the order appealed against is served upon the appellant:

The Corrupt Public Servants (Forfeiture of Property) Bill

Provided that the High Court may entertain an appeal preferred beyond 45 days in case the appellant satisfies that there was sufficient cause for not preferring the appeal within the period prescribed.

14. *Notice or order not to be invalid for error in description.*—No notice issued or served, no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

15. *Bar of jurisdiction.*—No order passed or declaration made under this Act shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the High Court or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

16. *Competent authority to have powers of civil court.*—(1) The competent authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents;
- (c) Receiving evidence on affidavits;
- (d) Requesting any public record or copy thereof from any court or office;
- (e) Issuing commissions for examination of witnesses or documents;
- (f) Any other matter, which may be prescribed.

(2) The competent authority shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceedings before the competent authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 for the purposes of Section 196 of the Indian Penal Code.

The Corrupt Public Servants (Forfeiture of Property) Bill

17. *Information to competent authority.*—(1) Notwithstanding anything contained in any other law, for the time being in force the competent authority shall have power to require any officer or authority of the Government or a local authority or a Bank, a company, a firm or any other institution, establishment, organization or any individual to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Act. Failure to furnish information shall be punishable with imprisonment of either description for a term which may extend to three years and fine.

(2) Notwithstanding, anything contained in the Criminal Procedure Code, 1973, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of Section 262] shall be applicable thereto.

(3) Any officer of the Income Tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973, may furnish suo motto any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

18. *Summoning of the Statement of assets.*—The Competent Authority shall be entitled to summon the statement of assets filed under Kerala Lok Ayukta Act, 1999 (8 of 1999) or under the Kerala Government Servant Conduct Rules, 1910 and any other law for the time being in force and take such action thereon as may be called for under the provisions of this Act.

19. *Certain officers to assist competent authority.*—For the purposes of any proceedings under this Act, the competent authority is empowered to require the assistance of any of the officers of the State Government; Statutory Corporation, Company subject to the control of the State Government; a local authority or University or such other officers as may be specified by the Government.

20. *Power of competent authority to require certain officers to exercise certain powers.*—For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation, search and seizure or survey in respect of any person, place, property, assets, documents, books of accounts or any other relevant matters.

The Corrupt Public Servants (Forfeiture of Property) Bill

21. *Power to take possession.*—(1) Where any property has been declared to be forfeited to the Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of Section 10 within the time allowed therefore under sub-section (3) of that Section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorized by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the services of any police officer to assist the competent authority and it shall be the duty of said officer to comply with such requisition.

22. *Rectification of mistakes.*—With a view to rectifying any mistakes apparent from record, the competent authority or the High Court, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

23. *Findings under other laws not conclusive for proceedings under this Act.*—No finding of any officer or authority under any other law for the time being in force shall be conclusive for the purposes of any proceedings under this Act.

24. *Service of notices and orders.*—Any notice or order issued or made under this Act shall be served—

(a) By tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) If the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on such conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

The Corrupt Public Servants (Forfeiture of Property) Bill

25. *Protection of action taken in good faith.*—No suit prosecution or other proceedings shall lie against the Government or any officer of the Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act, or the rules made thereunder.

26. *Punishment for giving false information.*—(1) Whoever, with intent to cause injury to or defame, any person, gives any information or complaint to the competent authority which he either knows or has reason to believe to be false or with reckless disregard for truth, shall be punished with imprisonment of either description for a term which may extend to three years or fine or both.

(2) Notwithstanding anything in the Criminal Procedure Code, 1973, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of Section 262] shall be applicable thereto.

27. *Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any or other law for the time being in force.

28. *Provisions of the Act not to apply to certain properties held in trust.*—Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes—

(i) Such property has been so held by such trust or institution from a date prior to the commencement of this Act; or

(ii) Such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

29. *Power to make rules.*—The Government may by notification in the Gazette make rules prospectively or retrospectively for carrying out the provisions of this Act.

30. *Act to be in addition to any other law.*—Any proceeding taken under any law for the time being in force shall not preclude the competent authority under this Act from taking any action or initiating any proceedings under this Act.

The Corrupt Public Servants (Forfeiture of Property) Bill

Statement of Objects and Reasons

Corruption is one of the greatest evils which eat into the vitals of the present day society. From 1988 onwards we are having Prevention of Corruption Act. But still the evil has extended its tentacles widely into almost all fields of human activities. Prosecution of corrupt public servants under the provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 has become difficult on account of various systemic defects and as a result of which the number of prosecutions and more so the number of convictions of corrupt public servants is ridiculously low compared to the widespread corruption prevailing at every level of administration. Experience hitherto establishes that prosecution and punishment for a period of imprisonment even may not be a sufficient deterrent for people not to become corrupt. Corrupt public servants are now stashing away their ill-gotten gains in numbered accounts in foreign banks in many other ways outside the territory of India. Similarly, such people have been augmenting such gains by violations of Wealth Tax, Income Tax and other laws and as such gaining immeasurable financial control in society. Therefore the Commission is of the considered view that it is necessary and proper to recommend the passing of a new legislation containing new provisions which will enable the Government or other authorities functioning under the Act to reach at the ill-gotten gains and to forfeit the same and use it for public good. It is with this object that the Bill is being recommended by the Commission.

Section 2 of the Act the outset itself indicates the various categories of people who may come within the fold of the provisions of the Act. A very wide range of people are statutorily mentioned as persons coming within the purview of the Act. Similarly the word “illegally acquired property” has been defined in a very wide manner to take in all classes of illegal gains.

Section 4 of the bill declares that as from the date of commencement of this Act, it shall not be lawful for any person to whom the Act applies to hold any illegally acquired property either by himself or through any other person on his behalf. Possession of property in violation of the above mandate is declared as an offence punishable with imprisonment which shall not be less than one year but which may extend to seven years. The punishment is over and above the deprivation of property by forfeiture.

As per Section 5 of the Bill the Competent Authority shall be a person who has been a Judge of the High Court or of the Supreme Court to enquire into and decide and forfeit the illegally acquired property of public servants, their relations, associates, name lenders etc. For discharging the very onerous duties of the competent authority under the Act he has been given very wide powers

The Corrupt Public Servants (Forfeiture of Property) Bill

including power to call for all informations about the illegally acquired properties inside or outside the State, power of attaching the properties even before a final decision is taken so as to disable the public servant or his relations or from transferring the ill-gotten assets to others. There is also a provision stating that all transfers of illegally acquired properties shall be void if such transfer is effected after the issue of notice of forfeiture. Another important provision in the Bill is Section 9 which states that “in any proceedings under this Act the burden of proving that any property specified in the notice of forfeiture is not illegally acquired property shall be on the person affected. The competent authority shall consider all the materials before it may finally decide the case. Against the decision of the competent authority the affected party shall have a right of appeal to the High Court. Appeal filed shall be heard and decided by a Division Bench of the High Court. There is a total bar for all other courts in entertaining any proceedings which is to be entertained and decided by the Competent Authority and the High Court.

THE KERALA CHRISTIAN MARRIAGE BILL, 2008

A BILL

An act to amend, consolidate and extend the law relating to solemnization and registration of marriages among Christians in the State of Kerala.

Preamble

WHEREAS it is necessary and expedient to amend and consolidate and extend the law relating to solemnization and registration of marriages among Christians in the State of Kerala: Be it enacted in the *Fiftyninth Year* of the Republic of India as follows:

1. *Short title.*—(1) This Act may be called “The Kerala Christian Marriage Act, —”.

2. *Local extent and commencement.*—It extends to the whole of the State of Kerala, and shall come into force at once.

3. *Interpretation clause.*—Unless the context otherwise requires—

(a) ‘Christians’ means a 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) “Government” means the State Government of Kerala.

(c) “Marriage Registrar” means the person appointed under section 6 of this Act.

(d) “Registrar General of Births, Deaths and Marriage” means Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

(e) “Minister of Religion” means a person authorized as such by a non-Episcopal Christian denomination in accordance with its constitution or regulations.

(f) “Episcopal denomination” means any denomination which recognizes the authority of a Bishop as ordained in accordance with the regulations of that denomination and which permits infant baptism.

(g) “Non-Episcopal denomination” means a denomination of Christian religion which does not have the office designated as Bishop or Episcopa or Metropolitan.

The Kerala Christian Marriage Bill, 2008

(h) “Episcopal ordination” means the conferment of authority to perform all or any of the sacraments of the Christian Church by or under the authority of a Bishop of the Episcopal denomination.

(i) “Licensing Authority” means the person authorized by the Government under section 7 for granting licence.

CHAPTER 1
SOLEMNIZATION OF MARRIAGE

4. *Conditions relating to solemnization of a Christian marriage.*—Notwithstanding anything contained in any other law for the time being in force, a marriage between persons, either of whom is a Christian, may be solemnized under this Act, if at the time of the marriage the following conditions subsist namely:

- (a) neither party has a spouse, in a valid marriage, living;
- (b) neither party is incapable of giving consent to the marriage in consequence of derangement of mental health;
- (c) the parties have attained marriageable age as provided in the Child Marriage Restraint Act, 1929 (Central Act XIX of 1929) and
- (d) the parties are not within the degrees of prohibited relationship as mentioned in the **First Schedule** hereto.

5. *Persons by whom marriages may be solemnized.*—A marriage between persons, either of whom is a Christian, may be solemnized by a Marriage Registrar, or by a person who has received Episcopal Ordination or by a person licensed under section 7 of this Act.

6. *Marriage Registrar.*—A Marriage Officer appointed under the provisions of the Special Marriage Act, 1954 for any local area shall be the Marriage Registrar for that local area under this Act.

7. *Issuing of Licence.*—(1) The State Government may authorize the District Collector or any other Officer to issue licence to any Christian for solemnizing a marriage under this Act.

(2) Any person authorized by a non-Episcopal denomination may apply to the licensing authority for the issue of a licence to the person or persons mentioned in such application.

The Kerala Christian Marriage Bill, 2008

(3) Any licence issued by the licensing authority shall be deemed to be the conferment of authority to solemnize a marriage between members of non-Episcopal denomination.

(4) The Licencing Authority may conduct such enquiry as he deems fit and issue the licence applied for and if he refuses to issue the licence, he shall communicate his reasons for such refusal to the applicant.

(5) Any applicant aggrieved by such refusal may prefer an appeal to the District Court within whose jurisdiction the cause of action arose.

8. *Notice of intended marriage.*—When a marriage is intended to be solemnized under this Act, the parties to the proposed marriage shall give notice thereof in writing in the form specified in the **Second Schedule** to the Marriage Registrar of the area in which at least one of the parties to the marriage has his or her permanent residence or domicile.

9. *Declaration by parties and witnesses.*—Along with the notice under section 8, the parties and two witnesses shall, in the presence of the Marriage Registrar, sign a declaration in the form specified in the **Third Schedule** to this Act, and the declaration shall be countersigned by the Marriage Registrar.

10. *Marriage Registrar to satisfy himself that parties understood purport of notice and declaration made.* —The Marriage Registrar shall, before authorizing solemnization of a marriage, satisfy himself that the parties to the proposed marriage understood the true import of the notice and the declaration made by them.

11. *Marriage Notice Book and publication.* —(1) The Marriage Registrar shall keep all notices given under section 8 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book to be kept in the form specified in the **Fourth Schedule**.

(2) The Marriage Registrar shall cause every such notice to be published by affixing a copy thereof on some conspicuous place in his office.

(i) Where either of the parties to a proposed marriage is not permanently residing within the local limits of jurisdiction of the Marriage Registrar to whom notice has been given under section 8, the Marriage Registrar shall cause a copy of such notice to be transmitted to the Marriage Registrar of the place within whose limits such party is permanently residing, or has his or her domicile and the latter shall thereupon cause a copy thereof to be affixed on some conspicuous place in his office.

The Kerala Christian Marriage Bill, 2008

(ii) Where either of the parties to an intended marriage is not permanently residing but has only domicile within the local limits of jurisdiction of the Marriage Registrar to whom notice has been given under section 8, he shall also cause a copy of such notice to be published at least in one English and one Malayalam Daily, which in his opinion, have wide circulation in the area.

12. *Objections to marriage and issue of certificate of marriage.*—

(1) Any person, may, before the expiration of seven days from the date of publication of the notice under sub-section (2) of section 11, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) If no objection has been received within the aforesaid period of seven days, the marriage may be solemnized by a person specified in section 5.

13. *Procedure on receipt of objection.*—(1) If objections are received under sub-section (1) of section 12, the Marriage Registrar shall prohibit the solemnization of the proposed marriage until such objections are disposed of by him. If he is satisfied that the objections are without sufficient cause for denying solemnization of the marriage or the objections are withdrawn, he shall permit or proceed to solemnize the marriage.

Provided further that the Marriage Registrar shall complete the enquiry into the objections within seven days from the date of the objections, unless there are sufficient reasons to be recorded in writing for extension of that period.

(2) If the Marriage Registrar upholds the objection and refuses to allow solemnization of the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the District Court within the local limits of whose jurisdiction the office of the Marriage Registrar is situate.

14. *Powers of Marriage Registrar in respect of inquiries.*—(1) For the purpose of any inquiry under section 11, the Marriage Registrar shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence on affidavits; and

The Kerala Christian Marriage Bill, 2008

(e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Registrar shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

15. *Liability for frivolous objection against solemnization of marriage.*—If the Marriage Registrar is satisfied that the objections made to the proposed marriage are not reasonable and have not been made in good faith he may impose on the person so objecting, compensation not exceeding fifty thousand rupees payable to such person or persons whom he deems entitled to. Any order so passed may be executed by the Civil Court within the local limits of whose jurisdiction the Marriage Registrar has his office.

16. *Marriage Registrar to issue certificate for solemnization of marriage.*—(1) As may be desired by the parties to the marriage, after completion of the procedure regarding publication of notice and inquiry in case of any objection, the Marriage Registrar shall permit the marriage to be solemnized.

(2) After permission is granted as mentioned above, it is open to the parties to approach a person specified in section 5 for solemnizing the marriage.

CHAPTER II

TIME AND PLACE OF SOLEMNIZING MARRIAGE

17. *Place, form and time for solemnizing marriage.*—(1) Every marriage under this Act may be solemnized at such time and place as deemed convenient.

(2) Every such marriage may be solemnized either by the Marriage Registrar or by a person who has received Episcopal Ordination or by a person licensed under section 7 in accordance with the formalities adopted or made by the person solemnizing it.

18. *Registration of marriage and certificate of marriage.*—(1) When a marriage has been solemnized by the Marriage Registrar, he shall enter the necessary details in a book kept in the form specified in the **Fifth Schedule**, to be called the Marriage Certificate Book. The relevant page or pages of the Marriage Certificate Book shall be signed by the parties to the marriage, the person solemnizing the marriage and two witnesses.

(2) When the marriage has been solemnized by any other person specified under section 5, a certificate of solemnization of marriage in the form specified in the **Sixth Schedule** shall be issued to the parties and one copy shall be forwarded to the Marriage Registrar forthwith and the Marriage Registrar shall enter the relevant details thereof in the Marriage Certificate Book and preserve the certificate.

The Kerala Christian Marriage Bill, 2008

19. *New notice when marriage not solemnized within three months.*—Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Registrar as required by section 8, or where an appeal has been filed under sub-section (3) of section 11, within three months from the date of the decision of the district court on such appeal, no Marriage Registrar shall allow solemnization of the marriage until a new notice has been given in the manner as laid down in this Act.

CHAPTER III
PENALTIES

20. *Unauthorised person granting certificate pretending to be licensed.*—(1) Whoever, not being authorised, to grant a certificate of marriage, issued any document purporting to be a certificate of marriage, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees.

(2) Whoever, being bound to perform the duties imposed on him under the provisions of this Act, without just cause refuses, or willfully neglects or omits, to perform any of the duties so imposed on him, shall be punished with fine which may extend to fifty thousand rupees.

Explanation.—A minister of religion or a clergyman or Bishop declining to solemnize a marriage as being contrary to the rules of the denomination concerned shall be deemed to be a just cause for the purpose of this section.

21. *Penalty for signing false declaration or certificate.*—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code, 1860 (45 of 1860).

CHAPTER IV
MISCELLANEOUS

22. *Marriage Certificate Book to be open to inspection.*—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection, by any person on an application made for that purpose, on payment of the prescribed fee and a certified extract there from shall be admissible as evidence of the statements therein contained.

The Kerala Christian Marriage Bill, 2008

(2) *Certified extracts to be issued.*—Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Registrar to the parties to the marriage or to any other applicant on payment of the prescribed fee.

23. *Fees.*—Fee shall be chargeable under this Act for receiving and publishing notices of intended marriages;

solemnizing marriage by the Marriage Registrar;

issuing certificates for authorizing solemnization of marriage by Marriage Registrar and registering marriage;

entering protests against, the solemnization of the marriage, by the said Registrars;

searching register books;

giving copies of entries or declarations or certificates.

The State Government shall fix the amount of such fees respectively, and may from time to time vary or remit them either generally or in special cases, as it may deem fit. Provided that until rules are framed by the State Government, the fee prescribed under the Special Marriage Act, 1954 (Central Act 43 of 1954) shall be levied.

24. *Transmission of copies of entries in marriage records.*—Every Marriage Registrar shall send to the Registrar General of Births, Deaths and Marriages of the State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals.

25. *Correction of errors.*—(1) Any Marriage Registrar who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Registrar shall make the like marginal entry in the certificate thereof.

(2) Where a copy of any entry has already been sent under section 24 to the Registrar General or other authority the Marriage Registrar shall make and sent in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

26. *Power to make rules.*—(1) The State Government, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

The Kerala Christian Marriage Bill, 2008

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

(a) the duties and powers of Marriage Registrars and the areas in which they may exercise jurisdiction;

(b) the eligibility, terms and conditions under which a License to solemnize a marriage is to be granted under section 7.

(c) the manner in which a Marriage Registrar may hold inquiries under this Act and the procedure therefore;

(d) the form and manner in which any books required by or under this Act shall be maintained.

(e) the fees that may be levied for the performance of any duty imposed upon a Marriage Registrar under this Act;

(f) the manner in which public notice shall be given under section 9;

(g) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of sections 24 and 25;

(h) the manner in which persons licensed under the Act should keep records relating to solemnization of marriages done by them;

(i) any other matter which may be or requires to be prescribed.

(3) Every rule made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.

27. *Non-validation of marriages within prohibited degrees.*—Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

28. *Repeals.*—(1) The Cochin Christian Civil Marriage Act, V of 1095 M.E. is hereby repealed.

(2) Withstanding such repeal, all marriages duly solemnized under the Cochin Christian Civil Marriage Act, V of 1095 M.E. shall be deemed to have been solemnized under this Act.

The Kerala Christian Marriage Bill, 2008

SCHEDULE I

(See Section 4)

PROHIBITED DEGREES OF CONSANGUINITY

A man shall not marry his.—Paternal grandfather's mother; Paternal grandmother's mother; Maternal grandfather's mother; Maternal grandmother's mother; Paternal grandmother; Paternal grandfather's wife; Maternal grandmother; Maternal grandfather's wife; Mother or step-mother; Father's sister or step-sister; Mother's sister or step-sister; Sister or step-sister; Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother; Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister; Daughter or step-daughter, or any direct lineal descendant of either; Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son; Wife of son or step-son, or of any direct lineal descendant of a son or step-son; Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter; Mother of daughter's husband; Mother of son's wife; Mother of wife's paternal grandfather; Mother of wife's paternal grandmother; Mother of wife's maternal grandfather; Mother of wife's maternal grandmother; Wife's paternal grandmother; Wife's maternal grandmother; Wife's mother or step-mother; Wife's father's sister; Wife's mother's sister; Father's brother's wife; Mother's brother's wife; Brother's son's wife; Sister's son's wife.

A woman shall not marry her.—Paternal grandfather's father; Paternal Grandmother's father; Maternal grandfather's father; Maternal grandmother's father; Paternal grandfather; Paternal grandmothers husband; Maternal grandmother; Maternal grandmother's husband; Father or step-father; Father's brother or step-brother; Mother's brother or step-brother; Brother or step-brother; Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother; Sister's son or step-sister's son; or any direct lineal descendant of a sister or step-sister; Son or step-son, or any direct lineal descendant of either; Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter; Husband of daughter or step-daughter, or of any direct lineal descendant of a daughter or step-daughter; Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son; Father of daughter's husband; Father of son's wife; Father of husband's paternal grandfather; Father of husband's paternal grandmother; Father of husband's maternal grandfather; Father of husband's maternal grandmother; Husband's paternal grandfather; Husband's maternal grandfather; Husband's father or step-father; Brother of husband's father; brother of husband's mother; husband's brother's son, or his direct lineal descendant; Husband's sister's son, or his direct lineal descendant; Brother's daughter's husband; Sister's daughter's husband.

In any case, the parties shall not be within the range of third generation counted from the common primogenitor-male or female.

The Kerala Christian Marriage Bill, 2008

SCHEDULE II

(See Section 8)

To

The Registrar of Marriages'

NOTICE OF MARRIAGE

Names	Name of parents	Profession or occupation	Age	Full address of the parties	The Church, or the place of worship or the place at which the marriage is intended to be solemnized

We intend to get married in accordance with the provisions of the Kerala Christian Marriage Act, 2009.

AB. (Sd.)

CD. (Sd.)

Witnesses: 1.....(Sd.)

2.....(Sd.)

Place:

Date:

The Kerala Christian Marriage Bill, 2008

SCHEDULE III

(See Section 9)

DECLARATION BY PARTIES AND WITNESSES

I,.....aged.....s/o.....having permanent residence/domicile at.....do hereby solemnly declare that I am a Christian and that I am not previously married (or that there is no subsisting marriage between me and any other person) and that there are no other lawful impediments in my getting married.

AND

I,.....aged.....d/o.....having permanent residence/domicile at.....do hereby solemnly declare that I am a Christian and that I am not previously married (or that there is no subsisting marriage between me and any other person) and that there are no other lawful impediments in my getting married.

That notice of intended marriage under the Kerala Christian Marriage Act, 2009 is produced herewith and the entries and statement contained in the Notice are true and correct.

All the facts stated above are true and correct.

AB. (Sd.)

CD. (Sd.)

Witnesses: 1.....(Sd.)

2.....(Sd.)

Place:

Date:

Signed in my presence

(Sd.)

Marriage Registrar.

The Kerala Christian Marriage Bill, 2008

Photograph	SCHEDULE IV (See Section 11) MARRIAGE NOTICE BOOK				Photograph
Names	Names of parents	Profession or occupation	Age	Full address of the parties	The Church, or the place of worship or the place at which the marriage is intended to be solemnized

The declaration required by section 9 of the Kerala Christian Marriage Act, 2009 has been duly made and produced along with the Notice of Marriage.

AB. (Sd.)

CD. (Sd.)

Witnesses: 1.....(Sd.)

2.....(Sd.)

Place:

Date:

Date of receipt of Notice:

(Sd.)

Marriage Registrar.

The Kerala Christian Marriage Bill, 2008

SCHEDULE V

[See Section 18 (1)]

MARRIAGE CERTIFICATE BOOK

Names of parties	Names of parents	Profession or occupation, if any	Age	The Church, or the place at which the marriage was solemnized	Full address of the parties to the marriage

Date of notice entered in the Marriage Notice Book.....

The declaration required by section 9 of the Kerala Christian Marriage Act, 2009 has been duly made and all other requirements under the Act has been complied with.

AB. (Sd.)

CD. (Sd.)

Witnesses: 1.....(Sd.)

2.....(Sd.)

Place:

Date:

(Sd.)

Marriage Registrar.

The Kerala Christian Marriage Bill, 2008

Photograph

SCHEDULE VI
[See Section 18 (2)]

Photograph

CERTIFICATE OF SOLEMNISATION OF MARRIAGE

I.....do hereby certify that on the.....day of.....a marriage between the parties named and described hereunder has been solemnized (that is to say):

Names of parties to the marriage	Names of parents	Profession or occupation	Age	Church, or place of worship or the place at which the marriage was solemnized	Full address of the parties to the marriage

AB. (Sd.)

CD. (Sd.)

Witnesses: 1.....(Sd.)

2.....(Sd.)

Place:

Date:

(Sd.)

Name and address
of person solemnizing the marriage.

(Office seal)

The Kerala Christian Marriage Bill, 2008**Statement of objects and reasons**

The Cochin Christian Civil Marriage Act, V of 1095 M.E. has been in vogue in the territories of the former State of Cochin enabling solemnization of civil marriages among Christians. Even after the adoption of the Constitution of India, the law continued in force. However, there are different denominations of Christians in Kerala having no personal law governing solemnization of marriage. That apart, a second marriage between persons one or both of whom had secured decree of divorce from Civil Court, is not being approved for solemnization in the Church in many instances on the ground of want of an annulment order in accordance with the rules of the Church. Certificate of marriage issued by the statutory authorities is required in the transnational movement of citizens. This necessitates registration of marriages solemnized by ecclesiastical personages. In the circumstances, it is deemed necessary to have a consolidated statute for the Christian community applicable to the whole of the State of Kerala. The Cochin Christian Civil Marriage Act contains well drafted provisions, which can now be used with necessary adaptations in formulating the new law. The bill is intended to achieve the above objectives.

THE KERALA PROHIBITION OF PLASTIC ARTICLES BILL

A BILL

to prohibit the production, supply, storage and sale of non-reusable plastics in the State.

Preamble.—WHEREAS it is expedient to prohibit the production, supply, storage and sale of non-reusable plastics in the State for the protection of environment and public health;

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 Prohibition of Non-reusable Plastic Act—

(2) It shall extend to the whole of the State.

(3) It shall come into force on such date as may be notified by the Government.

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

(a) “Authorised Officer” means the officers designated under sub-section (2) of Section 4.

(b) “Plastic Article” means any non-reusable carry bag, cup, tumbler, plate, spoon, knife, straw, box, string, cord, sheet, mat or other article made of, or containing plastic and such other article as may be notified by the Government.

(c) “non-reusable” means plastic article which is ordinarily used only once and then discarded.

3. *Restriction on manufacture, sale, distribution and use of non-reusable plastics.*—(1) No person shall manufacture, stock, distribute, sell or use any non-reusable plastic article thickness of which is less than 50 microns or such other higher microns as may be notified by the Government.

(2) The following specifications are applicable to the plastics articles used in the State, namely:-

(i) The minimum thickness of plastic carry bags and containers including plastic cups, bottles and packaging material shall be 50 micron.

(ii) The thickness in micron, material and identity of manufacturer shall be printed on each carry bag and container.

(iii) The minimum size of plastic carry bags shall be 20 × 30 cm.

(iv) No plastic carry bag or container shall be made of halogenated material.

The Kerala Prohibition of Plastic Articles Bill

4. *Punishment.*—(1) Whoever violates the provisions of this Act is liable to be punished for imprisonment for a term which may extend to six months and a fine not exceeding five thousand rupees.

(2) A Judicial Magistrate of the First Class shall have jurisdiction to try the offences under this Act.

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

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

(2) Notwithstanding anything contained in sub-section (1), where any such offence under this act has been committed by a company or firm 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 partner, director, manager, secretary or other officer of the company or firm such partner, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section:

(a) “company” means any body corporate and includes a trust, a firm, society or other association of individuals; and

(b) “director” in relation to –

(i) a “firm” includes a partner in the firm;

(ii) a “society, a trust or other association of individuals” means the persons entrusted under the rules of the society, trust or other association, with the management of the affairs of the society, trust or other association, as the case may be.

6. *Local Authority to monitor the implementation of the Act.*—(1) It shall be the duty of every local body in the State to implement the provisions of this Act.

The Kerala Prohibition of Plastic Articles Bill

(2) Every local authority shall designate such officers as Authorised Officers as it deems necessary for effectively carrying out the provisions in the Act. Every retired officials, public workers and others with adequate technical knowledge in the field may also be notified by the local authority as authorized officers.

(3) The officer designated under sub-section (2) may initiate prosecution proceedings for violation of the provisions of the Act.

7. *Power of entry, search and seizure.*—(1) For the purpose of carrying out the provisions of this Act or the rules made, the authorized officer may, at all reasonable hours with or without assistance.

(a) Enter and inspect at any time, any place in which it is reasonably suspected that an offence under this Act has been or is being, or is about to be, committed.

(b) Seize any plastic article in respect of which he has reason to believe that any provision of this Act has been, is being, or is about to be, contravened, along with the packages, coverings or receptacles in which such plastic article is found and thereafter take all measures necessary for securing the production of such plastic articles, packages, coverings or receptacles, so seized, in a court and for their safe custody pending such production.

(2) All searches and seizures under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

8. *Compounding of offences.*—(1) The officers designated under sub-section (2) of Section 6 may compound the offence of violation of the provisions of the Act after realizing an amount not exceeding the maximum amount of fine specified in Section 4.

(2) No compounding of an offence shall be made for the repetition of the offence by the same person.

9. *Local Authority to dispose of plastics.*—(1) Local Authority shall make necessary arrangement to collect the used plastics in their area of jurisdiction.

(2) The plastics collected by the local authority shall be burnt by using the latest technology for burning without affecting the health of the people.

The Kerala Prohibition of Plastic Articles Bill

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 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 any thing previously done under that rule.

Statement of Object and Reasons

The purpose of the bill is to enact a legislation prohibiting the manufacture, sale and use of non-reusable plastic materials which is defined as plastic materials having thickness not less than 50 microns. Violation of the provision in the bill is made an offence punishable with imprisonment for 6 months and a fine of Rs. 5,000. Local authorities are authorized to enforce the provisions of the bill strictly. For implementing the provisions local authorities can appoint sufficient number of officers who are given rights to initiate prosecution against the violation of the provisions, seize the article etc. A judicial Magistrate of the First Class is designated as the authority authorized to try and dispose of the proceedings initiated under the Act. The local authority is bound to collect and burn the used plastic articles adopting latest technology without causing any pollution and causing danger to life.

THE KERALA DISPOSAL OF CONFISCATED AND OTHER VEHICLES BILL

A BILL

for the disposal of vehicles confiscated in cases and other uneconomical vehicles of Government.

WHEREAS it is expedient to provide a speedy procedure for disposal of vehicles confiscated in cases under different statute and for the disposal of Government vehicles the use of which are no longer economical;

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 Disposal of Confiscated and Other Vehicles Act ———

(2) It shall come into force at once.

2. *Definition.*— In this Act unless the context otherwise requires.—

(a) “Confiscated vehicle” means any vehicle in the custody of any officials of the Government including court in connection with any cases registered under any statute.

(b) “Government Vehicle” means and includes the vehicles ownership of which are vested with the Government, court or other office or institution, any public sector undertaking, statutory board or corporation, company owned or controlled by Government, local body, University and Co-operative Societies.

(c) “Prescribed” means prescribed by rules made under the Act.

(d) “Uneconomical vehicle” means any Government vehicle where the maintenance cost exceeds the amount as may be prescribed by the Government.

3. *Vehicles involved in offences.*—(1) Notwithstanding anything contained in any other law for the time being in force no vehicle taken into custody for involvement in any offence shall be kept for a period longer than six months by any authority entitled to keep them in custody under any law.

(2) Any vehicle taken into custody for involvement in any offence and produced before any court or other authority shall be disposed of in the following manner:—

The Kerala Disposal of Confiscated and Other Vehicles Bill

(a) In cases where the owner of the vehicle is willing to take it on furnishing sufficient security as decided by the court or other authority, the vehicle shall be returned to him after observing the prescribed legal formalities, if any.

(b) In cases where the owner is not willing or able to produce sufficient security for the release of the vehicle, the court or the authority concerned may permit the officials who produced the vehicle before it to sell the vehicle in question.

(c) On getting permission from the court or other authority, the official shall sell the vehicle with notice to the owner of the vehicle in such manner as may be prescribed.

(d) The amount realized by sale of the vehicle shall be deposited in the court or authority concerned.

(3) Any vehicle in the custody of the officials for involvement of any offence or otherwise and the owner or the person involved in the offence cannot be traced out, such vehicle shall be disposed of in the following manner.

(a) A report shall be filed before the court or other authority explaining the circumstance in which the vehicle is in the custody of the officials.

(b) A notice shall be published in two local newspapers regarding the custody of the vehicle and the decision to dispose of the vehicle by auction if the owner or anyone claiming the vehicles is not turning up within 15 days from the date of notice.

(c) In case any one claiming the vehicle as its owner or in lawful possession is willing to furnish sufficient security before the authority, the vehicle may be released to him after due enquiry about the ownership and possession.

(d) In cases where no one comes forward claiming the vehicle, the officials may sell the vehicle in such manner as may be prescribed.

(4) The amount realized by sale of the vehicle shall be deposited in Treasury.

4. *Confiscated Vehicle.*—Any vehicle confiscated under any law for the time being in force shall be disposed of in the following manner, in cases where such laws do not provide for the procedure for disposal of such vehicles, namely:—

(a) The vehicle shall be offered to the owner of the vehicle on payment of the market value of the vehicle.

(b) If the owner pays the amount, the vehicle shall be released to him.

(c) If the owner is not willing to take the vehicle, it shall sell the vehicle in such manner as may be prescribed.

(d) The amount realized by sale of the vehicle shall be deposited in Treasury.

The Kerala Disposal of Confiscated and Other Vehicles Bill

5. *Disposal of Uneconomical Government Vehicle.*—(1) No uneconomical Government vehicles shall be used by any officials.

(2) Any Government vehicle which is uneconomical shall be disposed of by the custodian of that vehicle in the following manner, namely:—

(a) A report regarding the present condition of the vehicle, repairs needed and its approximate expenses, mileage of the vehicle shall be obtained from the competent authority as may be prescribed.

(b) If the custodian of the vehicles considers that the further use of the vehicle is uneconomical, he may report the matter to the competent authority to fix the market value of the vehicle.

(c) On receipt of the market value of the vehicle, the vehicle shall be auctioned based on the market value in such manner as may be prescribed.

6. *Penalty.*— Any officer, responsible for not complying with the provisions of this Act shall be punished with a fine not exceeding rupees ten thousand.

7. *Power to make rules.*—(1) The Government may by notification in the Gazette make rules for carrying 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 any thing previously done under that rule.

Statement of Objects and Reasons

The object of the Bill is to enact a law to make it compulsory for various officers who are empowered to confiscate or seize vehicles and other articles to see that confiscated, seized and non-economical vehicles are disposed of within a maximum period of 6 months in public auction and to deposit the money obtained in treasury so that the property is not allowed to be wasted. Of course, before auctioning the articles the authority shall offer the articles to be taken by its owner if he is ready to pay the value of the vehicles.

The Bill is intended to achieve the above object.

THE KERALA EMERGENCY (CONTROL, SUPPLY AND DISTRIBUTION OF ESSENTIAL COMMODITIES) BILL

A BILL

to provide in the interest of general public for the control of supply and distribution, trade and commerce in certain essential commodities;

Preamble.—WHEREAS it is expedient, in public interest to control the supply, distribution, trade and commerce in certain essential commodities:

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

1. *Short title and extent, commencement.*—(1) This Act may be called The Kerala Emergency (Control, Supply and Distribution of Essential Commodities) Act—

(2) It extends to the whole of Kerala.

(3) It shall come into force at once and shall remain in force for a period of three years from the date of commencement of this Act unless repealed earlier by the Government.

(4) Upon the expiry of this Act, the provisions of Section 4 of the Interpretation of General Clauses Act, 1125 (Act VII of 1125) shall apply as if this Act had been repealed by an Act of the Kerala State Legislature.

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

(a) “Caterer” means the proprietor or other person in charge of a catering establishment and includes an agent or servant who act on behalf of such caterer.

(b) “Catering establishment” means a hotel, restaurant, eating house, cafe, tea shop, coffee house, free feeding centre, club, canteen or railway refreshment room and includes any other place of a like nature, open to the public, where food is prepared, supplied or consumed.

(c) “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 manufacturer and a commission agent engaged in any such business.

The Kerala Emergency (Control, Supply and Distribution of Essential Commodities) Bill

(d) “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.

(e) “Essential commodity” means; all types of rice and rice products, wheat and wheat products, pulses, sugar, jaggery, edible oil, vegetables or any other articles notified by the Government.

(f) “notified order” means an order notified in the Gazette.

(g) “Ordinary Party” means any function other than a function in connection with marriage.

(h) “Retail dealer” means a dealer who sells any of the essential commodities to a person.

3. *Power to control, supply, distribution etc., of essential commodity.*—

(1) If the Government is of opinion that it is necessary and expedient so to do to tide over the scarcity felt in the availability of essential commodities and to secure equitable distribution and availability at fair prices of any essential commodity on an urgent basis, it shall issue orders notified in the Gazette fixing the maximum prices at which the essential commodity shall be bought and sold in the State.

(2) If the price of any essential commodity increases by fifty per cent of the price of the said commodities as on 1st January 2007 Government shall issue notification under sub-section (1). If the Government fails to issue such a notification, any citizen have a right to access to the court to direct the Government to issue a notification under sub-section (1) or in the alternative to give direction to the Government to distribute the essential commodities through public distribution system at the price as on 1st January 2007.

(3) Every dealer and retail dealer shall exhibit the price notified by the Government under sub-section (1) in a conspicuous place in his business place.

4. *Sale of essential commodity at notified price.*—No dealer or retail dealer shall buy or sell any essential commodity notified by the Government under sub-section (1) of Section 3 for a price higher than the notified price.

5. *Restriction on conducting parties.*—(1) No person or body of persons acting in concert either jointly or severally other than a caterer shall on any one day, either himself or themselves, prepare, serve, distribute or provide for consumption foodstuff to more than 100 persons (including the host or hosts) at ordinary parties or to more than 500 persons (including the host or hosts) at any party in connection with marriage.

The Kerala Emergency (Control, Supply and Distribution of Essential Commodities) Bill

(2) No caterer at the instance or for the benefit of himself or any person in connection with any party shall on any one day serve, distribute or provide for consumption or accept for service or distribution for consumption any foodstuff to more than 100 persons (including the host or hosts) at ordinary parties or to more than 500 persons (including the host or hosts) at any party in connection with marriage.

6. *Power to exempt.*—The District Collector may on application from any person exempt from the provisions of Section 5 for the reasons recorded in writing.

7. *Enforcement Inspector.*—(1) Government shall appoint such number of Enforcement Inspectors in respect of such are a as may be notified in the order for the effective implementation of this Act.

(2) Government shall give preference to retired Government employees, preferably having legal experience for appointment as Enforcement Inspectors.

(3) Government shall constitute a special police squad exclusively for the assistance of the Enforcement Inspectors.

8. *Intimation to Enforcement Inspector.*—Every person who intends to conduct any party shall intimate the Enforcement Inspector of the area regarding the nature of the party and the member of persons attending it.

9. *Power of entry, search, seizure, etc.*—(1) For the effective enforcement of the provisions of the Act, the Enforcement Inspector, may, when he has reason to believe that a contravention of the provisions of this Act has been, is being or is about to be committed, enter and search any premises interrogate any person and seize any article including their coverings or containers in respect of which he has reason to believe that the contravention has been, is being or is about to be committed.

(2) The provisions of Section 102 and 103 of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to searches and seizures under this clause.

10. *Offences.*—(1) Any person who buys or sells any essential commodities for more than the price notified by the Government shall be liable to be punished with imprisonment for a period not exceeding two years and fine of Rs.10,000 (Rupees ten thousand only).

(2) Any person who conducts a party in violation of Section 5 shall be liable to be punished with a fine not exceeding Rs.10,000 (Rupees ten thousand only).

11. *Special Court.*—(1) Government shall establish special court for exercising the jurisdiction of the offences under this Act.

The Kerala Emergency (Control, Supply and Distribution of Essential Commodities) Bill

(2) Special Court shall be presided over by the retired judicial officers or retired Government employees having legal experience, appointed by the Government.

(3) The Special Court shall try the offences in the manner provided for summary trial in the Code of Criminal Procedure, 1973 (2 of 1974).

12. *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 any thing previously done under that rule.

Statement of Objects and Reasons

It is the duty of the State to hold the price line, prevent hoarding and ensure equitable distribution of essential commodities. This is all the more so in times of crisis and scarcity caused by natural calamities and other unforeseen circumstances. Hoarding of essential commodities in times of acute shortage is a crime on society resulting in abnormal rise in prices. Therefore, strict measures are necessary to hold the price line and maintain a regular supply of essential commodities even in times of scarcity of food grains. Wastage of food grains through supply of food to large numbers of persons is also a common occurrence. Prevention of wastage of foodstuffs is one such measure that has become necessary in public interest. The Bill seeks to achieve the said purposes.

THE KERALA PRESERVATION AND PROTECTION OF MANGROVES BILL

A BILL

to provide for the conservation and discreet use of mangroves in the State of Kerala

Preamble.— WHEREAS indiscriminate removal of mangroves is causing adverse effect on the coastal ecology of the State;

AND WHEREAS the mangroves are life-protective systems, it is essential that they should be protected and preserved;

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 Preservation and Protection of Mangroves Bill,——.

(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) “Authority” means authority constituted under Section 4 of the Act;

(b) “Mangroves” means and includes mangrove swamp, mangrove forest and refer to all trees and large shrubs and plants which are found in depositional coastal environments where fine sediments, often with high organic content, collect in areas protected from high energy wave action;

(c) “Prune” and “trim” means to cut mangrove branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy the mangroves;

(d) “Wetlands” means and includes areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh brackish or salty, including areas of marine water, depth of which at low tide does not exceed 6 mts. It may also incorporate riparian and coastal zones adjacent to the wetlands and islands or bodies of marine water deeper than 6 mts. at low tide lying within the wetlands.

The Kerala Preservation and Protection of Mangroves Bill

3. *Vesting of Mangroves in the State.*—(1) On the date of commencement of this Act all mangroves in the State shall vest in the State of Kerala.

(2) The authority shall prepare a map identifying and specifying the area of the mangroves in the State and it shall be final and binding on the State.

4. *Authority constituted for the protection.*—(1) The State Government shall constitute an authority for the protection and preservation of mangroves.

(2) The authority shall consist of a Chairperson and two members who have expertise/knowledge on mangroves. The Chairman shall be a person who has experience of at least ten years as an advocate in the High Court and has knowledge on mangrove protection and preservation.

(3) Among the two members, one shall be a nominee from a non Government organization dealing with the issues of research and or conservation of mangroves and the other shall be co-opted by the Chairman (for the said meeting alone) from the local self Government institution within whose limit the mangroves are existing.

(4) The State Government shall frame rules in regard to service conditions of the members of the said authority.

5. *Alteration and trimming of mangroves; permit requirement.*—(1) No person shall alter or prune, or cause to be altered or pruned, any mangrove within the landward extent of wetlands and other surface waters in the State of Kerala without the written consent of the authority .

(2) While granting the permit the authority shall take into consideration the ecology of the area and shall make provisions for planting more mangroves alternatively to compensate the loss.

6. *Encouragement for mangrove planters.*—(1) Notwithstanding anything contained in Kerala Land Tax Act, 1961 (13 of 1961) if a person maintains an extent of mangroves on land owned by him/her that person shall be entitled to deduct such an extent of area of plantations while calculating the area for the purpose of taxation.

(2) If any person who receives the deduction of tax as per sub-section (1) above, the said area, shall be added to the mapping as referred to Sec. 3 (2) above.

7. *Offences.*—Whoever trims or cuts or alters or removes any mangrove in violation of the provisions of this Act, shall be liable for punishment for imprisonment upto one year or fine upto three lakhs of rupees.

The Kerala Preservation and Protection of Mangroves Bill

8. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette make such provisions not inconsistent with the provisions of the Act, which appear to them necessary for the purpose of removing the difficulty.

(2) Every such order made under this section shall, as soon as may be after it is made, laid before the Legislative Assembly.

9. *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 foregoing powers, such rules may provide for all or any of the following matters, namely

- (a) Service conditions of the members of the Authority.
- (b) Any other matter which may be prescribed.

(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.

Statement of Objects and Reasons

Mangroves are trees and shrubs that grow in saline coastal habitats. The word mangroves most broadly refer to the habitat and entire plant assemblage or 'mangal' for which the terms mangrove swamps and mangrove forest are also used. They have many uses. They mitigate the impact of storms and cyclones, Tsunamis and are sources of wood products and non-wood products. They provide aquatic products such as fish, prawns and crabs. They provide growing habitats for aquatic organisms. Today they are among the most threatened of the world's valuable habitats. Therefore it is necessary to protect and preserve them. The Bill is intended to achieve the above object.

**THE STATE—APPOINTMENT OF COMMISSIONS
(REGULATION OF AUTHORITY, STATUS, POWERS,
FUNCTIONS, ACCOUNTABILITY, CONDITIONS OF
SERVICE AND RELATED MATTERS) BILL**

**A
BILL**

to regulate the appointment, conditions of service and other related matters of the State—appointed Commissions Ombudsmen and Lok Ayuktas and any other supervisory and invigilatory agencies now largely left to the Executive Domain.

The finances of the Kerala State are reported to be precarious and a drastic economic drive is urgently necessary to redress the public economy from this dire distress, so that the resources of the State may be devoted to purposes of elimination of dearth, basic living conditions, development projects beneficial to the huge have not sector and to promote progressive agriculture, struggling small scale industries with employment potential, and other job-oriented businesses. Consequently, the State is constrained to focus on every measure of financial regulation to make the price-line and living conditions justly viable. One of the major items of lavish but avoidable expenditure draining the funds of the Public Exchequer is the profuse prolixity of Commissions and similar instruments and agencies with affluent remunerations, high perquisites and expensive facilities of members and other costly infrastructural set-up and practices, while the return is often inconsequential and the tenure of the Commissions and institutions of their ilk are imprudently procrastinatory. For these reasons, a legislation on Public Commission appointed by the State regulating the conditions, facilities, staff strength and other just restrictions has become necessary for operational regulation and other reasonably just restrictions through a statutory measure is being enacted.

1. *Short title, extent and commencement.*—(1) This Act may be called the State Commission (Conditions of Appointment and Regulation of Services and Related Matters) Act ———

(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 Government in the Official Gazette.

The State—Appointment of Commissions (Regulation of Authority, Status, Powers, Functions, Accountability, Conditions of Service and Related Matters) Bill

2. *Definitions.*—(1) ‘Commission’ means, a person or body of persons appointed under Section 4 of the Act by whatever name called, Commission, Ombudsman, Lok Ayukta, Upa Lok Ayukta and any other similar supervisory and invigilatory agencies.

(2) ‘Notification’ means the notification published in the Official Gazette.

(3) ‘Prescribed’ means prescribed by rules by the State Government.

(4) ‘Rules’ means rules made under this Act.

3. *Power to regulate the Emoluments, Amenities and Other Facilities.*—Notwithstanding anything contained in any other law in force, the State Government shall regulate the salary, perquisites, honoraria and other amenities, privileges and facilities of the Commission appointed by it.

4. *Power to appoint Commission.*—(1) The State Government or any other authority or agencies functioning under the Government may by notification in the Official Gazette or otherwise permitted, appoint a Commission for the purpose of making an inquiry in any specified matter of public importance and for performing such functions and for such period as may be specified in the notification.

(2) The Commission may consist of one or more members and where the Commission consists of more than one member, one of them shall be appointed as the Chairperson thereof.

5. *Persons to be appointed as Commission.*—The State Government may, as far as possible, appoint persons who are willing to give their service honorary as Chairman and members of the Commission. Only after a proper enquiry by or through an independent and responsible instrumentality, a salaried appointment shall be made. The salary, honorarium, perquisites shall be moderate judged by living standards of the common people and never be equated with those of judges or other high functionaries in public or private enterprises.

6. *Conveyance and Accommodation of the Commission.*—(1) The State Government shall if so advised provide, informed by a sense of austerity in public life, one low-priced car, minimum facilities compatible with a model of simplicity and free accommodation absent any luxuries.

(2) The State Government may insist that the members shall travel in condition of frugal economy and common agrarian life of the people.

The State—Appointment of Commissions (Regulation of Authority, Status, Powers, Functions, Accountability, Conditions of Service and Related Matters) Bill

7. *Extension of the terms of the Commission to be avoided.*—Except for exceptional circumstances, the original term of the Commission fixed by the Government shall not be extended.

8. *Office Expenses.*—The Commission shall take all necessary steps to reduce the office expenses and No. of staff of the Commission.

9. *Power to make rules.*—State Government may by notification make rules to carry out the provisions of this Act.

Statement of Objects and Reasons

The finances of the Kerala State are reported to be precarious and a drastic economic drive is urgently necessary to redress the public economy from this dire distress, so that the resources of the State may be devoted to purposes of elimination of dearth, basic living conditions, development projects beneficial to the huge have not sector and to promote progressive agriculture, struggling small scale industries with employment potential, and other job-oriented businesses. Consequently, the State is constrained to focus on every measure of financial regulation to make the price-line and living conditions justly viable. One of the major items of lavish but avoidable expenditure draining the funds of the Public Exchequer is the profuse prolixity of Commissions and similar instruments and agencies with affluent remunerations, high perquisites and expensive facilities of members and other costly infrastructural set-up and practices, while the return is often inconsequential and the tenure of the Commissions and institutions of their ilk are imprudently procrastinatory. For these reasons, a legislation on Public Commission appointed by the State regulating the conditions, facilities, staff strength and other just restrictions has become necessary for operational regulation and other reasonably just restrictions through a statutory measure. This Bill intended to achieve the above objects.

THE KERALA PUBLIC GRIEVANCE REDRESSAL TRIBUNAL BILL

A BILL

for the redressal of the grievance of the public owing to the inactions or failure of the authorities to carry out their obligations;

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 Public Grievance Redressal Tribunal Act ———.

(2) It shall come into force on such date as the Government may notify in the Gazette.

(3) It shall extend to the whole of the State of Kerala.

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

(a) ‘Prescribed’ means prescribed by rules made under this Act.

(b) ‘Public duty’ means a duty in the discharge of which the State, the public or the community at large has interest.

(c) ‘Public officer’ means every officer in the service or pay of Government, local authority, statutory body, company, society, corporation and any other authorities who are duty bound to do public duty for the welfare of the general public or community at large.

(d) ‘Tribunal’ means the Tribunal constituted under Section 3 of the Act.

3. *Constitution of Tribunal.*— (1) The Government shall constitute one or more Tribunals by notification in the Gazette for such area as may be specified in the notification.

(2) The Tribunal shall consist of a person who is or is qualified to be appointed, as a High Court Judge/or a Senior Advocate of the High Court of Kerala.

CHAPTER II

PUBLIC GRIEVANCE

4. *Public Officer to do his Public duty.*—(1) Every public officer shall do his duty diligently, and intelligently and in the manner specified in any Act, rules, orders, circulars or any other directions in whatever name it is issued.

The Kerala Public Grievance Redressal Tribunal Bill

(2) Every public officer under this Act shall be subject to accountability and transparency to the public and shall furnish all informations sought in this behalf by any citizen:

Provided that if the information sought for is frivolous or vengeful or by a busy body it can be rejected for reasons stated.

5. *Public to file petition before Tribunal.*— (1) Any person, whether he is affected by the action or inaction of the public authority, may file petition before the Tribunal having jurisdiction over the area in such manner as may be prescribed:

Provided that only such petitions alleging public inaction or failure to carry out the duties of the public officer shall be entertained by the Tribunal.

(2) There shall not be any prescribed form or any fees for filing petition under sub-section (1).

6. *Notice to public offices.* — (1) When a petition alleging culpable in action or failure to carry out the duties of a public office is received, the Tribunal shall examine the petition and satisfy himself that there is prima facie case made out to proceed against the public officer.

(2) If the Tribunal satisfies that there is prima facie case made out, a notice shall be issued to the public officer in such form as may be prescribed with a copy of the petition to file his written reply to the petition within such time as may be specified in the notice.

(3) The Tribunal shall examine the reply of the public officer and take a decision whether or not to proceed with the case or not.

(4) If the Tribunal decides to proceed with the case, Tribunal may fix the date and time for enquiry and intimate to the petitioner and the public officer in such manner as may be prescribed.

7. *Evidence.*— (1) Subject to the provisions of this section, for the purpose of any enquiry, the Tribunal may require any public officer or any other person who, in his opinion, is able to furnish information or produce documents relevant to the enquiry to furnish such information or produce such document.

(2) For the purpose of enquiry, the Tribunal shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

The Kerala Public Grievance Redressal Tribunal Bill

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or a copy thereof from any office;
- (e) Issuing Commissions for the examination of witnesses or documents;
- (f) Such other matters as may be prescribed.

8. *Disposal of Petitions.*—After enquiry by the Tribunal, it may issue any of the following orders, namely:—

(i) Impose fine of an amount not exceeding of Rs.10, 000. The amount shall be proportionate to the nature of action, but it shall not be less than Rs.1,000.

(ii) To do any act which is necessary for the redressal of the grievances of the petitioner.

(iii) Restrain from doing any Act, in mitigation of hardship to the petitioner or to the public at large.

(iv) Issue such orders as may be found necessary in the circumstances of the case.

9. *Special powers of the Tribunal.*—Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, on receiving information from reliable source that death or grievous hurt to any person from an accident due to failure of public duty of any public officer has occurred, the Tribunal shall conduct an on the spot inspection and enquiry and award at his discretion interim compensation to the victims of the accident forthwith.

CHAPTER III

PUBLIC OFFICER'S GRIEVANCE

10. *Jurisdiction of the Tribunal in service matters.*—The Tribunal constituted under Section 3 shall have jurisdiction to decide petitions relating to the grievances of public officers in relation to the service conditions.

11. *Application to Tribunal.*—(1) Subject to the other provisions of this Act, a public officer aggrieved by any order passed pertaining to any terms and conditions of his service may make an application to the Tribunal for the redressal of his grievance.

The Kerala Public Grievance Redressal Tribunal Bill

Explanation.—For the purpose of this sub-section, “order” means an order made—

(a) By the Government or a local or other authority within the State of Kerala or under the control of the State Government or by any Corporation or society owned or controlled by the Government.

(b) By an officer, committee or other body or agency of the Government or a local or other authority or Corporation or society referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of filing of such application and by such other fees for the service or execution of processes, as may be prescribed.

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit one for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

12. *Applications not to be admitted unless other remedies exhausted.*—

(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules applicable to him as to redressal of grievances.

(2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances—

(a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) Where no final order has been made by the Government or other authority or officer or other person competent to pass such orders with regard to the appeal preferred or representation made by such person if a period of three months from the date on which such appeal was preferred or representation was made has expired.

The Kerala Public Grievance Redressal Tribunal Bill

(3) For the purpose of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

13. *Procedure and powers of Tribunal for this Chapter.*—(1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Government. The Tribunal shall have power to regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in private.

(2) The Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representation and after hearing such oral arguments as may be advanced.

(3) The Tribunal shall have, for the purpose of discharging its functions under this Chapter, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters namely—

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit;

(d) Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office.

(e) Issuing Commissions for the examination of witnesses or documents;

(f) Reviewing its decisions;

(g) Dismissing a representation for default or deciding it ex parte;

(h) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) Any other matter which may be prescribed by the Government.

The Kerala Public Grievance Redressal Tribunal Bill

14. *Execution of orders of the Tribunal.*—Subject to the other provisions of this Act and the Rules, the order of the Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of Section 12 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.

15. *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.

Subject of Objects and Reasons

The main objects of recommending the Bill are two fold. One is to have a Tribunal constituted specially to hear all grievances which the public may be having against the illegal and improper actions and omissions on the part of public officers who are expected to discharge their official duties in a reasonable, fair and just manner without causing undue delay. But the present day experience is indisputably otherwise as regard the performance of public functionaries. The other object is to have a Special Tribunal constituted to hear the cases of the public officers in the State rather than leaving them to approach the High Court in all cases. In other words the new Tribunal is to function as a Special Tribunal for hearing the State Government officials' cases like C.A.T. in the case of Central Government officials. The reason for making the recommendation is that the public can put forward their grievances without any legal complications usually arising in proceedings before the High Court and other courts. Another reason is that if a Tribunal is constituted to hear the cases of State Governments the huge arrears of the cases reported to be pending in the High court may be reduced to a considerable extent.

THE KERALA VEXATIOUS LITIGATION (PREVENTION) BILL

A BILL

to prevent the institution or continuance of vexatious proceedings, civil, criminal and constitutional in the High Courts and courts subordinate thereto.

WHEREAS, it is expedient to prevent the institution or continuance of vexatious proceedings, civil criminal and constitutional in the High Courts and in the courts subordinate to the High Courts;

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 Vexatious Litigation (Prevention) 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, by notification in the Official Gazette specify.

2. *Declaration of a person as a vexatious litigant.*—(1) An application under sub-section (2) for declaring a person as a vexatious litigant, may be filed,—

(a) By the Advocate General or in his absence by a Senior Advocate nominated by the Advocate General in this behalf; or

(b) By the Registrar of the High Court; or

(c) By a non-governmental organization recognized by the Government or by the Legal Services Authority, the object of which is to promote social justice;

(d) With the leave of the High Court, by a person against whom another person has instituted or conducted proceedings, civil, criminal, or constitutional.

(2) If, on an application filed under sub-section (1), the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil, criminal or constitutional in any court whether against the same person or against different persons, the High Court may, after giving the person who has instituted such proceedings, an opportunity of being heard, declare that person as a vexatious litigant and shall also order as stated under sub-section (1) of Section 3.

The Kerala Vexatious Litigation (Prevention) Bill

(3) When an application is filed by any person referred to in clause (b) or (c) or (d) of sub-section (1), the Advocate General or in his absence a Senior Advocate nominated by the High Court in this behalf, as the case may be, shall also be heard on the application.

(4) Application filed under sub-section (1) shall be heard by a Division Bench of the High Court.

3. *Leave of Court necessary for vexatious litigant to institute or continue any civil, criminal or constitutional proceedings.*—(1) Subject to the provisions of sub-section (2), when the High Court under sub-section (2) of Section 2 or under sub-section (2) of Section 6 declares a person as a vexatious litigant, it shall also order that—

(a) No proceeding, civil, criminal or constitutional shall be instituted by the said person in the High Court or any other court subordinate to the High Court; and

(b) No proceeding, civil, criminal or constitutional if already instituted by the said person in the High Court or any other court subordinate to that High Court, shall be continued by him, without obtaining leave of the appropriate Court or Judge referred to in sub-section (3).

(2) It shall not be necessary for the person declared as a vexatious litigant to obtain leave in the following cases;

(a) Where such person is instituting a proceeding in the appropriate Court or before the appropriate Judge for the purpose of obtaining leave;

(b) Where, in any matter instituted against him, such person proposes to file or take appropriate proceedings to defend himself;

(c) Where, in a proceeding instituted or continued by such person after obtaining leave from the appropriate Court or the Judge, the said person proposes to file or take appropriate further proceedings.

(3) In this Section and in section 5, the “appropriate Court” or “appropriate Judge” means—

(a) The High Court, in the case of a proceeding proposed to be filed or continued by the person declared as a vexatious litigant in the High Court;

(b) The District & Sessions Judge, in the case of proceeding in any other Court subordinate to the High Court.

The Kerala Vexatious Litigation (Prevention) Bill

(4) Leave shall not be granted unless the appropriate Court or the appropriate Judge, as the case may be, is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground in the proceedings proposed to be instituted or continued by the person declared as a vexatious litigant.

(5) The appropriate Court or Judge may refer the matter to any non-Government organization recognized by Government, the object of which is to promote social justice or the Legal Services Authority for enquiry and report.

4. *Publication and Communication of Order.*—(1) A copy of every order made,—

Under sub-section (2) of Section 2, declaring any person as a vexatious litigant, shall be published in the Official Gazette and may also be published in such other manner as the High Court may direct.

(2) Every order referred in sub-section (1) shall also be communicated to all the Courts subordinate to the High Court which passed such order.

5. *Proceedings, civil, criminal or constitutional, instituted or continued without leave of the appropriate Court to be dismissed and other consequences.*—

(1) Any proceedings, civil, criminal or constitutional instituted or continued in any court by a person against whom an order under sub-section (1) of Section 3 has been made without obtaining the leave required to be obtained from the appropriate Court or appropriate Judge, shall be dismissed by the said Court.

(2) The Court while dismissing the proceedings under sub-section (1) shall, in addition, further direct such vexatious litigant to pay costs.

(3) Every person referred to in sub-section (1) who has instituted or continued any proceedings without leave as aforesaid, may also be liable for punishment for contempt of the High Court which had passed the order under sub-section (1) of Section 3.

6. *Declaration and order by more than one High Court.*—(1) Where any person against whom an order under sub-section (1) of Section 3 has been made by a High Court, institutes or continues any proceedings, civil, criminal or constitutional in another High Court or in a Court subordinate to such High Court, then the persons referred to in sub-section (1) of Section 2 may make an application to such High Court for declaring such person as a vexatious litigant.

The Kerala Vexatious Litigation (Prevention) Bill

(2) If, on an application filed under sub-section (1), the High Court is satisfied that any person has been declared as a vexatious litigant under sub-section (2) of Section 2, by another High Court, the High Court may after giving an opportunity of being heard to the person who has instituted or continued any proceeding, civil, criminal or constitutional declare that person as a vexatious litigant and shall also order as stated under sub-section (1) of Section 3.

(3) Where an application under sub-section (1) is filed, the provisions of sub-sections (3) and (4) of Section 2, and Sections 3, 4 and 5 shall apply in relation to such application.

7. *Power to make Rules.*—The High Court may frame rules for the purpose of implementing the provisions of this Act.

8. *Saving.*— The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law providing for striking out vexatious pleadings or prevention of abuse of process of law, or which require consent, sanction or approval in any form of any other authority for the institution or continuance of any civil or criminal proceeding.

Statement of Objects and Reasons

The object of the Bill is to prevent or at least strictly control the institution and/or continuation of vexatious proceedings whether civil, criminal or constitutional before the courts including the High Court. At present, there is no enactment dealing with the matter in question. That is one of the reasons for recommending the Bill. The other reason is that vexatious litigation wasting the valuable time and energy of the courts are on the increase. Accordingly the Commission has included in the Bill provisions empowering the High Court anybody as a vexatious litigant on an application filed by persons specified in the provisions of a person is declared as a vexatious litigant he may not be thereafter entitled to institute any proceedings in any court without the leave of the court.

THE KERALA URBAN LAND (CEILING AND REGULATION) BILL

A BILL

to provide for the imposition of a ceiling on urban land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

Preamble.— WHEREAS it is expedient to provide for the imposition of a ceiling on urban land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith and

WHEREAS with a view to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein and

WHEREAS with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

BE it enacted in the Fifty Ninth Year of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. *Short title, application and commencement.*— (1) This Act may be called the Kerala Urban Land (Ceiling and Regulation) Act,———.

(2) It applies to all the urban areas of the State as may be notified by the Government.

(3) It shall come in to force on such date as may be notified by the Government.

CHAPTER II DEFINITIONS

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

(a) “Board” means the Board constituted under Section 4.

(b) “Building regulation” means the regulations contained in the Development Plan (Master Plan) of the urban area or the building rules applicable to that area.

The Kerala Urban Land (Ceiling and Regulation) Bill

(c) “Ceiling limit” means the ceiling limits notified by the Government from time to time.

(d) “Competent authority” means any person or authority authorized by the Government by notification to perform the functions of the competent authority under this Act for such area as may be specified in the notification.

(e) “Dwelling unit” in relation to a building or a portion of a building means a unit of accommodation, in such building or portion of it, used solely for the purpose of residence.

(f) ‘Family’ in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children.

Explanation: For the purpose of this clause, ‘minor’ means a person who has not completed age of eighteen years.

(g) “land appurtenant”, in relation to any building means the minimum extent of land required under the building rule to be kept as open space for enjoyment of such building, which in no case shall exceed the extent notified by the Government.

(h) “Development plan (master plan)” means Town Planning Scheme approved by the Government under this Act.

(i) “Notified” means notified in the Gazette.

(j) “Person” includes an individual, a family, a firm, a company or an association or body of individual whether incorporated or not.

(k) “Prescribed” means prescribed by the rules made under this Act.

(l) “Tribunal” means the Urban Land Tribunal constituted under Section 14.

(m) “Urban agglomeration” means that area coming under Calicut, Cochin and Trivandrum City and the peripheral Area of 5 kilometers and includes any other area notified by the Government for the purpose.

(n) “Urban land” means any land situated within the limits of an urban agglomeration.

(o) “Urbansiable land” means land situated within an urban agglomeration, but not being an urban land.

(p) “Vacant land” means land, not being mainly used for the purpose of agriculture, in an urban agglomeration, but does not include—

The Kerala Urban Land (Ceiling and Regulation) Bill

(i) Land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated; and

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed, on the appointed day with the approval of the appropriate authority, and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause.

3. *No person to hold land in excess of the ceiling areas.*— With effect from such date as may be notified by the Government, no person shall be entitled to own or hold or to possess vacant lands in excess of the ceiling limit.

4. *Constitution of the Board.*— (1) Government shall constitute a Board to recommend to the Government the urban area where the land ceiling limit has to be implemented and the extent of ceiling limit to be fixed and to recommend to the competent authority the amount of compensation to be paid under Section 11.

(2) The Board shall consist of members nominated by the Government from experts in the field of Engineering, Architecture, Audit, Law and Revenue Departments.

(3) Nomination to the Board by the Government shall be made on the recommendation of a High Power Committee consisting of Chief Minister, Leader of Opposition and the Speaker of the Legislative Assembly.

5. *Functions of the Board.*—(1) The Board may classify the land into different zones having regard to the location, utility of the land, facilities available to it in the locality, road access and similar other features.

(2) The Board may fix different ceiling limit for different zones.

(3) The Board, after fixing the areas where the ceiling has to be applied and the ceiling limit, recommend to the Government accordingly.

The Kerala Urban Land (Ceiling and Regulation) Bill

(4) Where any land is vested with the Government under sub-section (3) of Section 10, the Board shall fix an amount to be paid to the persons interested in the land concerned considering the locality, market value and other similar features.

(5) The Board shall inform the competent authority the amount so fixed.

6. *Notification of the ceiling limit.*—(1) Government shall, on receipt of the recommendation of the Board, notify the area and the extent of the ceiling limit fixed in respect of the area concerned.

(2) Government may deviate from the recommendation of the Board for reasons to be recorded in writing.

7 *Transfer of land.*—(1) Where any person who had held land in excess of the ceiling limit at the commencement of this Act has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of land so transferred shall also be taken in to account in calculating the extent of land held by such person and the excess land in relation to such person shall, for the purpose of this Chapter be selected out of the vacant land held by him excluding the land so transferred and in cases the entire excess vacant land cannot be so selected, the balance, or where no vacant land is held by him after transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion of the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-section (1), the transfer to that extent shall stand null and void.

(3) No person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 10 and any such transfer made in contravention of this provision shall be deemed to be null and void.

The Kerala Urban Land (Ceiling and Regulation) Bill

8. *Persons holding vacant land in excess of ceiling limit to file statement.—*

(1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building whether or not with a dwelling unit therein held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain.

(2) If the competent authority is of opinion that any person holds, at the commencement of this Act vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit, so however, that the period or the aggregate of the periods of such extension shall not exceed three months.

(4) The statement under this section shall be filed,—

(a) in the case of an individual, by the individual himself; or where the individual is absent from India, by the individual concerned or by some person duly authorized by him in this behalf; and when the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to Act on his behalf;

(b) in the case of a family, by the husband or wife and when the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both;

(c) In the case of a company, by the principal officer thereof;

(d) In the case of a firm, by any partner thereof;

(e) In the case of any other association, by any member of the association, or the principal officer thereof; and

(f) In the case of any other person, by that person or by a person competent to act on his behalf.

The Kerala Urban Land (Ceiling and Regulation) Bill

Explanation.—For the purpose of this sub-section, “Principal Officer”,—

(i) In relation to a Company means the Secretary, Manager, Managing Director of the Company;

(ii) In relation to any association, means the Secretary, Treasurer, Manager or agent of the association,

and includes any person connected with the management of the affairs of the company or the association as the case may be upon whom the competent authority has served a notice of the intention of treating him as the principal officer thereof.

9. *Filing of statement in cases where vacant land held by a person is situated within the jurisdiction of two or more competent authorities.*—(1) Where a person holds vacant land situated within the jurisdiction of one or more competent authorities, then he shall file his statement under sub-section (1) of Section 6 before the competent authority within the jurisdiction of which the major part thereof is situated and thereafter all subsequent proceedings shall be taken before the competent authority to the exclusion of the other competent authority or authorities concerned and the competent authority before which the statement is filed, shall send intimation thereof to the other competent authority or the authorities concerned.

(2) When the extent of vacant land held by a person and situated within the jurisdiction of two or more competent authorities are equal, he shall file the statement under sub-section (1) of Section 6 to any one of the competent authority with intimation thereof to the other competent authority or authorities concerned.

10. *Preparation of draft statement as regards vacant land held in excess of ceiling limit.*—(1) On the basis of the statement filed under Section 6, and after such enquiry as the competent authority may deem fit to make, the competent authority shall prepare a draft statement in respect of the person who has filed the statement under Section 6.

(2) Every statement prepared under sub-section (1) shall contain the following particulars, namely:—

(i) The name and address of the person;

(ii) the particulars of all vacant lands and any other land on which there is a building or not with a dwelling unit there in, held by such person;

(iii) The particulars of the vacant lands which such person desires to retain within the ceiling limit;

The Kerala Urban Land (Ceiling and Regulation) Bill

(iv) The particulars of the right, title or interest of the person in the vacant land;

(v) Such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason from the person on whom a copy of the draft statement has been served under that sub-section and the competent authority shall after giving the object or a reasonable opportunity of being heard pass such orders as it deems fit.

11. *Final Statement.*—After disposal of the objections, if any, received under sub-section (4) of Section 8, the competent authority can make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease or mortgage, or a hire purchase agreement or on an irrevocable power of attorney, also on the owner of such vacant land.

12. *Acquisition of vacant land in excess of ceiling limit.*—(1) As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that,—

(i) such vacant land shall be vested in the Government;

(ii) the claim of all person interested in such vacant land may be made by them personally or by their agents giving particulars of their nature of interest in such land, to be published for information of the public in the Gazette in such manner as may be prescribed.

(2) After considering the claim of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

The Kerala Urban Land (Ceiling and Regulation) Bill

(3) At any time after the publication of the notification under sub-section (1) the competent authority may by notification declare that the excess vacant land referred to in the notification shall, with effect from such date as may be specified in the declaration, be deemed to have been vested with the Government free from all encumbrances with effect from the date so notified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration under sub-section (3),—

(i) No person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land including any part thereof specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) No person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the Government under sub-section (3), the competent authority may, by notice in writing, order any person who is in possession of such land to surrender or deliver possession thereof to the Government or to any person duly authorized by the Government in this behalf within thirty days of the service of notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the Government or to any person duly authorized by the Government in this behalf and may for that purpose use such force as may be necessary.

13. *Payment of amount for vesting of land.*—(1) Where any vacant land is deemed to have been vested with the Government under sub-section (3) of Section 10, the Government shall pay to the person or persons having interest therein an amount as may be decided by the Board.

(2) Notwithstanding anything contained in sub-section (1), where any vacant land which is deemed to have been vested under sub-section (3) of Section 10 is held by any person under a grant, lease or other tenure from the Central Government or State Government and,

(i) The terms of such grant, lease or other tenure do not provide for payment of any amount to such person on the termination of such grant, lease or other tenure and resumption of such land by the Central Government or the State Government as the case may be; or

The Kerala Urban Land (Ceiling and Regulation) Bill

(ii) The terms of such grant, lease or other tenure provide for payment of any amount to such person on such termination and resumption, then,

- (a) In a case falling under clause (1), no amount shall be payable in respect of such vacant land under sub-section (1); and
- (b) in a case falling under clause (ii), the amount payable to him under the terms of such grant, lease or other tenure on such termination and resumption or the amount payable to him under sub-section (1) whichever is less.

(3) The competent authority may, as per recommendation of the Board by order in writing determine the amount to be paid in accordance with the provision of this section as also the person, or, where there are several persons interested in the land, the persons to whom it shall be paid and in what proportion, if any.

(4) Any claim or liability enforceable against any vacant land which is deemed to have been acquired under sub-section (3) of section 10 may be enforced only against the amount payable under this section in respect of such land and against any other property of the owner of such land.

14. *Constitution of Urban Land Tribunal and Appeal to Urban Land Tribunal.*—(1) Government may, by notification, constitute one or more Urban Land Tribunal or Tribunals.

(2) The Tribunal shall consist of three members of which one shall be a District Judge and the other two shall be officers of the Government in the cadre of a sub-divisional Magistrate.

(3) All the decisions of the Tribunal shall be taken by majority.

(4) The Tribunal shall have jurisdiction over such area as the Government may by notification specify.

(5) If any person is aggrieved by an order of the competent authority, he may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the Tribunal having jurisdiction over the area in which the vacant land is situated or where such land is situated within the jurisdiction of more than one Tribunal, to the Tribunal having jurisdiction over the area in which a major part of such land is situated or where the extent of such land is situated within the jurisdiction of two or more Tribunals is equal, to any one of those Tribunals:

Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Kerala Urban Land (Ceiling and Regulation) Bill

(6) In deciding appeal, the Tribunal shall exercise all the powers which a Civil Court has and follow the same procedure which a Civil Court follows in deciding appeals against the decree of an original court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

15. *Payment of the amount.*—Government shall, within a period of six months from the date of the order of the competent authority determining the amount to be paid under Section 11, within a period of six months from the date of the final appellate order, pay the amount referred to in Section 11 to the person or persons entitled thereto.

16. *Ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees etc.*—(1) If, on or after the commencement of this Act, any person acquires by inheritance, settlement or bequest from any other person by sale in execution of a decree or order of a Civil Court or of an award or order of any other authority, or by purchase or otherwise, any vacant land and the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then, he shall, within three months of the date of such acquisition, file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the vacant land held by him and also specifying the vacant land within the ceiling limit which he desires to retain.

(2) The provisions of Sections 6 to 14 (both inclusive) shall, so far as may be, apply to the statement filed under this section and to the vacant land held by such person in excess of the ceiling limit.

17. *Power to enter upon any vacant land.*—The competent authority or any person acting under the orders of the competent authority may, subject to any rules made in this behalf and at such reasonable times as may be prescribed, enter upon any vacant land or any other land on which there is a building with such assistance as the competent authority or such person considers necessary and make survey and take measurement thereof and do any other act which the competent authority or such person considers necessary for carrying out the purposes of this Act.

18. *Penalty for concealment etc., of particulars of vacant land.*—(1) If the competent authority, in the course of any proceedings under this Act, is satisfied that any person has concealed the particulars of any vacant land or any other land on which there is a building, whether or not with a dwelling unit therein, held by him or furnished inaccurate particulars of such land or user thereof, it may, after giving such person an opportunity of being heard in the matter, by order in writing direct that, without prejudice to any other penalty to which he may be liable under this Act, such

The Kerala Urban Land (Ceiling and Regulation) Bill

person shall pay, by way of penalty, a sum which shall not be less than but which shall not exceed twice, the amount representing the value of the vacant land or such other land or both, as the case may be, in respect of which the particulars have been concealed or in respect of which inaccurate particulars as aforesaid have been furnished.

(2) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.

19. *Exemptions.*—(1) Subject to the provisions of sub-section (2), nothing in this chapter shall apply to any vacant land held by—

(i) the Central Government or any State Government, or any local authority or any Corporation established by or under a Central or Provincial or State Act or any Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(ii) Any military, naval or air force institution;

(iii) Any bank.

Explanation.—In this clause, “bank” means any banking company as defined in Cl. (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949), and includes,—

(a) The Reserve Bank of India constituted under the Reserve Bank India Act, 1934 (2 of 1934);

(b) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(c) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(d) a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970);

(e) the Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 (15 of 1948), the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956 (31 of 1956) the Unit Trust of India, established under the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Development Bank of India Act, 1964 (18 of 1964), the Industrial Credit and Investment Corporation of India, the Industrial Reconstruction Corporation of India and any other financial institution, which the Central Government or the State Government concerned may, by notification in the Official Gazette, specify in this behalf;

The Kerala Urban Land (Ceiling and Regulation) Bill

(iv) Any public charitable or religious trust (including wakf) and required and used for any public charitable or religious purposes:

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust;

(v) Any co-operative society, being a land mortgage bank or a housing co-operative society registered or deemed to be registered under any law relating to co-operative societies for the time being in force:

Provided that the exemption under this clause, in relation to a land mortgage bank, shall not apply to any vacant land held by it otherwise than in satisfaction of its dues;

(vi) any educational, cultural, technical or scientific institution or club (not being a corporation established by or under a Central or Provincial or State Act referred to in Cl. (i) or a society referred to in Cl. (viii) as may be approved for the purposes of this clause by the State Government by general or special order, on application made to it in this behalf by such institution or club or otherwise:

Provided that no approval under this clause shall be accorded by the State Government unless the Government is satisfied that it is necessary so to do having regard to the nature and scope of the activities of the institution or club concerned, the extent of the vacant land required bona fide for the purposes of such institution or club and other relevant factors;

(vii) Any society registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purpose;

(viii) A foreign State for the purposes of its diplomatic and consular missions or for such other official purposes as may be approved by the Central Government or for the residence of the members of the said missions;

(ix) The United Nations and its specialized agencies for any official purpose or for the residence of the members of their staff;

(x) Any international organization for any official purpose or for the residence of the members of the staff of such organization:

Provided that the exemption under this clause shall apply only if there is an agreement between the Government of India and such international organization that such land shall be so exempted.

The Kerala Urban Land (Ceiling and Regulation) Bill

(2) The provisions of sub-section (1) shall not be construed as granting any exemption in favour of any person, other than an authority, institution or organization, specified in sub-section (1) who possesses any vacant land which is owned by such authority, institution or organization or who owns any vacant land which is in the possession of such authority, institution or organization:

Provided that where any vacant land which is in the possession of such authority, institution or organization, but owned by any other person, is declared as excess vacant land under this chapter, such authority, institution or organization shall, notwithstanding anything contained in any of the foregoing provisions of this chapter, continue to possess such land under the State Government on the same terms and conditions subject to which it possessed such land immediately before such declaration.

Explanation.— For the purposes of this sub-section, the expression “to possess vacant land” means to possess such land either as tenant or as mortgagee or under a hire-purchase agreement or under an irrevocable power-of-attorney or partly in one of the said capacities and partly in any other of the said capacity or capacities.

20. *Power to exempt.* — (1) notwithstanding anything contained in any of the foregoing provisions of this chapter,—

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

The Kerala Urban Land (Ceiling and Regulation) Bill

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under Cl. (a) or Cl. (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this chapter shall apply accordingly.

21. *Disposal of vacant land vested with the Government.*—(1) It shall be competent for the Government to allot in such manner as may be prescribed in excess of the ceiling limit any vacant land which is deemed to have been vested with Government under this Act to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the State Government to its employees of any industry and it shall be lawful for such person to hold land in excess of the ceiling limit.

(2) In making allotment under sub-section (1), the Government may impose such conditions as may be specified in the order.

(3) If the allottee of the vacant land has not complied with the conditions of allotment, the Government may after giving the allottee an opportunity of being heard in the matter cancel the allotment and the land allotted shall revert in the Government free from all encumbrances.

(4) Subject to provision of sub-sections (1) to (3), all the vacant lands vested with Government under this Act shall be disposed of by the Government to sub-serve the common good on such terms and conditions as the Government may deem fit to impose.

(5) Notwithstanding anything contained in sub-sections (1) to (4), where the Government is satisfied that it is necessary to retain or reserve any vacant land vested with the Government under this Act for the benefit to the public, it shall be competent for the Government to retain or reserve such land for the same.

22. *Special provisions regarding disposal of vacant lands in favour of certain persons.*—(1) Notwithstanding anything contained in Section 22 where any person, being the owner of any vacant land, had leased out or mortgaged with possession of any vacant land, or had given possession of such land under a hire-purchase agreement to any other person and as a consequence thereof he had no vacant land in his possession or has vacant land in his possession less in extent than the ceiling limit and deemed to have been acquired by the Government under this chapter, then, such person shall be entitled to make an application to the Government in such form and containing such particulars as may be prescribed within a period of three months from the date of such acquisition for the assignment to him,—

The Kerala Urban Land (Ceiling and Regulation) Bill

(a) in a case where he has no land in his possession, of so much extent of land as is not in excess of the ceiling limit; or

(b) in a case where he has land in his possession less in extent than the ceiling limit, of so much extent of land as is required to make up the deficiency:

Provided that nothing in this sub-section, shall be deemed to entitle a person for the assignment of land in excess of the extent of the land leased or mortgaged with possession or given possession under a hire-purchase agreement as aforesaid by such person.

(2) On receipt of an application under sub-section (1), the State Government shall, after making such inquiry as it deems fit, assign such land to such person on payment of an amount equal to the amount which has been paid by the Government for the acquisition of the extent of land to be assigned.

CHAPTER III
MISCELLANEOUS

23. *Powers of competent authority.*—The competent authority shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of any document;

(c) Receiving evidence on affidavits;

(d) Requisitioning any public record or copy thereof from any court or office;

(e) Issuing commissions for the examination of witnesses or documents;
and

(f) any other matter which may be prescribed.

24. *Revision by Government.*—The Government may, by its own motion, call for and examine the records of any order passed or proceedings taken under the provisions of this Act and against which no appeal has been preferred under Section 14 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

The Kerala Urban Land (Ceiling and Regulation) Bill

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

25. *Powers of the Government to issue orders and directions to the competent authority.*—The Government may issue such orders and directions of a general character as it may consider necessary in respect of any matter relating to the powers and duties of the competent authority and thereupon the competent authority shall give effect to such orders and directions.

26. *Returns and reports.*—The competent authority shall furnish to the Government such returns, statistics, account and other information as the Government may, from time to time require.

27. *Offences and Penalties.*—(1) If any person who is under an obligation to file a statement under this Act fails, without reasonable cause or excuse, to file the statement within the time specified for the purpose, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or with both.

(2) If any person who is under an obligation to file a statement under this Act files a statement which he knows or has reasonable belief to be false, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twentyfive thousand rupees.

(3) If any person contravenes any of the provisions of this Act for which no penalty has been expressly provided for, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twentyfive thousand rupees.

28. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company 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, 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.

The Kerala Urban Land (Ceiling and Regulation) Bill

(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 consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the 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.

29. *Identity.*— No suit or other legal proceeding shall be filed against the Government or any offices of the Government in respect of anything which is in good faith done or intended to be done by or under this Act.

30. *Cognizance of offence.*—No court shall take cognizance of any offence punishable under this Act except on complaint in writing made by the competent authority or any office authorized by the competent authority in this behalf and no court inferior to that of a Chief Judicial Magistrate shall try such offence.

31. *Act to override other laws.*— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith any other law for the time being in force or any customs, usage or agreement or decree or order of a court, tribunal or other authority.

32. *Certain offices to be public servants.*— Every offices acting under, or in pursuance of the provision of this Act or under the rules made thereunder shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Central Act 45 of 1860).

33. *Correction of clerical errors.*—Clerical or arithmetical mistakes in any order passed by any officer or authority under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by such offices or authority on its own motion or on an application received in this behalf from any of the parties.

34. *Power to make rules.*— (1) Government may make rules either prospectively or retrospectively for carrying out the provisions of this Act.

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

(a) The period within which the Statement may be filed.

The Kerala Urban Land (Ceiling and Regulation) Bill

(b) Publication of native of interest of persons in the land for information of the public under Section 12.

(c) Time to be prescribed under Section 18.

(d) The manner in which the vacant land vested in the Government to be disposed.

35. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing difficulty.

(2) No order under sub-section (1) shall be made after the expiration of two year from the commencement of this Act.

Statement of Objects and Reasons

The object of the Bill is to impose ceiling on urban land as defined in the Bill and the acquisition of land in excess of the ceiling limit to be fixed by the Government as per the provisions of the bill. The main object sought to be achieved by the proposed legislation is to prevent concentration of urban land in large extent in the hands of a few persons and indulging in speculative transactions with reference to such lands with the sole motive of profiteering and thus to bring about an equitable distribution of land in an urban agglomerations to sub-serve the common good. The word 'urban agglomeration' had been defined to mean that, that areas coming under Calicut, Kochi and Trivandrum city and peripheral areas of five kilometers and includes any other area notified by the Government for the purpose.

The Bill contains provisions for the Constitution of the board for fixing the ceiling limit of land which can be legally held by an individual or family under the Bill. After fixing the ceiling limit no person is entitled to hold any land in excess of the ceiling area. Excess land should be surrendered to the competent authority appointed by the Government. Bill contains provisions to hear and dispose of all appeals against the decision of the competent authority and hear and dispose of them in accordance with the provisions of the bill. Any person holding excess land is bound to file a statement in the prescribed form to the competent authority. Suo mottu proceedings can also be taken by the competent authority against any person who is known to have been holding land in excess of the ceiling limit. Government has been given power to exempt any land from the ceiling provisions in appropriate cases. Failure to file statement under the bill and falsification of statements are made offences punishable under the Bill.

THE KERALA RECOVERY AND DISTRIBUTION OF GOVERNMENT LAND BILL

A BILL

to recover possession of the Government land remaining in the hands of certain persons on the basis of time expired lease or licence, lease or licence on nominal rent or licence fee entrusted long back, by encroachment and the land acquired by purchase or otherwise in violation of ceiling provisions in the Land Ceiling Law.

Preamble.—WHEREAS large extent of Government land is in the possession of certain persons on the basis of expired lease or licence, lease or licence on nominal rent or licence fee or by encroachment or acquired by purchase or otherwise in violation of ceiling provisions in the Land Ceiling Laws, and

WHEREAS it is necessary in the public interest to recover such land and to distribute it among landless weaker section of the community or to utilise it for any other Government purposes or public purpose.

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 (Recovery and Distribution) of Government Land Act,—

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

(3) It shall come into force on such date as the Government by notification in the Gazette appoint.

2. *Definitions.*—In this Act unless the context otherwise requires—

(a) “Appointed day” means the date notified by the Government under Section 3 of the Act.

(d) “Land Ceiling Law” means the Kerala Land Reforms Act, 1963 (Act 1 of 1964) and the rules issued thereunder.

(f) “Lease” means lease of any Government land as per the provisions of the Land Assignment Act, 1961 and the rules thereunder, or in any other legal manner.

(g) “Licence” means grant of licence of Government land as per the provisions of the Kerala Land Assignment Act, 1961 and the rules made thereunder or in any other legal manner.

The Kerala Recovery and Distribution of Government Land Bill

(h) “Nominal rent” means any rent fixed by the Government at the time of lease (irrespective of the purpose), which is nominal now when compared to the rent prevalent for the time being for leases of similar lands.

(i) “Nominal licence fee” means any licence fee fixed by the Government at the time of granting licence (irrespective of the purpose) which is nominal now when compared to the licence fee prevalent for the time being for licences in respect of similar lands.

(e) “Encroached Land” means the Government land encroached by any person knowingly or unknowingly, intentionally or unintentionally without permission of the Government or any authority under the Government.

(j) “Prescribed” means prescribed by the rules made under this Act.

(e) “Land Tribunal” means the Land Tribunal constituted under Section 10.

(b) “Appellate Authority” means an Appellate Authority constituted under Section 11.

3. *No person shall hold Government land on lease or licence.*— (1) With effect from the appointed day, all lands in the possession of any person after the expiry of the period of lease or licence shall be the property of the Government.

(2) With effect from the appointed day, notified by the Government all lands in the hands of any person on lease or licence on nominal rent or licence fee shall be deemed to be vested in the Government.

4. *All encroached Government land shall vest in the Government.*—On and from the appointed day, all Government land encroached by any person shall be deemed to be vested in the Government.

5. *Excess land shall vest with the Government.*—All lands in excess of ceiling limit under the land ceiling law in the possession of any person on the appointed day, shall be deemed to be vested with the Government.

6. *Persons in possession of Govt. land under Sections 3, 4 and 5 to file statement.*—(1) Persons in possession of Government land on the basis of expired lease or licence, or on nominal rent, or on nominal licence fee or by way of encroachment or in excess of the ceiling limit specified in the land ceiling law shall file a statement before the Land Tribunal within such time as may be prescribed intimating the extent of land in his possession with such other particulars as may be prescribed.

The Kerala Recovery and Distribution of Government Land Bill

(2) The statement under sub-section (1) shall be filed,

(a) In the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorized by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs by his guardian or any other person competent to act on his behalf;

(b) In the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by another person competent to act on behalf of the husband or wife or both;

(c) In the case of a company, by the principal officer thereof;

(d) In the case of a firm, by the principal officer thereof;

(e) In the case of any other association, by any member of association, or the principal officer thereof; and

(f) In the case of any other person, by that person or by a person competent to act on this behalf.

Explanation.—For the purpose of this sub-section, “principal officer”,—

(i) In relation to a company, means the secretary, manager or managing director of the company;

(ii) In relation to any association, means the secretary, treasurer, manager or agent of the association,

And includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the Land Tribunal has served a notice of his intention of treating him as the principal officer thereof.

(3) Any person who has with him sufficient evidence to prove that any other persons has in his possessions Govt. land under Section 3, 4 or 5 may file statement or petition before the Land Tribunal.

(4) The Land Tribunal shall, after making such enquiry as it deems fit, make a draft statement detailing the Govt. land in such form as may be prescribed.

(5) The statement under sub-section (4) shall be served on the person concerned in such manner as may be prescribed together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

The Kerala Recovery and Distribution of Government Land Bill

(6) The statement prepared under sub-section (5) shall be published in the notice board of the Land Tribunal for the information of the Public and for filing objection, if any, to the statement.

(7) The Land Tribunal shall consider any objection received from the person concerned and from the public under sub-section (6) and after hearing the parties concerned, finalise the statement.

(8) The Land Tribunal shall, after finalization of the statement, issue an order that the land described in the statement shall vest in the Govt. free from any encumbrances.

(9) The Land tribunal shall take possession of the land described under sub-section (7) immediately on issue of an order under sub-section (8):

Provided that the land on nominal lease or licence and the encroached land shall be taken possession of only in accordance with the provision in Section 8 or 9 as the case may be.

7. *Suo motu action by Land Tribunal.*—The Land Tribunal may, suo motu or on credible information received by him regarding any Govt. land described under Section 3, 4 or 5, make such enquiry as he deems fit and take a decision on the Govt. land and issue an order under sub-section (8) of Section 6 and take possession under sub-section (9) of Section 6:

Provided that the affected parties shall be heard before issuing any order.

8. *Grant of Lease or Licence of Govt. land under sub-section (2) of Section 3.*—(1) Notwithstanding the provisions contained in Section 3 of this Act, any person in possession of any Govt. land on nominal rent or licence fee, whose period of lease or licence is expired or not and not being used for agricultural purposes or for plantation may file an application before the Govt. within 30 days after the issue of an order by the Land Tribunal under sub-section (8) of Section 6, for grant of fresh lease or licence.

(2) Any application made under sub-section (1) shall be considered by the Government on its merit.

(3) In case the Government decides to grant afresh a lease or licence to the applicant, the same may be granted after determining the standard rent and executing fresh lease or a licence agreement.

The Kerala Recovery and Distribution of Government Land Bill

(4) In case the lessee or licensee does not make any application under sub-section (1) or the Govt. refuses to grant fresh lease or licence, the land may be surrendered to the Land Tribunal.

(5) The encroacher of any land is liable to a penalty at such rate as may be prescribed.

9. *Assignment of encroached land.*—(1) Any person against whom an order under sub-section (8) of Section 6 has been issued in respect of the encroached land, may apply to the Land Tribunal for assignment of such land if such land is absolutely necessary for the beneficial enjoyment of the property or building owned and possessed by him.

(2) Every application filed under sub-section (1) shall be considered by the Land Tribunal after such enquiry as may deem fit and take a decision as expeditiously as possible but not later than 30 days from the date of application.

(3) In case it is decided to assign the land, he may issue an order for the assignment of the land by the revenue authorities.

(4) The revenue authorities shall there upon assign the land after realizing the market value of the land and a penalty at such rate as may be prescribed.

10. *Constitution of Land Tribunal.*—(1) The Govt. may, by notification constitute one or more Land Tribunals or authorise any other appropriate authorities for any area or for any class of cases specified in the notifications, for the purpose of performing the functions of a Land Tribunal under this Act.

(2) The Land Tribunal shall consist of a sole member who shall be an officer of the rank of Revenue Divisional Officer appointed by the Govt.

11. *Constitution of Appellate Authority.*—(1) The Govt. may by notification constitute as many Appellate Authorities or authorise any other appropriate authorities as may be necessary for the purposes of this Act with such area of jurisdiction or such class of cases as may be prescribed.

(2) The appellate authority shall consist of a sole member who shall be an officer not below the rank of a District Collector appointed by the Government.

12. *Powers of Land Tribunal and Appellate Authority.*—The Land Tribunal and the Appellate Authority constituted under this Act shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely:—

The Kerala Recovery and Distribution of Government Land Bill

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavit;
- (d) Issuing commissions for the examination of witnesses or for local investigation;
- (e) Any other matter which may be prescribed.

13. *Appeal.*—(1) Any person aggrieved by any final orders of the Land Tribunal may file appeal to the Appellate Authority within such time as may be prescribed.

(2) The Appellate Authority may admit an appeal presented after the expiration of the period prescribed, if it is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appellate authority shall within a period of six months take a decision on appeal after calling for the records with a report from the Land Tribunal.

14. *Revision by Government.*—(1) Any person aggrieved by any final order of the Appellate Authority may, within such time as may be prescribed, prefer a revision to the Government on the ground that the Appellate Authority has decided a question of law erroneously.

(2) Government may admit a revision petition presented after the expiration of the period prescribed, if it is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The Government shall decide the revision, after hearing the parties, within two months from the date of revision.

15. *Assignment of land vested with the Government under this Act.*—Lands vested with the Government under this Act shall be distributed by the Government as per the following priority, namely:—

- (a) Landless Scheduled Tribes.
- (b) Landless Scheduled Castes.
- (c) Landless people below poverty line.
- (d) Scheduled Castes having land less than fifty cents.
- (e) Scheduled Tribes having land less than fifty cents.
- (f) People below poverty line having land less than fifty cents.

The Kerala Recovery and Distribution of Government Land Bill

Provided that Government may deviate from the above priority considering the location, suitability and other similar reasons.

16. *Offences and Penalties.*—(1) Any person who files a statement under sub-section (1) of Section 6 concealing the particulars of any land or files a statement with inaccurate particulars shall be punishable with imprisonment for a term which may be extend to two years or with fine which may extend to fifty thousand rupees.

(2) Any person who files a statement under sub-section (3) of Section 6 without bona fide and to harass any other person shall be punishable with imprisonment for a term which may be extend to three years or with fine which may extend to one lakh rupees.

(3) In the event of issuing any order in a petition filed under sub-section (3) of Section 6, the Land Tribunal is of the view that the concerned person has intentionally failed to file statement under sub-section (1) Section 6, then the concerned person shall be liable to be punished with imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees.

17. *Purchase of land from persons having excess land.*—(1) Notwithstanding anything contained in any other law for the time being in force, any land purchased from a person having excess land which was liable to be surrendered as per the ceiling limit prescribed in the land ceiling law shall vest with the Government:

Provided that the purchaser or any subsequent purchaser or his legal heirs is, on the appointed day, has only 50 cents of land, he may be allowed to retain that land.

(2) In the event of retaining land by any person under the proviso to sub-section (1), the original land owner shall pay to the Government an amount equal to the present market value of such land.

18. *Power to make rules.*—(1) Government may either prospectively or retrospectively make rules to carry out the purpose of this Act.

(2) Without prejudice to the generality of the power under sub-section (1), such rules may provide for any of the following matters namely—

- (a) The time within which the statement under sub-section (1) of Section 6.
- (b) The particulars of statement to be filed under sub-section (2) of Section 6.
- (c) The form in which the statement to be prepared under sub-section (4) of Section 6.
- (d) The manner of serving the statement under sub-section (5) of Section 6.

The Kerala Recovery and Distribution of Government Land Bill

- (e) The rate of penalty under sub-section (5) of Section 7.
- (f) The rate of penalty under sub-section (4) of Section 9.
- (g) The area of jurisdiction and the classes of cases under sub-section (1) of Section 11.
- (h) The provisions of the land tribunal under clauses (e) of Section 12.
- (i) The time for appealing under Section 13.
- (j) The time for filing revision under Section 14.
- (k) Any other matter which is required to be prescribed by the Government.

(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.

Statement of Objects and Reasons

Large extent of Government land are stated to be in the possession of private individuals or bodies of individuals whether incorporated or not on the basis of time expired lease or licences or by way of illegal encroachment. Commission takes the view that such situations cannot be allowed to continue unchecked. Similarly, a large extent of land statutorily vested in the Government as excess land under the Kerala Land Reforms Act has not come into the actual possession of the Government even after 3 ½ decades due to various reasons some justified but many totally unjustified. The provisions in the existing enactments like Kerala Land Conservation Act etc., are not sufficiently effective to deal with the problem. As such the Commission finds it expedient to recommend a new enactment empowering the Government to take comprehensive and effective steps to bring lands into its control.

The Kerala Recovery and Distribution of Government Land Bill

The provisions in the bill makes it obligatory on the part of all persons who are in possession of Government land either on the basis of time expired lease or licence or on nominal rent or licence fee or on encroachment or as land in excess of ceiling limit fixed under the Kerala Land Reforms Act to file a statement in the prescribed form before the Land Tribunal concerned within the time fixed under the bill. On receipt of the statement, the Land Tribunal shall make necessary enquiries and shall prepare a draft statement of the land actually held by the statement given. Such drafts shall be published in the notice board of the Tribunal for information of all concerned. The affected person may file objections if any against the draft statement which may be considered by the Tribunal before preparing the final statement. Even in a case where no statement is given the Tribunal has power to take suo motu proceedings against any person who is believed to be in possession of excess land. The Land Tribunal shall pass final orders and shall take possession of the land in case the finding is that there is excess land. Against the decision of the Land Tribunal an appeal is provided to the Appellate Authority and the appellate decision shall be final.

Another important provision is the one which mandates distribution of all lands which vest in the Government under the act to those categories of persons mentioned in Section 15 of the bill in the priority indicated therein. Any person who files a statement concealing relevant facts or inaccurate details are liable to be punished under the bill.

**THE KERALA MEDICARE SERVICE PERSONS AND
MEDICARE SERVICE INSTITUTIONS (PREVENTION
OF VIOLENCE AND DAMAGE TO PROPERTY) BILL**

**A
BILL**

to prohibit violence against Medicare service persons and prevent damage and loss to property in Medicare service institutions and for matters connected therewith and incidental thereto.

Preamble.—WHEREAS acts of violence causing injury or danger to life of Medicare Service Persons and damage or loss to property of Medicare Service Institutions are on the increase in the State creating unrest in Medicare persons resulting in total hindrance to such services in the State;

AND WHEREAS in the larger interest of the patients, their relatives, attendants and members of the public, it is necessary to prevent persons from taking law into their own hands and indulging in violent activities.

AND WHEREAS it has become necessary to punish the persons committing violence and to provide compensation for loss or damage to the property of medicare persons and to make such offences cognizable and non-bailable.

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 Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act,—

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

(3) It shall come into force at once.

Definition.—

2. *In this Act, unless the context otherwise requires,*—

(a) ‘*Medicare Service Institutions*’ means all institutions providing Medicare to people which are under the control of State or Central Government or Local Bodies etc., including any private hospital having facilities for treatment of the sick and used for their reception or stay; any private maternity home where women are usually received and accommodated for the purpose of confinement and ante-natal and post-natal care in connection with child birth or anything connected therewith; and any

The Kerala Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill

private nursing home used or intended to be used, for the reception and accommodation of persons suffering any sickness, injury or infirmity whether of body or mind and providing of treatment for nursing or both of them and includes a maternity home, convalescent home, clinics, residence and or consulting rooms of medicare persons;

(b) Medicare Service Persons in relation to a Medicare service institution shall include,

(i) Registered Medical Practitioners, working in Medicare Institutions (including those having provisional registration);

(ii) Registered Nurses;

(iii) Medical Students;

(iv) Nursing Students;

(v) Para Medical Workers employed and working in Medical Service Institutions;

(c) ‘*Offender*’ means any person who either by himself or as a member or as a leader of a group of persons or organizations commits or attempts to commit or abets or incites the commission of violence under this Act;

(d) ‘*Property*’ means any property, movable or immovable or medical equipment or medical machinery owned by or in possession of or under the control of any medicare person or medicare service institution;

(e) ‘*Violence*’ means activities causing any harm, injury or endangering the life or intimidation, obstruction or hindrance to any Medicare service person in discharge of duty in the Medicare service institution or damage or loss to property in Medicare service institution.

3. *Prohibition of Violence.*—Any act of violence against Medicare service persons or damage or loss to property in a Medicare service Institution is hereby prohibited.

4. *Penalty and other consequences for violation of Section 3.*—(1) Any Offender who commits any act in contravention of Section 3 shall be punished with imprisonment for a period which may extend to three years and with fine, which may extend to fifty thousand rupees.

(2) Any offence committed under Section 3, shall be cognizable and non-bailable.

(3) In addition to the punishment specified in section 4, the offender shall be liable to a penalty of twice the amount of purchase price of medical equipment damaged and loss caused to the property as determined by the Court trying the offender.

The Kerala Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill

(4) If the offender has not paid the penal amount under sub-section (1), the said sum shall be recovered under the provisions of the Kerala Revenue Recovery Act, 1864 as if it were an arrear of land revenue due from him.

(5) The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force.

5. *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) 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 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

A large number of cases has been reported in recent times of violent attacks against medicare persons and medicare institutions for alleged deficiency of service to the patients who die in hospitals and other health care institutions. Medicare persons and their properties as also Medicare Institutions and their properties are destroyed by miscreants. Therefore, the Medicare patients and the properties of Medicare Institutions need to be protected against illegal action on the part of the persons who take law into their own hands on the spur of the moment and indulge in violent activities. This Bill is intended to prevent violence and the punish the offenders.

THE KERALA (PREVENTION OF SEEKING ALMS AND JUST REHABILITATION) BILL

A bill to consolidate and unify the law relating to prevention of seeking alms and rehabilitation of affected persons in the State of Kerala.

Preamble.—WHEREAS it is expedient to consolidate and unify the laws relating to prevention of seeking alms and rehabilitation of affected persons in the State of Kerala.

BE it enacted in the fifty ninth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(a) This Act may be called the Kerala Prevention of Seeking Alms and Just Rehabilitation Act —

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

(c) It shall come into force on such date as the Government may, by notification in the Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different areas of the State.

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

(a) “alms” means anything gratuitously given to a person seeking alms, such as money, food-cooked or uncooked grain or clothing or any other thing of value;

(b) “beggar” means a person who seeks alms;

(c) “begging” means,—

(i) Soliciting or receiving alms in a public place or entering on any private premises for the purpose of soliciting or receiving alms, whether under any pretence; or

(ii) Exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; or

(iii) Allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms, but does not include soliciting or receiving money or food or gifts for a purpose authorised by any law, or authorised by the Government in the rules made under this Act;

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(d) “Chief Inspector” means the person appointed to be the Chief Inspector of relief centres and workhouses under sub-section (1) of Section 17;

(e) “Child” or juvenile means a person who has not completed the age of eighteen years;

(f) “Court” means a court of competent jurisdiction referred to in Section 4;

(g) “Juvenile Justice Board” means a board constituted under the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000;

(h) “Prescribed” means prescribed by rules made under this Act;

(i) “Private premises” means places of private residence including lodges, restaurants or any place or vehicle, which is not owned by the person seeking alms;

(j) “Probation Officer” means a probation officer appointed under sub-section (2) of Section 17 or a Probation Officer under the Probation of Offenders Act, 1958 (Central Act 20 of 1958);

(k) “Public place” means any highway, public park or garden or any railway station, bus station or railway train bus or any public bridge, road, lane, footway, square, court, institution, Government Office, Place of worship alley or passage, whether a thoroughfare or not, and includes any open space or building to which, for the time being, the public have or are permitted to have, access, whether on payment or otherwise;

(l) “Relief centre” means an institution established or certified under Section 12;

(m) “State” means the State of Kerala;

(n) “Superintendent” or resident manager means an Officer of Government appointed to be in-charge of relief centre or workhouse established under this Act;

(o) “Work House” means an institution established or certified under Section 13.

CHAPTER II

PROCEDURE FOR DEALING WITH BEGGARS

3. *Begging to be an offence.*—Save as otherwise provided by this Act or by any other law for the time being in force, no person shall seek alms or induce or cause any person to seek alms in an area where this Act is in force.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

4. Courts having jurisdiction:

The powers conferred on Courts by this Act shall be exercised only by the High Court, a Court of Session, a Judicial Magistrate of the First Class or a Juvenile Justice Board or any other court exercising criminal jurisdiction in the area, and may be exercised by such courts whether the case comes before them originally or on appeal or revision.

5. Power to require person found seeking alms to appear before Court:

(1) Any police officer or other person authorised in this behalf or a member of a 'relief squad' constituted in accordance with the rules made under this Act may arrest without warrant any person contravening the provisions of Section 3:

Provided that no person entering on any private premises for the purpose of soliciting or receiving alms shall be so arrested or shall be liable to any proceedings under this Act, except upon a complaint by the occupier of that premises.

(2) Every person arrested under sub-section (1) shall be brought before the Court / Juvenile Justice Board within twenty four hours of such arrest excluding the time necessary for journey from the place where the person had been taken into custody.

6. Summary inquiry in respect of persons found seeking alms and their detention:

(1) Where a person who is brought before the court under Section 5 is not proved to have previously been detained in a relief centre or work house under the provisions of this Act, the court shall make a summary inquiry in the prescribed manner as regards the allegation that he was found seeking alms.

(2) If the inquiry referred to in sub-section (1) cannot be completed forthwith, the court may adjourn the inquiry from time to time and order the person to be remanded to a relief centre, or released on bail with or without sureties pending the enquiry.

(3) If on making the inquiry referred to in sub-section (1), the court is not satisfied that the person was found seeking alms, it shall order that such person be released forthwith.

(4) If on making the inquiry referred to in sub-section (1), the court is satisfied that such person has been found seeking alms, it shall record its finding that the person is found seeking alms.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(5) The court shall order the person found seeking alms under sub-section (4) to be detained in a relief centre or work house, as the case may be, for a period not exceeding three years:

Provided that if the court is satisfied from the circumstances of the case that the person found seeking alms is not likely to seek alms again, it may, after due admonition, release the person found seeking alms on a bond, for such person abstaining from seeking alms and being of good behavior, executed by the person found seeking alms or any other person whom the court considers suitable, with or without sureties, as the court may require.

(6) In passing any order under this section, the court shall have regard to the following matters, namely:

- (a) The age and character and antecedents of the person seeking alms;
- (b) The circumstances and conditions in which the person seeking alms was living;
- (c) Reports made by the Probation Officer in respect of the person seeking alms; and

(7) The report of the Probation Officer or any other report considered by the court under sub-section (6) shall be treated as confidential:

Provided that if such report relates to the character, health or conduct of the person seeking alms, or the circumstances and conditions in which the person seeking alms is living, the court may, if it thinks expedient, communicate the substance thereof to the person seeking alms or, if he is a dependent, to his guardian, and may give the person seeking alms or the guardian, as the case may be, an opportunity of producing evidence to disprove any matter stated in the report.

(8) A copy of the order made under sub-section (5) shall be sent forthwith to the Chief Inspector.

(9) Notwithstanding anything contained in this section, where the person found to be a person seeking alms under sub-section (4) is a child the court shall forward him to a Juvenile Justice Board and shall not make any order under sub-section (5); and the Juvenile Justice Board shall deal with the child according to the law for the time being in force relating to care and protection of children.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

7. Penalty for seeking alms after previous detention as beggar:

(1) Whoever, having been previously detained in a relief centre or work house under this Act or under any law in force immediately before the commencement of this Act, is found begging, shall, on conviction, be punished as provided in sub-sections (2) and (3).

(2) When a person is convicted for the first time under sub-section (1) the court shall order him to be detained in a relief centre or work house, as the case may be, for a period of not less than one year and not more than three years.

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a period of less than one year.

(3) When a person is convicted for the second or subsequent time under sub-section (1), the court shall order him to be retained in a relief centre or work house, as the case may be, for a period of ten years:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a period of less than ten years.

8. Contribution of parents:

(1) The court which makes an order for the detention of any person in a relief centre or work house, as the case may be, under Section 6 or Section 7 may make an order requiring the parent or other person liable to maintain him to contribute to his maintenance, if able to do so, in the manner prescribed.

(2) Before making any order under sub-section (1), the court shall inquire into the circumstances of the parent or other person liable to maintain him and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.

(3) Any order made under this section may, on an application made by the party liable or otherwise, be varied by the Court.

(4) Any order made under this section may be enforced in the same manner as an order under Section 125 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

9. Court may order detention of person wholly dependent on a person seeking alms:

(1) When a court has ordered the detention of a person in a relief centre or work house, as the case may be, under Section 6 or Section 7, it may, after making such inquiry as it thinks fit, order any other person who is wholly dependent on such person to be detained in a relief centre or work house, as the case may be, for a like period:

Provided that before such order is made, such dependent person shall be given an opportunity of showing cause why such an order should not be made.

(2) Where the dependent person is a child, the court shall forward him to a Child Welfare Committee which shall deal with him as provided under the law for the time being in force relating to care and protection of children:

Provided that where the dependent person seeking alms with his/her own child which is under the age of five years, and the person seeking alms is an able-bodied mother not being a person affected with any contagious disease or mentally ill, the child may be ordered to be detained in the relief centre or work house, as the case may be, without being separated from the mother as regards the place of detention until it attains the age of five years, and thereafter dealt with as provided under this sub-section.

(3) For the purpose of this section, the court may, if necessary, cause the dependent person to be arrested and brought before it and cause such person to be examined by medical officer.

(4) The provisions of Section 57 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall apply to every arrest under sub-section (3), and the officer in charge of the police station shall cause the arrested person to be kept in the prescribed manner until he can be brought before a court.]

10. Power of Government to order further detention of disabled and helpless person seeking alms:

When any person who is detained in a relief centre or work house under Section 6 or Section 7 or Section 9 is considered by the Government, whether on an application made by him or otherwise, to be blind, physically disabled, or otherwise suffering from a disability and is incurably helpless, the Government may order that he shall, after the expiry of the period of his detention, be further detained indefinitely in a relief centre:

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

Provided that the Government may release any such inmate, with any person, whom the Government consider suitable, after executing a bond, with or without sureties as the Government may require, making himself responsible for the housing and maintenance of such inmates, and for preventing him from reverting to begging or being used for the purpose of begging.

11. Penalty for employing or causing person to seek alms or using them for purposes of seeking alms:

Whoever employs or cause any person to solicit or receive alms, or whoever having the custody, charge or care of a child connives at or encourage the employment or the causing of a child to solicit or receive alms, or whoever uses another person as an exhibit for the purpose of begging, shall, on conviction, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

CHAPTER III

RELIEF CENTRES AND WORK HOUSES

12. Relief Centres:

(1) The Government may establish and maintain as many relief centres as may be necessary for the detention under this Act of persons seeking alms who are physically incapable of ordinary manual labour.

(2) There shall be separate relief centres for men and women.

(3) Where the Government are of opinion that any institution other than an institution established under sub-section (1) of this section is fit for the detention of beggars, who are physically incapable of ordinary manual labour, to be sent there under this Act, they may certify such institution as relief centre for the purposes of this Act.

(4) Every relief centre in which a person seeking alms is detained under this Act shall provide him with facilities for adult education and give him training in suitable vocations or other pursuits and shall also provide such medical help as is expedient and necessary.

(5) Every relief centre shall be under the control of a Superintendent/Resident Manager.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(6) The Government shall constitute a fund, for maintaining relief centres of the State to which shall be credited:

(a) all moneys received by the relief centre from the State Government by way of grants, loans, advances or otherwise.

(b) all money received by way of donations from the social welfare associations of people.

(c) cess collected from different sets of the public as may be prescribed by the Government.

(d) all money received by the relief centres from any other source.

13. Work Houses:

(1) The Government may establish and maintain as many work houses as may be necessary for the detention under this Act of persons seeking alms who are physically capable of ordinary manual labour.

(2) There shall be separate work houses for men and women.

(3) Where the Government are of opinion that any institution other than an institution established under sub-section (1) is fit for the detention of persons seeking alms, who are physically capable of ordinary manual labour, to be sent there under this Act, they may certify such institution as a work house for the purpose of this Act.

(4) Every work house in which a person seeking alms is detained under this Act may provide him with facilities for adult education and give him training in suitable vocation or other pursuits and shall also provide medical facilities to the extent expedient and necessary.

(5) Every work house shall be under the control of a Superintendent.

14. Advisory Committees:

(1) The Government may constitute for any area an advisory committee consisting of such persons, not exceeding five in number, as they may appoint:

Provided that where a local authority has agreed to render such financial assistance as the Government may consider proper in each case, for the maintenance of relief centres or work houses in which beggars from the area within the jurisdiction of the local authority are detained, the Government shall appoint such number of persons as they deem fit on the advisory committee for such area representing the local authority.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(2) The advisory committee constituted under sub-section (1) for any area or any member thereof may visit at all reasonable times and after due notice to the Superintendent, any relief centre or work house in which beggars from that area are detained.

(3) The advisory committee may also

(a) Tender advice as regards management of any relief centre or work house through the Chief Inspector;

(b) Collect subscriptions towards the recurring as well as non-recurring expenses of any relief centre or work house in the area for which it is constituted or in which persons seeking alms from that area are detained or of all such relief centres or work houses and disburse the collections in the prescribed manner.

(c) Advise the Government through the Chief Inspector as regards the certification of any institution within the area for which it is constituted, as a relief centre or work house or the cancellation of the certification of any such institution.

(d) Advise the Government generally on the working of this Act in the area for which it is constituted, and particularly on any point referred to it by the Chief Inspector.

15. Visiting Committee:

The Government shall nominate a local NGO to the performance of such functions as may be necessary to supervise the functioning of such relief centres and work houses.

16. Payment of contribution by local authorities and recovery thereof:

(1) Notwithstanding anything contained in any law for the time being in force, any local authority which has agreed to pay any sum of money for the maintenance of any relief centre or work house shall make payment of that sum to the Government before such date as may be prescribed.

(2) If any local authority fails to make any payment as required by such section (1), the Government may make an order directing any person, who for the time being has custody of any moneys on behalf of that local authority as its officer, treasurer, banker or otherwise, to pay the sum from such moneys as he may have in his custody or may from time to time receive, to the Government, and such person shall be bound to obey such order.

(3) Every payment made pursuant to an order under sub-section (2) shall be sufficient discharge to such person from all liability to the local authority in respect of any amount paid by him out of the money of the local authority so held by him.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill:

17. Appointment of Chief Inspector, Probation Officers etc.:

(1) The Government may appoint a Chief Inspector of relief centres and work houses for carrying out the purposes of this Act.

(2) The Government may appoint Probation Officers and such other officers as they deem fit to assist the Chief Inspector.

(3) Every person appointed under sub-section (2) to assist the Chief Inspector shall exercise such of the powers and discharge such of the duties of the Chief Inspector as the Government may direct:

Provided that he shall exercise such powers and discharge such duties under the direction of the Chief Inspector.

(4) The Chief Inspector, the Probation Officer and any other officer appointed under sub-section (2) shall inspect every relief centre and work house within his jurisdiction at least once in six months.

18. Search in relief centres and work houses:

(1) The Superintendent of a relief centre or work house may order that any person received therein shall be searched or that he shall be cleansed or that his personal effects shall be inspected or that any money or other valuables belonging to him shall be disposed of in the prescribed manner:

Provided that a female shall be searched only by a female and with due regard to decency.

(2) Where an order of detention is passed against any person referred to in sub-section (1), the Superintendent may order that any money or other valuables found with or owned by such person shall be disposed of in the prescribed manner.

(3) Where an order other than an order of detention is passed with regard to any such person, his money and other valuables shall be returned to him and if his clothing has been destroyed, he shall be provided with fresh clothing.

(4) The expenses of providing any clothing under sub-section (3) shall be paid out of the moneys provided under allotments to the relief centre or work house, as the case may be.

19. Management and discipline: Persons remanded to or detained, in relief centres or work houses under this Act shall be subject to such rules of management and discipline, including the imposition of manual or other work and the awarding of punishment for breach of any such rules, as may, from time to time, be prescribed.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

20. Disciplinary imprisonment: (1) Without prejudice to any disciplinary action that may be taken under Section 19, the Chief Inspector or Superintendent may report to the court the case of any person detained in relief centres or work house who habitually and wilfully disobeys or neglects to comply with any rule referred to in that section; and the court may, thereupon, if satisfied that the person has wilfully disobeyed or neglected to comply with any such rule, convert the balance of the period of his detention in the relief centre or work house, as the case may be, or part thereof, into a term of imprisonment.

21. Transfer from one relief centre or work house to another:

(1) Subject to such conditions as may be prescribed the Chief Inspector may direct any person detained in a relief centre or work house in the State to be transferred therefrom to another relief centre or work house, as the case may be, in the State:

Provided that the total period of detention of such person shall in no case be increased by such transfer.

(2) In directing a transfer under sub-section (1), the Chief Inspector shall have regard to the medical certificate and the directions, if any, made by the Government or the court under Section 27.

22. Release for short periods or on license:

(1) Subject to such terms and conditions as may be prescribed:

(a) The Chief Inspector or the Superintendent of a relief centre or work house may, at any time, grant permission to a person detained in a relief centre or work house to absent himself for short periods;

(b) The Chief Inspector or the Superintendent may, at any time, release such person conditionally and issue him a license therefore; and

(c) The Chief Inspector or the Superintendent may, at any time, release such person on license, to undertake manual labour on payment basis, on the application of any person.

(2) Any license issued under clause (b) or clause (c) of sub-section (1) shall be in force until the expiry of the term for which the person was ordered to be detained in a relief centre or work house unless sooner revoked.

(3) The period during which a person is absent from a relief centre or work house by permission or on license as provided in this section shall, for the purpose of computing his term of detention in such institution, be deemed to be part of his detention.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

23. Wages earned by persons detained:

(1) The person who employs a person licensed under clause (c) of sub-section (1) of Section 22 shall pay wages at the rates existing in the locality to the Chief Inspector or the Superintendent, as the case may be.

(2) Where any money is received under sub-section (1), such money, shall be deposited in the name of the person so employed in such manner, and shall be returned to him at the time of his release after detention or such other time and in the manner prescribed.

24. Revocation of license:

(1) Subject to such conditions as may be prescribed, the Chief Inspector or the Superintendent of a relief centre or work house may, at any time, revoke a license issued under Section 22 and thereupon the released person shall be detained in a relief centre or work house, as the case may be, until the expiry of the term for which he had been ordered to be detained.

(2) For the purposes of sub-section (1), the Chief Inspector may, if necessary, cause the released person to be arrested sent to the nearest relief centre or work house, as the case may be, together with a copy of the orders of detention.

25. Unconditional release:

(1) At any time after the expiry of three months from the date of release on license of any person under Section 22, the Chief Inspector may, if he is satisfied that there is a probability that such person will abstain from seeking alms, recommend to the Government, his unconditional release.

(2) The Government may, on receipt of a recommendation under sub-section (1), release the person unconditionally and thereupon the term for which such person had been ordered to be detained in a relief centre or work house, as the case may be, shall be deemed to have expired.

26. Procedure on order of detention or sentence of imprisonment:

(1) Subject to the provisions of sub-section (3), when a person has been ordered to be detained in a relief centre or work house under any of the provisions of this Act, the court which ordered the detention shall forthwith forward him to the relief centre or work house; as the case may be, where he is to be detained.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(2) When a person cannot be sent to the relief centre or work house immediately the court shall forthwith forward him to the nearest sub-jail and thereupon he shall be handed over to the custody of the officer-in-charge of the sub-jail and shall be detained therein until he is sent therefrom to the relief centre or work house, as the case may be.

(3) (a) When any such person has also been sentenced to imprisonment, the court passing the sentence of imprisonment shall forthwith forward a warrant to a jail in which he is to be confined and shall forward him to such jail with the warrant together with a copy of the order of detention.

(b) After the sentence of imprisonment is fully executed, the officer executing it shall, if detention in a relief centre or work house for any periods remains to be undergone by such person, forward him forthwith together with the order of detention to the relief centre or work house, as the case may be, where he is to be detained and thereupon the provisions of sub-section (2) shall, so far as may be, apply.

(4) In computing the period for which a person is ordered to be detained in a relief centre or work house, there shall be included the period for which he is detained in a sub-jail or observation home, as the case may be, under this section.

Explanation.—For the purpose of this section,

(a) “adult” means a person who has completed the age of twenty one years; and

(b) “Observation home” shall have the same meaning as in the Juvenile Justice (Care and Protection of Children) Act, 2000.

CHAPTER IV

MISCELLANEOUS

27. Medical examination and detention of beggars under certain circumstances: (1) Where it appears to the Government that any person seeking alms detained in a relief centre or work house under any order of a court is of unsound mind or person suffering from any contagious disease, the Government may, by an order setting forth the ground of their belief that the person seeking alms is of unsound mind or person suffering from any contagious disease, order his removal to a mental hospital or other place of safe custody, there to be kept and treated during the remainder of the term for which he has been ordered to be detained or if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the person seeking alms or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(2) Where it appears to the Government that the person seeking alms has ceased to be of unsound mind, or he is cured of the disease, the Government shall, by an order directed to the person having charge of the person seeking alms if he is still liable to be kept in custody, send him to the relief centre or work house from which he was removed or if the person seeking alms is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of the Mental Health Act, 1987 shall apply to every person seeking alms confined in a mental hospital or other place for treatment under sub-section (1) after the expiration of the period for which he was ordered to be detained; and the time during which the person seeking alms is confined in a mental hospital or other place under that sub-section shall be reckoned as part of the period for which he may have been ordered by the court to be detained:

Provided that where the removal of a person seeking alms due to unsoundness of mind is immediately necessary, it shall be open to the authorities of the institution in which the person seeking alms is detained, to apply to a court having jurisdiction under the Mental Health Act for an immediate order or committal to a mental hospital until such time as the orders of the Government can be obtained in the matter.

28. Arrest of person escaping from relief centre or work house:

Any person who leaves a relief centre or work house without the permission of the Superintendent thereof or fails to return there to after the expiry of the period of absence permitted under sub-section (1) of Section 22, may be arrested by any police officer or by an officer of the relief centre or work house, as the case may be, authorised in this behalf by the Government, without warrant and sent back to the relief centre, or work house, as the case may be.

29. Transfers between relief centre and work houses and institutions of like nature in different parts of India:

(1) The Government may direct any person detained in a relief centre or work house to be transferred there from to any institution of like nature in any other part of India, in respect of which provision similar to that in the State is made by the State Government of that part under any law in force therein:

Provided that no person shall be transferred under this section to any other State without the consent of the Government of that State.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(2) The Government may, in consultation with the Superintendent of any relief centre or work house, consent to the transfer to that institution of any person in respect of whom an order of detention of the nature of an order under this Act, has been made by a competent authority in any other part of India directing him to be detained in a relief centre or work house or institution of like nature, and upon such transfer, the provisions of this Act shall apply to such persons.

30. Seizure and disposal of animal's exposed or exhibited for obtaining or extorting alms:

(1) Any police officer or other person effecting the arrest of a person found seeking alms may seize any animal the sore, wound, injury, deformity or disease of which has been exposed or exhibited with the object of obtaining or extorting alms.

(2) The police officer or other person effecting the arrest may remove such animal to any infirmary notified under Section 35 of the Prevention of Cruelty to Animals Act, 1950 (Central Act 59 of 1960), for detention therein pending its production before a court.

(3) The court, before which the person found seeking alms is brought may direct that the animal shall be treated and cared for in such infirmary until it is fit for discharge or that it shall be sent to a Pinjrapole, or, if the veterinary officer in charge of the area in which the animal is tamed or such other veterinary officer as has been authorised by rule made under Section 38 of the Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960), certifies that it is incurable or cannot be removed without cruelty, and that it shall be destroyed, the court may also order that, after release from the infirmary, the animal may be confiscated.

(4) An animal sent for care and treatment to an infirmary shall not, unless the court directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as has been authorised by rules made under Section 38 of the Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960).

31. Certain offences to be cognizable and non-bailable:

The offences under Sections 7 and 11 shall be cognizable and non-bailable.

32. Persons to be deemed public servants:

All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (Central Act 45 of 1860).

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

33. Procedure in respect of bonds:

The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, as far as may be, apply to bonds taken under this Act.

34. Appeal and Revision:

For the purposes of appeal and revision under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an order of detention under this Act, including an order of detention under Section 6, shall be deemed to be a sentence of imprisonment for the same period.

35. Protection of action taken under the Act:

(1) No suit, prosecution or legal proceedings shall lie against any person 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 proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any provision of this Act or any rule made thereunder.

36. Power to make rules:

(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

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

(a) the manner of authorising a person under sub-section (1) of Section 5;

(b) the manner of constitution of relief squad;

(c) the manner of keeping persons arrested under sub-section (1) of Section 5 or sub-section (3) of Section 9;

(d) the manner of making summary inquiry under sub-section (1) of Section 6;

(e) the manner in which contribution for the maintenance of a person detained in a relief centre or work house may be ordered to be paid under sub-section (1) of Section 8;

(f) the manner of constituting an advisory committee under sub-section (1) of Section 14 and its conduct of business;

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

(g) the manner of appointing visiting committees under Section 15 and their functions;

(h) the date before which payment shall be made under sub-section (1) of Section 16;

(i) the manner in which the effects and the money and valuables referred to in Section 18 shall be disposed of;

(j) the management and discipline of persons detained in a relief centre or work house including the imposition of manual or other work and the awarding of punishment for breach of any rule made under this clause;

(k) the conditions subject to which the Chief Inspector may direct transfers under Section 21;

(l) the conditions subject to which a person may be released on license under Section 22;

(m) the manner in which wages is to be deposited and the manner in which and the time at which it shall be disbursed to the person under sub-section (2) of Section 23;

(n) the conditions subject to which a license may be revoked under Section 24;

(o) the manner of medical examination of beggars;

(p) any other matter which has to be, or may be, prescribed.

(3) 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.

The Kerala (Prevention of Seeking Alms and Just Rehabilitation) Bill

37. Repeal:

The Madras Prevention of Begging Act, 1945 (Madras Act XIII of 1945) as in force in the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the Travancore Prevention of Begging Act, 1120 (XIII of 1120) and the Cochin Vagrancy Act, 1120 (XXI of 1120), are hereby repealed.

Statement of Objects and Reasons

This Bill seeks not only to prevent begging but to punish those who resort to begging. It is a pity that large scale begging is being carried on an organized basis in which innocent children are employed by powerful begging lobby. Although various legislations exist in different parts of the State, no uniform legislation is available so far. This Bill seeks to unify the law in this field and create offences and provide punishments therefore. No civilized country can tolerate begging as a means of livelihood for its citizens. It has, therefore, become necessary to prevent employment of beggars and punish those employing beggars to seek alms. Not merely receiving alms but employing beggars for seeking of alms is also made an offence under this Bill.

**THE KERALA REGULATION TO CONTROL NOISE GENERATED
FROM LOUDSPEAKERS, FIREWORKS DISPLAY
AND OTHER PLURAL SOURCES BILL**

**A
BILL**

for curtailing the noise generated from the loudspeakers, fireworks and other plural sources in the State of Kerala.

Preamble.—WHEREAS it is considered necessary to control the noise pollution being generated from the fireworks display, loudspeakers and other noise generators which are causing nuisance to the general public and other risks.

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 Regulation to Control Noise Generated from Loudspeakers, Fireworks Display and Other Plural Sources 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) “Act” means the Environment (Protection) Act, 1986 (29 of 1986).

(b) “Air pollutant” means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

(c) “Air pollution” means the presence in the atmosphere of any pollutant.

(d) “Authority” means any authority or officer authorized by the Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force.

(e) “Loudspeaker” includes any instrument, device or process being used for broadcasting the noise generated or polluting atmospheric acoustics.

The Kerala Regulation to Control Noise Generated from Loudspeakers, Fireworks
Display and Other Plural Sources Bill

(f) “Fireworks” means and includes any bursting of crackers, dynamites and other types of explosives and substances which can generate noise above 40 DB with similar effect notified under this Act.

(g) “Licensee” any person who gets authorization from the authorities contemplated under this Act.

(h) “Silence Zone” under this Act shall mean any place or area where any activity which is being carried on is of such a nature that it will be disturbed wholly or partly by noise or sound beyond reasonable limit and would include zones which are declared as such by the Competent Authority. In short, Silence Zone is an area comprising not less than hundred meters around hospitals, educational institutions and Courts.

3. *Prohibition of use of loudspeakers and fireworks as defined in Section 2.*—(1) No person shall use loudspeakers and fireworks as defined in clauses (e) & (f) of Section 2 in any place without obtaining a licence from the concerned authorities.

(2) No licence shall be granted to any person to use loudspeakers or conduct fireworks display in contravention of the provisions of Noise Pollution (Regulation and Control) Rules, 2000 and Explosives Act, 1884 and the rules thereunder.

(3) While granting licence under this provision, the licensing authority shall specify the place where the loudspeakers or any instrument, device, or process shall be installed and fireworks shall be conducted and it shall not be at any rate in any silence zone.

(4) The licence issued shall be only for less than ten days at a time and it shall be monitored by a police officer not below the rank of Sub Inspector and if there is any violation of any conditions, the said officer shall be empowered to take all measures including the disconnection of power supply and taking custody of the said loudspeakers, amplifiers, mikes or any instrument or device or process and other apparatus and materials connected therewith.

(5) If any loudspeaker, amplifier, mikes or any instrument or device or process and other apparatus or materials used for fireworks is being used violating the conditions imposed, the authority is empowered to pass orders of confiscation after giving a reasonable opportunity of being heard.

(6) No licence shall be granted to any person to use loudspeakers or any instrument or process and conduct fireworks display or permitting any noise at any time beyond 8 P.M. and before 6 A.M. without special permission by the licensing authority.

The Kerala Regulation to Control Noise Generated from Loudspeakers, Fireworks
Display and Other Plural Sources Bill

(7) If any licence once granted is violated and action is taken, no further licence shall be granted unless exceptional reason is shown for such renewal to the satisfaction of licensing authority.

4. *Prohibition on supplying loudspeakers or other devices or technological process other than to persons who are having licence.*—(1) No loudspeakers, amplifiers, mikes and other apparatus used for amplifying sound or other devices or technologies shall be let on for hire or reward unless the said person obtains a registration as contemplated under Section 4.

(2) All the persons who are engaged in the business of lending out loudspeakers, amplifiers, mikes and other apparatus and materials for amplifying sound or other devices or technologies shall obtain a registration from the authorities.

(3) If any loudspeakers, amplifiers and mikes or other devices, materials or technological processes used is found to be used in contravention of the conditions of licence granted, as per Section 3 above and liable for confiscation, it shall not be a defence in the said proceedings that the said equipments do not belong to the licensee as contemplated under Section 3 above.

5. *Liability to compensate the victims of accident caused by violation of the prohibition in Section 3 above.*—(1) If any accident occurs on account of fireworks or other devices or technological process conducted in violation of the conditions of licence granted, such licensee or other persons violating Section 3 above shall be personally liable to pay compensation to all the victims of the said accident.

(2) The authorities are empowered to recover the said amount from the properties of the licensee in case the licensee refuses to make the amount payable as stated above, and recover the amount by invoking the provisions of the Kerala Revenue Recovery Act.

6. *Offences.*—(1) If any person commits any act in contravention of any provisions of this Act or in violation of the conditions imposed by the authorities while granting licence shall in addition to the confiscation proceedings initiated under Section 3 above, be liable for simple imprisonment for a term of one month or with a fine upto fifty thousand rupees;

(2) If any person commits the offence for the second time, he shall be liable for punishment for a term of one year or with a fine upto three lakhs rupees.

(3) All offences under this enactment shall be cognizable and bailable.

**The Kerala Regulation to Control Noise Generated from Loudspeakers, Fireworks
Display and Other Plural Sources Bill**

Statement of Objects and Reasons

Indian Law now, has no separate Noise Pollution Prevention Act. The noise syndrome permeates every aspect of life. The human ear is constantly being assailed by man-made sounds from all sides. Noise has been proved to be a health hazard; it may change a mans psychological state, cause chronic effects as hypertension or ulcers way damage his hearing. It gives rise to many other ailments. Noise, like smog, is a slow agent of death. The Commission, therefore, is of the view that noise pollution from various sources such as loudspeakers, crackers etc. should be effectively controlled by appropriate legislation. If the Bill is made into an Act of legislature, noise pollution can be reduced to the minimum.

**THE CREATIVE COMMUNICATION (OF LAW DECLARED
BY SUPREME COURT AND HIGH COURTS) AND
JUDICIAL COMPLIANCE BILL**

**A
BILL**

to create an instrument for communicating law declared by superior courts for early information of the Government.

WHEREAS the Supreme Court lays down the Law under Article 141 which is binding on all Courts within the territory of India;

AND WHEREAS the decisions of the High Court of Kerala are ordinarily binding on the State until varied or reversed whether the State is party to the ruling or not;

AND WHEREAS the rulings of High Courts other than of the Kerala State, although not directly binding on it, still have persuasive value and deserve to be within the active informational range of the State.

AND WHEREAS it has become necessary that the lethargic attitudes of the Government Servants in complying with the judgments have increased.

NOW THEREFORE it is of practical importance to have an instrumentality to ascertain and communicate the rulings of the Supreme Court and the Kerala High Court and Other High Courts which declare the Law, for appropriate action by 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 Creative Communication (of Law Declared by Supreme Court and High Courts) and Judicial Compliance Act—.

(2) It shall come into force at once.

(3) It shall apply to the whole of the State of Kerala.

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

(a) “Committee” means committee appointed under Sec. 4 of this Act;

(b) “Prescribed” means prescribed by rules made under this Act.

The Creative Communication (of Law Decalared by Supreme Court and High Courts)
and Judicial Compliance Bill

3. *Duty of the Advocate General as courier.*—(1) The Advocate General shall examine all the judgments delivered by the Supreme Court, High Court of Kerala and other High Courts against the Government during a particular period and shall make a report to the State Government and the Legislature.

(2) While making the report the Advocate General shall specifically point out the observations of the Supreme Court, the High Court of Kerala and other High Courts which require implementation by the State Government or any other authorities, with his comments and interpretation and the nature of the action required in pursuance of the said observations.

4. *Judgment Compliance Committee.*—(1) The Advocate General shall constitute a committee of three persons for ensuring the compliance of the judgments pronounced by the High Court of Kerala and Supreme Court of India.

(2) The Advocate General shall be the Chairman of the Committee and the additional two members can be appointed by the Government on his recommendation.

(3) If any person intends to file any contempt petition for the non-compliance of judgment he shall file a petition before the said Committee.

(4) Immediately on receipt of the petition to take contempt action, the Committee or any person so authorized shall send a communication by messenger, by fax or e-mail or speed post or by any recognized courier to the alleged contemnor the copy of the said petition seeking comments of the alleged contemnor.

(5) The said reply shall be given by the alleged contemnor, who will be liable for answering the contempt if filed, within ten days of the receipt of the same.

(6) On receipt of the same, the committee shall consider the same and will give appropriate directions to the alleged contemnor, at any rate, within ten days of the receipt of the said reply.

(7) A copy of the communication of the Committee shall also be given to the concerned person who has filed the complaint before the Committee.

5. *Effect of non-compliance of directions.*—If any officer of the State who fails to comply with the directions given by the High Court in any of the judgments of which a report had been made by the Advocate General, and in case a contempt petition is filed in the Court, the Advocate General or any of the Government Pleaders shall not appear in such cases so as to defend the said officer.

The Creative Communication (of Law Decalared by Supreme Court and High Courts)
and Judicial Compliance Bill

6. *Power to make rules.*—(1) The Government may from time to time in consultation with the Advocate General of the State appoint other personnel and organizations for the purpose of effective fulfillment of the objectives of 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 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 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 Legislature makes the laws, the Executive implements them and the Judiciary interprets them. Instances are a legion where, in the discharge of the functions of the Judiciary, Judiciary notices lacunae in the laws, issues directions, recommends correction of laws and points out the need for enacting appropriate legislations to implement the objects with which a law is enacted. As a matter of fact, the Court's directions remain dead letter in most cases for want of appropriate follow-up action on the part of the Executive and Legislature.

In order to bring to the notice of the Government and the Legislature such judgments and orders of Courts—High Court and the Supreme Court—which need to be implemented as directed by the Courts in the interest of the public at large, there exists the need for a machinery in the form of a Courier to study the judgments and orders passed by the High Courts and the Supreme Court and to communicate the views of the Courts to the Government and the Legislature for appropriate action.

The Bill also seeks to introduce a new provision to prevent action by resort to the jurisdiction of the Courts as far as possible for contempt of Court under the Contempt of Courts Act. The creation of a “Judgment Compliance Committee” to look into the complaints of non-compliance with the judgments of Court in the first instance is necessary to achieve the above said purpose.

THE KERALA DOMESTIC WORKERS (LIVELIHOOD RIGHTS, REGULATION OF EMPLOYMENT, CONDITIONS OF WORK, SOCIAL SECURITY AND WELFARE) BILL

Preamble:

Social and economic justices are promises of our Constitution. Justice to the domestic workers who are long neglected victims of very exploitative conditions is, therefore, an urgent imperative of our Socialist Republic.

The experience of implementation, failure, legal and litigation hurdles of existing labour legislations have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field.

The participation of workers as envisaged by the Constitution under Article 43-A in the working of the legislation and enforcement of remedies thereunder is essential if credibility and confidence are to be commanded by the law.

Now, therefore; be it enacted in the fifty ninth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short Title, Extent, Commencement and Application:

The Act may be called Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Act, —

1. It extends to the whole of Kerala.

2. Chapter I shall come into force at once. The rest of the provision in the Act shall come into force on such date or dates as the Government may, by notification in the official Gazette, appoint. However it shall not be later than 2 years from the passing of this Act. In cases where such notification is not issued within the said period, it is deemed that the Act shall come into operation immediately after the lapse of such period.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

2. Declaration as to Expediency of Regulation:

It is hereby declared that it is expedient in the public interest that the domestic sector, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the provisions in Article 39, 41, 42, 43 and 43-A of the Constitution are given effect to by a law made by Legislature with reference to entries 22, 23 and 24 of List III in the 7th Schedule to the Constitution.

3. Definitions:

In this Act, unless the context otherwise requires:—

(a) “*Adolescent*” means a person who has completed 15 years of age but has not completed 18 years of age.

(b) “*Adult*” means a person who has completed 18 years of age.

(c) “*Government*” means the Government of Kerala.

(d) “*Board*” means one of the Domestic Workers Boards established under Section 9 of this Act.

(e) “*Child*” means a person who has not completed 15 years of age.

(f) “*Contractor*” in relation to any establishment in the domestic employment, means a person who undertakes to supply domestic workers to or for an establishment or a placement agency by engaging such workers on hire or otherwise, or who supplies such workers either in groups, or as individuals; and includes a sub-contractor, an agent, domestic placement agency as any supplier of labour.

(g) “*Domestic Worker*” means a person or a group of persons between the age of 15 and 70 years working in any domestic employments, directly or through any agency or contractor whether exclusively for one employer, one or more employers or a group of employees whether simultaneously or otherwise and includes—

a casual or temporary domestic worker;

a migrant worker,

but does not include—

any member of the family of an employer.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

(h) “**Employer**” in relation to any domestic worker means the person who has the ultimate control over the affairs of the establishment of work or service and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an employee or is called by any other name prevailing in the scheduled group of employments.

(i) “**Establishment**” means any place or premises belonging to, or under the control of an employer where the domestic workers are employed in any work; and includes an establishment belonging to the employer.

“**establishment**” means a shop, a commercial establishment, residential hotel, restaurant, eating house, theatre or other places of public amusement or entertainment and includes such other establishments as Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act;

(j) “**Family**” in relation to an employer or any unorganized sector worker in the scheduled grouping of employments, means the spouse, son, daughter, father, mother, brother or sister of such employer or any unorganized sector worker in the scheduled grouping of employments, who lives with him / her and is wholly dependent on him / her.

(k) “**Fund**” means fund created for social security, administration and welfare schemes under this Act.

(l) “**Government**” means the Government of Kerala.

(m) “**Inspector**” means an Inspector appointed under Section 15.

(n) “**Inter-State migrant workman**” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the employer in relation to such establishment;

(o) “**Prescribed**” means prescribed by rule or scheme made under this Act.

(p) “**Principal employer**” means any employer who engages any domestic worker directly or through a contractor.

(q) “**Scheme**” means a scheme notified by the appropriate Government under the Act.

(r) “**Social security number**” means the number given to the worker under Section. 10(2) (n).

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

(s) “*State Advisory Committee*” means an Advisory Committee constituted by the Government under Section 13.

(t) “*Wages*” means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to a domestic worker in respect of work done but does not include—

(i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government;

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;

(iii) any travelling allowance or the value of any travel concession;

(iv) any sum paid to the domestic worker to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

4. Effect of Laws and Agreements Inconsistent with this Act:

(a) The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority or under any settlement.

(b) The Government may by notification in the Official Gazette and subject to such conditions as may be specified in such notification, exempt any employer of domestic worker from the operation of this Act, if the domestic workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

5. Application of Various Laws to Domestic Workers:

Notwithstanding anything contained in any other law for the time being in force, provisions of Workmen’s Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Maternity Benefit Act 1961, Minimum Wages Act 1948, Equal Remuneration Act 1976, Employees State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972, will apply to the domestic workers subject to the modifications made under this Act.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

6. Rules of Evidence:

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the onus to prove compliance with the provisions of the Act and the Scheme shall be entirely on the employer and the units of the Board wherever applicable.

7. Values to be Adopted in the Application of the Act:

The Domestic Worker Boards, their units, the Dispute Resolution Council and any other authority which may be constituted under the Act and Scheme shall strive to apply, as the situation may require, the principles enshrined in Articles 41, 42, 43, 43-A and 46 of Part IV and clauses (h) and (j) of Article 51-A of part IV A of the Constitution of India.

CHAPTER II

MINIMUM LABOUR STANDARDS TO BE ENSURED FOR THE DOMESTIC WORKERS

8. The Government shall Ensure to Every Domestic Worker the Following Rights and Entitlements:

- (i) The right to livelihood;
- (ii) Not to be employed in employments such as forced/bonded labour, child labour and manual scavenging;
- (iii) Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth/residence/domicile or any other reason;
- (iv) Minimum age of employment not to be below 15 years of age;
- (v) The age of superannuation not exceeding 60 years for men and 55 years for women;
- (vi) The right for written contract with regard to terms and conditions of employment;
- (vii) The right to have an uniform social security card;
- (viii) The right to have a model set of standing orders framed by the Government in consultation with workers' representatives on matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures within the scope of employment, with a condition that every employer must agree to the standing order in conformity with these standing orders. Any condition of engagement, employment or service not so provided, shall be in accordance with the provisions of this Act;

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

- (ix) The right to minimum wages in accordance with norms evolved at the 15th Session of Kerala Labour Conference, 1957 and Raptakos Brett Judgment;
- (x) The right to form union for collective bargaining through the tripartite mechanism or otherwise;
- (xi) The right to collective action by the Unions and the Workers;
- (xii) The employer's duty to provide occupational and other safety measures;
- (xiii) The right to the entitlement for vocational training and guidance through the State, Employers Organisations or otherwise.
- (xiv) Ensuring special protection for migrant workers and their families in providing ration cards, housing, medical help and education to their children;
- (xv) Providing the protection for women workers against sexual harassment at work place, as defined in the Visakha judgment;
- (xvi) Restricting mechanization causing labour displacement and other labour displacement methods in the Domestic Sector.
- (xvii) Ensuring the health and medical care, employment, injury benefit, maternity benefits, group insurance, housing, gratuity, bonus and pension benefits.

CHAPTER III

CONSTITUTION OF STATE BOARDS AND FRAMING OF SCHEMES

9. Domestic Worker Boards:

1. The Government shall, by notification in the official Gazette, establish State Domestic Worker Board for domestic employments for the State. Apart from the representatives of workers and employers, each Board shall also consist of representatives of the State Government, and such number of experts and social activists as are considered necessary.
2. Every such Board shall be a body corporate with the name aforesaid having perpetual succession and common seal with power to acquire, hold and dispose off property and to contract and may by that name sue and be sued.
3. The Government shall after consulting the State Advisory Committee, by notification in the official Gazette and subject to the condition of prior publication set up tripartite bodies at the district level and below on the same pattern as each of the State Domestic Worker Board.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

4. The representatives of workers on each of the Board shall be elected by registered Domestic Workers every three years. Rules shall be framed for conduct of elections, subsequent to the completion of the registration process. Until that time, representatives of the workers shall be the representatives of Trade Unions of the Domestic Workers in the domestic employments with such substantial membership as may be prescribed.

5. Women unorganized sector workers shall have proportionate representation among representatives of workers in all bodies.

6. The term of the members of the Boards and the District and local area bodies shall be for a period of three years.

7. The meeting of the State level boards shall take place every two months and the meeting of the district / taluk / local boards shall take place every month.

10. Scheme for Ensuring Regular Employment of Workers:

(1) The Government may in consultation with its Domestic Worker Boards frame schemes to be called the Domestic Workers (Regulation of Employment and Conditions of Service) Schemes, 2008 for ensuring greater regularity of employment, for regulating the employment of domestic workers and for prescribing conditions of service for the domestic workers covered by the scheme.

(1) (a) Each Scheme may provide for one more benefits for the domestic workers for the whole State.

(2) In particular, the Scheme may provide for any or all of the following—

(a) for ensuring regular employment and regulating employment in the domestic employments in the unorganized sector and providing benefits to workers;

(b) for regulating the recruitment and entry into the Domestic Worker Board, by way of registration of domestic workers identified by registered trade unions and employers including the maintenance of registers, temporary or permanent; removal of names of workers or employers from the registers and the imposition of fees for registration for provision of identity card, work book and a social security number to each worker;

(c) for regulating the employment of domestic workers, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;

(d) for providing for minimum payment to domestic workers who are available for work in respect of periods during which full employment, or even part employment, is not available;

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

(e) for prohibiting, restricting or otherwise regulating the employment of domestic workers who are not registered workers and the employment of domestic workers by employers who are not registered employers;

(f) for collecting levy from employers of the domestic worker towards the scheme and social security and welfare fund;

(g) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to the fund by employers and domestic workers and the rate of such contributions;

(h) for creating such fund or funds as may be necessary or expedient for the purposes of social security and other welfare benefits and for the administration of such fund or funds;

(i) for training, imparting skills to and providing welfare for domestic workers; such as housing, crèche, assistance for accidents, natural death of the registered workers, marriage and education of children etc.;

(j) for the welfare of the officers and other staff of the Board;

(k) for health and safety measures in places where domestic workers are employed;

(l) for implementing ESI, PF, pension from the age of 55, maternity benefit to the registered domestic workers;

(m) for constituting Social Security and Welfare Fund composed of contributions from Employers through Cess, levy, annual budgetary provision from Central and State Govts. and small contribution from the workers;

(n) provision of National Social Security Number to each domestic worker by the Domestic Worker Boards;

(o) for implementing special protection for migrant workers and families;

(p) for constituting complaints committee on sexual harassment of women workers;

(q) for evolving guidelines for restricting of mechanization and other labour displacement policies and practices in the domestic sector and implementing them;

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(r) for devising steps to help workers depending on open and common resources to see that their activities are not hindered and sustainability maintained with environmental protection;

(s) for taking steps to protect the right of the domestic workers to share the public space to engage in economic activities;

(t) for promotion of labour intensive methods and practices in the domestic workers;

(u) for constituting, Administrative Bodies at various levels as may be necessary for the administration of the Scheme;

(v) for setting up units of the Board at various levels, district, taluk etc.;

(w) For constituting, primary and appellate forums to adjudicate disputes that may arise between domestic workers and contractors, or between domestic workers and employers;

(x) for formulating appropriate provisions for taking disciplinary action if necessary against employers and workers, and the functionaries of Boards and its bodies.

(3) Contribution to Social Security and Welfare Fund:

Notwithstanding anything contained in any law for the time being in force or in any agreement.

(i) The employers of domestic worker shall make contribution to the social security and Welfare Funds of the Domestic Workers Boards in the State. At least one thousand rupees shall be paid by every employer of full-time domestic worker and two hundred rupees for part-time domestic worker at the time of Registration before commencing employment which shall be renewed every year.

(ii) Each registered worker shall make a small contribution, the full-time domestic worker shall contribute Rs. 100 per year and the part-time domestic worker shall contribute Rs. 20 per part-time employment.

(4) The Scheme may further provide for constituting appropriate dispute resolution bodies for speedy resolution of disputes that may arise between workers, the contractors, employers and Board, or any two of the domestic workers, the employer's/contractors and the Board.

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(5) The Scheme may further provide for the consequences and penalties for contravention of any provisions of the Scheme.

(6) In framing the scheme, the Governments shall keep in view the provisions of the model scheme as may be prescribed by the Central Government, if any and ensure that the provisions of the scheme framed are not in material particulars inconsistent with or less beneficial to the unorganized workers than the provisions of the model scheme. The Central Government shall in according its prior approval likewise ensure that the provisions of the Scheme are not in material particulars inconsistent with or less beneficial to the domestic workers than the provisions of the model scheme if any.

11. Variation and Revocation of Schemes:

(1) The Government may, by notification in the official gazette, add to the schedule, amend, alter or vary the schemes made by it for the purpose of more effective implementation of the Schemes having regard to any special condition obtaining in the State after the scheme was originally framed for conferring additional benefits to the domestic workers.

(2) Such amendments, alterations or variations of the Schemes may be effected in consultation with the Central Government and the State Domestic Workers Boards.

12. Functions of the Boards:

1. The Domestic Worker Boards set up in the State shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the scheme.

2. (i) The tripartite bodies set up under Section 9 of the Act shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the Board.

(ii) To conduct taluk/local wise meeting of registered workers in each scheduled grouping of employments shall be held every year and the minutes placed before the corresponding boards in the subsequent meeting.

(iii) There shall be grievance day every week in the units of the boards, local/taluk/district and the state level when the registered worker can get the redressal of grievance relating to the functioning of the scheme.

3. No decision of a Board which is adverse to the interests of domestic workers shall generally be implemented except with the concurrence of the representatives of the domestic workers on the concerned Board.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

4. The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.

5. Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any domestic workers to initiate action for making any claim under any law or rules made there under or award or settlement made under any such law and appear on behalf of the domestic workers in such proceedings.

6. The Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty first March of that year. Every report so received shall be laid as soon as may be after it is received before the State Legislature if it is in session, or in the session immediately following the receipt of the report.

7. The Board shall constitute a Vigilance Committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.

8. Accounts and audit:—

(i) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance sheet in such form as may be prescribed.

(ii) The accounts of the Board shall be audited annually by such qualified person as the Government may appoint in this behalf.

(iii) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or officer of the Boards.

(iv) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it is approved by the corresponding Board.

(v) The Board shall comply with such directions as the Government may after perusal of the report of the auditor, think fit to issue.

(vi) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

9. Recovery of dues to the Board:—

(a) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any scheme and on its furnishing a statement of accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(b) A certificate by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered in attendance with the Kerala Revenue Recovery Act as arrears of land revenue and remitted to the Board.

13. State Advisory Committee:

(i) State Advisory Committee shall be constituted by the Government in order to evolve appropriate schemes for the scheduled grouping of employments on the basis of a survey in the State and the model schemes evolved by the Central Advisory Committee if any.

(ii) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.

(iii) The members of the Advisory Committee shall be appointed by the Government and shall be of such number and chosen in such manner as may be prescribed:

14. Inspectors:

(i) Any registered trade union may have the power to inspect the work premises and prosecute the erring employer for violations under this Act.

The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purpose of this Act or of any scheme and may define the limits of their jurisdiction.

(ii) Subject to any rules made by the Government in this behalf, an Inspector may

(a) enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where domestic workers are employed or are deputed for work for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme, and require the production thereof, for inspection;

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a domestic worker employed therein or contractor workers to whom work is given out therein;

(c) require any person giving any work to domestic workers or to a group of domestic workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

(d) seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act or Scheme, which he has reason to believe has been committed by an employer; and

(e) exercise such other powers as may be prescribed:

Provided that no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate him.

(iii) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Central Act XLV of 1860).

15. Obstructions:

(i) Whoever obstructs an Inspector or a person appointed under this Act or Scheme (hereinafter referred to "as the authorized person") in the discharge of his duties under this Act or refuses or willfully neglects to afford the Inspector or authorized person any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

(ii) Whoever willfully refuses to produce on the demand of any Inspector or authorized person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector or authorized person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees or with both.

(iii) Such obstruction or willful refusal shall at once be reported to the respective unit of the Board within whose jurisdiction such obstruction/willful refusal takes place, as well as to the Board which may also take appropriate action in accordance with the scheme.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

CHAPTER IV

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

16. Resolution of Disputes:

All disputes arising out of the enforcement of the provisions of this Act shall be resolved only by Dispute Resolution Councils and Appellate Authority duly constituted under this Act.

17. Constitution of Dispute Resolution Councils and Appellate Authority:

(1) There shall be Dispute Resolution Council in each of the five cities comprising three members, representing the Government, the domestic workers and the employers constituted by the Labour Commissioner.

(2) The term of office of the members of the council shall be three years.

(3) The Appellate authority shall likewise be a tripartite body, representative in composition and constituted in the same manner by the Government.

18. Reference of Disputes:

(1) Where the appropriate unit of the Board is of the opinion that dispute exists or is apprehended, it may at any time, by order in writing—

(a) refer the dispute to the Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.

(2) No proceeding pending before a Dispute Resolution Council or the appellate authority in relation to a dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate unit of the Board.

(3) The decision of the Appellate Authority shall be final and binding on the parties.

The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

CHAPTER V

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

19. Procedures and powers of Boards, Councils and appellate authorities:

(1) Subject to any rules that may be made in this behalf by the Board, the Dispute Resolution Council or appellate authority shall follow such procedure as may be deemed fit and conforming to principles of natural justice.

(2) Every unit of the Board, Dispute Resolution Council or the appellate authority shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses;
- (d) in respect of such other matters as may be prescribed;

and every enquiry or investigation by a Board or Dispute Resolution Council shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(3) Every document in relation to a dispute as above said, will be a public document within the meaning of Section 76 of the Evidence Act, 1972. Any person interested in the dispute or his authorized representatives shall have a right to obtain copies of such documents.

(4) The Dispute Resolution Council may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which it has ground for considering being relevant to the implementation of any Award or for carrying out any other duty imposed on it under this Act. For the aforesaid purposes, the Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

(5) All members of the Council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Council shall be in the discretion of that Council, which shall have full power to determine by whom, to whom and to what

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, by the person entitled, be recovered by the appropriate government in such manner as it deems appropriate.

(6) Every Council shall be deemed to be civil court for the purposes of Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

20. Bar of Jurisdiction of Civil and Labour Courts:

No civil or labour court shall entertain the suit or application in respect of any matters arising under this Act or the Scheme.

21. Contravention of Provisions Regarding Employment of Unorganized Sector Workers:

Whoever contravenes any provisions of this Act or of any rules made thereunder regarding the employment of unorganized sector workers, or contravenes any other provision under this Act or this Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend upto one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

22. Other Offences:

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to thousand rupees, or with both.

23. Offences by Companies:

(1) Where an offence under this Act or Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction has not been issued by the Company for wholesome compliance with the Act and Scheme unless it is otherwise proved.

(2) Where it is not so proved, 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.

(3) Where it is so proved the person who is responsible for such violation shall be proceeded against and punished accordingly.

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(4) Notwithstanding anything contained in sub-section (i), if the commission of the offence under this Act is attributable to any omission or negligence on the part of the director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section:

(a) ‘company’ means any body corporate and includes a partnership firm or other association of individuals; and

(b) ‘director’, in relation to a firm, means a partner in the firm.

24. Cognizance of offences:

(1) Every offence punishable under this Act and the scheme shall be cognizable only by a Judicial Magistrate not lower in rank than a First Class Magistrate of the area concerned.

(2) Whenever any contravention of the provisions of the Act and Scheme takes place, the Inspector of the Board or any person aggrieved by such contravention may in writing complain to the Magistrate for taking cognizance of the offence.

(3) Whenever an Inspector without sufficient reason refuses or fails to make a complaint of such a contravention, the Board, may suo motu or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognizance of the offence. This will be without prejudice to such disciplinary action that the Board may cause to be initiated against the Inspector for his lapse.

25. Power to make Rules:

The Government and its Unorganized sector worker boards together shall have the power to make Rules for the purposes of effective functioning of the Scheme.

In particular the Government and its domestic worker boards shall have the power to make rules in respect of the following:

(a) The election of representatives of domestic workers in the domestic workers boards.

(b) Health, safety and medical facilities, social security and maternity benefits, and domestic workers welfare funds.

(c) Enforcement of Provisions of the Act and Scheme, including machinery for such enforcement.

(d) Provisions in regard to welfare crèches, education and such other social welfare benefits for the children of domestic workers.

**The Kerala Domestic Workers (Livelihood Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(e) The conditions of service including recruitment, pay, allowance, tenure, discipline and appeal, retirement benefits of various categories of employees of the Board and their welfare.

(f) The remuneration or honorarium payable to the Presidents and other Office bearers of the Boards.

(g) Provisions for leisure time activities, recreation, library any literacy measures including legal literacy among domestic workers.

26. This Law will not affect the functioning of any other State or Central Act which is more beneficial than this Act.

SCHEDULE

LIST OF EMPLOYMENTS IN THE DOMESTIC SECTOR

1. Domestic Work will Include

- a. gardening,
- b. baby sitting,
- c. cooking and serving,
- d. cleaning & washing,
- e. care of the sick & aged.

Statement of Objects and Reasons:

Social justice and economic justice are the promises of our Constitution. Justice to the domestic workers who are long neglected victims of exploitative conditions are, therefore, an urgent imperative of our Socialist Republic. The participation of workers as envisaged by the Constitution under Article 41-A in the working of the legislation and enforcement of the remedies thereunder is essential if credibility and confidence is to be commanded by the law.

Domestic workers include a large number of women whose conditions of work are far from satisfactory. They are exploited by the employers and invariably treated with scant respect. Their living conditions leave much to be desired and need to be improved to bring them to the mainstream of workers to lead a decent life. It is the duty of the Government to ensure their right to livelihood, protection from discrimination and exploitation, minimum wages, security of employment, the right to a written contract embodying the terms of employment etc. The Bill seeks to enable the domestic workers to enjoy their rights under the Constitution by a welfare scheme to be framed by the Government and implementation of the provisions of the scheme by a statutory body called Domestic Worker Boards with appropriate powers. Provision has also been made for settlement of disputes arising out of the enforcement of the provisions in the Act. Violation of the provisions of the Act has also been made an offence punishable with imprisonment and fine.

**THE KERALA UNORGANIZED WORKERS
(RIGHTS, REGULATION OF EMPLOYMENT, CONDITIONS
OF WORK, SOCIAL SECURITY AND WELFARE)
BILL**

Preamble.—WHEREAS Social and economic justices are the promise of our Constitution;

AND WHEREAS justice to the unorganized workers who are long neglected victims of very exploitative conditions is therefore an urgent imperative of our Socialist Republic;

AND WHEREAS the experience of implementational failure, legal and litigational hurdles of existing labour legislations have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field;

AND WHEREAS the participation of workers as envisaged by the Constitution under Article 43-A in the working of the legislation and enforcement of remedies thereunder is essential if credibility and confidence are to be commanded by the law.

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) The Act may be called The Kerala Unorganized Workers (Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Act—

(2) It extends to the whole of Kerala.

(3) Chapter I shall come into force at once and the rest of the Act shall come into force on such date or dates as the Government may, by notification in the Official Gazette, appoint.

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

(a) “Adolescent” means a person who has completed 15 years of age but has not completed 18 years of age.

The Kerala Unorganised Workers (Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

- (b) “Adult” means a person who has completed 18 years of age.
- (c) “Government” means Government of Kerala.
- (d) “Board” means Unorganized Workers Boards established under Section 7 of this Act.
- (e) “Kerala Advisory Committee” means an Advisory Committee constituted under Section 15.
- (f) “Child” means a person who has not completed 15 years of age.
- (g) “Contractor” in relation to any unorganized worker in the scheduled grouping of employments, means a person who undertakes to execute any work or render any service for an establishment by engaging such workers on hire or otherwise, or who supplies such workers either in groups, gangs or as individuals and includes a sub-contractor, an agent, or a mastery or any supplier of labour.
- (h) “Employer” in relation to any unorganized worker in the scheduled grouping of employments, means the principal employer and in relation to any unorganized worker in the scheduled grouping of employments, the person who has an ultimate control over the affairs of the establishment work or service and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled group of employments.
- (i) “Establishment” means any place or premises belonging to, or under the control of an employer where workers are employed in any work and includes an establishment belonging to a contractor.
- (j) “Family” in relation to an employer or any unorganized sector worker in the scheduled grouping of employments, mean the spouse, son, daughter, father, mother, brother or sister of such employer or any unorganized sector worker in the scheduled grouping of employments, who lives with him and is wholly dependent on him.
- (k) “Fund” means fund created for social security, administration and welfare schemes under this Act.
- (l) “Home based worker” means a person involved in the production of goods or services for an employer premise in his name or other premises of his choice other than the work place of the employer for remuneration irrespective of whether or not the employer provides the equipment, materials or other inputs.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(m) “Inspector” means an Inspector appointed under Section 16.

(n) “Prescribed” means prescribed by rule or scheme made under this Act.

(o) “Principal employer” means any employer who engages any unorganized worker in the scheduled grouping of employments, by or through a contractor.

(p) “Scheduled employment” means any employment specified in schedule or any other employment added in the schedule by notification under Section 11.

(q) “Scheme” means a scheme notified by the Government under the Act.

(r) “Self employed person” means any person who is not employed by an employer, but directly engages himself in any employment or vocation for his livelihood.

(s) “Social security number” means the number given to the worker under clause (o) of sub-section (2) of Section 8.

(t) “Unorganised sector & Unorganized Sector Worker” means the sector in which the scheduled employments exist.

(u) “Wages” means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to an unorganized sector worker in respect of work done in any scheduled employment but does not include—

(i) The value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government;

(ii) Any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;

(iii) Any travelling allowance or the value of any travelling concession;

(iv) Any sum paid to the unorganized sector worker to defray special expenses entailed to him by the nature of his employment; or

(v) Any gratuity payable on discharge.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(v) “Worker” means a person between the age of 15 and 60 years working in any unorganized sector in the scheduled grouping of employments, as a self employed, or employed directly or through any agency or contractor whether exclusively for one employer or in a group or otherwise one or more employers whether simultaneously or otherwise and includes,—

(a) A casual or temporary worker;

(b) Migrant worker;

But does not include any member of the family of an employer.

3. *Effect of laws and agreements inconsistent with this Act.*—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority or under any settlement.

(2) The Government may by notification in the Official Gazette and subject to such conditions as may be specified in such notification, exempt any employer in the Schedule Grouping of Employments from the operation of this Act, if the workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

4. *Application of Various Laws to Unorganized Sector Workers.*—Notwithstanding anything contained in any other law for the time being in force, provision of Workmen’s Compensation Act, 1923 (Central Act 8 of 1923), Interstate Migrant Workers Act, 1976, Payment of Wages Act, 1936 (Central Act 4 of 1936), Maternity Benefit Act, 1961 (Central Act 53 of 1961), Minimum Wages Act, 1948 (Central Act 11 of 1948), Equal Remuneration Act, 1976 (Central Act 25 of 1976), Employee’s State Insurance Act, 1948 (Central Act 34 of 1948), Employees Provident Fund Act, 1952 (Central Act 19 of 1952), Payment of Gratuity Act, 1972 (Central Act 39 of 1972) subject to modifications of this Act shall apply to all the Unorganized Sector Workers covered under this Act.

5. *Rules of evidence.*—Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872) the burden of proof that compliance with the provisions of the Act and the Scheme have been effected shall be on the employer and the units of the Board wherever applicable.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

CHAPTER II

**MINIMUM LABOUR STANDARDS TO BE ENSURED
FOR THE WORKERS**

6. *Duty of Government to ensure Minimum Standards.*—Government shall ensure to every worker engaged in the Scheduled Grouping of Employments the following Rights and Entitlements, namely: —

(i) The right to livelihood including the right over common properties and natural resources in the following manner:

(a) Ensuring the traditional rights of all types of Forest Workers, Fish Workers, Potters, Sand Miners, Quarry and other Miners and other groups of workers having traditional access to common property resources for their livelihood.

(b) Ensuring the right of workers to share the public space to engage in economic activities.

(c) Ensuring the right to inhabitation in places where the workers are usually residing.

(ii) Not to be employed in employments such as forced/bonded labour, child labour and manual scavenging.

(iii) Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth/residence/domicile or any other reason.

(iv) Minimum age of employment not to be below 15 years of age.

(v) The age of superannuation not exceeding 60 years for men and 55 years for women.

(vi) The right for written contract with regard to terms and conditions of employment.

(vii) The right to have an uniform social security card.

(viii) The duty of the Government to prescribe a model set of standing orders in consultation with worker's representatives on matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures within the scope of employment, with a condition that every employer must frame the standing order in conformity with such standing orders. In cases where an employer fails to frame such standing order, model standing order shall be applicable. Any condition of engagement, employment or service not so provided, shall be in accordance with the provisions of this Act.

**The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(ix) The right to form the union and for collective bargaining through the tripartite mechanism or otherwise.

(x) The right to collective action by the Unions and the Workers.

(xi) The employers' duty to provide occupational and other safety measures.

(xii) The right to the entitlement for vocational training and guidance through the State, Employers Organisations or otherwise.

(xiii) Ensuring special protection for migrant workers and their families in providing ration cards, housing, medical help and education to their children.

(xiv) Providing the protection for women workers against sexual harassment at work place, as defined in the Visakha judgment.

(xv) Restricting mechanization causing labour displacement and other labour displacement methods in the unorganized sector.

(xvi) Ensuring the health and medical care, employment, injury benefit, maternity benefits, group insurance, housing, gratuity, bonus and pension benefits.

(xvii) Providing Credit, adequate raw material (input) supply and creating marketing facilities for the Employments specified in the Scheduled Grouping of employments in respect of home-based and self employed workers.

(xviii) Ensuring access to Banking Institutions, in the State or Co-operative Sector for the purpose of affordable credit facilities with due provisions for insurance collective or otherwise.

CHAPTER III

CONSTITUTION OF STATE BOARDS, FRAMING OF SCHEMES

7. *Unorganized Sector Workers Boards.*—(1) The Government shall, by notification in the Official Gazette, establish Unorganized Sector Workers Board at State level for each grouping of scheduled employments with such number of members as may be prescribed. The Board shall consist of representatives of workers, employers, and Government representatives and experts in the field.

(2) Every such Board shall be a body corporate with the name as aforesaid having perpetual succession and common seal with power to acquire, hold and dispose of property and to contract and may by that name sue and be sued.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(3) The Government shall after consulting the State Advisory Committee, by notification in the Official Gazette and subject to the condition of prior publication set up at the District level bodies on the same pattern as that of the State Unorganized Sector Workers Board constituted by each grouping of scheduled employments.

(4) The representatives of workers of the Board shall be elected by registered Unorganized Sector Workers in such manner as may be prescribed. Until that time, representatives of the workers in the Board shall be the representatives of Trade Unions of the Unorganized Workers in the corresponding grouping of scheduled employments with such substantial membership as may be prescribed.

(5) Women unorganized sector workers shall have proportionate representation among representatives of workers in all bodies.

(6) The term of the members of the Boards and the District bodies shall be for a period of three years.

(7) The meeting of the State level Boards shall be held in every two months and the meeting of the District Boards shall be held every month.

8. *Scheme for ensuring regular employment of workers.*—(1) The Government shall, in consultation with its Unorganized Workers Boards frame schemes to be called the Unorganized Workers (Regulation of Employment and Conditions of Service) Schemes, for ensuring greater regularity of employment, for regulating the employment of unorganized workers and for prescribing conditions of service for the unorganized workers covered by the scheme.

(2) Each Scheme shall be for the corresponding group of scheduled employments of unorganized workers and for all categories of workers.

(3) In particular, the Scheme may provide for any or all of the following matters, namely: —

(a) For the application of the Scheme to such classes of unorganized workers and employers as may be specified therein;

(b) For ensuring regular employment and regulating employment in the each grouping of scheduled employments in the unorganized sector and providing benefits to workers;

(c) For regulating the recruitment and entry into the Unorganized Sector Workers Board, by way of registration of unorganized workers identified by registered trade unions and employers including the maintenance of registers, temporary or permanent; removal of names of workers or employers from the registers and the imposition of fees for registration for provision of identity card, work book and a social security number to each worker;

The Kerala Unorganised Workers (Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

(d) For regulating the employment of unorganized workers, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;

(e) For providing for minimum payment to workers who are available for work in respect of periods during which full employment, or even part employment, is not available;

(f) For prohibiting, restricting or otherwise regulating the employment of unorganized workers who are not registered workers and the employment of unorganized workers by employers who are not registered employers;

(g) For collecting levy from employers of the scheduled employments towards the scheme and social security and welfare fund;

(h) For the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to the fund by employers and manual workers and the rate of such contributions;

(i) For creating such fund or funds as may be necessary or expedient for the purposes of social security and other welfare benefits and for the administration of such fund or funds;

(j) For training, imparting skills to and providing welfare for unorganized workers; such as housing, crèche, assistance for accidents, natural death of the registered workers, marriage and education of children etc.;

(k) For the welfare of the officers and other staff of the Board;

(l) For health and safety measures in places where unorganized workers are employed;

(m) For implementing ESI, PF, Pension from the age of 55, maternity benefit to the registered workers;

(n) For constituting Social Security and Welfare Fund composed of contributions from Employers through Cess, levy, annual budgetary provision from the State Government and small contribution from the workers;

(o) Provision of National Social Security Number to each unorganized sector worker by the Unorganized Sector Boards;

(p) For implementing special protection for migrant workers and families;

The Kerala Unorganised Workers (Rights, Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill

(q) For constituting complaints committee on sexual harassment of women workers;

(r) For evolving guidelines for restricting of mechanization and other labour displacement policies and practices in the unorganized sector and implementing them;

(s) For devising steps to help workers depending on open and common resources to see that their activities are not hindered and sustainability maintained with environmental protection;

(t) For taking steps to protect the historical and traditional rights of the forest workers and forest produce gatherers, fisher-people, potters, sand miners, quarry workers and other miners and such other groups of workers having traditional access to common property resources for their living and avocation;

(u) For taking steps to protect the right of the unorganized sector workers to share the public space to engage in economic activities;

(v) For taking steps to protect natural and common resources with a view to sustainability of work of those group of workers who are having access to natural and common property resources for their living avocation;

(w) For promotion of labour intensive methods and practices in the unorganized workers;

(x) For constituting, Administrative Bodies at various levels as may be necessary for the administration of the Scheme;

(y) For setting up units of the Board at various levels;

(z) The Scheme may further provide for constituting appropriate dispute resolution bodies for speedy resolution of disputes that may arise between workers, the contractors, principal employers and Board, or any two of the unorganized workers, the principal employer's contractors and the Board.

(aa) for formulating appropriate provisions for taking disciplinary action if necessary against employers and workers, and the functionaries of Boards and its bodies.

9. *Contribution to Social Security and Welfare Fund.*— Notwithstanding anything contained in any law for the time being in force or in any agreement,—

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(i) The employers of goods and services shall make contribution to the social security and Welfare Funds of the corresponding unorganized sector workers boards in the State. One percent of levy of the total turnover shall be paid by every kind of production and services before the exit of goods and services from place of production and at the time of sale at the point of distribution of goods and services in the State.

(ii) Every motorized transport service shall pay 1% of the road tax for Social Security and Welfare Funds of the Unorganized Workers (Transport & allied services, No. 12 in the Schedule) Boards in the State.

(iii) The Govt. shall make annual grants to the Social Security and Welfare Funds of the Unorganized Sector Workers Boards operating in the State starting from 3% of the budgetary allocations and increasing every year till adequate Social Security levels are reached in the State.

(iv) Each registered worker shall make a small contribution.

10. *Amendment of the Scheme.*— The Government may in consultation with the Unorganized Workers Boards for grouping of scheduled employments by notification in the Official Gazette, from time to time may amend, alter or vary the schemes framed under Section 8 for the purpose of more effective implementation of the Schemes or for conferring additional benefits to the unorganized workers.

11. *Amendment of Schedule.*— Government may add any unorganized sections to the Schedule by notification in the Gazette.

12. *Functions of the Boards.*—(1) The Unorganized Sector Workers Boards at state level shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the Scheme.

(2) The District Board shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the Board.

(3) The District, Panchayat level Board shall convene meetings of registered workers in each scheduled grouping of employments every year and the minutes placed before the corresponding boards in the subsequent meeting.

(4) There shall be grievance day every week in the District Boards, where the registered worker can get the redressal of grievance relating to the functioning of the Scheme.

(5) No decision of a Board, which is adverse to the interests of unorganized workers, shall be taken except with the concurrence of the representatives of the workers on the concerned Board.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(6) The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.

(7) Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any unorganized sector workers to initiate action for making any claim under any law or rules made thereunder or award or settlement made under any such law and appear on behalf of the unorganized workers in such proceedings.

(8) The State level Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty-first March of that year. Every report so received shall be laid as soon as may be after it is received before the State Legislature if it is in session, or in the session immediately following the receipt of the report.

(9) The Board shall constitute a vigilance committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.

13. *Accounts and Audit.*—(1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance sheet in such form as may be prescribed.

(2) The accounts of the Board shall be audited annually by such qualified person as the Government may appoint in this behalf.

(3) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or Officer of the Boards.

(4) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it is approved by the corresponding Board.

(5) The Board shall comply with such directions as the Government may after perusal of the report of the auditor, think fit to issue.

(6) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

14. *Recovery of dues to the Board.*—(1) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any scheme and on its furnishing a statement of accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered as arrears of land revenue by the Collector and remitted to the Board.

15. *Advisory Committee.*—(1) Government shall constitute an Advisory Committee in order to evolve appropriate schemes for the scheduled grouping of employments.

(2) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.

(3) The Advisory Committee shall consist of such number of members as may be prescribed by the Government.

(4) The method of selection and terms and conditions of their service shall be such as may be prescribed.

16. *Inspectors.*—(1) The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purpose of this Act or of any scheme and may define the limits of their jurisdiction.

(2) Subject to any rules made by the Government in this behalf, an Inspector may,—

(a) Enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where unorganized workers are employed, or work is given out to unorganized workers in any scheduled employment, for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme, and require the production thereof, for inspection;

(b) Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a manual worker employed therein or an unorganized worker to whom work is given out therein;

(c) Require any person giving any work to unorganized sector workers or to a group of unorganized workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(d) Seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and

(e) Exercise such other powers as may be prescribed:

Provided that the Inspector shall have no power to require anyone to answer any question or make any statement tending to incriminate him.

(3) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860).

17. *Obstructions.*—(i) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuses or willfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

(ii) Whoever willfully refuses to produce on the demand of any Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees or with both.

(iii) Such obstruction or willful refusal shall at once be reported to the respective unit of the Board within whose jurisdiction such obstruction / willful refusal takes place, as well as to the Board which may also take appropriate action in accordance with the scheme.

CHAPTER IV

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

18. *Resolution of Disputes.*—All disputes arising out of the enforcement of the provisions of this Act shall be resolved only by Dispute Resolution Councils and Appellate authority duly constituted under this Act.

19. *Constitution of Dispute Resolution Councils and Appellate Authority.*—(1) Government shall constitute the Dispute Resolution Council and an Appellate Authority in each District.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(2) The Dispute Resolution Council in every District shall comprise of three members, representing the Government, the unorganized workers and the employers in each of the Unorganized Workers Board.

(3) The term of office of the members of the council shall be three years and the members may be nominated by each Board for such term.

(4) The Appellate authority shall likewise be a tripartite body, representative in composition and constituted in the same manner by each Board.

20. *Reference of Disputes.*—(1) Where the appropriate unit of the Board is of the opinion that dispute exists or is apprehended it may at any time, by order in writing—

(a) Refer the dispute to the Board for promoting a settlement thereof; or

(b) Refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.

(2) No proceeding pending before a Dispute Resolution Council or the Appellate Authority in relation to a dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate unit of the Board.

CHAPTER V

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

21. *Procedures and powers of Boards, Councils and Appellate Authorities.*—(1) Subject to any rules that may be made in this behalf by the Board, the Dispute Resolution Council or Appellate Authority shall follow such procedure as may be deemed fit and conforming to principles of natural justice.

(2) Dispute Resolution Council and the Appellate Authority shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely –

- (a) Enforcing the attendance of any person and examining him on oath;
- (b) Compelling the production of documents and material objects;
- (c) Issuing commissions for the examination of witnesses;
- (d) In respect of such other matters as may be prescribed.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

(3) Every enquiry or investigation by the Dispute Resolution Council or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) Every document in relation to a dispute shall be a public document within the meaning of Section 76 of the Indian Evidence Act, 1872. Any person interested in the dispute or his authorized representatives shall have a right to obtain copies of such documents.

(5) The Dispute Resolution Council may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which it has reasons for considering being relevant to the implementation of any Award or to carrying out any other duty imposed on it under this Act. For the aforesaid purposes, the Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).

(6) All members of the Council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Council shall be in the discretion of that Council, which shall have full power to determine by whom, to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, by the person entitled, be recovered by the appropriate Government in such manner as it deems appropriate.

22. *Bar of jurisdiction of civil and labour courts.*— No civil or labour court shall entertain the suit or application in respect of any matters arising under this Act or the Scheme.

23. *Contravention of provisions regarding employment of Unorganized workers.*—Whoever contravenes any provisions of this Act or of any rules made thereunder regarding the employment of unorganized workers, or contravenes any other provision under this Act or this Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend upto one hundred rupees for every day during which such contravention continues even after such conviction.

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

24. *Offences by Companies.*—(1) Where an offence under this Act or Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction has not been issued by the Company for wholesome compliance with the Act and Scheme unless it is otherwise proved.

(2) Where it is not so proved, 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.

(3) Where it is so proved, the person who is responsible for such violation shall be proceeded against and punished accordingly.

(4) Notwithstanding anything contained in sub-section (1), if the commission of the offence under this Act is attributable to any omission or negligence on the part of the Director, Manager, Secretary, or other officer of the Company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section:

(a) ‘Company’ means any body corporate and includes a partnership firm or other association of individuals; and

(b) ‘Director’, in relation to a firm, means a partner in the firm.

25. *Cognizance of offences.*—(1) Every offence punishable under this Act and the scheme shall be cognizable only by a Judicial Magistrate not below the rank than a First Class Magistrate of the area concerned.

(2) Whenever any contravention of the provisions of the Act and Scheme takes place, the Inspector of the Board or any person aggrieved by such contravention may in writing complain to the Magistrate for taking cognizance of the offence.

(3) Whenever an Inspector without sufficient reason refuses or fails to make a complaint of such a contravention, the Board, may *suo motu* or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognizance of the offence. This will be without prejudice to such disciplinary action that the Board may cause to be initiated against the Inspector for his lapse.

26. *Power to make Rules.*—The Government and its unorganized sector workers boards together shall have the power to make rules for the purposes of effective functioning of the Scheme.

In particular the Government and its unorganized sector workers boards shall have the power to make in respect of the following:

**The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

(a) The election of representatives of unorganized workers in the unorganized sector workers boards.

(b) Health, safety and medical facilities, social security and maternity benefits, and unorganized workers welfare funds.

(c) Enforcement of Provisions of the Act and Scheme, including machinery for such enforcement.

(d) Provisions in regard to welfare crèches, education and such other social welfare benefits for the children of unorganized workers.

(e) The conditions of service including recruitment, pay, allowance, tenure, discipline and appeal, retirement benefits of various categories of employees of the Board and their welfare.

(f) The remuneration or honorarium payable to the Presidents and other Office-bearers of the Boards.

(g) Provisions for leisure time activities, recreation, library any literacy measures including legal literacy among unorganized workers.

SCHEDULE I

LIST OF EMPLOYMENTS IN THE UNORGANISED SECTOR

1. Handlooms & PowerLooms, Dyeing

- a. handloom weaving of cotton and silk
- b. powerloom weaving
- c. cloth printing
- d. bleaching & dyeing
- e. ginning

2. Fish

- a. fishing
- b. fish selling
- c. fishery production
- d. fish processing

3. Poultry & Animal Husbandry

- a. animal husbandry
- b. dairying and allied activities
- c. shepherding

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

4. Tea, Coffee, Rubber, Cashew, Plantation, Processing, Horticulture, Sericulture

- a. cashew processing
- b. gardening and parks maintenance
- c. horticulture and floriculture
- d. plantation [other than those covered under Plantations Labour Act, 1951 (Act No.69 of 1951)]
- e. sericulture (silk rearing)

5. Forests & Allied Activities

- a. forestry operation
 - * Till special laws are made honey gathering enacted to cover these sectors
- b. minor forest produce gathering
- c. tendu leaves collection

6. Tree Climbing, Coir

- a. coir processing / manufacture
- b. toddy tapping
- c. coconut peeling
- d. tree climbing

7. Home Based Work

- a. agarbatti making
- b. bindi work
- c. masala making
- d. matches manufacture
- e. pappad making
- f. food products and others

8. Vendors

- a. hawking and vending

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

9. Handicrafts

- a. blacksmithy
- b. goldsmithy
- c. pottery
- d. artist
- e. sculpture
- f. cane / reed work
- g. carpet weaving
- h. chikan work
- i. hand embroidery work
- j. floral work and garland making and others

10. Services (Traditional & Modern)

- a. beautician
- b. hair dressing
- c. rag picking
- d. scavenging
- e. shoe shining work
- f. laundry work
- g. cable TV operation
- h. folk arts
- i. sound & light service and others

11. Shops & Establishments

- a. catering and canteen, hotels and restaurants, bakeries
- b. computer and information technology related services
- c. courier service
- d. distribution of petroleum products
- e. electronic and electrical goods repairs
- f. health services
- g. ngo services
- h. packing and packaging
- i. security service
- j. telephone booth service
- k. video & photography and others

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

12. Transport & Allied

- a. transport services (driving, conducting, cleaning etc.)
- b. autorickshaw
- c. bicycle, automobile, auto, two-wheeler repair and servicing work
- d. boat / ferry operation
- e. bullock / camel—cart operation
- f. rickshaw and tricycle driving and others

13. Salt Pans

- a. salt pan work
- b. loading & unloading

14. Small Scale & Cottage Industries

- a. arrack and liquor production and vending
- b. bulb manufacture
- c. envelope making
- d. fire work / crackers production
- e. foundry, engineering works
- f. garment manufacture
- g. glassware manufacturing
- h. lock making
- i. plastics manufacture
- j. printing press work
- k. rice mills, oil mills, dhal mills, flour mill
- l. soap manufacture
- m. sports goods manufacture
- n. steel vessels and utensils and containers manufacture
- o. timber industry, furniture manufacturing, saw mills
- p. Sago
- q. tanning (including hides and skins production), leather goods and footwear manufacture and others

15. Loading Unloading Goods Sheds, Yards, Markets Etc.

- a. headload work
- b. cleaning
- c. stacking

16. Tailoring

The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill

Statement of Objects and Reasons

1. Unorganized workers number nearly—crores in Kerala, of which substantial numbers are women. This sector contributes 65% of the GDP and covers a wide range of occupations such as agriculture, construction, handlooms & powerlooms, dyeing, fisheries, poultry & animal husbandry, tea, coffee, rubber, cashew, plantation, processing, horticulture, sericulture, forests and allied activities, tree climbing, coir, home based work, vendors, handicrafts, services, shops & establishment, transport & allied, leather, tanning products, salt pans, small scale & cottage industries, domestic work, production & distribution of culture, art & media, loading & unloading in goods sheds, yards, markets etc. The unorganized sector is neglected and unprotected. Thus bonded labour, child labour, exploitation of women labour, poverty and deprivation are widely prevalent. Also the processes of globalization, liberalization and mechanization have led to invisible retrenchments, under employment, poverty and mal-nutrition levels. Hence there is an urgent need for regulation of employment, conditions of service, social security and welfare of this vast unorganized sector in our country.

2. Unlike the organized sector, there is no fixed employment relationship in the unorganized sector. The peculiar nature of the unorganized sector is the changing employer—employee relationships and existence of hierarchy of relationships. The employment is contractual, most often on a sub-contract basis and is unregulated and thus the workers are unprotected. Thus, to ensure security of employment and protection of workers, it is imperative to regulate employment in the unorganized sector. A sizable section of workers are women, hence gender discrimination must be prevented and maternity entitlements, childcare ensured apart from preventing sexual harassment at workplaces. Also, there is a large number of self employed workers, at the mercy of traders and authorities, and being further marginalized facing starvation due to globalization.

3. Though labour laws enacted to protect sweated labour, such as the Minimum Wages Act, Contract Labour (Regulation and Abolition) Act etc., are sought to be applied to unorganized sector workers, they are not capable of being implemented due to the changing employer—employee relation, inadequacy of labour law administration and the lack of provisions to involve workers in the implementation or to protect them against victimization.

**The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

4. Though social security laws such as the ESI Act, EPF Act, Payment of Gratuity Act etc., have been sought to be extended to the unorganized sector, constraints in their application have been experienced due to lack of continuity of employment, the changing employer–employee relationship and the total lack of records pertaining to details of employment.

5. Thus the major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the unorganized sector. The beneficiaries of the labour of unorganized workers have thus a collective obligation to meet the human needs of those, the fruits of whose labour benefit the people at large. If the benefits of labour legislation are to reach this large mass of workers, it is then necessary that the law should take note of the unique features of the unorganized sector and should provide not merely for welfare of the workers, but also for the regulation of employment itself in the unorganized sector. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, Government and the employers.

6. The proposed Law intends to incorporate the following features based on the above stated nature of employment in the unorganized sector.

- (a) Right to livelihood including right over common property and resources;
- (b) Minimum Labour Standards to achieve Decent Conditions of Work;
- (c) Right of workers in formulation and implementation of schemes through Tripartite Boards at various levels with workers having decisive voice;
- (d) Compulsory registration of the employers and of the workers, identified by registered trade unions in all the scheduled groupings of employments;
- (e) Restriction on employment in the sector to only those workers who are registered under the law;
- (f) Prohibition of employment in unorganized sector by employers, without registration under the law;
- (g) Equitable sharing of the available employment, category-wise, on the basis of rotational booking of workers;

**The Kerala Unorganised Workers (Rights, Regulation of Employment,
Conditions of Work, Social Security and Welfare) Bill**

- (h) Employment guarantee for a minimum number of days in a month;
- (i) Vesting of the responsibility for determining wages including piece rates to be not less than the time rated wage for 8 hours and their disbursement in the autonomous body; and
- (j) Provision of safety measures and for various other entitlements including social security, pension, group insurance, relief for accident and natural death and a minimum guarantee of earnings by the autonomous body;
- (k) Provision of ESI, PF, gratuity, maternity entitlement, housing, crèches etc. and steps for prevention of sexual harassment of women;
- (l) Restriction of mechanization and labour displacement strategies and promotion of labour intensive methods in the unorganized sector;
- (m) Inbuilt tripartite dispute resolution mechanism and appellate authority;
- (n) Special protection of migrant workers and their families;
- (o) Elimination of bonded labour and child labour and ensuring compulsory education of children in the unorganized sector;
- (p) Special measure for prevention of sexual harassment on women workers in workplaces.

The objects and reasons for the Bill is stated above.

THE KERALA PUBLIC HEALTH CODE

A C O D E

to consolidate and amend the laws relating to Public Health in the State of Kerala and to provide sufficient measures to meet present day health hazards and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS it is expedient to consolidate and amend the laws relating to Public Health in the State of Kerala and to provide sufficient measures to meet present day health hazards and for matters connected therewith or incidental thereto;

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

PART 1 – GENERAL

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Code may be called the Kerala Public Health 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 Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Code, and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

2. *Definitions.*—In part I of this Code, unless the context otherwise requires,

(a) “Building” includes,—

(i) a house, out-house, stable, latrine, godown, shed, hut, bunk, wall (other than boundary wall not exceeding two metres in height) and any other structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

(ii) a structure on wheels or simply resting on the ground without foundation;

The Kerala Public Health Code

(iii) a ship, vessel, boat [(when outside the port limit of major ports as defined under the Indian Ports Act, 1908 (Central Act 15 of 1908)]; and

(iv) tent, van and any other structure used for human habitation, but do not include a temporary shed erected on ceremonial or festival occasions.

(b) “Canal” includes any river, inland navigation, lake or waterway being within or bordering the State, whether it is or is not within the ebb and flow of the tide;

(c) “Canal Boat” means any vessel however propelled, which is used or capable of being used for the conveyance of goods or passengers or both along a canal;

(d) “Cattle” include elephants, camels, mules, asses, horses, cows, bulls, bullocks, buffaloes, sheep, goats, pigs etc. and their young ones of these species;

(e) “Committee” means the Public Health Committee constituted under section 3;

(f) “Communicable Diseases” means an infectious disease;

(g) “Contagious Diseases” means an infectious disease which spreads through direct contact.

(h) “Dairy” includes—

(i) any farm, cattle shed, milk store, milk shop, or other places from which milk is produced, sold or supplied or for sale or in which milk is kept for sale or manufactured for sale into butter, ghee, cheese, cream, curd, butter milk or dried, sterilized, toned milk, condensed milk or any other milk products; and

(ii) in relation to a dairyman who does not occupy any premises for the sale of milk, any place in which he keeps the vessels used by him for the storage or sale of milk, but does not include,—

(a) a shop or place in which milk is sold for consumption on the premises only, or

(b) a shop or place from which milk is sold or supplied for sale in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shops or place.

(i) “Dairy man” includes any person who sells milk whether wholesale or retail;

(j) “Drain” means a house-drain or a public drain of any other description, and includes a sewer, tunnel, culvert, ditch, channel or any other devices for carrying of sullage, sewages, offensive matter, rain water or sub-soil water;

The Kerala Public Health Code

(k) “Drug” means any substance used as medicine for internal or external use or any substance used in the composition or preparation of such medicines;

(l) “Dwelling House” means a building constructed used or adopted to be used wholly or partly for human habitation or in connection therewith;

(m) “Factory” means any premises as defined in the Factories Act, 1948 (Central Act 63 of 1948);

(n) “Farm” includes cattle farm, poultry farm, goat farm, pig farm or any farm where animals or birds are kept or reared in more numbers;

(o) “Filth” includes sewage, excreta and other contents of latrines, cess pools and drains, dung and the refuse of the useless or offensive matters throwing out in consequence of any process of manufacture, industry or trade, putrid and putrifying substance and all other substances causing danger to the public health;

(p) “Food” includes every article including water consumed or used by man for food, drink, or chewing and all material used or admixed in the composition or preparation of such articles and shall also include flavouring, stabilizing and colouring matters and condiments;

(q) “Food handling Institution” includes hotels, restaurants, canteens, bakery, motels, floating restaurants, mobile food stalls, bars, toddy shops, catering units, beer parlours, where food items are manufactured or prepared or stored or kept for sale or brought and supplied to the public;

(r) “Government” means the Government of Kerala;

(s) “Guardian” includes any person who has or is presumed to have accepted the care or custody of any child or disabled;

(t) “Hawker” means a person who has no fixed place for business, but selling articles from place to place;

(u) “Health Authority” means the authority appointed under section 5;

(v) “House drains” means any drain actually used or intended to be used, for the drainage of one or more premises;

(w) “Hut” means any building which is constructed principally of wood, mud, leaves, grass, thatch or metallic sheets and includes any temporary structure or shelter or any small building of whatever material made, which the local authority may declare to be a hut for the purpose of part I of this Code;

The Kerala Public Health Code

(x) “Infectious disease” means any infectious disease as defined in section 50 and a notified disease as defined in section 61;

(y) “Inspector” means an inspector appointed under section 9;

(z) “Latrine” means a place set apart for defecating or urinating or bath and includes a closet of the dry or water borne type and urinal, whether public or private or whether open or flushed out;

(aa) “Local area” means the area within the jurisdiction of a Local authority;

(ab) “Local authority” means a Panchayat at any level constituted under section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under section 4 of the Kerala Municipality Act, 1994 (20 of 1994);

(ac) “Lodging house” means a hotel, hostel, a boarding house, a choultry, dharmasala or rest house or any place where people are received and provided with facilities of sleeping, accommodation, with or without food, on payment;

(ad) “Market” means any place set apart, ordinarily or periodically used for the assembling of the persons for the sale or purchase of grain, fruit, vegetable, meat, fish or any perishable or non-perishable articles of food or for the sale or purchase of livestock or poultry or any agricultural or industrial produce or any raw or manufactured products or any other articles or commodities necessary for the convenience of life;

(ae) “Medical practitioner” means a practitioner qualified for the practice of Modern Medicine or Homeopathic Medicine or Indian System of Medicine and registered as a practitioner under the Travancore Cochin Medical Practitioners Act, 1953;

(af) “Migrant Labour” means a person from any place other than the State of Kerala employed in or in connection with the work of any establishment to do any skilled or semi-skilled or unskilled labour or in any farm or plantation for reward, whether in terms of employment, expressed or implied by or through a contract or otherwise;

(ag) “Milk” means the milk of a cow, buffalo, goat, ass or any other animal and includes cream, skimmed milk, or separated milk, toned milk and condensed, sterilized or desiccated milk or any other product of milk;

The Kerala Public Health Code

(ah) “Notification” means a notification published in the Gazette;

(ai) “Nuisance” includes any Act, omission, place or thing which causes or is likely to cause injuries, danger, annoyance, or harassment or offence to the sense of sight, smell, or hearing or disturbance to rest or sleep or which may be dangerous to life or injurious to the health or property of the public or the people in general who dwell or occupy property in the vicinity or person who may have occasion to use any public right;

(aj) “Occupier” includes,—

(i) any person who for the time being is paying or liable to pay the owner the rent or any portion of the rent of the land or building or part of the same in respect of which the word is used or damages on or account of the occupation of such lands; building or part; and

(ii) any owner in occupation of or otherwise used his land or building;

(iii) a rent free tenant of any land or building;

(iv) a licensee in occupation of any land or building;

(ak) “Offensive matter” includes filth, dirt, house sweeping, spitting including chewed betel and tobacco, kitchen or stable refuse, poultry waste, sewage, broken glass or pottery debris or plastic material, waste paper, ash and rags;

(al) “Offensive trade” means any trade in which the substance dealt with are likely to become a nuisance;

(am) “Open drain” means and includes culvert, ditch, channel, built at any side of a street or any drain carrying drained water, rain water and sub-soil water;

(an) “Owner” includes,—

(i) the person for the time being receiving or entitled to receive whether on his own account or as agent, trustee, guardian of receiver for another person or estate or for any religious or charitable purpose, rent or profit of any land or building or part thereof;

(ii) the person for the time being in charge of animal, vessel or vehicle in connection with which the word is used.

The Kerala Public Health Code

(ao) “Prescribed” means prescribed by rules made under this Act;

(ap) “Private building” means any building other than a public building;

(aq) “Private market” means any market other than a public market;

(ar) “Public market” means any market owned, constructed, repaired or maintained by a local authority;

(as) “Private street” means road, square, court, alleys, lane, passage or riding path which is not a public street, but does not include a path way made by the owner of a premises on his own land to secure access to or the convenient use of such premises;

(at) “Public street” means any street, road, square, court, alleys, lane, passage or riding path where thoroughfare or not over which the public have the right and way and includes:—

(i) the road way over any bridge or causeway;

(ii) the footway attached to such street, public bridge or causeway; and

(iii) the drains attached to any such streets, public bridge or causeway and the land, whether covered or not by nay pavement, verandah or other structure which lies on either side of the road way up to the boundaries of the adjacent property whether that property is private property or property belonging to the State.

(au) “Public building” means a building used or adopted to be used:—

(i) as a place of public worship or a school or college or other institution (not belonging to a dwelling house so used) or as hospital or workhouse, public theatre, public cinema hall, public hall, public library or public lecture room, public concert room, public exhibition room, a public place, or assembly;

(ii) for any other public purposes; or

(iii) as a hotel, eating house, lodging house, refuge or shelter;

The Kerala Public Health Code

(av) “Public health care services” means the essential health care which prevents diseases, promotes health and prolongs life of the public;

(aw) “Public health services” means services for the prevention and control and treatment of diseases including the environmental sanitation, control of communicable diseases, immunization and any other services provided under this Act and to the establishment and maintenance of any institution for the purpose of any such services;

(ax) “Rubbish” means dust, ash, broken bricks, glass, plastics, coaltar and refuse of any kind;

(ay) “Sewage” means night soil and other contents of latrines, cesspools or drain and includes trade effluents and discharges from the manufactures of all kinds;

(az) “Standard fee” means the fee fixed as per Section 135A of this Act.

(ba) “Water-Course” includes any river, stream or channel whether natural or artificial other than a drain;

(bb) “Wharf” means a landing place and includes any wall stage or stairs, any part of the land for show that is used for loading and unloading goods or for the embarkation of or disembarkation of passengers and any wall enclosing or adjoining the same;

(bc) “Work Place” means any premises including the precincts thereof (not belonging a factory or a workshop) wherein is carried on any industrial, manufacturing or trade process, at which not less than five persons are employed for wages or any other remuneration;

(bd) “Work Shop” means any premises including precincts thereof (not being factory), wherein any articles or part of an article is an, repaired or altered, ornamented, finished or otherwise adopted for use on a commercial basis and not less than five persons are employed for wages or any other remuneration.

CHAPTER II

CONTROLLING AUTHORITIES AND THEIR POWERS

3. *The Public Health Committee.*—(1) Government shall as soon as after the commencement of this Act constitute a Committee called the Public Health Committee for the State to advise the Government on matters arising out of the administration of this Act and carry out all or any of the functions assigned to it under this Act.

The Kerala Public Health Code

(2) The Committee shall consist of the following members, namely:—

- | | | |
|--|----|----------|
| (a) Director of Health Services | .. | Chairman |
| (b) Additional Director of Health Services (Public Health) | .. | Convenor |
| (c) The Professor & Head of the Department of Community Medicine, Medical College, Thiruvananthapuram | .. | Member |
| (d) Director of Municipal Administration | .. | Member |
| (e) Director of Panchayat | .. | Member |
| (f) Drugs Controller | .. | Member |
| (g) Chief Government Analyst, Government Analytical Lab, Thiruvananthapuram | .. | Member |
| (h) Chairman, Pollution Control Board | .. | Member |
| (i) Chief Engineer, Kerala Water Authority | .. | Member |
| (j) Director General of Police | .. | Member |
| (k) Chief Town Planner | .. | Member |
| (l) Director of Animal Husbandry | .. | Member |
| (m) A senior officer of the National Institute of Communicable Disease (NCID), Ministry Health, nominated by the Government of India | .. | Members |
| (n) Four technical experts in the field of Public Health, nominated by the Government | .. | Member |

(3) The Committee shall advise the Government on such matters as the Government may, from time to time refer to it.

(4) The Committee shall meet once in three months and the quorum for the meeting shall be half of the strength of the Committee.

(5) The nominated members of the Committee shall unless their seats become vacant either by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for re-nomination.

The Kerala Public Health Code

(6) The Committee may appoint such sub-committees as it deems fit and may include persons who are not members of the committee to such sub-committee to discharge such duties as may be assigned subject to such conditions, if any, as the Committee may impose.

(7) The Committee may, after previous approval of the Government, make bye-laws for the purpose of regulating its own procedure and the transaction of its business.

(8) The Government shall provide such staff to the committee as may be necessary for functioning of the committee.

4. *Powers of the Government.*—(1) The Government shall have power to inspect, control and superintend the operation of local authorities under Part I of this Code.

(2) The Government may, from time to time define the functions to be performed, by the Director of Health Services or any members of the staff under him for the purposes of sub-section (1).

(3) Nothing contained in sub-section (1) and (2) shall be deemed to affect, or derogate from, any powers possessed by the Government or the District Collector under any other law for the time being in force.

(4) The Government may, by notification, direct any of the functions under Part I of this Code to be performed by local authority.

(5) The Government may, with a view to prevent spread of diseases, among persons engaged in or serving in establishments like hotels including restaurants, bar and other food manufacturing units, laundry, saloons and such other services as may be notified from time to time, prescribe the conditions to be observed by such persons while working in such establishments.

5. *Health Authorities.*—(1) For the purpose of giving effect to the provisions of part I of this Code, the Government may designate the Director of Health Services as the Health Authority of the State and entrust him with such powers and such duties as may be assigned to him by the Government.

(2) The Health Authority of the State shall be the chief advisor to the Government on all matters relating to public health and shall have the power to exercise general supervision of the implementation of the provisions under Part I of this Code.

The Kerala Public Health Code

(3) The District Medical Officers of Health Department shall be the District Health Authorities within their respective jurisdiction and are responsible for the implementation of the provision part I of this Code within their respective jurisdiction.

(4) The Medical Officer in charge or the Senior Medical Officer serving in the Primary Health Center or Community Health Center or any other health institution under the control of any local authority shall be the Health Authority of that local area:

Provided that if no such medical officer as aforesaid is available in any local area, the Health Authority of the State may nominate a medical officer of the nearby local area, to function as the Health Authority.

6. *Powers and Duties of the Health Authority of the State.*—(1) The Health Authority of the State shall, from time to time, as the occasion may require, adopt such measures as may be necessary for improving the Public Health Administration of a local area or for safeguarding the Public Health therein.

(2) The Health Authority of the State may assign one or more members of the public health establishment of one local authority for temporary duty in the area of another local authority.

(3) The Health Authority of the State shall have power,—

(a) to direct the rectification of any defect relating to public water supply, water purification work, sewage treatment works etc.;

(b) to enforce rules and regulations for abatement of nuisance;

(c) to make sanitary investigations as may from time to time be deemed necessary for improvement of Public Health;

(d) to make investigations and enquires with respect to the causes of disease especially epidemics, the causes of mortality and the effect of environmental on the public health and make such other sanitary investigations as may be deemed necessary for the improvement of public health;

(e) to direct, by order, the Health Authority of the local area or to the local authority to take such action as may be specified in order on being satisfied upon investigation that any source of public water supply in the local area is contaminated or is subject to imminent risk of contamination by reason of unsatisfactory location, in sufficient protective measures or any defect in construction or operation or maintenance and speedy remedy or immediate prevention is, inevitable to protect public health;

(f) to prohibit assembly of more than five persons in the event of the prevalence of a notifiable diseases in any local area if needed;

The Kerala Public Health Code

(g) to prohibit the manufacture, sale, stock, distribution of any article of food which is found to be the cause of any notified disease in any local area;

(h) to control and supervise the whole fair and festival areas of the State and issue necessary orders to execute the successful implementation Part I of this Code.

7. *Powers of the District Health Authority.*—(1) The District Health Authority shall have the power,—

(a) to exercise supervision of the public health staff within the district;

(b) to conduct sanitary investigations as may from time to time deemed necessary for the prevention and control of communicable disease and promotion of public health;

(c) to conduct investigation and enquiry with respect to the cases of all communicable diseases;

(d) to issue directions as may from time to time deemed necessary to the Health Authority of the local area.

8. *Powers of the Health Authority of the local area.*—(1) The Health Authority of the local area shall have power,—

(a) to exercise supervision and control over all the members of the public health establishment in such local area;

(b) to compound any offence committed or any violation of the provisions Part I of this Code and the rules made thereunder, which are declared as compoundable under the provisions of Part I of this Code;

(c) to issue sanction to the inspector of the local area to launch prosecution for violation of any provisions of Part I of this Code and the rules made thereunder;

(d) to issue fitness certificate to any building or residential units as required under Part I of this Code.

(2) Notwithstanding anything contained in the Kerala Municipality Act, 1994 (20 of 1994) or in the Kerala Panchayat Raj Act, 1994 (13 of 1994), the Health Authority of the local area shall perform such functions and discharge such duties in regard to public health matter under any of the provisions applicable to such Health Authority contained in Part I of this Code subject to such supervision and control as the Government may, by general or special order, determine.

The Kerala Public Health Code

9. *Appointment of Inspector.*—(1) The Government or the local authority may appoint such persons having the prescribed qualification to be inspectors for such local area for the purpose of Part I of this Code.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Act, 1860 (Central Act 45 of 1860).

10. *Powers of Inspectors.*—(1) The Inspector of the local area may enter and inspect,

(a) any place where any type of nuisance has taken place or continuing;

(b) any place, conducting dangerous and offensive trades;

(c) any place where any articles of food is manufactured, stored, or exposed for sale or any source of water supply;

(d) any building or hotel or shop where articles of food are exposed for sale including the fairs and festivals which is a place of food supply.

(2) Inspector of the local area shall have the power to seize and carry away any article intended for food obtained from a diseased animal or any article of food prepared, packed or kept under unsanitary conditions whereby it has become contaminated or injurious to health or unwholesome or unfit for human consumption and destroy the same forthwith:

Provided that he shall report the seizure to the Health Authority of the local area as early as possible:

Provided further that where the Inspector of the local area takes any Action under this section, he shall call for one or more witnesses to be present at the time of such Actions and get his or their signature in the report of seizure.

(3) Inspector of the local area may,—

(a) at any time, inspect with or without assistants any place, factories, work shop, office, cinema hall, hospital and the like which may appear to him reasonable and in other cases including, dwelling places in which any notifiable disease is reported or suspected to exist, without notice;

(b) take such measures as he may consider necessary to prevent the spread of such disease beyond such place.

(4) Inspector of the local area shall have the power,—

The Kerala Public Health Code

(a) to take Action against the person or persons, who violate any provisions of Part I of this Code or Rules and to launch prosecution for such violations of any of the provisions of Part I of this Code or Rules made thereunder;

(b) to take samples of any articles of food or drug or water from any place or premises for analysis as may appear to him reasonable.

(5) To take any action as empowered by Part I of this Code and the rules made thereunder to abate any nuisance within the meaning of section 12.

(6) The Inspector may for the purpose of discharging the official duties, apply for assistance to the officer in charge of a Police Station and the police officers shall accompany and assist the Inspector in performing his duties under Part I of this Code.

11. *Appointment of Additional Health Authority or Inspector of local areas in emergencies.*—In the event of the prevalence or threatened outbreak of any notified disease in any local area or of any unusual mortality therein or any notified area of fair and festival, the Government or Health Authority of the State, may by order appoint additional Health Authorities or Inspectors for the local area, temporarily for such period as may be specified therein, for the purpose of preventing such notifiable diseases from spreading or for investigating the causes of it and preventing such mortality, as the case may be.

CHAPTER III
NUISANCE

12. *Certain things to be nuisances.*—Without prejudice to the generality of the term ‘nuisance’ as defined in clause (ai) of section 2, the following shall be deemed to be nuisances for the purpose of this chapter, namely:—

- (i) any premises in such a state as to be prejudicial to public health;
- (ii) any pond, pool, ditch, gutter, water course, water trough, latrine, cesspool, drain or ash pit which is so foul or in such a state as to be prejudicial to health;
- (iii) any animal kept in such a place or manner as to be prejudicial to health;
- (iv) any accumulation or deposit of refuse or other matter which is prejudicial to health;

The Kerala Public Health Code

(v) any factory, workshop or work place which is not provided with sufficient means for ventilation or in which sufficient ventilation is not maintained or which is not kept clean or free from noxious effluvia or which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein or public in general;

(vi) any fire place or furnace which does not, as far as practicable, consume the smoke arising from the combustibles used therein and which is used for working engines by steam or in any mill, factory, dye house, brewery, backhouse or gasworks or in any manufacturing or trade process whatsoever in such a state as to be prejudicial to health;

(vii) any chimney sending forth smoke in such quantities as to the manner as to be prejudicial to health;

(viii) any noise, vibration, dust, cinders, irritating smell or offensive odor produced by a factory, workshop or work place or any other place which is a nuisance to the neighbourhood;

(ix) any X-ray unit, laboratory, hospitals which are not maintained with proper precautionary measures and in such a state which is prejudicial to health;

(x) any hotel or any food handling institutions, health resort, holiday camps, slaughter house, meat stall, milk stall, market, ice factory and like, theatre or auditorium or tourist home or lodges or hostel or rental building, in such a state as to be prejudicial to health;

(xi) any school or other educational institutions functioning in such a state as to be prejudicial to health;

(xii) any burial ground, crematorium in such a state as to be prejudicial to health;

(xiii) any tree or any type of construction which are caused or maintained in such a state as to be prejudicial to health;

(xiv) any park, play ground, or any other place in which people gather kept in such a State as to be prejudicial to health;

(xv) any water collection still or flowing which are seemed to be breeding sources of mosquitoes;

(xvi) places seemed to be the breeding places of flies, cockroaches, etc. and in such a state as to be prejudicial to health;

The Kerala Public Health Code

(xvii) any piggery, poultry, goat farm, cattle farm, hatchery, stable kept in such a state as to be prejudicial to health;

(xviii) any godown or accumulation of garbages etc. maintained or kept in such a manner to harbour rat, mice, ticks etc. and which are prejudicial to health;

(xix) any loud speaker or sound system producing sounds above eighty five decibel in public or private places;

(xx) dog or any other domestic animals allowed to stray in public places, which are prejudicial to health;

(xxi) any uncovered transportation of materials like sand or soil, etc. which are prejudicial to health;

(xxii) any dung or refuse of animal farm or poultry farm brought into the State or any local area to use as manure and kept in such a way as prejudicial to health;

(xxiii) any type of utensils used for the manufacture, preparation, storage or exposed for sale of food and the same used for any other purpose like mixing of pesticide, insecticide for agricultural purpose etc. which is prejudicial to health.

13. *Detection of Nuisance.*—Every local authority shall cause its local area to be inspected from time to time with a view to ascertain whether any nuisance exist therein for abatement under the powers conferred on such authority by Part I of this Code and shall take Action under Part I of this Code to abate such nuisance.

14. *Information Regarding Nuisance.*—Any person aggrieved by a nuisance in any local area may give information or complaint of the same to the Health Authority of the local area or to the Inspector of the local area.

15. *Abatement of Nuisance.*—(1) If the Health Authority or the Inspector of the local area is satisfied, whether upon an information given under section 14 or otherwise, of the existence of a nuisance, he shall be duty bound to issue a notice on receipt of such an information or of knowledge of the existence of such nuisance, as the case may be, requiring the person by whose act, default or sufferance, the nuisance arises or continues, and in case the person responsible for such nuisance cannot be found, the owner or occupier of the premises on which the nuisance arise or continues, to abate the nuisance and in default, to execute such works and take such steps as may be necessary for that purpose:

The Kerala Public Health Code

Provided that where the nuisance arises from any defect of a structural character, the notice shall be served to the owner of the premises:

Provided further that where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the Act, default or sufferance of the owner or the occupier of the premises, the Health Authority of the area or the Inspector of the local area may by himself forthwith do what he considers necessary to abate the nuisance and to prevent a recurrence thereof:

Provided also that, the Health Authority of the local area or the Inspector of the local area for reasons to be recorded in writing, and upon the application in writing by such person to whom such notice is issued, may extend the period specified in such notice, in the facts and circumstances of the case.

(2) The officer in charge of the police station of the local area concerned shall provide necessary police protection to the Health Authority of the local area or Inspector of the local area for removal or to ensure the removal of such nuisance and shall also provide all possible assistance for removal of such nuisance.

(3) The direction contained in the notice under sub-section (1) shall have effect, notwithstanding anything contained in any other law for the time being in force or any custom or usage or decree or order of a court or any agreement or contract, express or implied, in so far as they are not inconsistent with the provisions of this section.

(4) The issuance of the notice under sub-section (1) to a person as an occupier of any premises, shall not create any legal right, title or interest in such person, in respect of such premises, if such person is not the owner of such premises as the notice issued is only for creating the liability of abatement of nuisance or execution of any work or to take such steps as may be directed under sub-section (1).

(5) If any person, owner or occupier of any premises, to whom a notice is issued by the Health Authority of the local area or the Inspector of the local area, under sub-section (1), fails to comply with the directions given therein within the specified period or within the extended period, as the case may be, the Health Authority of the local area or the Inspector of the local area, shall himself execute any work or take such steps, which he may consider necessary to abate, the nuisance and to prevent the recurrence thereof:

The Kerala Public Health Code

Provided that, any expenses incurred or loss suffered on account of execution of any work or steps taken by the Health Authority of the local area or Inspector of the local area, for abatement of nuisance under this sub-section, shall be met by the local authority and such amount may be recovered from the person to whom the notice under sub-section (1) was issued, as arrears of tax due to the local authority.

16. *Penalties.*—(1) If any person,—

(a) whether by himself or by any other person on his behalf fails to comply with the directions contained in the notice issued under sub-section (1) of section 15 for abatement of any nuisance within the meaning of section 12; or

(b) obstruct or prevent the Health Authority of the local area or Inspector of the local area from exercising any powers conferred on him by or under part I of this Code; or

(c) prevents the Health Authority of the local area or Inspector of the local area any work or Action taken for abatement of a nuisance under part I of this Code; or

(d) commits any other action in contravention of any of the provisions of section 15 shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extent to rupees five thousand and in case of a continuing breach, with fine not exceeding rupees one hundred for every day closing which the breach continues after conviction for the first breach.

(2) The Health Authority of the local area may, subject to such restrictions and control as may be prescribed, compound any offence under sub-section (1).

(3) If any person who viciously and without any reasonable ground violate the directions of Health Authority of the local area or Inspector of local area, section 12 of part I of this Code or any other provisions of part I of this Code or any rules made thereunder and such action of that person cause grave injury to any other person or public in general, shall be punishable with imprisonment for a term which shall not be less than one year, which may extend to six years and with fine which shall not be less than Rupees 10,000.

(4) Whether by himself or any other person on his behalf gives to the Health Authority of the local area or the Inspector of the local area a false or misleading information about the true name and address of the person, who is responsible for such nuisance or any other action from the part of a person which is in contravention of any of the provisions of part I of this Code or any rules made thereunder shall be punishable with simple imprisonment for a term which may extend to thirty days and with fine which shall not be less the Rupees 1,000:

The Kerala Public Health Code

Provided that the said offence may be compoundable by the Health Authority of the local area subject to such restrictions and control as may be prescribed.

(5) If any person convicted for offence under part I of this Code, commits a like offence afterwards, it shall be lawful for the court, before which the second and subsequent conviction takes place to cause the offenders name and place of residence, the offence and the penalty imposed to be published at the offenders expense in such news papers or in such other manner as the court may direct. The expense of such publication shall be deem to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine imposed on conviction.

17. *Compounding of offences.*—(1) Subject to such conditions and restrictions as may be prescribed, the Health Authority of the local area, may compound any offence under part I of this Code or the rules made thereunder or bye-laws by accepting such amount not below Rs.1,000 which may extent to Rupees 6,000 as compensation.

(2) The Health Authority of the local area shall, if there is no reason to the contrary make an order in writing specifying therein,—

(a) the sum determined by way of composition;

(b) the date on or before which the sum shall be paid;

(c) the date on or before which the person should report the fact to the Health Authority of the local area or the Inspector of the local area.

(3) The Health Authority of the local area shall send a copy of such order to the person concerned.

(4) After compounding any offence if the person repeats the same offence he shall be liable to fine double the amount payable earlier and for continuance of the same offence, Rupees 100 shall be recovered on every day as long as the breach continues.

18. *Power of court to try case summarily.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under section 16 shall be tried in a summarily way by a Judicial Magistrate of the First Class specially empowered on this behalf by the State Government by notification and the provision of sections 262 to 265 (both inclusive) of the said Code shall as far as may be apply to such trial.

The Kerala Public Health Code

19. *Power of local authority to abate nuisance.*—If the person on whom a notice to abate a nuisance has been served under section 15 makes default in complying with any of its requirements within the time specified therein or if the nuisance although abated within such time is, in the opinion of the Health Authority of the local area, likely to recur on the same premises, the Health Authority of the local area may require the local authority the execution of any works necessary to abate the nuisance or to prevent its recurrence, and the local authority shall execute such work and the cost may be recovered from such persons as if it were a tax, due to the local authority.

20. *Provision Regarding House Rendered unfit for occupation by Reason of Nuisance.*—Where a house or other building is, in the opinion of the Health Authority of the local area or the Inspector of the local area, unfit for human habitation by reason of a nuisance existing therein, he may prohibit the use of such house or building for human habitation until it is rendered fit thereof.

21. *Disposal of articles removed while abating nuisance.*—(1) The local authority may dispose of by sale or otherwise any material which has been removed by it from any premises (including any street) while executing any works or otherwise carrying into effect the provisions of part I of this Code, if such material is not claimed or removed by the owner or occupier before the expiry of the date mentioned in the notice issued by the Health Authority of the local area or the Inspector of the local area for the purpose.

(2) A local authority which proceeds with the sale of any material under sub-section (1) shall pay the sale proceeds thereof to the person to whom the material belonged after deducting therefrom the amount of any expense recoverable from him in connection with the storage, handling, removal or sale of such material.

(3) The provisions of this section shall not apply to any offensive matter removed under the provisions of part I of this Code and such offensive matter shall be safely disposed as per the instructions of the Health Authority of the local area or the Inspector of the local area.

22. *Nuisance caused by Act or omission outside local area.*—If a nuisance within or affecting any part of a local area appears to be wholly or partly caused by some Act or default committed or taking place outside such local area, the local authority may, in consultation with the District Health Authority take such Action against any person in respect of such Act or default.

23. *Obligation of local authority to provide public sanitary conveniences.*—Every local authority shall provide and maintain proper sanitary conveniences for the use of the public and cause all such places to be kept in proper order so as not to cause nuisance or injurious to health.

The Kerala Public Health Code

24. *New houses to be provided with sanitary conveniences.*—No building in any local area intended for human habitation shall be constructed or is reconstructed after being pulled down to or below the ground floor, without such sanitary conveniences in such positions as directed by the Inspector of the local area by notice.

25. *Additional sanitary conveniences.*—(1) If any building intended for human habitation is without any sanitary convenience or if, in the opinion of Inspector of the local area, the sanitary convenience provided therein is insufficient having regard to the number of person occupying the building or inefficient or objectionable on sanitary grounds, he may, by notice, require the owner of such building,—

(a) to provide such sanitary convenience in such positions as may be specified in the notice; or

(b) to make such structural or other alternations as may be specified in the notice.

(2) Every owner of the ground on which a group of six or more huts stands shall provide such latrine accommodation in such position and within such time as the Health Authority of the local area or the Inspector of the local area, by notice require, for the use of the inhabitants of such group of huts.

26. *Prohibition of the deposit of rubbish, etc., in street.*—(1) No person shall deposit or cause or suffer any members of his family or household to deposit carcasses of animals, any dirt, dust, drug, ashes or refuse or filth of any kind, any animal matter, any hospital waste, any broken glass, earthenware or other rubbish or any other thing which is or may be a nuisance in any street or any drain beside a street or on any quay, jetty, landing place or wharf or on any part of the seashore or on the bank of any water course, except in such receptacles as may be provided or at such place and in such manner and at such hours as may be fixed in consultation with the local authority by the Health Authority of the local area or the Inspector of the local area.

(2) No person shall ease himself or cause, permit or suffer any member of his family or household to ease himself in any such street, drain, open space, quay, jetty, landing place, wharf, seashore or bank of any water course.

27. *Notification of residential areas.*—Every local authority shall within one year from the commencement of part I of this Code or within such further time as the Government may by notification, permits, notify in the manner prescribed, the locality, divisions, streets in the local area which shall be reserved for residential purposes.

The Kerala Public Health Code

28. *Local authority to maintain public drains.*—(1) Every local authority shall, to the extent possible provide and maintain sufficient and satisfactory system of public drains for the effective drainage of the local area.

(2) If, in the opinion of Government or the Health Authority of the State, any local area or part thereof should, for any special reason, be provided with a system of public drains or with any other means of drainage, they may direct the local authority to provide or execute, within such time as may be fixed by them in this behalf, such works as may be considered necessary by them.

(3) All drains, cesspools and the like vested in or belonging to a local authority shall at all times be kept in good repair by the local authority.

29. *Power of the Health Authority or the Inspector of the local area to require drains to be constructed.*—(1) If any premises, in the opinion of the Health Authority of the local area or the Inspector of the local area, is not having sufficient means of effective drainage, by notice, direct the owner of such premises to construct a drain leading therefrom to the nearest public drain or other place set apart by the local authority for the discharge of sewage:

Provided that the cost of constructing that portion of the drain which is situated more than hundred feet from the said premises, shall be paid out of the funds of the local authority concerned:

Provided further that if there is no public drain or other place set apart for the discharge of sewage, within a reasonable distance of such premises, the Health Authority of the local area or the Inspector of the local area may by notice require the owner of the premises to construct,

- (a) a closed cesspool, tank, or other suitable device as may be directed and
- (b) a house drain communicated with such closed cesspool, septic tank, or other work.

30. *Drainage for huts.*—Drains for the drainage of huts shall be of such size and description, and be constructed of such materials as may be considered appropriate and practicable by the Health Authority of the local area or the Inspector of the local area, having regard to the circumstances of the locality and the position of the nearest public drain or other place set apart by the local authority for the drainage of sewage.

31. *Drainage of Residential unit, courtyard, alley, passage or such other buildings, etc.*—For the purpose of efficient draining of any land or building the Health Authority of the local area or the Inspector of the local area may by notice, require the owner of any courtyard, alley, lane, passage or open space,—

The Kerala Public Health Code

(a) to pave the same with such materials and in such manner as may be directed by the Health Authority of the local area or the Inspector of the local area and to keep such paving in proper repair; and

(b) to raise the level of such courtyard, alley, lane, passage or open space, construction and closure of cesspools.

32. *Prohibition of occupation of new building.*—No building constructed after the commencement of part I of this Code in any local areas shall be occupied or cause or permit to be occupied until a certificate from the Health Authority of the local area to the effect that the building has been provided with sufficient means of drainage has been obtained.

33. *Sullage of sewage not to be let out into street.*—(1) No person having control over any building or land shall cause or allow,—

(a) the water of any sink, sewer, latrine or sanitary convenience, or any other liquid or other matter which is, or is likely to become offensive to run into drain, or to be thrown or put upon any street or open space or to soak through any external wall; or

(b) any offensive matter from any sewer, latrine or sanitary convenience to run, drain or be thrown into a surface drain in any street.

(2) Where a local authority is changing its system of drainage or undertaking a new system of drainage and if it becomes necessary for the owner of any premises to reconstruct or alter any drain, the cost of the reconstruction or alteration of such drain shall be met by the owner in accordance with such rules as may be prescribed.

34. *Drains in private street.*—Where a house drain belonging to one or more premises has been laid in any private street which is common to more than one premises and the Health Authority of the local area or the Inspector of the local area considers it desirable that any other premises should be drained into such premises to connect its house drain with such first mentioned drain; and the owner or owners of such first mentioned drain shall thereupon be bound to permit such connection to be made:

Provided that no such connection shall be made,—

(a) except upon such terms as may be agreed upon between or among the owners concerned; or

(b) in default of such agreement, except on such terms as may be laid down by the local authority and in particular, until any payment which may be directed by the local authority to be made to the owner or owners concerned, has been duly made.

The Kerala Public Health Code

35. *Injurious refuse not to be discharged into public drain or open drain.*—No person shall otherwise than in accordance with the terms and conditions as may be prescribed throw, empty or turned or to pass into any public drain or into any drain communicating with a public drain:—

(a) any matter likely to injure the drain or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of such contents; or

(b) any liquid or refuse or stream or other liquid which is either alone or in combination with the contents of the drain may cause nuisance or may be prejudicial to health; or

(c) any explosive or inflammable substance.

36. *Lodging Houses to be registered.*—No person shall keep a lodging house or receive any lodger therein, unless he is registered as the keeper thereof under Part I of this Code.

37. *Register of lodging houses.*—Every local authority shall keep a register in which it shall be entered the full name and address of every person registered, the number of persons authorized to receive in the lodging house and such other particulars as may be prescribed.

CHAPTER IV

WATER SUPPLY

38. *Local authority to provide potable water.*—(1) Every local authority shall provide or arrange to provide sufficient supply of drinking water for consumption by the inhabitants of the area within its jurisdiction and ensure that,—

(i) that the water supply is at all time wholesome and fit for human consumption, and

(ii) that the water supply is continuous throughout the year.

(2) A local authority may also provide or arrange to provide sufficient supply of water for other domestic purposes or for non-domestic purposes.

39. *Power of the Government or Health Authority of the State to direct local authority or any other agencies to execute water works.*—(1) If, in the opinion of the Government or Health Authority of the State, a local area does not possess sufficient supply of wholesome water fit for the consumption of its inhabitants, they may direct the local authority or other agencies concerned, either singly or in combination with the local authority or authorities having jurisdiction over any local

The Kerala Public Health Code

area or area in the neighbourhood which are similarly situated, to execute within such time as the Government or the Health Authority of the State may fix, such works as may be directed by the Government or the Health Authority of the State for providing sufficient supply of wholesome water fit for human consumption.

(2) A local authority may, with the previous sanction of the Government –

(i) construct, lay or erect filters, reservoirs, engines, conduits, pipes or other works within the limits of its area, for supply of sufficient wholesome water;

(ii) purchase or taken on lease any water works or any water, or any right to store or to take or convey water, within the limits of its area; and

(iii) contract with any local authority or to any other person or agency for the supply of water.

(3) A local authority may, with the previous sanction of the Government, by public notice, declare any lane, stream, spring well, tank, reservoir, pond or other source of water supply within or without the limits of its local area (other than a source under the control of the Government) from which water is or may be made available for the use of the public for domestic purposes, to be a source of public water supply for such purposes, and every such source shall thereafter be under the control of the local authority, only to the extent necessary for such purposes.

40. *Power of the Government to divert water from water-main belonging to a local authority.*—(1) The Government shall have power to take water from any water-main belonging to or in the control of a local authority for supplying water to any other areas, subject to such payment being made to the local authority concerned and subject also to such other conditions as the Government may consider reasonable:

Provided that before taking Action under this section, the Government shall communicate to the local authority the grounds on which they propose to do so, fix a reasonable period for the local authority to show cause against the proposal and consider its explanations and objections, if any.

(2) A local authority may, with the previous approval of the Government,—

(a) enter a contract for supply of water of good quality in the area or a part thereof with another local authority or a water supply undertaking;

(b) provide supply of water in bulk to a local authority of an adjoining area, on such terms and conditions as may be agreed;

The Kerala Public Health Code

(c) provide supply of water by bulk on such terms and conditions as may be fixed by the local authority, to,—

- (i) any trade, manufacture, or business;
- (ii) hospitals, medical or educational institutions, hostels, hotels, and restaurants;
- (iii) ports, ships, railways, cantonments and labour and other camps,
- (iv) fountains, swimming pools and the like;
- (v) gardens and pastures:

Provided that such supply of water does not interfere with the supply in quantity of water for domestic or other purposes within the area of the supplying of the local authority.

(3) The Health Authority of the local area or the Inspector of the local area or any officer on behalf of them shall have the right to access to water works of the local authority or any other agency and inspect them from time to time, and the recommendations, if any made by them shall be implemented by the local authority.

41. *Levy of water tax and earmarking the net revenue.*—Any local authority may levy within its area or part thereof, any tax which may be necessary for providing water supply in such area or part.

42. *Examination of water supply.*—The local authority shall arrange periodical examination of source of water supply and of points of delivery.

43. *Power of Government to issue directions for the protection and periodical examination of source of water supply.*—The Government shall have power subject to such rules as may be prescribed, to direct any local authority or any other authority for the protection and periodical examination of sources of water supply in its control.

44. *Authority to take samples.*—In the case of Railway, factories, mills, workplace, hospitals, lodges and in any place where drinking water is supplied, the Government may, by general or special order authorize such person or institution in such manner and at such intervals as may be prescribed, to take samples of drinking water supplied at such places.

The Kerala Public Health Code

45. *Power of District Collector in regard to water supply.*—(1) The District Collector or any officer authorised by him in his behalf, may cause inquiries to be made in any local area or part thereof, with a view to ascertaining ,

(a) whether the source of water supply for such local area or part thereof is contaminated from any cause against which effective means of protection can be taken, and

(b) whether the provision of any additional source or sources of water supply is necessary for such local area or part thereof.

46. *Power of the Health Authority of the State to direct local authority to improve water supply.*—If the Health Authority of the State is satisfied, upon investigation, that any source of public water supply in any local area is contaminated or is subject to imminent risk of contamination by reason of unsatisfactory location, protection, construction, operation or maintenance and speedy remedy or immediate prevention is necessary, the Health Authority of the State may by order direct the local authority to take such measures as may be specified in the order, and the local authority shall take such Action.

47. *Power of the Health Authority of the local area or the Inspector of the local area in regard to water sources.*—(1) The Health Authority of the local area or the Inspector of the local area may, at any time, by written notice, require that the owner of or any person having control over any lake, stream, spring, well, tank, reservoir, pond or other sources of water supply which is applied for drinking, bathing or washing purpose, shall, whether the same is private property or not, within a reasonable time to be specified in the notice, to execute any work to ensure the potable quantity of the water which is necessary to protect the health and safety of any person or persons.

(2) If the owner or person having control as aforesaid fails or neglects to comply with any notice issued under sub-section (1) of section 47 within the time specified therein, the Health Authority of the local area or the Inspector, may, if immediate action is necessary to protect the health or safety of any person or persons, at once proceed to execute the work specified in such notice, and all expenses incurred in respect thereof by the Health Authority or the Inspector shall be paid by the owner of, or person having control over such source of water supply, and shall be recoverable as if it were a tax due to the local authority concerned.

The Kerala Public Health Code

(3) The local authority shall provide the expense incurred by the Health Authority of the local area or the Inspector of the local area for the execution of any work under sub-section (2).

48. *Building not to be occupied without adequate water supply and proper water storage facility.*—(1) No owner of any building having more than one independent residential unit which may be constructed or reconstructed after the commencement of Part I of this Code, shall occupy it, or cause or permit it to be occupied until he has obtained certificate from the Health Authority of the local area,—

(a) that there is within such building or within reasonable distance therefrom, a supply of wholesome water sufficient for the domestic purpose of the inmates of such building, and

(b) if such building has a sump or overhead tank, that they are provided with such mosquito-proof arrangements as may be specified.

(2) the Health Authority of the local area or the Inspector of the local area may by notice in writing, direct the owner or occupier of any existing building having a sump or overhead tank to provide with such mosquito proof arrangements within such time as may be specified in the notice.

(3) Any person on whom a notice under sub-section (2) has been served fails to comply with the requirements thereof, the Health Authority of the local area or the Inspector may himself or through the local bodies get the requisite work done and recover the cost thereof from the owner as arrears of revenue due to a local authority.

49. *Prohibition of pollution of water source.*—(1) No person shall put or cause to be put or cause to fall or flow or be catered to permit to be put or to fall or flow or be carried into any water course, —

(a) any solid or liquid sewage matter, or

(b) any poisonous, noxious or proceeding from any manufacturing process, farm etc. or

(c) gas, electricity or any explosive materials, etc.

(2) No person shall put or cause to be put or cause to fall or be carried or permit to be put or to fall or be carried into any course, so as, either singly or in combination with other similar Acts of the same or any other person, to interfere with the due flow of such water course, or to pollute the water therein, the solid refuse of any manufacturing process or quarry or any rubbish or cinders or any other form of putrid solid matter, or commit nuisance in or in the neighbourhood of any water course.

The Kerala Public Health Code

CHAPTER V

PREVENTION, NOTIFICATION AND TREATMENT OF DISEASES

PART I

INFECTIOUS DISEASES IN GENERAL

50. *Infectious diseases.*—For the purposes of this chapter “Infectious diseases” includes,-

1. Acute Influenzal Pneumonia
2. Anthrax
3. Cerebrospinal fever
4. Chickenpox
5. Cholera
6. Diphtheria
7. Dysentery
8. Infective Hepatitis
9. Malaria
10. Mumps
11. Ophtalmia Infection Conjunctives
12. Plague
13. Poliomyelitis
14. Rabies
15. Relapsing fever
16. Para typhoid
17. Tuberculosis (pulmonary)
18. Typhus
19. Kala azar
20. Yellow fever
21. Tetanus
22. Leptospirosis
23. Dengue fever
24. Typhoid
25. Filaria
26. Acquired Immune Deficiency Syndrome
27. Leprosy
28. Severe Acute Respiratory Syndrome
29. Japanese Encephalitis
30. Hepatitis-B or
31. any other disease which the Government may from time to time by notification, declare to be an infectious disease either generally throughout the State or in part or parts thereof as may be specified in the notification.

The Kerala Public Health Code

51. *Appointment of Additional Staff.*—(1) In the event of the prevalence or threatened outbreak of any infectious disease in any local area or of any unusual mortality therein, the local authority concerned shall provide such additional staff, medicines, appliance, equipment and other things as may, in the opinion of the Health Authority of the local area be necessary for the treatment of such infectious diseases and preventing it, from spreading or for investigating the cause of such mortality and preventing it, as the case may be:

Provided that if the local authority does not agree with the opinion of the Health Authority of the local area, the matter shall be referred to the Health Authority of the State whose decision, thereon shall be final.

(2) In the event as aforesaid in sub-section (1), if the Health Authority of the local area or the Inspector of the local area considers that immediate Action is necessary in the interest of public health, he may, notwithstanding anything contained in that sub-section (1), appoint such additional staff and obtain such medicines, appliances, equipments and other things as may be necessary and the expenses incurred in respect thereof shall be met from the funds of the local authority.

(3) Every appointment made under sub-section (2) shall be reported to the local authority.

52. *Provision and maintenance of isolation hospitals and wards.*—(1) The local authority may, and if so required by the Government, shall, provide, or cause to be provided hospitals, wards or other places for the reception and treatment of persons suffering from infectious diseases.

(2) For the purpose of the reception and treatment of such persons, a local authority may, —

(a) itself build such hospitals, wards or other places of reception, or

(b) contract for the use of any such hospital or part of a hospital or other place of reception, or

(c) enter an agreement with any person having the management of any such hospital or part of a hospital for the reception and treatment therein of persons suffering from infectious diseases.

(3) A local authority shall not be deemed to have discharged its obligation under sub-section (1) unless the hospitals, wards or places of reception are maintained in accordance with such general or special orders as may, from time to time, be issued by the Health Authority of the State.

53. *Provision of Vehicle.*—Local authority shall and if so required by the Health Authority of local area shall,—

The Kerala Public Health Code

(a) provide and maintain suitable conveyances with sufficient attendants and other requisites for the free carriage of persons suffering from any infectious disease, and

(b) provide proper places and apparatus and establishment for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection and when any conveyances, clothing, bedding or other articles are brought to any such place for disinfection, may cause them at its discretion to be disinfected either free of charge or on payment of such fee as it may fix.

54. *Information regarding Infectious Disease.*—(1) Every Medical Practitioner, who in the course of his practice, becomes cognizant of the existence of any case of infectious disease referred to in section 50 in any private or public dwelling other than a public hospital, shall, if the case has not already been reported, give information in writing of the same with the least possible delay to the Health Authority of the local area or the Inspector of the local area.

(2) Every hospitals having bed strength of fifty or more shall have a qualified Health Sanitary Inspector and he shall be duty-bound to inform incidents of infectious diseases, periodical records etc. in time, to the Health Authority of the local area:

Provided that the Inspector of the local area is responsible to maintain sanitary conditions and safe disposal of waste in the hospital concerned.

55. *Prohibition of use of water, food and drinks from a suspected source.*—(1) If it appears to the Health Authority of the local area or the Inspector of the local area that the water in any tank, well or other place, if used for drinking or any other domestic purpose, preparation or servicing of food articles and other drinks is likely to endanger or cause the spread of any infectious disease, he may, by public notice, prohibit the removal or use of the said water, generally or for any specific domestic purpose.

(2) No person shall use or cause to be used water in any tank, well or other place in respect of which any such notice has been issued, in contravention of the terms thereof.

56. *Removal of infected person.*—(1) If the Health Authority of the local area or the Inspector of the local area is satisfied that any person is suffering from any infectious disease and that such person is,—

(a) without proper lodging or accommodation, or

(b) lodged in a place occupied by more than one family, or

The Kerala Public Health Code

(c) without medical supervision directed to the prevention of the spread of the disease, or

(d) in a place where his presence is a danger to the people in the neighbourhood; such person may be removed or cause him to be removed to a hospital or other place at which patients suffering from such disease are received for treatment, after taking all reasonable precautions to ensure the safety of the patient in transit.

(2) If any woman who according to custom does not appear in public is removed to any such hospital or place under sub-section (1),—

(a) the removal shall be effected in such a way as to preserve her privacy; and

(b) special accommodation in accordance with the custom shall be provided for her in such hospital or place at the expense of the local authority.

(3) No person shall have or be taken away from any hospital or other place referred to in sub-section (1) without the permission of the Health Authority of the local area or the Inspector of the local area.

(4) Whoever,—

(a) obstructs the removal of any person to any hospital or other place under sub-section (1); or

(b) leaves or takes away any person from any such hospital or place in contravention of sub-section (3), shall be punished with imprisonment for a term which may extend to three months or with fine not exceeding one thousand rupees or with both.

57. *Prohibition of exposure of other person to infections.*—(1) No person who knows that he is suffering from an infectious disease specified in Part II of this Chapter shall expose other person to the risk of infection by his presence or conduct in,—

(a) any market, school, college and other places, or

(b) theatre or other places of entertainment, or

(c) any hostel, hotel, boarding house, choultry, rest house or club or beauty parlour, barber shop, or

(d) any factory or shop, or

(e) any public conveyance, or

(f) any public bathing place or swimming pool, or

(g) any other place of public resort.

The Kerala Public Health Code

Explanation.—A person shall be deemed to know that he is suffering from an infectious disease within the meaning this sub-section, if he has been informed by the Health Authority or the Inspector of the local area that he is so suffering.

(2) No person who has the care of a person whom he knows to be suffering from an infectious disease shall expose or permit that person to expose others to the risk of infection by his presence or conduct in any place referred to in sub-section (1).

58. *Infected persons not to engage in certain trades and occupation.*—No person shall, while suffering from, or in circumstances in which he is likely to spread, any infectious disease, manufacture, store or offer for sale or take part in the business of manufacturing, carrying, or offering for sale any article of food for human consumption.

59. *Prevention of infectious diseases transmissible from animals.*—If in any local area any infectious disease transmissible to man breaks out or is in the opinion of the Health Authority of the local area or the Inspector of the local area likely to break out, amongst cattle or other animals or rats or any other rodents, it shall be the duty of the Health Authority of the local area or the Inspector of the local area to recommend to the local authority the adoption of such measure as he deem necessary for controlling or mitigating the disease or for preventing the outbreak or threatened outbreak and the local authority shall consider such recommendation and take such Action there on as it may deem suitable:

Provided that the Health Authority of the local area or the Inspector of the local area shall take suitable measures in emergency situation to prevent or to control outbreak of such zoonosis and intimate the same to the local authority or the District Health Authority or to the Health Authority of the State.

60. *Powers of the Health Authority or the Inspector of the local area to seize and destroy or take away any article causing infectious disease.*—The Health Authority of the local area or the Inspector of the local area shall have the power to seize and destroy or take away such article or food or drinks which may cause or likely to cause any infectious disease for disposal.

The Kerala Public Health Code

Notified Infectious Diseases

61. *Notified disease.*—In this Chapter “notified diseases” means,

- (a) Diarrhoeal diseases
- (b) Chickenpox
- (c) Cholera
- (d) Typhoid
- (e) Malaria
- (f) Infective Hepatitis or Hepatitis-B
- (g) Poliomyelitis
- (h) Rabies
- (i) Plague
- (j) Tetanus
- (k) Tuberculosis
- (l) Dengue fever
- (m) Leptospirosis
- (n) Japanese Encephalitis and other Viral Encephalitis

(o) Any other disease which the Government may, from time to time, by notification, declare to be a notified disease for the purpose of this section either generally throughout the State or in such parts thereof as may be specified in the notification.

62. *Occupation of houses to prevent the spread of infections.*—(1) In the case of emergency, the Health Authority of the local area or the Inspector of the local area, shall enter, occupy and use or depute any person to enter upon, occupy and use for a temporary period not exceeding two months without having recourse to the provisions of the Land Acquisition Act for the time being in force any building or place which, in the opinion of the Health Authority of the local area or the Inspector of the local area, is required and is suitable for any purpose connected with the prevention or control of infection from a notified disease:

Provided that if the building or place is occupied, notice shall be given in writing to the occupant or be conspicuously affixed on such building or place not less than forty-eight hours before it is entered upon:

The Kerala Public Health Code

Provided further that necessary alternative accommodation shall be provided to the occupants.

(2) The Health Authority of the local area or the Inspector shall, when any such building or place ceases to be occupied or used for any of the purposes aforesaid, cause it to be thoroughly disinfected and cleaned.

63. *Information regarding notified diseases.*—Every medical practitioner who in the course of his practice becomes cognizant of the existence of any notified disease in any private or public dwelling or any hospital, and every manager of any factory or public building, every keeper of a lodging house, every head of a family and every owner or occupier of a house, who knows or has reason to believe that any person in any premises under his management, control or occupation is suffering from or has died of a notified disease, shall, if the case has not already been reported, give information of the same with the least possible delay to the Health Authority of the local area or the Inspector of the local area.

64. *Power of entry of Health Authority of the local area or Inspector of the local area to take preventive measures.*—The Health Authority of the local area or the Inspector of the local area shall,—

(a) at all reasonable hours inspect with or without assistance any place in which any notified disease is reported or suspected to exist, without notice in the case of private clinics, factories, workshops, work places, offices, business places and the like and after giving such notice as may appear to him reasonable in other cases including dwelling house, and

(b) take such measures, as he may consider necessary to prevent the spread of such disease beyond such place.

65. *Destruction of huts or sheds to prevent infection.*—(1) If it appears to the Health Authority of the local area or the Inspector of the local area that the destruction of any hut or shed is necessary to prevent the spread of any notified disease, he may after giving to the owner and the occupier of such hut or shed such previous notice of his intention as may in the circumstances of the case appear to him reasonable, to take measures for having such hut or shed and all the materials thereof destroyed:

Provided that such action can be taken by the Health Authority of the local area or the Inspector of the local area only when no other option is available to prevent or control the notifiable disease.

The Kerala Public Health Code

(2) Such compensation as the local authority may consider reasonable shall be paid within thirty days to any person who sustains loss by the destruction of any hut or shed under sub-section (1), save as provided in this sub-section, no claim for compensation shall lie for any loss or damage caused by the exercise of any powers aforesaid.

66. *Closure of lodging or hotel or restaurant houses.*—If the Health Authority of the local area or the Inspector of the local area is satisfied that is necessary in the interests of public health that a lodging house or any place where articles of food are prepared, stored or sold or exposed for sale or distributed should be closed on account of the existence or recent occurrence in such lodging house or place of a case of notified disease, he shall, by order, direct it to be closed until the expiry of such period as may be specified in the order or until it is certified by the Health Authority of the local area or the Inspector of the local area to be free from infection.

67. *Infected clothes not to be sent to laundry.*—No person shall,—

(a) send or take to any laundry or public wash house or any public water course, tank or well for the purpose of being washed or to any place for the purpose of being cleaned, any clothing, bedding or other article which he knows to have been exposed to infection from any notified disease unless such articles have been disinfected by or to the satisfaction of the Health Authority of the local area or the Inspector of the local area or unless under instructions from such a person, it is sent with proper precautions to a laundry for the purpose of disinfecting with the notice that it has been exposed to infection; or

(b) place or cause or permit to be placed in any dust-bin or receptacle for the deposit of refuse any matter which he knows to have been exposed to infection from a notified disease and which has not been disinfected.

68. *Infected person with highly contagious disease persons not to use public conveyance.*—(1) No person who knows that he is suffering from a notified disease shall enter,—

(a) any public conveyance used for the conveyance of passengers at separate fares, or

(b) any other public conveyance without previous notice to the owner, driver or conductor thereof that he is so suffering.

(2) No person having the care of a person when he knows to be suffering from a notified disease shall permit that person to be carried,—

The Kerala Public Health Code

(a) in any public conveyance used for the conveyance of passengers at separate fares;

(b) in any other public conveyance without previous notice to the owner, driver or conductor thereof that the person is so suffering.

(3) The local authority, when so requested by the person in charge of a public conveyance in which a person suffering from a notified disease has been conveyed, shall provide for its disinfection.

69. *Letting or sub-letting a building occupied by an infected person.*—No person shall, without a special permit from the Health Authority of the local area or the Inspector of the local area let or sub-let or permit or suffer any prospective tenant to enter a building in which he knows or has reason to know that a person has been suffering from contagious disease within one month immediately preceding.

70. *Prohibition of the exposure of other persons to infection.*—(1) No person who knows that he is suffering from a notified disease shall expose other person to risk of infection by his presence or contact in,—

- (a) any street or public place, or
- (b) any market, theatre or other place of entertainment or assembly, or
- (c) any school, college, play ground or such other place, or
- (d) any hotel, hostel, boarding house, rest house or club, or
- (e) any factory or shop, or
- (f) any public bathing place or swimming pool, or
- (g) any other place of public resort.

(2) No person who has the care of a person whom he knows to be suffering from a notified disease shall cause or permit that person to expose others to the risk of infection by his presence or contact in any place referred to in sub-section (1).

71. *Forbidding work in infected premises.*—If a case of notified disease occurs on any premises, the Health Authority of the local area or the Inspector of the local area shall whether the person suffering from the disease has been removed from the premises or not, make an order forbidding any work to be given out to any person living or working on those premises or in such part thereof, as may be specified in the order, and the order so made be served on the occupier of the factory from which the work is given out or on any contractor employed by such occupier.

The Kerala Public Health Code

72. *Prohibition of use of public library by infected person.*—No person who knows that he is suffering from a notified disease shall take any book or newspaper, or cause any book or newspaper to be taken for his use or use any book or newspaper to be taken from any public or circulating library.

73. *Disposal of bodies of persons dying while suffering from notified diseases.*—(1) No person having the charge or control of the body of any person who had died while suffering from a notified disease shall permit or suffer persons to come unnecessarily into contact with or proximity to, the body.

(2) No person shall, without the sanction in writing of Health Authority of the local area or Inspector of the local area, retain in any premises (elsewhere than in a public mortuary) for more than twelve hours the body of any person who died while suffering from any notified disease.

(3) In any such body (not being a body kept in a mortuary) remains undisposed of for more than twelve hours without the sanction referred to in sub-section (2), or if the dead body of any person is retained in any building so as to endanger the health of the inmates of such building or of any adjoining or neighbouring building, referred to in sub-section (2) the local authority shall remove and dispose of it within such time and in such manner as may be directed by the Health Authority of the local area or the Inspector of the local area.

(4) If any person dies in a hospital or a place of temporary accommodation for the sick while suffering from a notified disease and the Health Authority of the local area certifies that, in his opinion, it is desirable, in order to prevent the spread of infection that the body should not be removed from such hospital or place except for the purpose of being taken direct to a burial or burning ground or to a crematorium for being buried or cremated, no person shall remove such body from the hospital or place except for such a purpose.

(5) when a body referred to in sub-section (1) is removed for the purpose aforesaid, it shall forthwith be taken direct to a burial or burning ground or to a crematorium and buried or cremated there with the least practicable delay.

(6) Without the permission of the Health Authority of the local area or Inspector of the local area, no person shall cause or permit to be carried in public or private conveyance the dead body of any person who had died while suffering from cholera or any other notified disease as specified by the Health Authority of the State.

The Kerala Public Health Code

74. *Power of Government to confer special powers on officers to control notified diseases.*—(1) In the event of the prevalence or threatened outbreak of a notified disease in any place or area, the Government may by notification in the Gazette declare, that such place or area is visited by or threatened with an outbreak of such disease. Subject to such limitations and conditions and to such control as may be prescribed either generally or in the case of the notified disease to which the declaration relates, the Health Authority of the local area or the Inspector of the local area or any other officer specially authorized by the Government in this behalf shall have the following powers, namely:—

(a) to order the evacuation of infected houses or houses adjoining them or in their neighbourhood or generally of all houses in any infected locality;

(b) to make vaccination and preventive inoculation compulsory;

(c) to direct,—

(i) that persons arriving from places outside the area to which the declaration relates or residing in any building adjacent to, or in the neighbourhood of an infected building shall be examined by any specified medical officer or by anyone of a specified class of medical officers;

(ii) that the clothing, bedding or other articles belonging to such persons shall be disinfected if there is reason to suspect that they have been exposed to infection; and

(iii) that any such person shall give his address and present himself daily for medical examination at a specified time and place for a period not exceeding ten days.

(d) to make such measures as may be necessary,—

(i) in respect of, or in relation to, persons exposed to infection from any notified disease or likely to infect other person with any such disease;

(ii) in respect of, or in relation to, articles exposed to infection from any notified disease or likely to infect persons with any such disease and

(iii) in respect of, or in relation to, person referred to in sub-clause (i) the placing of restrictions on the movements of such persons and in respect of or in relation to articles referred to in sub-clause (ii) the distribution of such articles and the placing of restrictions on their export from, import into or transport within the local area.

(e) to direct that at any place within or outside the local area, any consignment of grain exported from or imported into such area by rail, road or otherwise shall be examined and if necessary unloaded and disinfected in any specified manner; and

The Kerala Public Health Code

(f) to close all or any of the existing markets and to appoint special places where markets may be held.

75. *Destruction of rats, mice, etc.*—(1) The occupier of every premises or if the premises are unoccupied, the owner thereof shall take such steps as may be reasonably practicable for the destruction of rats, mice and other animals susceptible to plague infecting such premises.

(2) Where the Health Authority of the local area or the Inspector of the local area is of opinion that the occupier or owner of any premises has failed to fulfill the obligations laid on him by sub-section (1), he may either,-

(a) serve a notice on such occupier or owner requiring him to take such steps and within such time, as may be specified in the notice; or

(b) enter upon such premises and take such steps as may be necessary for the purpose of destroying the rats, mice and other animals susceptible to plague infecting the same, after giving not less than twenty four hours previous notice to such occupier or owner.

(3) Any expenses incurred under clause (b) of sub-section (2) may be recovered by the local authority concerned from the occupier or owner, as the case may be, as if it were a tax due from him to the local authority.

PART II

SPECIAL PROVISIONS REGARDING SELECTED COMMUNICABLE DISEASES

76. *Tuberculosis—Special arrangement for detection and treatment.*—The Government may from time to time issue such orders or directions as may be necessary for the prevention and control of tuberculosis.

77. *Special provisions regarding rabies.*—(1) The Government or Health Authority of the local area shall make arrangement, as is desirable or as the Government directs, for the isolation, care and treatment of persons suffering or suspected to be suffering from rabies.

(2) The State Government or the Health Authority of the local area or the Inspector of the local area shall make arrangements for anti-rabic treatment in places where it is considered necessary.

(3) The local authority,—

(i) shall license possession of pet dogs at a charge

(ii) shall ensure vaccinating dogs against rabies at periodical intervals.

The Kerala Public Health Code

(4) No person shall possess a dog which has not been registered and licensed by the local authority and it shall be the duty of every such owner of a dog have the dog vaccinated at periodical intervals against rabies as required by the local authority.

(5) The local authority shall have the power to seize and detain all stray dogs at large, if any dog is in the opinion of the Health Authority of the local area or the Inspector of the local area found or suspected to be suffering from rabies, arrange for the destruction of such dogs in such manner as permitted by law.

78. *Special provisions regarding HIV or AIDS and sexually transmitted diseases.*—The Health Authority of the local area or the Inspector of the local area shall from time to time inspect hospitals, clinics, dental clinics, beauty parlour, barber shop etc. in the local area and ensure that proper sterilization techniques are maintained for instruments and universal precautionary measures are maintained to prevent spread of HIV or AIDS and other infectious diseases.

79. *Provisions for the prevention, treatment and control of certain diseases.*—The Government may make such rules for the purpose of the treatment of persons affected with any epidemic or infectious disease including measures for preventing the spread of such diseases.

CHAPTER VI
CONTROL OF INSECTS

80. *Control of insects and vector borne disease.*—For the purposes of this chapter “insects” include mosquitoes, flies, lice, mite, sand fly, ticks and any other insects detrimental to health.

81. *Duties of local authority.*—(1) Every local authority shall take steps to eliminate breeding places where insects are breeding or likely to breed and to control or destroy insects.

(2) The Government or the local authority shall take measures for the prevention, control and removal of any cause or causes of breeding of insects.

(3) The local authority shall upon request, provide sufficient number of labourers to the Health Authority of the local area or Inspector of the local area for elimination of breeding places of mosquitoes or insects.

82. *Duties and responsibilities of owners and occupiers.*—Every owner or occupier of land or premises shall take measures to prevent the breeding of insects and shall take such measures as may be directed by the local authority, from time to time.

The Kerala Public Health Code

83. *Prohibition of mosquito breeding in collection of water.*—No person or local authority shall—

(a) have, keep, or maintain within such area any collection of standing or flowing water in which mosquitoes breed or are likely to breed, or

(b) cause, permit, or suffer any water within such area to form a collection in which mosquitoes breed or are likely to breed, unless such collection has been so treated as effectively to prevent such breeding.

84. *Treatment of mosquito breeding places.*—The Health Authority of the local area or the Inspector of the local area, shall, by notice in writing, require the owner or the occupier of any place containing any collection of standing or flowing water in which mosquitoes breed or likely to breed, within such time as may be specified in the notice, not being less than twenty four hours, to take such measures with respect to the same or to treat the same by such physical, chemical or biological method or a method, approved by the Health Authority of the local area or the Inspector of the local area consider suitable in the circumstances.

85. *Power of the Health Authority of the local area or the Inspector of the local area in case of default.*—If the person on whom a notice is served under section 84 fails or refuses to take the measure or adopt the method of treatment, specified in such notice within the time specified there in, the Health Authority of the local area or the Inspector of the local area shall take himself such means or adopt such measures. The local authority shall recover the cost of doing so from the owner or occupier of the property, as the case may be, in the same manner as if were a property tax or an arrear of tax due to the Local authority.

86. *Power of the health staff to enter and inspect premises.*—The Health Authority of the local area or the Inspector of the local area at all reasonable times, after giving such notice in writing as may appear to him reasonable, enter and inspect any land or building, and the owner or occupier shall give all facilities necessary for such entry and inspection, and supply all such information as may be required by him for the purpose aforesaid.

CHAPTER VII

VENEREAL DISEASES HIV/AIDS

87. *Provision for treatment of HIV or AIDS and other venereal disease by local authority.*—(1) The local authority may, and if so required by the Government, shall make such arrangements in its local areas for the free diagnosis and treatment of and the prevention of infection from HIV or Acquired Immune Deficiency Syndrome and other venereal disease. Patients to be instructed in the methods of prevention of the spread of Acquired Immune Deficiency Syndrome and other venereal diseases.

The Kerala Public Health Code

(2) Every registered medical practitioner examining or treating with a view to treat a person having such disease shall, at the first visit,—

(a) impress upon such person the necessity for treatment until the cure is effected;

(b) instruct him with regard to the measures necessary for preventing the spread of the disease; and

(c) furnish him with such other information relating to the disease as may be provided by the Health Authority of the State.

(3) If required, the Government may isolate a person who is found to be positive for Acquired Immune Deficiency Syndrome by serological test, for such period and on such conditions as may be considered necessary and such isolation or ward thereof, as may be prescribed.

(4) The linen mattresses etc. used for the deceased patients who were suffering from Acquired Immune Deficiency Syndrome shall be immediately disinfected as directed by the Health Authority of the local area or the Inspector of the local area.

(5) All the staff working for the management of the patient suffering from Acquired Immune Deficiency Syndrome shall be effectively protected with long rubber gloves, sterilized linen mask etc.

(6) No transplant operation of any kind shall be performed unless the donor as well as the receptor is confirmed to be free from Acquired Immune Deficiency Syndrome through serological investigation.

CHAPTER VIII

FOOD CONTROL

88. *Prohibition of manufacture, distribution, stock, sale of unsound food.*—

(1) No person shall,—

(a) sell, expose or hawk about for sale or keep store or prepare for sale any animal intended for human consumption which is diseased or the flesh of any animal which has died on account of natural causes; or,

(b) sell, expose or hawk about for sale or keep, store, manufacture or prepare for sale any food or drug intended for human consumption which is unfit for such purpose or is unwholesome.

The Kerala Public Health Code

(c) manufacture, distribute, stock, sell, expose or hawk without valid licence from the local authority.

(2) In any prosecution under sub-section (1) the court shall, unless and until the contrary is proved, presume—

(a) that any animal found in the possession of a person who is in the habit of keeping animals of that class for sale for human consumption, has been kept by such person for sale; and

(b) that any food or drug found in the possession of a person who is in the habit of keeping, storing, manufacturing or preparing such food or drug for sale for human consumption, has been kept, stored, manufactured or prepared by the person for sale.

89. *Flesh of dead animal not to be stocked or distributed.*—No person shall stock, distribute the flesh of any animal which had died on account of natural causes.

90. *Importing meat into local area.*—(1) No person shall bring into any local area without the permission in writing of the Health Authority of the local area or the Inspector of the local area thereof, the flesh of any animal slaughtered outside the local area otherwise than in a slaughter house maintained or licensed by the Government or by a local authority.

(2) Any flesh brought into the local area in contravention of sub-section (1) shall be seized by the Health Authority of the local area or the Inspector of the local area and disposed of as may be directed by the Health Authority of the local area or the Inspector of the local area.

(3) Nothing in this section shall be deemed to apply to—

(a) cured or preserved meat; or

(b) flesh or meat carrier through any local area for consumption outside the limits thereof and not stored anywhere within such limits in the course of transit; or

(c) flesh or meat brought into the local area by any person for immediate domestic consumption and not for sale, provided that the local authority may by public notice direct that the provision of this section shall apply to cured or preserved meat of any specified description or brought from any specified place.

91. *Power of Health Authority of the local area or Inspector of the local area to enter premises used for food trade.*—The Health Authority of the local area, or Inspector of the local area without notice, may enter any place, at any time, by day or by night, where any article of food is being manufactured, prepared, exposed or stored for sale and inspect such article and any utensil or vessel used for manufacture preparing or containing the same.

The Kerala Public Health Code

92. *Power of Health Authority of the local area or Inspector of the local area to deal with carriers of diseases handling food.*—The Health Authority of the local area or the Inspector of the local area may, at any time, examine or cause to be examined any person engaged in selling or in manufacturing or preparing any articles of food for sale or in any manner whatsoever handling any article of food intended for sale.

93. *Investigation of diseases caused by milk or dairy produce.*—(1) If the Health Authority of the local area or the Inspector of the local area has reason to believe—

(a) that any person within the local area over which he has jurisdiction is suffering from an infectious disease attributable to milk or dairy produce supplied within such area; or

(b) that the consumption of such milk or dairy produce is likely to cause any person to suffer from an infectious disease, the Health Authority of the local area or the Inspector of the local area shall require the person supplying the milk or dairy produce to furnish within such time a complete list of all dairies from which that person supply milk or dairy product is derived.

(2) If such supply or part of such supply is obtained not directly from a dairy but through some other person, the Health Authority of the local area or the Inspector of the local area may make a similar requisition upon such other person.

(3) Every person on whom any requisition is made under sub-section (1) or sub-section (2) shall be bound to comply with such direction.

94. *Inspection of dairy by Health Authority of the local area or Inspector of the local area.*—(1) The Health Authority of the local area or the Inspector of the local area may inspect any dairy referred to in section 93 and the milk, cattle and the employees therein and if on such inspection the Health Authority of the local area or the Inspector of the local area is of opinion that any infectious disease is caused or likely to be caused by the consumption of the milk or the dairy produce supplied from such a dairy, he may make an order prohibiting the supply of any milk or dairy produce for human consumption from such dairy.

(2) An order made under sub-section (1) shall forthwith be cancelled by the Health Authority of the local area or the Inspector of the local area, as the case may be on his being satisfied that the milk supply has been changed or that the employees objected to by him have ceased to work at the dairy or that the cause of infection has been removed.

The Kerala Public Health Code

(3) If an order made under sub-section (1) or cancelled under sub-section (2) relates to a dairy situated outside the limits of the local area, the Health Authority of the local area or the Inspector shall also inform the local authority within whose jurisdiction the dairy is situated that such an order has been made or cancelled, as the case may be.

95. *Issuance of Certificate by the Health Authority of the local area or the Inspector of the local area.*—(1) No person shall manufacture, distribute, stock or sell any article of food without holding a certificate issued by the Health Authority of the local area or the Inspector of the local area.

(2) The certificate issued under sub-section (1) shall be valid only for a period of one year from the date of issue and may be renewed:

Provided that at the time of incidence of notifiable disease the District Health Authority shall have the power to cancel any certificate issued by the Health Authority of the local area or the Inspector of the local area.

CHAPTER IX

MARKETS

96. *Establishment of hats and markets.*—A local authority may establish and maintain markets or “hats” at suitable places for the convenience of people and may permit, by issue of licenses, private persons to establish and maintain markets and hats.

97. *Licensing of markets and other food handling institutions.*—No person shall establish or maintain a market or hat or any food handling institution without a license from the local authority.

CHAPTER X

SLAUGHTER HOUSES AND MEAT STALL

98. *Public Slaughter Houses.*—The Local Authorities may establish and maintain Public Slaughter Houses for slaughtering of animals for meat.

99. *Licensed Slaughter Houses.*—(1) No owner of a place within the area of a Local Authority, shall establish a slaughter house without obtaining a license from the local authority of the area.

(2) The owner, who intended to establish a slaughter house shall apply for a license for the same, the local authority concerned. An application shall be in the prescribed form and with prescribed fees.

The Kerala Public Health Code

(3) the Local Authority may by an order and subject to such conditions and restrictions as it thinks fit, grant or refuse to grant such license.

100. *Slaughter Houses to be maintained properly.*—(1) Every Public and licensed Slaughter Houses shall be maintained properly and waste materials therefrom shall be disposed of without causing nuisance to the public, where any violation of the conditions of agreement or license leads to unhygienic conditions of the slaughter house, the person concerned may on conviction, be punished with a penalty up to rupees five thousand and a further fine at the rate of penalty up to five thousand and a further fine at the rate of rupees five thousand for each day on which the offence in continuing and in case such penalty is imposed continuously for Ten days, action can be taken treating the license as a automatically cancelled.

(2) No person shall be permitted for slaughtering animals in the slaughter houses except with a lines in the form prescribed, issued by the secretary of the Local Authority.

(3) No animals shall be admitted in to a slaughter house for slaughter, unless it is examined, certified and stamped by the veterinary surgeon of a veterinary sub-centre or Veterinary Dispensary or Veterinary Hospital in a village Panchayath area, specially authorized by the local authority in this behalf that this animal is forced from contagious diseases and other diseases.

(4) if an animal having contagious diseases or other diseases or dead or dying brought to the slaughter house shall be seized by the examining authority or the person authorized by the local authority and destroyed and disposed of in the manner as he deems fit.

101. *Prohibition of exhibition of carcass of animals.*—(1) No person shall be permitted to sell meat in the slaughter house or in its premises. After slaughtering the animals the meat shall be sent to the meat stalls as quick as possible.

(2) No person shall inhibit or exposed to public view, for sale or otherwise, the ear case of animal, bird or fish in any licensed meat stall or in any other place in such a manner as to cause annoyance or offence to the sense of sight of the public.

102. *Location of meat stalls.*—(1) All meat stalls lending meats from animals slaughtered in slaughter house in a local authority shall be a place within limit of that local authority, approved by the local authority.

Note.—Suitable number of meat stalls shall be constructed in separate places within the market in such a way as to cause no annoyance to the public who frequent the market.

The Kerala Public Health Code

(2) The Examining Authority or President or Secretary or any officer authorized by the local authority or Government shall have power to inspect the meat kept for sale and to seize and destroy the meat which is seen as diseased or unfit for consumption.

103. *Conditions to be observed by meat stall holders.*—(1) The meat offered for sale shall be animals slaughtered in a public slaughter house or licenced slaughter house and shall be clean and devoid of materials unfit for consumption.

(2) Offal, skin, horn, entrails etc., for which provision is made for sale in the slaughter house shall not be brought to the stall or kept in for sale.

(3) The unwholesome meat, skin, entrails etc., found in the stall shall be seized and destroyed by the officer authorized in this behalf.

(4) The meat shall be suspended by means of hooks in such a way that they do not come into contact with the roofs, walls or pillars of the stall.

(5) Bones and refuses shall not be thrown out but shall be put in a receptacle kept for the purpose.

CHAPTER XI

PHYSICAL HEALTH

104. *Establishment of recreation grounds.*—(1) A local authority may establish sufficient recreation grounds wherever found necessary for the free use of the residents to engage themselves in various activities which would help them to raise and maintain a high level of bodily health and mental peace. Care may be taken to provide recreation centres to the children separately.

(2) Local authority may conduct awareness programmes to inform the residents about the need to engage themselves regularly in activities like walking briskly or otherwise, jogging, running, playing any games of their choice, doing of indoor exercises with or without the help of machines, swimming etc.

105. *Establishment of yoga centre, gymnasium etc.*—A local authority may establish sufficient number of yoga centres, gymnasiums and other exercise centres for improving and maintaining the health of the residents.

The Kerala Public Health Code

106. *Treatment and Medicine free.*—(1) Treatment and medicines to persons above 65 years and as well as who are below poverty line shall be free of cost in all Government hospitals.

(2) Any treatment of women in connection with pregnancy and delivery shall be free to all persons who are below poverty line. Such women shall be provided with free nutritious food to maintain the health of both women and the child in the womb. Free nutritious food shall also be provided to her even after delivery for the upkeep of the health of both women and her new born child.

(3) A written statement made by a person that he is below poverty line shall be accepted as sufficient to treat the person qualified for the benefit provided under sub sections (1) and (2) of the section.

(4) Government shall establish at least a medical store in every district for the supply of medicines to the Neethi Medical shop in hospitals in the district and to the patients.

(5) In every Government hospital, there shall be a Neethi Medical shop for supplying medicines to the patients on subsidized rates.

(6) The subsidy to be given to the patients shall be on the basis of the income of the patients on such rate as may be prescribed.

(7) Every employee serving under the Government, judiciary, public Sector Undertakings, Autonomous bodies, Welfare Fund Boards, Co-operative institutions, Boards and Corporations, Local Authorities, Universities and all other statutory bodies shall be insured for medical care.

(8) The expenses for insurance policy under Sub-Section (1) shall be met by the Government or other concerned bodies.

(9) The terms and conditions of the medical care policy shall be as may be prescribed.

(10) The rate of subsidy and the income slab shall be prescribed by the Government and shall be notified from time to time.

107. *Medical Insurance.*—(1) Government shall provide free medical insurance to the people who are below poverty line in such manner as may be prescribed.

(2) The State shall prescribe the maximum extent to which insurance coverage will be guaranteed and the scheme under which the eligibility of a person to medical aid or medicare.

The Kerala Public Health Code

(3) A person below the poverty line but above the status of destitution shall be entitled to medical aid and anyone falling within the status of destitution shall be eligible for medical care.

(4) All Government hospitals and health institutions maintained by a Panchayat, a Municipal body or other public organization supported by State Government shall give free treatment including free medicines upto a cost of Rs.50,000. Any such person undergoing medical treatment in a non-State health institution shall be equally eligible:

Provided he is admitted in such institution for special reasons or absence of facilities in the institutions falling within clause (4).

(5) Every district health authority shall make due enquiries about the financial condition and other circumstances of the patient claiming mediclaim or medicare and his recommendation shall be final subject to investigation by the Collector of the District who may supercede the orders of the health authority after giving a hearing to the patient affected and the authority who has initially granted or refused the free medical facility.

(6) A patient falling within BPL category shall be given a coupon entitling him to payment for medical treatment as recommended by the head of the hospital or institution. The required coupon shall be issued by the District Health Officer or the recommendation of the head of the medical institution. Every patient who is a destitute shall be eligible for a coupon which will entitle him to full payment of medical cost including diagnosis and other tests, special treatment and price of drugs and medicine. On presentation of the coupon, countersigned by the head of the institution the District Collector shall make the necessary payment in fulfillment of the right to medical aid and medicine.

(7) Every employee serving under the Government, Judiciary, Public Sector Undertakings, Autonomous bodies, Welfare Fund Boards, Co-operative Institutions, Board and Corporations, Local Authorities, Universities and all other statutory bodies shall be insured for medical care.

(8) The expenses for insurance policy under sub-section (1) shall be met by the Government or other concerned bodies.

(9) The terms and conditions of the medical care policy shall be as may be prescribed.wq

The Kerala Public Health Code

CHAPTER XII
FAMILY PLANNING

108. *Family Planning*.—(1) Government shall take all measures for the effective control of population growth in the State.

(2) In every hospital in the State including Private Hospitals, there shall be sufficient provision for conducting Vasectomy and Tubectomy or any other family planning devices. Every person undergoing Vasectomy or Tubectomy or any other family planning devices shall be provided with free nutritious food for the upkeep of their health. All treatments in connection with all family planning schemes shall be free. The expenses for such treatment in private hospital shall be reimbursed by the Government in such manner as may be prescribed.

(3) Every men and women who come forward for conducting Vasectomy or Tubectomy shall be misused or any other Family Planning device free of cost.

(4) The expenses for making the insurance policy shall be met by Government.

(5) The mode of payment of the insurance premium and terms and conditions of the insurance shall be such as may be prescribed.

(6) In cases where any hospital authorities refuses to comply with the above provisions, the aggrieved person may file petition before any of the Health Authorities designated under sub-section (3) or (4) of section 5.

(7) The Health Authority, may after making such enquiry as he deems fit take decision on the petition.

(8) If the Health Authority finds that the refusal of the hospital authority is not justifiable, he may impose fine on the hospital authorities an amount not exceeding rupees thousand.

(9) If the hospital authority is aggrieved by the decision of the health authority, the hospital authority may file appeal before the Director of Health Service.

(10) The Director of Health Services may take decision on the appeal within such time as may be prescribed.

(11) The decision of the Director of Health Service under sub-section (10) shall be final.

The Kerala Public Health Code

CHAPTER XIII

PALLIATIVE CARE

109. *Palliative Care Centre.*—(1) Government shall establish a minimum of one Palliative Care Unit in every district for the care of terminally ill patients.

(2) Sufficient number of doctors, nurses and attenders specially trained for attending the needs of terminally ill patients shall be posted in each Palliative Care Unit.

(3) Every local bodies shall provide to the Palliative Care Units in their area the necessary essential drugs for the care of the patients.

(4) Government shall make necessary arrangements for the training of doctors, nurses and attenders for attending the terminally ill patients.

CHAPTER XIV

MEDICAL REIMBURSEMENT

110. *Medical reimbursement.*—(1) All expenses in connection with the medical treatment of employees working under the Government, statutory body, corporation, local authority, University and other institutions shall be reimbursed by the Government.

(2) All medical reimbursement claims under sub-section (1) shall be submitted before the concerned authority within a period of six months after the completion of the treatment.

(3) Medical reimbursement claims shall be submitted in such form accompanied by such certificates of the doctors as may be prescribed.

(4) Government shall reimburse all the medical expenses irrespective of the fact whether the treatment is made in Government Hospital, or State recognized private, allopathy, ayurvedic or homeo hospitals.

CHAPTER XV

FAIRS AND FESTIVALS

111. *Notification of fairs and festivals by Government.*—(1) The Government may, by notification,

(a) declare that any local area or part of a local area in which a fair or festival is to be held shall, for the purposes of this chapter, be a notified fair or festival centre for such period as may be specified in the notification; and

The Kerala Public Health Code

(b) define the limits of the area which shall, for the purposes aforesaid, be the site for the fair or festival.

(2) The provisions of this chapter shall apply to fairs and festivals in connection with which a notification under sub-section (1) has been issued.

112. *Notice to be given for fairs and festivals.*—(1) The person or authority in charge of any fair or festival shall, not less than thirty days before its commencement, intimate to the local authority, and the Health Authority of the local area or Inspector of the local area, concerned, or, in case the fair or festivals to be held within the jurisdiction of more than one local authority, to those local authorities and the Health Authority or Inspector of each of the local areas concerned, the date of commencement of such fair or festival and the period for which it will last.

(2) The person or authority in charge of fair or festival shall also furnish such other particulars relating to the fair or festival as may be called for by the local authority and the Health Authority of the local area or the Inspector of the local area concerned.

113. *Sanitary arrangements, etc.*—The local authority within whose jurisdiction a fair or festival is held or if it is held within the jurisdiction of two or more local authorities any person or committee appointed by such local authorities jointly shall make provision for,

- (i) the cleaning and draining of the site;
- (ii) the disposition of the several parts of fair or festival, including alignment of road within the site;
- (iii) the supply of sufficient quantities of water fit for drinking and cooking purposes for the use of person resorting to the fair or festival and the proper preservation of such water;
- (iv) the accommodation of pilgrim and visitors to such extent as may be practicable;
- (v) the lighting of the fair or festival centre;
- (vi) the supply by suitable persons of wholesome food at reasonable rates and in such quantities as may be necessary to persons resorting to the fair or festival and the proper supervision and inspection of all food prepared or offered for sale or stored in the course of transit within the fair or festival centre;
- (vii) the collection, removal and disposal of refuse, rubbish and sewage;
- (viii) the supply and maintenance of suitable latrines for the use of persons resorting to the fair or festival;

The Kerala Public Health Code

(ix) the detection and segregation of cases of infectious diseases and the prevention of the introduction and spread of such diseases;

(x) the employment of adequate medical staff, the provision of medical relief and the furnishing of hospital accommodation both for general and isolation purposes, and

(xi) such other purposes as may be prescribed.

114. *Health Authority of the local area or Inspector of the local area to supervise arrangements.*—The arrangements mentioned in section 101 shall be made under the supervision and control of the Health Authority of the local area or the Inspector of the local area concerned, or if the fair or festival is held within the jurisdiction of more than one local authority, under the supervisions and control of the Health Authority of the local area or the Inspector of the local area of one of such local authorities, designated by the person or committee referred to in section 101 or in case if no Health Authority of the local area or the Inspector of the local area is so designated, under the supervision and control of the Health Authority of the local area or the Inspector of the local area concerned, within their respective local areas.

115. *Power to enter and seize unwholesome food.*—(1) The Health Authority of the local area or the Inspector of the local area or the Health Authority of the State or the District Health Authority may,—

(a) enter and inspect any building or shop in the fair or festival centre which is a source of food supply;

(b) for the purpose of inspection, have access to any source of water supply on such centre or within such distance there from as the Government may, by general or special order determine; and

(c) seize any food prepared or offered for sale or stored or in course of transit within the fair or festival centre, which he has reason to believe, is unwholesome or unfit for human consumption and destroy the same forthwith if, in his opinion, such food is of a perishable nature.

(2) Health Authority of the local area or Inspector of the local area seizing any food under clause (c) of sub-section (1) shall, if it is not destroyed under that clause, report the seizure to District Health Authority and the District Health Authority is of opinion that the food is unwholesome or unfit for human consumption, he may by order in writing direct the food to be destroyed and any expense incurred in this behalf, including the cost of analyzing the food or sample thereof shall be recoverable from the person from whom the food was seized, as if it were an arrear of any tax due to a local authority:

The Kerala Public Health Code

Provided that if such food is of non perishable nature and the District Health Authority is of the opinion that such food is wholesome and fit for human consumption, the food shall be returned to the person from whom it was seized and the cost, if any, of analysing the food or a sample thereof, shall be borne by the local authorities concerned.

116. *Occupation of building, etc. required in connection with fair or festival.*—(1) The local authority may in cases of emergency with the sanction of the District Collector, depute any person to enter upon, occupy and use without having recourse to the provisions of the Land Acquisition Act, for the time being in force, any land or any building not being a dwelling house in the notified fair or festival centre, which in the opinion of the Health Authority of the local area or the Inspector of the local area, is required and is suitable for any purposes connected with the fair segregation sheds, latrines and the like:

Provided that if such land or building is occupied, notice shall be given to the occupants or be conspicuously affixed on such land or building not less than twenty-four hours before it is entered upon.

(2) The owner of such land or building shall be entitled to compensation for any damages or expenses incurred and for a reasonable rent for the period during which it has been occupied or used for any of the purposes referred to in sub-section (1) and such compensation and rent shall be fixed by the District Collector.

(3) The local authority shall, when any such land or building ceases to be occupied or used for any of the purposes aforesaid, cause it to be thoroughly disinfected and cleaned.

117. *Control over public or private source of water supply.*—(1) The Health Authority of the local area or the Inspector of the local area shall by notice in writing, require the owner of or other person having control over any source of water supply situated in the fair or festival centre or within such distance therefrom as the Government may, by general or special order, determine, to close or disinfect such source within a specified time, if in the opinion of the Health Authority of the local area or the Inspector of the local area, it is likely to endanger or cause the spread of disease among the persons resorting to the fair or festival.

(2) If the owner or person aforesaid fails or neglects to comply with any notice issued under sub-section (1) within the time specified therein the Health Authority of the local area or the Inspector of the local area may, by himself, take necessary action and the whole of the expenses incurred in doing so or such part thereof as the Health Authority of the local area or the Inspector of the local area may determine to be reasonable, shall be recovered from such owner or person as if it were an arrears any tax due to a local authority.

The Kerala Public Health Code

118. *Licencing of houses to accommodate visitors to fair or festival.*—

(1) The owner or occupier of house, not being a lodging house, registered under Part I of this Code situated in any notified fair or festival centre shall not for the purpose of gain, accommodate in the house visitors to the fair or festival without obtaining a licence in that behalf from the local authority.

(2) Every application for licence under sub-section (1) shall be in writing containing such information as may be required by the local authority and shall be accompanied by such fee as may be prescribed for grant of the licence.

(3) If the local authority, the Health Authority of the local area or the Inspector of the local area is satisfied that the house is suitable for accommodating visitors to the fair or festival, may issue a licence in the prescribed form and subject to the prescribed conditions for the recommendation in the house of such number of visitors as may, in the opinion of the local authority conveniently revived therein, having regard to the number of resident in the house, whether as members of the family or as servants of the owner or occupier.

CHAPTER XVI
MISCELLANEOUS

119. *Power to make rules.*—(1) The Government may make rules generally to carry out the purpose of Part I of this Code.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for,—

(a) all matters expressly required or allowed by Part I of this Code to be prescribed; and

(b) for regulating the situation in which sanitary conveniences for the use of the public shall be provided by a local authority, and the nature and extent of such sanitary convenience.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of 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 make any modification in the rule or decide that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Kerala Public Health Code

120. *Provision for the delivery of School Health Service.*—Every School Authority shall provide necessary facilities for the delivery of School Health Service such as clean room, vehicle etc. as required by the Local Health Authority of the local area or the Inspector of the local area.

121. *Propaganda by Local Authority.*—Every Local Authority shall carry out intensive and extensive propaganda for the advancement of public health.

122. *Appeal against decision of Health Authority.*—Any decision of the Health Authority of the local area or the Inspector of the local area against which an appeal is not otherwise provided for in Part I of this Code shall be subject to such appeal as may be prescribed.

123. *Method of serving notices.*—(1) When any notice is required to be given by or under part I of this Code or any rule order or declaration made under it, such notice shall be in writing and shall be given,—

(a) by giving or tendering the notice to such person; or

(b) if such person is not found, by leaving such notice at his last known place of abode or business or by giving or tendering the same to some adult member of his family; or

(c) if none of the means aforesaid be available by affixing the same in some conspicuous part of such place of abode or business.

(2) When the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the notice and in the case of joint owners and occupiers, it shall be sufficient to serve it on or send it to one of such owners or occupiers.

124. *Cognizance of offences against Part I of this Code.*—No person shall be tried for any offence against the provisions of this Part I of this Code, or the rules made thereunder unless a complaint is made within three months of the commission of the offence, by the police, or the local authority or the Health Authority of the local area or the Inspector of the local area or by a person expressly authorized in this behalf by the local authority or the Government:

Provided that nothing contained in this section shall effect the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) in regard to the power of certain Magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion.

The Kerala Public Health Code

125. *Power to compound offences.*—The Health Authority of the local area or the Inspector of the local area may as the case may be, compound any violation or offence under part of this Code or the rules made thereunder in the manner as prescribed.

126. *Powers of the police to arrest offenders against Part I of this Code, etc.*—Any police officer not below the rank of a Sub Inspector may arrest a person committing an offence against any of the provisions of Part I of this Code or of any rule made thereunder, if his name and address are unknown to the officer and such person on demand declines to give his name and address or gives a name and address which the officer has reason to believe to be false.

127. *Bar of suits and prosecution in certain cases.*—(1) No suit, prosecution or other proceeding shall lie against any local authority or any Health Authority of the local area or the Inspector of a local area or against the Government or any officer or servant of a local authority or of the Government or against any person appointed under this Act by the local authority, Government or any other authority for any Act done or purporting to be done under Part I of this Code, without the previous sanction of the Government.

(2) No local authority or Health Authority of the local area or Inspector of a local area or officer or servant of any local authority or of the Government and no person appointed by the local authority, Government or any other authority under Part I of this Code, shall be liable in respect of any such act in any civil or criminal proceedings if the act was done, in good faith in the course of the execution of duties or the discharge of functions imposed by or under Part I of this Code.

128. *Punishment for malicious abuse of powers.*—(1) Any Health Authority of the local area or the Inspector of a local authority or any officer or servant of the local authority or of the Government, or any person appointed under Part I of this Code, who maliciously abuses any power conferred on him by or under Part I of this Code, shall be punished with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both.

(2) No prosecution shall be instituted under this section without the previous sanction of the Government.

129. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of Part I of this Code, the Government may, by order published in the Gazette, make such provisions not inconsistent with the provisions of Part I of this Code as appear to them to be necessary or expedient for the purpose of removing such difficulty:

The Kerala Public Health Code

Provided that no such order shall be issued under this sub-section after the expiry of two years from the date of commencement of Part I of this Code.

(2) Every order issued under sub-section (1) shall, as soon as may be, after it is issued, be laid before the Legislative Assembly.

130. *Act to override other laws.*—The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any custom or usage, or in any contract, express or implied, inconsistent with the provisions of Part I of this Code.

131. *Repeal and saving.*—The Travancore-Cochin Public Health Act, 1955 (16 of 1955) and the Madras Public Health Act, 1939 (3 of 1939) 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) are hereby repealed:

Provided that such cessation or repeal shall not affect,—

(a) The previous operation 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 enactments;

(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, obligation, liability, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if Part I of this Code has not been passed; or

(e) any appointment or rules, bye-laws or regulations made any notification, notice, order, declaration or direction issued under the repealed enactments and in force at the commencement of Part I of this Code to the extent they are not inconsistent with the provisions of Part I of this Code.

The Kerala Public Health Code

PART II
CLINICAL ESTABLISHMENTS

CHAPTER I

Preliminary

132. *Definitions.*—In Part I of this part of the Code unless the context otherwise requires,—

(a) “accreditation” means approval by competent agency in the respective fields;

(b) “authority” means the District registering authority designated under section 134;

(c) “certificate” means certificate of registration issued under sections 140 and 153;

(d) “clinical establishment” means—

(i) hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers regular services, facilities with or without beds requiring treatment, diagnosis or care for illness, injury, deformity, abnormality or pregnancy, under *modern medicine* established and administered or maintained by any person or body of persons, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in clause (i), in connection with the diagnosis or treatment of diseases where pathological bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not, and shall include a clinical establishment owned, controlled or managed by—

- (1) the Government or a department of the Government;
- (2) a Trust, whether public or private;
- (3) a Corporation (including a co-operative society) registered under a State Provincial or State Act, whether or not owned by the Government;
- (4) a local authority, and
- (5) a single doctor establishment,

The Kerala Public Health Code

- (6) Any other clinical establishment functioning within State rendering Modern Medicine Services. But does not include the clinical establishments owned, controlled or managed by the Armed Forces.

Explanation.—For the purpose of this clause “Armed Forces” means the forces constituted under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957;

(e) “Modern Medicine” means modern scientific medicine including all its branches;

(f) “State Council” means the State Council for clinical establishments established under section 131;

(g) “notification” means a notification published in the Official Gazette;

(h) “prescribed” means prescribed by rules made under Part II of this Code;

(i) “register” means the register maintained by the authority, State Registrar under sections 37 and 39 of the part of the Code containing the number of clinical establishments registered and the expressions “registered” and “registration” shall be construed accordingly;

(j) “registration” means to register under section 11 and the expression registration or registered shall be construed accordingly;

(k) “rules” means rules made under this part of the Code;

(l) “Schedule” means Schedule to this part of the Code;

(m) “standards” means conditions that the Government may prescribe under section 12, for the registration of clinical establishments.

CHAPTER II

THE STATE COUNCIL

133. *Establishment of State Council.*—(1) With effect from such date as the Government may, by notification, appoint in this behalf, there shall be established for the purposes of Part II of the Code, a Council to be called the State Council.

(2) The State Council shall consist of—

(a) Director of Health Services, Department of Health & Family Welfare, State Government, ex officio, who shall be the Chairperson;

The Kerala Public Health Code

- (b) Director of Medical Education
- (c) Director of Insurance Medical Services
- (d) Drugs Controller, Kerala
- (e) Director, Public Health Lab, Thiruvananthapuram.
- (f) One representative each to be nominated by the—
 - (i) Medical Council of Kerala constituted under section 3 of the Indian Medical Council Act, 1956;
 - (ii) Dental Council of India constituted under section 3 of the Dentists Act, 1948;
 - (iii) Nursing Council of India constituted under section 3 of the Indian Nursing Council Act, 1947;
 - (iv) Pharmacy Council of India constituted under section 3 of the Pharmacy Act, 1948;
 - (g) one representative of Kerala State Branch of Indian Medical Association, President/Secretary/Nominee;
 - (h) one representative of Bureau of the Indian Standards constituted under section 3 of the Bureau of Indian Standards Act, 1986;
 - (i) one representative from Qualified Private Medical Practitioners Association;
 - (j) one representative from Kerala Government Medical Officers Association;
 - (k) one representative from Kerala Government Medical College Teachers Association, President/Secretary/Nominee;
 - (l) one legal expert from Law Department nominated by Government.
- (3) The nominated members of the Council shall hold office for one year but shall be eligible for re-nomination:

Provided that the person nominated shall hold office for so long as he holds appointment of the office by virtue of which he was nominated to the Council.
- (4) The members of the Council shall be entitled for such allowances as may be prescribed by the Government.
- (5) The Council may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

The Kerala Public Health Code

(6) The Council may constitute sub-committees and may appoint to such sub-committee, as it deems fit, consisting of members who are not members of the Council for such periods, not exceeding *one year*, for the consideration of particular matters.

(7) The functions of the Council may be exercised notwithstanding any vacancy therein.

(8) The Government shall appoint a person to be the *Registrar* of the Council and may provide the Council with such other secretarial and other staff as the Government considers necessary.

134. *Disqualification for appointment as member.*—A person shall be disqualified for being appointed as a member of the Council if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

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

(d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or

(e) has, in the opinion of the Government, such financial or other interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a member.

135. *Functions of the Council.*—The Council shall have the following functions, namely:—

(a) determine the standards for ensuring proper health care by the clinical establishments;

(b) classify the clinical establishments into different categories and establish a dynamic system of accreditation;

(c) develop the minimum standards and their periodic review;

(d) compile, maintain and update a State register of clinical establishments;

(e) collect the statistics in respect of clinical establishments;

(f) perform any other function determined by the State of Government, from time to time.

The Kerala Public Health Code

136. *Power to seek advice or assistance.*—The Council may associate with itself any person or body whose assistance or advice it may desire in carrying out any of the provisions of Part II of this Code.

137. *The Council to follow consultative process.*—The Council shall follow a consultative process for determining the standards and for classification of clinical establishments for development of the accreditation system could be periodically reviewed.

CHAPTER II A

**CONSTITUTION OF COMMITTEE FOR FIXATION OF
STANDARD FEE**

137A. *Procedure for fixation of standard fee leviable by medical practitioners.*—(1) The medical practitioners working in clinical establishment shall demand and receive only a reasonable amount of fee from the patients treated by them as inpatient in such establishments or outside such establishments or in their residence as outpatients. Such fee shall not exceed the fee prescribed by the expert body constituted by the Government under sub-section (2) of this Section.

(2) The Government shall constitute a high power committee of expert doctors practicing in different systems and branches of modern medicine consisting of not more than 7 members for the purpose of fixing the maximum fee leviable by the medical practitioners for rendering different types of medical assistance to the patient from clinical establishments or outside such establishments.

(3) The Chairperson of the Committee shall be the Director of Health Service. Other members of the Committee shall be appointed by the Government from the list of experts prepared and submitted to the Government by the Chairperson.

(4) The Committee may conduct such enquiries and collect such information's as they deem fit from medical practitioners of different systems and branches, the owners of medicare institutions, the patients and the public before arriving at the amount of fee leviable for different kinds of treatment.

(5) On the basis of the materials collected by the committee, it shall initially fix the fees for various kinds of medical assistance and give wide publicity for the same and inviting objections regarding the correctness or otherwise of the amount fixed, from the medical practitioners, the public and all others concerned specifying a time-limit within which the objections have to be submitted to the Committee.

The Kerala Public Health Code

(6) The Committee may consider the objections received after giving all or any of the objectors as the Committee may deem fit, an opportunity to be heard in person and fix the final standard fee chargeable by the medical practitioners for different kinds of medical assistance rendered by them in the course of performing their duties as such.

(7) The standard fee so fixed may be revised from time to time by the committee for sufficient reasons.

(8) If after such fixation of such standard fee by the Committee any medical practitioner or the owner or any other person running the clinical establishment collects more than the standard fee prescribed for any medical assistance rendered, he or she shall be liable to refund the same to the patient on written demand.

137 B. *Liability of Medical Practitioners to be proceeded against for refund of fees.*—In case no refund is made even after a claim is made for refund of the same such owner or medical practitioner or other person liable to refund the fees may be liable to be proceeded against in Civil Court by the concerned patient or any body authorized by him for such refund.

CHAPTER III

REGISTRATION AND STANDARDS FOR CLINICAL ESTABLISHMENTS

138. *Registrar of Clinical Establishments.*—The Government shall, by notification, designate a subordinate of the Director of Health Services or any other officer as the Registrar of clinical establishments.

139. It shall be the responsibility of the Registrar of clinical establishments to compile and update the State register of clinical establishments.

140. *Authority for Registration.*—The State Government shall, by notification, designate the District Medical Officer (Health) as an authority to be called the District Registering Authority for each District for registration of clinical establishments.

141. *Registration for Clinical Establishments.*—No person shall carry on a clinical establishment unless it has been duly registered in accordance with the provisions of this Act.

Explanation.—For the purposes of this section, “carry on” means to manage patients in a clinical establishment for providing treatment, diagnosis, or nursing care. It includes private practice of Government Doctors.

The Kerala Public Health Code

142. *Conditions for Registration.*—For registration and continuation, every clinical establishment shall fulfill—

- (i) the standards of facilities and services as may be prescribed according to the level of accreditation.
- (ii) the minimum qualifications for the personnel as may be prescribed;
- (iii) provisions for maintenance of records and timely and completed reporting as may be prescribed;
- (iv) such other conditions as may be prescribed.

143. *Classification of Clinical Establishments.*— Different standards may be prescribed for classification of different categories.

CHAPTER IV

PROCEDURE FOR REGISTRATION

144. *Application for Provisional Certificate of Registration.*—(1) For the purposes of registration of the clinical establishment under section 10, an application in the prescribed proforma along with the prescribed fee shall be furnished to the authority.

(2) The application shall be furnished in person or by post.

(3) The application shall be made in such form and shall be accompanied by such details as may be prescribed under part II of this Code or Rules made thereunder.

(4) If any clinical establishment is in existence at the time of the commencement of part II of this Code an application for its registration shall be made within six months from the date of the commencement of Part II of this Code.

(5) If any clinical establishment is already registered under any existing law requiring registration of such establishments, even then it shall apply for registration as referred to in sub-section (1).

145. *Provisional Certificate.*—(1) In the first instance every clinical establishment shall apply for provisional registration, one month prior to the expected date of starting of establishment.

(2) The authority shall, within a period of fifteen days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and such information, as may be prescribed.

The Kerala Public Health Code

146. *No Inquiry prior to Provisional Registration.*—(1) The authority may not conduct any inquiry prior to the grant of provisional registration.

(2) Notwithstanding the grant of the provisional certificate of registration, the authority shall, within a period of forty-five days from the grant of provisional registration, cause to be published in such manner, as may be prescribed, all particulars of the clinical establishment proposed to be registered.

147. *Validity of Provisional Certificate.*—Every provisional registration shall be valid to the last day of the twelfth month from the date of issue of the certificate of registration and such registration shall be renewable.

148. *Display of the Certificate Registration.*—The certificate shall be displayed in a conspicuous place in the clinical establishment.

149. *Duplicate Certificate.*—In case the certificate is lost, destroyed, mutilated or damaged, the authority shall issue a duplicate certificate on the request of the clinical establishment and on payment of such fees, as may be prescribed.

150. *Certificate to be non transferable.*—The certificate of registration shall be non-transferable and, in the event of change of ownership or change of category or change of management or on ceasing to function as a clinical establishment, the certificate of registration shall be surrendered to the authority and the clinical establishment shall apply afresh for grant of certificate of registration.

151. *Renewal of Registration.*—Application for renewal of registration shall be made thirty days before the expiry of the validity of the certificate of provisional registration and, in case the application for renewal is made after the expiry of the provisional registration, the authority shall allow renewal of registration on payment of such fine, as may be prescribed.

152. *Time limit for Provisional Certificate.*—Clinical Establishments registered under provisional registration shall be assessed by the District Registering Authority and shall be granted permanent registration suited for the level of accreditation or denied registration, if they fall below the minimum standard permitted within one year.

153. *Application for Permanent Registration.*—Application for permanent registration by a clinical establishment shall be made to the authority in such form and be accompanied by such fees, as may be prescribed.

154. *Verification of application.*—The clinical establishment shall submit evidence of the clinical establishment having complied with the prescribed standards for the level of accreditation in such manner, as may be prescribed.

The Kerala Public Health Code

155. *Standards for Permanent Registration.*—(1) Permanent registration shall be granted only when a clinical establishment fulfills the prescribed minimum standards for registration by the Council.

(2) The registering authority shall inspect every registered establishment at least once in two years to check for compliance of the standards.

(3) Each permanent registration shall be valid for a period of three years following which it may be renewed prior to the expiry by payment of prescribed fees. Late applications may be renewed by payment of prescribed fine.

156. *Allowing or Disallowing of Registration.*—The authority shall pass an order immediately after the expiry of the prescribed period and within the next thirty days thereafter either –

(a) allowing the application for permanent registration at a particular level of accreditation; or

(b) disallowing the application:

Provided that the authority shall record its reasons, if it disallows an application for permanent registration.

157. *Certificate of Permanent Registration.*—The authority shall issue a certificate of permanent registration in such form and containing such particulars, as may be prescribed, if the authority allows an applicant.

158. *Fresh Application for Permanent Registration.*—The disallowing of an application for permanent registration shall not debar a clinical establishment from applying afresh for permanent registration under section 24 and after providing such evidence, as may be required, of having rectified the deficiencies on which grounds the earlier application was disallowed.

159. *Cancellation of registration.*—(1) If, at any time after any clinical establishment has been registered, the authority is satisfied that,—

(a) the conditions of the registration are not being complied with; or

(b) the person entrusted with the management of the clinical establishment has been convicted of an offence punishable under this part of the Code, it may issue a show cause notice as to why its registration under this part of the Code should not be cancelled for the reasons to be mentioned in the notice.

The Kerala Public Health Code

(2) If after giving a reasonable opportunity to the clinical establishment, the authority is satisfied that there has been a breach of any of the provisions of this part of the Code or the rules made thereunder, it may, without prejudice to any other action that it may take against such clinical establishment, cancel its registration.

(3) Every order made under sub-section (1) shall take effect—

(a) where no appeal has been preferred against such order immediately on the expiry of the period prescribed for such appeal, and

(b) where such appeal has been preferred and it has been dismissed from the date of the order of such dismissal:

Provided that the authority, after cancellation of registration for reasons to be recorded in writing, may restrain immediately the clinical establishment from carrying on if there is imminent danger to the health and safety of patients.

160. *Inspection of registered clinical establishments.*—(1) The authority or an officer authorized by it, shall have the right to cause an inspection of, or inquiry in respect of any clinical establishment, its building, laboratories and equipment and also of the work conducted or done by the clinical establishment, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the clinical establishment and that establishment shall be entitled to be represented thereat.

(2) The authority shall communicate to the clinical establishment the views of that authority with reference to the results of such inspection or inquiry and may, after ascertaining the opinion of the clinical establishment thereon, advise that establishment upon the action to be taken.

(3) The clinical establishment shall report to the authority, the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time, as the authority may direct.

(4) Where the clinical establishment does not, within a reasonable time, taken action to the satisfaction of the authority, it may, after considering any explanation furnished or representation made by the clinical establishment, issue such directions, as that authority deems fit, and the clinical establishment shall, comply with such directions.

The Kerala Public Health Code

161. *Power to enter.*—The authority or an officer authorized by it may, if there is any reason to suspect that anyone is carrying on a clinical establishment without registration, enter and search in the manner prescribed, at any reasonable time and the clinical establishment, shall offer reasonable facilities for inspection or inquiry and be entitled to be represented thereat:

Provided that no such person shall enter the clinical establishment without giving *sufficient* notice of his intention to do so.

162. *Finance and Accounts.*—(1) The Council may fix fees for different categories of clinical establishments, as may be prescribed.

(2) It shall be the responsibility of the Registrar of clinical establishments to ensure that the amount is remitted to the State Council, on time.

163. *Appeal and revision.*—(1) Any person, aggrieved by an order of the registering authority refusing to grant or renew a certificate of registration or revoking / revising a certificate of registration may, in such manner and within such period as may be prescribed, prefer an appeal to the State Council;

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the Appellate Authority shall after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

Revision.—The Government may suo moto or on an application made to it by any applicant call for the records of any case in which an order has been passed by the Authority and if it appears to the Government, that the order is improper or illegal, after giving an opportunity of being heard to the concerned, the Government may pass such order as it deems fit.

CHAPTER V

REGISTER OF CLINICAL ESTABLISHMENTS

164. *Register of Clinical Establishments.*—(1) The authority shall maintain a register or digital format of clinical establishments, registered by it and it shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner, as may be prescribed by the Government.

(2) Each authority, including any other authority set up for the registration of clinical establishments under any other law for the time being in force, shall supply in digital format to the State Registrar of clinical establishments a copy of every

The Kerala Public Health Code

entry made in the register of clinical establishments in such manner, as may be prescribed to ensure that the State Register is constantly *updated* with the registers maintained by the registering authority in the State.

165. *Maintenance of State Register of Clinical Establishments.*—The Council shall maintain in such form and containing such particulars, as may be prescribed by the Government, a register to be known as the State register of clinical establishments in respect of clinical establishments.

166. *Penalty.*—Whoever contravenes any provision of this Act shall, if no penalty is provided elsewhere, be punishable for the first offence with fine which may extend to ten thousand rupees, for any second offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend upto five lakh rupees depending on the gravity.

167. *Penalty for non registration.*—(1) Whoever carries on a clinical establishment without registration shall, on conviction for first offence, be punishable with a fine up to fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for any subsequent offence with fine which may extend upto five lakh rupees *depending on the gravity*.

168. *Disobedience of order, obstruction and refusal of information.*—(1) Whoever willfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this part of the Code to discharge, shall be punishable with fine which may extend to *one* lakh rupees.

(2) Whoever being required by or under this part of the Code to supply any information willfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall be punishable with fine which may extend to *one* lakh rupees.

169. *Penalty for minor deficiencies.*—Whoever contravenes any provision of this part of the Code or any rule made thereunder resulting in deficiencies that do not pose any imminent danger to the health and safety of any patient and can be rectified within a reasonable time, shall be punishable with fine which may extend to ten thousand rupees.

170. *Offences by Companies.*—(1) Where an offence under this part of the Code has been committed by a company, every person who at the time of offence was committed was in-charge of and was responsible to the company or 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;

The Kerala Public Health Code

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

(2) Notwithstanding anything contained in sub-section (1), where any offence under part II of this Code has been committed by a company and it is proved that the offence has been committed with the consent or commission 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 deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm, a co-operative society or other Association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

171. *Offences by Government Departments.*—(1) Where an offence under this part of the Code has been committed by any Department of Government, the officer responsible shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

172. *Recovery of fine.*—Whoever fails to pay the fine, the Registrar of clinical establishment may prepare a certificate signed by him specifying the fine due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder, as if it were an arrear of land revenue *and remitted to the State Council.*

The Kerala Public Health Code

CHAPTER VI

SPECIAL PROVISIONS FOR GOVERNMENT HOSPITALS

173. *Category of Hospitals.*—(1) Government shall establish sufficient number of hospitals for the health care and medical care of the people of Kerala.

(2) The category of such hospitals may be classified as follows:—

- (a) Basic Health Unit—Government Dispensary—sub-centres
- (b) Primary Health Centre
- (c) Intermediate Hospital—Taluk Hospital
- (d) District Hospital
- (e) Medical College Hospital
- (f) Special Hospital or Institution
- (g) Institution for population groups.

(3) The number of each category of hospitals and their location may be decided by the Government. So far as possible the number of hospitals shall be as follows:—

- | | | |
|-------|-----------------------|--|
| (i) | District Hospital | One for each District. |
| (ii) | Intermediate Hospital | One for every four lakhs of population |
| (iii) | P.H. Centres | One for every 80,000 population |
| (iv) | Basic Health Units | One for every 20,000 population |
| (v) | Sub-centres | One for every 5,000 population |

(4) Government shall while deciding the number and location, it should be ensured that medical care and health care reach uniformly to all people within a reasonable reach.

(5) Sub-centres shall be functional part of basic health units, PHCs and Intermediate Hospitals to deliver institutional care services to the peripheral population through Health Clinics by the male health worker, MCH and FW Clinics by the female health worker.

(6) The broad functional structure of the Basic Health Unit—Government Dispensary shall be as follows:—

The Kerala Public Health Code

1. Medical care
 - (a) Inpatient service with 10 beds
 - (b) Outpatient service
2. Health care
 - (a) Institutional services:
 1. Through the Health Clinics and MCH & FW Clinics and Special Clinics of the Main Centre.
 2. Through the Clinics of Sub Centres.
 - (b) Extended service through the Male and Female Health Workers and Special Health Workers.
3. Implementation of Health Programmes
4. Supervision services
5. Auxiliary services like laboratory service and ministerial service including Medical Record Library.

(7) The broad functional structure of the Primary Health Centre shall be as follows:—

1. Medical care
 - (a) Inpatient service with 30 beds
 - (b) Ambulatory of Outpatient service
 - (c) Primary referral service
2. Health care
 - (a) Institutional service at the outpatient section of PHC and Sub Centres:
 - (i) Health Clinic
 - (ii) MCH & FW Clinic
 - (iii) Special Clinics
 - (b) Extended or Domiciliary service
3. Implementation of Health Programmes
4. Supervision
 - (1) First line
 - (2) Overall
5. Auxiliary services
 - (1) Laboratory facilities
 - (2) Post-mortem facilities
 - (3) Ambulance services
 - (4) Ministerial Services including Medical Record Library

The Kerala Public Health Code

(8) The broad functional structure of Intermediate Hospital—Taluk Hospital shall be as follows:—

1. Medical care
 - (a) Inpatient service with 200 beds.
 - (b) Ambulatory or outpatient service
 - (c) Emergency service
 - (d) Referral service
2. Health care as is available from a P.H.C.
3. Auxiliary service
 - (1) Laboratory
 - (2) Radiology
 - (3) Blood Bank
 - (4) E.C.G.
 - (5) Post-mortem facilities
 - (6) Ambulance
 - (7) Medical Record Library
4. Administrative services including overall supervision and control of the institutions in the area covered by an Intermediate Hospital.

(9) The broad functional structure of District Hospital shall be as follows:—

1. Medical care
 1. Institutional or inpatient service with 500 beds.
 2. Ambulatory or outpatient service
 3. Referral services
 4. Emergency service
2. Auxiliary services
 1. Laboratory
 2. Radiology
 3. Blood Bank
 4. E.C.G.
 5. Medico-legal services and Mortuary facilities
 6. E.E.G.
 7. Ambulance service for the living
 8. Ambulance service for the dead
 9. Power laundry
 10. Central sterilization
 11. Medical Record Library
3. Administrative services including internal supervision and control.

The Kerala Public Health Code

Sl. No.	Section	No. of Units	No. of beds in each Unit	Total No. of beds
(10) The intrinsic structure of intermediate hospital—Taluk hospital shall be as follows:-				
1	General medicine	2	20	40
2	General Surgery	2	20	40
3	Orthopaedic	1	10	10
4	Obstetrics & Gynaecology	2	20	40
5	Paediatric	2	20	40
6	E.N.T.	1	5	5
7	Eye	1	5	5
8	Skin & STD	1	5	5
9	Psychiatry	1	5	5
10	Dental	1	5	5
11	Emergency & unclassified cases	1	..	..
12	Anaesthesiology	1	..	..
13	Radiology	1	..	..
14	Clinical Pathology	1	..	..
		18		200

(11) The intrinsic structure of District hospital shall be as follows:—

1	Specialised Medical Unit	3	..	150
	General Medicine			
2	Specialised Surgical Units			
	General Surgery	3	..	150
3	Obstetrics & Physiotherapy	2	25	50
4	E.N.T.	1	20	20
5	Eye	1	20	20
6	Skin & STD	1	20	20
7	Psychiatry	1	15	15
8	Dental	1	5	5
9	T.B.	1	30	30
10	Isolation	1	20	20

The Kerala Public Health Code

Sl. No.	Section	No. of Units	No. of beds in each Unit	Total No. of beds
11	Emergency	..	..	20
12	Radiology	..	..	..
13	Anaesthesiology	..	..	..
14	Clinical Pathology	..	..	..
15	Histopathology	..	..	..
16	Medico-legal service	..	..	..
17	Obsterics and Gynaecology	..	..	..
18	Paediatric	..	..	..
		15		500

(12) Government may, from time to time modify the intrinsic structure under sub-section (9) and (10) according to the need of that particular area.

(13) Government shall establish sufficient numbers of women and children hospitals in each District for maternal and child health. Such hospitals shall be a independent of other category of hospitals.

(14) Government shall establish super speciality hospitals for Nephrology, Endocrinology etc., etc., in such places as considers necessary.

(15) Government shall establish such number of institutes as may be considered necessary for preventive services, research and training.

(16) The physical structure of each category of hospitals shall be as follows:—

1. Sub Centre

One Sub Centre will consists of two physical structures—each one being an office-cum-residential building preferably in cents of land. One building will be the Health Clinic and quarters of a Male Health Worker and the other will be MCH & FW Clinic and residence of Female Health Worker.
2. Basic Health Unit

One Main Centre and requisite number of Sub Centres.

The Kerala Public Health Code

- | | | |
|----|-----------------------|--|
| 3. | P.H. Centre | One Main Centre and requisite number of Sub Centres. |
| 4. | Intermediate Hospital | One complex for the Hospital proper and the requisite number of Sub Centres. |
| 5. | District Hospital | One complex for the Hospital |

174. *Staff strength of different category of hospitals.*—(1) The staff strength of different category of hospitals may be prescribed from time to time.

(2) The staff of pattern of other special category of hospitals shall be fixed by the Government by taking into consideration of the staff pattern prescribed under sub-section (1) as a guiding principle.

175. *Location of the Hospital.*—(1) The location of a hospital shall be decided depending on the population in that area, accessibility to the public availability of other hospitals in the area and similar factors.

(2) The site of a new hospital proposed to be constructed shall be selected based on the area of space available, suitability for building construction, easy accessibility for the public and the availability of public, utility services such as water supply and sewage system, electricity and telephone.

176. *Lay out of the Hospital.*—(1) A hospital must have seven major sections, namely:—

1. Outpatient Department
2. Emergency Department
3. Inpatient Department
4. Ancillary service units—Laboratory, X-Ray, Blood Bank, Central Sterilisation etc.
5. General Administrative Section.
6. House keeping services-stores, laundry, water and power and sanitation units
7. Staff quarters

(2) Outpatient Department and Emergency Department must be closest to the entrance to the site.

The Kerala Public Health Code

(3) Next zone must be allotted for ancillary services. Administrative services section shall also be located here.

(4) Next zone shall be the inpatient section.

(5) A zone independent of the main hospital shall be provided for services such as stores, laundry, kitchen, mortuary, and incinerator. Care should be taken to see that this zone is connected with all other sections.

(6) Staff quarters shall be provided at the peripheral part of the site.

(7) Corridors shall be provided connecting various sections of the hospital as far as possible connecting blocks at periphery for facilitating inter zone communications.

(8) Proper road access for various section of the hospital should be provided. There shall be provisions for garden, walking alleys, shade trees and parking spaces for vehicles as well as garages.

(9) There shall be adequate areas for patients and staff. The latrines shall be located away from the wards and connected by a corridor. The area for inpatient and outpatient departments have to be separated to provide for controlled entrances. The surgical areas shall be restricted entrance. There shall be one entry and each part situated at the junction of Outpatient Department and Inpatient Departments. Enquiry counter, Office, Medical Record, Library sections shall be located near the Outpatient Department with easy access to the public.

(10) Hospital building shall be kept neat and clean all the time.

177. *Inpatient section.*—(1) The inpatient section shall be grouped into major departments. Each department shall have sufficient wards situated to that department. There shall also be separate zone for pay wards to be used for different departments. The major departments shall be as follows, namely:—

- | | |
|--------------------------|---|
| 1. Medical Department | Consisting of General Medicine Medical Specialities. An Intensive Care Unit for medical emergencies is also essential. |
| 132. Surgical Department | Consisting of general surgery and other Surgicals specialities. A surgical suite and a post operative Intensive Care Unit must also provided. |

The Kerala Public Health Code

133. Speciality Department For highly specialized services.
134. Maternity Department For obstetrics and Gynaecology
135. Paediatric Department
136. Psychiatry Department
137. Isolation Department

(2) In places where there is separate hospital for women and children, inpatient section does not have a maternity and paediatric departments.

(3) Along with the major department as stated in sub-section (1), there shall be the following department also, namely:—

1. Geriatrics
2. Physiotherapy and Occupational Therapy
3. Dental Department
4. Research
5. Training

(4) There shall be an admission-cum-observation ward attached to the Emergency Department.

(5) Inpatient wards shall be so designed that in a 20 bedded ward unit, there shall be three cubicles each capable of accommodating six patients and two single bedded cubicles. In single bedded cubicles, serious patient requiring special attention and who are critically ill shall be accommodated. Each cubicle shall have a common wash basin and built in shelf for each bed. For each cubicle, there shall be space for doctor-nurse station.

(6) The ward unit shall have the following additional facilities, namely:—
For each 20 bedded ward unit.

1. Room for Nurses—Duty Room with toilet and other facilities.
2. Common toilets based on ISI standards may be provided.
3. Side laboratory and treatment room.
4. Utility room—for collection of dirty and used materials and cleaning them.

The Kerala Public Health Code

For each two 20 bedded ward units (additionally):

1. Room for medical staff with toilet and other facilities
2. Treatment room or minor operation room for aseptic procedures.
3. Dining room for patients.
4. Utility room for receiving supplies of stores
5. Room for the Nursing staff.
6. Room for male paramedical staff with toilets—resting and changing.
7. Room for female paramedical staff with toilets—resting and changing.

Additional Spaces

Additional space may be provided as follows:

1. Waiting space for patients' attendants and visitors.
 2. Space for parking trolleys, wheel chairs etc.
 3. Moving space such as verandah and corridors.
- (7) There shall be intensive care unit of six beds each for surgical and medical department.
- (8) There shall be additional space equivalent to one 6 bedded cubicle for accommodating doctor's room, nurses room, equipment room and treatment room.
- (9) Delivery rooms shall be organized on the pattern of surgical department with sufficient precautions for asepsis. One delivery room shall be provided for every fifty beds and each room shall accommodate not more than two delivery cots.
- (10) Paediatric Department shall have the following additional facilities, namely:—
- (1) Facilities for mothers to stay with the child
 - (2) Recreation facilities for children
 - (3) Isolation facilities
- (11) The paediatric department shall be located close to the Maternity Department.

The Kerala Public Health Code

178. *Paywards*.—Paywards shall be located in a separate part of the inpatient zone of a hospital with approaches to all departments. So far as possible, there shall be direct road access to the paywards.

179. *Administration Block*.—Administrative block shall be located with easy access for the public as well as for all sub-sections of the hospital and shall be located in the same zone ancillary services.

180. *Kitchen Block*.—There shall be a well designed kitchen block located near the wards but completely separated by a corridor to serve food through trolleys.

181. *Toilets*.—(1) The toilet area shall be separated from the main wards through a corridor connection. The toilet block shall be located and separated from the more habitable areas. The toilet shall be provided with good quality materials of closet and other fittings. Latrine seats shall be provided at least one for every 10 beds. There shall be sufficient bathrooms also.

182. *Water Supply*.—There shall be provision for supply of sufficient water to the hospital. There shall be separate sub tanks for operation room, delivery room and such other essential sections so as to ensure uninterrupted supply.

183. *Out-patient Services*.—(1) Timing of the O.P. department in different category of hospitals shall be so fixed so that any sick person is facilitated to receive services from any major health institution in the State.

(2) There shall be sufficient equipment in the O.P. department such as wheel chairs, trolleys, X-Ray, Laboratory.

(3) The working hall in the O.P. department shall be airy, spacious and provided with sufficient seating facility, lavatories, wash basins and the like. Medical Social Worker or Honorary Social worker shall be posted in the O.P. Department for guiding patients and dependants and for giving patient education.

(4) An emergency tray with all necessary medicine shall be kept for allergy, shock or on a phylaxix or any untoward reaction. One bed at the injection room should be provided for acute allergic reactions.

(5) In all medical institutions the General O.P. Department should function from 8 a.m. to 1 p.m.

(6) Referral Services as well as ancillary services shall also function concurrently during the General O.P. hours.

The Kerala Public Health Code

(7) In all referral hospitals an extended O.P. Department should function from 1 p.m. to 8 p.m. apart from the emergency service.

(8) The workload of General Duty Medical Officer be ordinarily calculated on the basis of one doctor for every 100 out-patients during a shift of 5 hours.

(9) Items of drugs issuable at O.P. be enhanced and the same shall be ensured at all times.

(10) All specialist services should be available at the O.P. Department for referral services during the General O.P. time.

(11) Nursing and para-medical services should be available for each of the O.P. Units.

(12) The registering and data keeping work pertaining to each O.P. case should be vested with the Medical Record Librarian.

(13) One sergeant should be posted in each hospital and he should be available for maintenance of orderliness in the O.P. Department during the O.P. hours.

(14) An information counter manned by a medico-sociologist should be located near the entrance of each hospital.

184. *Emergency Department.*—(1) Emergency department shall be located in easily approachable spacious surroundings. Boards in red conspicuously indicating location of the Emergency Department and Boards with the name of Emergency Service personnel of a particular shift be kept at a prominent place at the Emergency Department. The details are to be depicted in the local language also.

(2) Minimum of four general duty Medical Officers preferably those who are willing to work for at least an year be posted to this Department and the vacancies even transient should be kept re-filled with priority.

(3) Specialists in Surgery, Medicine, Obstetrics, Orthopaedics, Otorhinolaryngology (E.N.T.), Ophthalmology or other specialities need not be posted as Emergency Duty Medical Officers as long as such of these specialists are available for emergency call-duty.

(4) R.M.O's. should be given special training in the latest resuscitation techniques and also Blood Bank technology.

The Kerala Public Health Code

(5) The nursing staff earmarked and allotted to the Emergency Department shall not be allowed to be pooled along with those working in the general section. These staff should be volunteering but selected persons who should be posted at least for a period of three years and be given special inservice training (for a period of one month) in resuscitative and emergency medical care.

(6) Para-medical personnel should be posted in sufficient numbers earmarked for Emergency Department with training in First Aid and Stretcher-bearing as per St. Johns Ambulance Code (10 days course). They may be changed yearly so that experienced persons are transferred out only after newly posted co-workers get contact-training and later on formal training as suggested above.

(7) All Emergency Departments should have a special ward with beds for observation (Refer Chapter on “In-patient Services”). Patients of this Department should not ordinarily require stay for longer than 24 hours.

(8) Duty Medical Officer of the Emergency Department should always have easy access to an ‘Emergency medical Cupboard’. In addition a refrigerator should exclusively be provided for storing sera, anti-venin and other life saving drugs at the Emergency Department and in the custody of the duty Medical Officer of the Emergency Department. The items of drugs in the cupboard and in the refrigerator should be kept replenished every day to make up the original quantities and a register should be maintained to this effect after personal verification by the duty Medical Officer of the Emergency Department.

(9) At least a pair of stretcher, trolleys and wheelchairs should be available. In addition equipments required for simple diagnosis and resuscitation (Refer Appendix I) should be available at labeled sports, checked up for functional efficiency and recorded every time officers change on shift.

(10) Two Ambulance Vans at District level and one each at Intermediate level may be provided with enough number of drivers (Refer Chapter on “Institutional Staff Pattern’) on shift duty as to ensure service round the clock.

(11) Ambulant emergency services should be established attached to all the District hospitals which could be alerted if contacted through a specified well-known phone number. These ambulances should be provided with emergency kit and oxygen and other essential items. Communication facilities should also be provided for in these ambulances.

The Kerala Public Health Code

(12) Exclusive phone with connections to the major departments of the Hospital should be made available at hand-reach of the Emergency Duty Medical Officer.

(13) Clinical Pathology, Radiology, Cardiography and Blood Bank Units should function all the 24 hours at locations accessible with ease from the Emergency Department.

(14) An Emergency Surgery Room should also be made available. It is worthwhile providing this with an alternative power unit (Electric Generator).

(15) There should be resting room with lavatory facilities for the benefit of by-standers adjacent to the emergency block.

(16) Emergency Department should have diagrams and charts showing resuscitation techniques and operations, and also posology tables exhibited for ready reference.

(17) Medico-statistical and medico-legal records such as Nominal Register, Accident-cum-wound certificate, Police Intimation Forms etc., should be meticulously maintained and kept under lock and key. Medical records pertaining to emergency unit may be maintained by the Medical Record Library.

185. The following equipments and instruments required exclusively at the emergency department:

1. Stethoscope
2. Diagnostic set
3. Torch and Tape
4. B.P. Apparatus
5. Cylinder with Oxygen
6. Blower Respirator
7. Cardiac De-Fibrillator
8. Vene section apparatus
9. Aspirator/Suction apparatus
10. Electro-magnet set
11. Bronchoscope with F.B. catcher

The Kerala Public Health Code

12. Trachiotomy set
13. Stomach wash set
14. Enema set
15. Catheter set
16. Aiway
17. Nasal tube
18. Stretcher
19. Wheel-chair
20. Trolley

186. *Ancillary Services.*—(1) All District and Taluk hospitals shall have an X-Ray machine of minimum 300 MA to under all types of work.

(2) There shall be sufficient ECG machines in all Districts and Taluk Hospitals.

(3) There shall standard Blood Banks in all major hospitals upto the Taluk Hospital level.

187. *Procurement and supply of drugs.*—(1) There shall be sufficient and separate allotment of funds for the purchase drugs in hospitals.

(2) Government may evolve such procedure as deems fit for the purchase of drugs.

(3) The supply of drugs to various category of hospitals shall be regulated in such a manner that there is sufficient stock of essential drugs in every hospital.

(4) There shall be periodical check by the Drugs Controller to monitor the quality of drugs.

(5) It shall be the duty of the person in charge of a Government hospital to ensure that these sufficient medicines in the hospital for the treatment of the patients. No doctor shall ask the patients to purchase medicine outside.

(6) Whoever violates the provisions of sub-section shall be liable for punishment for an amount not exceeding rupees ten thousand.

188. *Diet in hospitals.*—(1) In every hospitals when there are inpatients a diet system which is simple, clean, nutritious, easily available, suppliable without elaborate cooking, of moderate cost, substitutable and non-pilferable shall be introduced.

The Kerala Public Health Code

(2) Articles like milk, bread, butter, egg, banana, rice and greengram should be important items of diet.

(3) Provision should be made from the Government concerns/Co-operative societies to supply items like milk, butter, bread, egg etc., in exclusive Hospital packets for direct distribution.

(4) Diet supply should be universal in every hospital/health institution with in-patients.

(5) Patients can be given the option for taking hospital diet.

189. *Hospital Sanitation.*—(1) There should be a separate category of cleaning staff for hospitals designated as Hospital Cleaners.

(2) Areas for daily cleaning and areas for periodic cleaning should be identified and Hospital Cleaners should specifically be assigned areas and periodicity.

(3) Adequate number of galvanized steel dust bins of suitable sizes with closely fitting foot, operated lids should be provided in every ward for depositing refuse.

(4) Installation of incinerators of adequate capacity is essential in all the hospitals.

(5) There should be on an average, one latrine seat for every 10 beds for in-patient use.

(6) Hospitals cots, furniture, floors, and walls of the wards should be sprayed with suitable insecticides every six months.

(7) The habit of taking food at the bed-side except for the non-ambulatory patients should be discouraged. Dining rooms are contemplated for every 40 patient-groups in District and Intermediate Hospitals.

(8) Admissions, as far as possible, are to be limited to the number of actual beds and no patients should be allowed to lie on floors.

(9) By-standers should be limited and visitors allowed only during fixed times of the day.

190. *Hospital Development Committees.*—(1) In every category of hospitals, there shall be a hospital development committee.

The Kerala Public Health Code

(2) The hospital development committee shall have the following rights and responsibilities, namely:—

(a) To find out defects, if any, in the amenities and functioning of the institutions and devise ways of remedying them.

(b) To strive to maintain orderliness and cleanliness in the institutions and their surroundings.

(c) To assess monetary requirements for improvements and organize ways and means to collect funds. The Government on their part should provide matching grants in a fixed proportion.

(e) To exercise vigilance in preventing malpractices.

(f) To help organize health education and mass medical campaigns.

(g) To organize voluntary Blood Banks and Drug Banks, public comfort stations and bystanders' dormitories.

(h) To run canteens and medical stores to provide supplies at fair prices. Nevertheless profits accruing will augment funds of the Committee.

(i) Any welfare activities including donations initiated by individuals or voluntary organizations should be routed through the Development Committees.

(j) Greater involvement in the maintenance of social discipline in hospitals.

CHAPTER VI MISCELLANEOUS

191. *Protection of Action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any authority or any member of the State Council or any officer authorized in this behalf in respect of anything, which is in good faith done or intended to be done in pursuance of the provisions of this part of the Code or any rule made thereunder.

(2) No suit or other legal proceedings shall lie against a State Government or the State Council in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of part II of this code or any rule made thereunder.

The Kerala Public Health Code

192. *Furnishing of returns etc.*—Every clinical establishment shall, within such time or within such extended time, as may be prescribed in that behalf, furnish to the authority or the State Registrar such returns or the statistics and other information in such manner, as may be prescribed by the State Council, from time to time.

193. *Power to give directions.*—Without prejudice to the foregoing provisions of this part of the Code, the authority shall have the power to issue such directions, including furnishing returns, statistics and other information for the proper functioning of clinical establishments and such directions shall be binding.

194. *Employees of the Authority etc.; to be public servants.*—Every employee of the authority and the State Council while acting or purporting to act under the provisions of this part of the Code or any Rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

195. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of part II of this Code, the Government as occasion may require, by order do anything not inconsistent with part II of this Code or the rules made there under which appears to them necessary for the purpose of removing the difficulty.

Provided that no such order shall be issued after the expiry of a period of two years from the date of commencement of part II of this Code.

(2) Every order issued under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

196. *Power to make rules.*—(1) The Government may, by notification, in the gazette make rules for carrying out all or any of the provisions of part II of this Code.

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

- (a) the conditions for registration under section 140;
- (b) the pro forma and the fee to be paid for registration under sub-section (1) of section 142.
- (c) the form and details of application under section 143 (1);
- (d) the particulars and information contained in certificate of provisional registration under section 145;
- (e) the manner of publication of all particulars of the clinical establishment proposed to be registered under section 144 (2);
- (f) the fees to be paid to issue a duplicate certificate under section 147;

The Kerala Public Health Code

(g) the manner in which the authority shall publish the names of the clinical establishments whose registration would be expiring under section 21;

(h) the enhanced fine to be charged for renewal after expiry of provisional registration under section 149;

(i) the form of the application and fees to be charged by the Government under section 151;

(j) the manner of submitting evidence of the clinical establishments having complied with the minimum standards under section 152;

(k) the manner of displaying information of the clinical establishments having complied with the minimum standards for filing objection under section 152;

(l) the period within which the reasons to be communicated to the clinical establishment under section 154;

(m) the period to be specified in section 154;

(n) the form and particulars of the certificate of registration under section 155;

(o) the manner of entry and inspection of clinical establishment under section 158;

(p) the fees to be charged by the State Government for different categories of clinical establishments under sub-section (1) of section 160;

(q) the manner and the period within which an appeal may be preferred to the State Government under sub-section (1) of section 161;

(r) the form and the fee to be paid for an appeal under sub-section (2) of section 161;

(s) the form and the manner in which the register to be maintained under sub-section (1) of section 162;

(t) the manner of supply to the State Registrar in digital format the entry made in the register of clinical establishments under sub-section (2) of section 162;

(u) the manner and the time within which the information is to be furnished under section 172;

(v) any other matter which is required to be or may be prescribed by the Government.

197. Every rule made by the State Government under this section shall be laid, as soon as may be after it is made before the Legislative Assembly.

The Kerala Public Health Code

PART III

HOMEOPATHY ESTABLISHMENTS

CHAPTER I

Preliminary

198. *Definition.*—In this part of the Code, unless the context otherwise requires,—

(a) “Authority” means the District registering authority designated under section—

(b) “certificate” means the certificate of registration issued under section and

(c) “homeopathy” means the system of medicines founded by Dr. Heinemann;

(d) “Homeopathy establishment” means homeo hospital, dispensary, homeo clinic or an institution by whatever name called that offers regular services, faculties with or without beds requiring treatment, diagnosis or care for illness under homeo medicine established and administered or maintained by any person or body of persons whether incorporated or not but does not include the homeo establishment owned, controlled or managed by the Armed Forces.

Explanation.—for the purpose of this clause “Armed Forces” means the forces under the Army Act, 1950, the Air Force, 1950 and the Navy Act, 1957;

(e) “State Council” means the State Council for Homeopathy establishment established under sec. 3;

(f) “notification” means a notification published in the Official Gazette.

(g) “Prescribed” means prescribed by rule made under this part of the Code.

(h) “register” means the register maintained by the authority under section....and the state register maintained under section.....of this part of the Code containing the number of claimed establishments registered and the expressions registered and registration shall be construed accordingly.

(i) “registration” means to register under section..... and the expressions registration or registered shall be construed accordingly.

(j) “rules” means made under this part the Government may prescribe under see, for the registration of Homeopathy establishment.

(k) “Standards” means the conditions the Government may prescribe under sec..... for the registration of Homeopathy establishment.

The Kerala Public Health Code

CHAPTER II
STATE COUNCIL

199. *Establishment of State Council.*—(1) With effect from such date as the Government may, by notification, appoint in this behalf, there shall be established for the purposes of this part of the Code, a Council to be called the State Council.

(2) The State Council shall consists of,—

(a) Director of Homeopathy, Department of Health & Family Welfare, State Government, Ex Officio, who shall be Chairperson

(b) Director of Medical Education

(c) Drugs Controller

(d) One representation each to be nominated by the

(i) Medical Council of Homeopathic Medicine

(ii) Association of Homeopathy Doctors.

(3) The nominated members of the Council shall hold office for one year but shall be eligible for re-nomination:

Provided that the person nominated shall hold office for so long as he holds appointment of the office by virtue of which he was nominated to the Council.

(4) The members of the Council shall be entitled for such allowances as may be prescribed by the Government.

(5) The Council may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(6) The Council may constitute sub-committees and may appoint to such sub-committee, as it deems fit, consisting of members who are not members of the Council for such periods, not exceeding *one year*, for the consideration of particular matters.

(7) The functions of the Council may be exercised notwithstanding any vacancy therein.

(8) The Government shall appoint a person to be the *Registrar* of the Council and may provide the Council with such other secretarial and other staff as the Government considers necessary.

The Kerala Public Health Code

200. *Disqualification for appointment as member.*—A person shall be disqualified for being appointed as a member of the Council if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

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

(d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or

(e) has, in the opinion of the Government, such financial or other interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a member.

201. *Functions of the Council.*—The Council shall have the following functions, namely:—

(a) determine the standards for ensuring proper health care by the Homeopathy establishments;

(b) classify the Homeopathy establishments into different categories and establish a dynamic system of accreditation.

(c) develop the minimum standards and their periodic review;

(d) compile, maintain and update a State register of Homeopathy establishments;

(e) collect the statistics in respect of Homeopathy establishments;

(f) perform any other function determined by the State of Government, from time to time.

202. *Power to seek advice or assistance.*—The Council may associate with itself any person or body whose assistance or advice it may desire in carrying out any of the provisions of this part of the Code.

203. *The Council to follow consultative process.*—The Council shall follow a consultative process for determining the standards and for classification of Homeopathy establishments for development of the accreditation system in accordance with such procedures as may be prescribed. The accreditation system could be periodically reviewed.

The Kerala Public Health Code

CHAPTER III

REGISTRATION AND STANDARDS FOR HOMEOPATHY ESTABLISHMENTS

204. *Registrar of Homeopathy Establishments.*—The Government shall, by notification, designate a subordinate of the Director of Homeopathy or any other officer as the Registrar of Homeopathy establishments.

205. *Registration of Homeopathy Establishments.*—It shall be the responsibility of the Registrar of homeopathy establishments to compile and update the State register of homeopathy establishments.

206. *Authority for Registration.*—The State Government shall, by notification, designate the District Medical Officer (Health) as an authority to be called the District Registering Authority for each District for registration of homeopathy establishments.

207. *Registration for Homeopathy Establishments.*—No person shall carry on a homeopathy establishment unless it has been duly registered in accordance with the provisions of this Act.

Explanation—For the purposes of this section, “carry on” means to manage patients in a homeopathy establishment for providing treatment, diagnosis, or nursing care. It includes private practice of Government Doctors.

208. *Conditions for Registration.*—For registration and continuation, every homeopathy establishment shall fulfill—

- (i) the standards of facilities and services as may be prescribed according to the level of accreditation.
- (ii) the minimum qualifications for the personnel as may be prescribed;
- (iii) provisions for maintenance of records and timely and completed reporting as may be prescribed;
- (iv) such other conditions as may be prescribed.

209. *Classification of Homeopathy Establishments.*—Different standards may be prescribed for classification of different categories.

The Kerala Public Health Code

CHAPTER IV

PROCEDURE FOR REGISTRATION

210. *Application for Provisional Certificate of Registration.*—(1) For the purposes of registration of the homeopathy establishment under section 130, an application in the prescribed pro forma along with the prescribed fee shall be furnished to the authority.

(2) The application shall be furnished in person or by post.

(3) The application shall be made in such form and shall be accompanied by such details as may be prescribed under this part of the Code or Rules made thereunder.

(4) If any homeopathy establishment is in existence at the time of the commencement of this part of the Code an application for its registration shall be made within six months from the date of the commencement of this part of the Code.

(5) If any homeopathy establishment is already registered under any existing law requiring registration of such establishments, even then it shall apply for registration as referred to in sub-section (1).

211. *Provisional Certificate.*—(1) In the first instance, every homeopathy establishment shall apply for provisional registration, one month prior to the expected date of starting of establishment.

(2) The authority shall, within a period of fifteen days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and such information, as may be prescribed.

212. *No Inquiry prior to Provisional Registration.*—(1) The authority may not conduct any inquiry prior to the grant of provisional registration.

(2) Notwithstanding the grant of the provisional certificate of registration, the authority shall, within a period of forty-five days from the grant of provisional registration, cause to be published in such manner, as may be prescribed, all particulars of the homeopathy establishment proposed to be registered.

213. *Validity of Provisional Certificate.*—Every provisional registration shall be valid to the last day of the twelfth month from the date of issue of the certificate of registration and such registration shall be renewable.

214. *Display of the Certificate Registration.*—The certificate shall be displayed in a conspicuous place in the homeopathy establishment.

The Kerala Public Health Code

215. *Duplicate Certificate.*—In case the certificate is lost, destroyed, mutilated or damaged, the authority shall issue a duplicate certificate on the request of the homeopathy establishment and on payment of such fees, as may be prescribed.

216. *Certificate to be non transferable.*—The certificate of registration shall be non transferable and, in the event of change of ownership or change of category or change of management or on ceasing to function as a homeopathy establishment, the certificate of registration shall be surrendered to the authority and the homeopathy establishment shall apply afresh for grant of certificate of registration.

217. *Renewal of Registration.*—Application for renewal of registration shall be made thirty days before the expiry of the validity of the certificate of provisional registration and, in case the application for renewal is made after the expiry of the provisional registration, the authority shall allow renewal of registration on payment of such fine, as may be prescribed.

218. *Time limit for Provisional Certificate.*—Homeopathy Establishments registered under provisional registration shall be assessed by the District Registering Authority and shall be granted permanent registration suited for the level of accreditation or denied registration, if they fall below the minimum standard permitted within one year.

219. *Application for Permanent Registration.*—Application for permanent registration by a homeopathy establishment shall be made to the authority in such form and be accompanied by such fees, as may be prescribed.

220. *Verification of application.*—The homeopathy establishment shall submit evidence of the homeopathy establishment having complied with the prescribed standards for the level of accreditation in such manner, as may be prescribed.

221. *Standards for permanent registration.*—(1) Permanent registration shall be granted only when a homeopathy establishment fulfills the prescribed minimum standards for registration by the Council.

(2) The registering authority shall inspect every registered establishment at least once in two years to check for compliance of the standards.

(3) Each permanent registration shall be valid for a period of three years following which it may be renewed prior to the expiry by payment of prescribed fees. Late applications may be renewed by payment of prescribed fine.

The Kerala Public Health Code

222. *Allowing or Disallowing of Registration.*—The authority shall pass an order immediately after the expiry of the prescribed period and within the next thirty days thereafter either –

(a) allowing the application for permanent registration at a particular level of accreditation; or

(b) disallowing the application:

Provided that the authority shall record its reasons, if it disallows an application for permanent registration.

223. *Certificate of Permanent Registration.*—The authority shall issue a certificate of permanent registration in such form and containing such particulars, as may be prescribed, if the authority allows an application.

224. *Fresh Application for Permanent registration.*—The disallowing of an application for permanent registration shall not debar a homeopathy establishment from applying afresh for permanent registration under section 144 and after providing such evidence, as may be required, of having rectified the deficiencies on which grounds the earlier application was disallowed.

225. *Cancellation of registration.*—(1) If, at any time after any homeopathy establishment has been registered, the authority is satisfied that,—

(a) the conditions of the registration are not being complied with; or

(b) the person entrusted with the management of the homeopathy establishment has been convicted of an offence punishable under this part of the Code, it may issue a show cause notice as to why its registration under this part of the Code should not be cancelled for the reasons to be mentioned in the notice.

(2) If after giving a reasonable opportunity to the homeopathy establishment, the authority is satisfied that there has been a breach of any of the provisions of this part of the Code or the rules made thereunder, it may, without prejudice to any other action that it may take against such homeopathy establishment, cancel its registration.

(3) Every order made under sub-section (1) shall take effect—

(a) where no appeal has been preferred against such order, immediately on the expiry of the period prescribed for such appeal, and

(b) where such appeal has been preferred and it has been dismissed, from the date of the order of such dismissal:

The Kerala Public Health Code

Provided that the authority, after cancellation of registration for reasons to be recorded in writing, may restrain immediately the homeopathy establishment from carrying on if there is imminent danger to the health and safety of patients.

226. *Inspection of registered homeopathy establishments.*—(1) The authority or an officer authorized by it, shall have the right to cause an inspection of, or inquiry in respect of any homeopathy establishment, its building, laboratories and equipment and also of the work conducted or done by the homeopathy establishment, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the homeopathy establishment and that establishment shall be entitled to be represented thereat.

(2) The authority shall communicate to the homeopathy establishment the views of that authority with reference to the results of such inspection or inquiry and may, after ascertaining the opinion of the homeopathy establishment thereon, advise that establishment upon the action to be taken.

(3) The homeopathy establishment shall report to the authority, the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time, as the authority may direct.

(4) Where the homeopathy establishment does not, within a reasonable time, taken action to the satisfaction of the authority, it may, after considering any explanation furnished or representation made by the homeopathy establishment, issue such directions, as that authority deems fit, and the homeopathy establishment shall, comply with such directions.

227. *Power to enter.*—The authority or an officer authorized by it may, if there is any reason to suspect that anyone is carrying on a homeopathy establishment without registration, enter and search in the manner prescribed, at any reasonable time and the homeopathy establishment, shall offer reasonable facilities for inspection or inquiry and be entitled to be represented thereat:

Provided that no such person shall enter the homeopathy establishment without giving *sufficient* notice of his intention to do so.

228. *Finance and Accounts.*—(1) The Council may fix fees for different categories of homeopathy establishments, as may be prescribed.

(2) It shall be the responsibility of the Registrar of homeopathy establishments to ensure that the amount is remitted to the State Council, on time.

The Kerala Public Health Code

229. *Appeal and Revision.*—(1) Any person, aggrieved by an order of the registering authority refusing to grant or renew a certificate of registration or revoking / revising a certificate of registration may, in such manner and within such period as may be prescribed, prefer an appeal to the State Council;

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the Appellate Authority shall after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

Revision.—The Government may suo moto or on an application made to it by any applicant call for the records of any case in which an order has been passed by the Authority and if it appears to the Government, that the order is improper or illegal, after giving an opportunity of being heard to the concerned, the Government may pass such order as it deems fit.

CHAPTER V

REGISTER OF HOMEOPATHY ESTABLISHMENTS

230. *Register of Homeopathy Establishments.*—(1) The authority shall maintain a register or digital format of homeopathy establishments, registered by it and it shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner, as may be prescribed by the Government.

(2) Each authority, including any other authority set up for the registration of homeopathy establishments under any other law for the time being in force, shall supply in digital format to the State Registrar of Homeopathy establishments a copy of every entry made in the register of homeopathy establishments in such manner, as may be prescribed to ensure that the State Register is constantly updated with the registers maintained by the registering authority in the State.

231. *Maintenance of State Register of Homeopathy Establishments.*—The Council shall maintain in such form and containing such particulars, as may be prescribed by the Government, a register to be known as the State register of homeopathy establishments in respect of homeopathy establishments.

232. *Penalty.*—Whoever contravenes any provision of this Part of the Act shall, if no penalty is provided elsewhere, be punishable for the first offence with fine which may extend to ten thousand rupees, for any second offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend upto five lakh rupees depending on the gravity:

The Kerala Public Health Code

233. *Penalty for non registration.*—(1) Whoever carries on a homeopathy establishment without registration shall, on conviction for first offence, be punishable with a fine up to fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for any subsequent offence with fine which may extend upto five lakh rupees depending on the gravity.

234. *Disobedience of order, obstruction and refusal of information.*—(1) Whoever willfully disobeys any direction lawfully given by any person or authority empowered under this part of the Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this part of the Code to discharge, shall be punishable with fine which may extend to one lakh rupees.

(2) Whoever being required by or under this part of the Code to supply any information willfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall be punishable with fine which may extend to one lakh rupees.

235. *Penalty for minor deficiencies.*—Whoever contravenes any provision of this part of the Code or any rule made thereunder resulting in deficiencies that do not pose any imminent danger to the health and safety of any patient and can be rectified within a reasonable time, shall be punishable with fine which may extend to ten thousand rupees.

236. *Offences by Companies.*—(1) Where an offence under this part of the Code has been committed by a company, every person who at the time the offence was committed was incharge of and was responsible to the company or 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, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this part of the Code has been committed by a company and it is proved that the offence has been committed with the consent or commission 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 deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The Kerala Public Health Code

Explanation.—For the purposes of this section,—

(c) “company” means any body corporate and includes a firm, a Co-operative society or other Association of individuals; and

(d) “director” in relation to a firm, means a partner in the firm.

237. *Offences by Government Departments.*—(1) Where an offence under this part of the Code has been committed by any Department of Government, the officer responsible shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

238. *Recovery of fine.*—Whoever fails to pay the fine, the Registrar of Homeopathy Establishment may prepare a Certificate signed by him specifying the fine due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder, as if it were an arrear of land revenue and remitted to the State Council.

CHAPTER VI
MISCELLANEOUS

239. *Protection of Action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any authority or any member of the State Council or any officer authorized in this behalf in respect of anything, which is in good faith done or intended to be done in pursuance of the provisions of this part of the Code or any rule made thereunder.

The Kerala Public Health Code

(2) No suit or other legal proceedings shall lie against a State Government or the State Council in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this part of the Code or any rule made thereunder.

240. *Furnishing of returns etc.*—Every homeopathy establishment shall, within such time or within such extended time, as may be prescribed in that behalf, furnish to the authority or the State Registrar such returns or the statistics and other information in such manner, as may be prescribed by the State Council, from time to time.

241. *Power to give directions.*—Without prejudice to the foregoing provisions of this part of the Code, the authority shall have the power to issue such directions, including furnishing returns, statistics and other information for the proper functioning of homeopathy establishments and such directions shall be binding.

242. *Employees of the Authority etc; to be public servants.*—Every employee of the authority and the State Council while acting or purporting to act under the provisions of this part of the Code or any Rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

243. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this part of the Code, the Government as occasion may require, by order do anything not inconsistent with this part of the Code or the rules made there under which appears to them necessary for the purpose of removing the difficulty:

Provided that no such order shall be issued after the expiry of a period of two years from the date of commencement of this part of the Code.

(2) Every order issued under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

244. *Power to make rules.*—(1) The Government may, by notification, in the gazette make rules for carrying out all or any of the provisions of this part of the Code.

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

The Kerala Public Health Code

- (a) the conditions for registration under section 139;
- (b) the proforma and the fee to be paid for registration under sub-section (1) of section 141.
- (c) the form and details of application under section 141 (3);
- (d) the particulars and information contained in certificate of provisional registration under section 142;
- (e) the manner of publication of all particulars of the homeopathy establishment proposed to be registered under section 143 (2);
- (f) the fees to be paid to issue a duplicate certificate under section 146;
- (g) the manner in which the authority shall publish the names of the homeopathy establishments whose registration would be expiring under section 141;
- (h) the enhanced fine to be charged for renewal after expiry of provisional registration under section 148;
- (i) the form of the application and fees to be charged by the Government under section 150;
- (j) the manner of submitting evidence of the homeopathy establishments having complied with the minimum standards under section 151;
- (k) the manner of displaying information of the homeopathy establishments having complied with the minimum standards for filing objection under section 152;
- (l) the period within which the reasons to be communicated to the homeopathy establishment under section 1153;
- (m) the expiry of period specified in section 153;
- (n) the form and particulars of the certificate of registration under section 154;
- (o) the manner of entry and inspection of homeopathy establishment under section 157;
- (p) the fees to be charged by the State Government for different categories of homeopathy establishments under sub-section (1) of section 159;
- (q) the manner and the period within which an appeal may be preferred to the State Government under sub-section (1) of section 160;

The Kerala Public Health Code

(r) the form and the fee to be paid for an appeal under sub-section (2) of section 153;

(s) the form and the manner in which the register to be maintained under sub-section (1) of section 155;

(t) the manner of supply to the State Registrar in digital format the entry made in the register of homeopathy establishments under sub-section (2) of section 54;

(u) the manner and the time within which the information is to be furnished under section 171;

(v) any other matter which is required to be or may be prescribed by the Government.

(3) Every rule made under this part of the Code 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.

PART IV
AYURVEDA
CHAPTER I
PRELIMINARY

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

(a) “authority” means the District registering authority designated under section.....

(b) “Ayurveda Health Centre” means a hospital, nursing home, clinic or an institution by whatever name called that offers regular treatment, diagnosis or care for illness, injury or improving the health conditions under Ayurveda treatment established by and administered or maintained by any persons or body of persons, whether incorporated or not, and shall include a Ayurveda Health Centre owned, controlled or managed by—

The Kerala Public Health Code

- (1) the Government or a department of the Government;
- (2) a Trust, whether public or private;
- (3) a Corporation including a Co-operative society registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969);
- (4) a local authority, and
- (5) a single doctor establishment,
- (6) Any other Ayurveda Health Centre functioning within the State rendering Ayurveda Health Services, but does not include the Ayurveda Health Centres owned, controlled or managed by the Armed Forces.

Explanation.—For the purpose of this clause “Armed Forces” means the forces constituted under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957;

- (c) “certificate” means the Certificate of Registration issued under section
- (d) “Director” means the Director of Department of Indian System of Medicine;
- (e) “Government” means the Government of Kerala;
- (f) “Licence” means the licence issued by the Director after conducting necessary inspections as specified in this Act;
- (g) “Local Self Government Institution” means a Village Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994), or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);
- (h) “Manager” means the owner or the person responsible for the administration and management of an Ayurveda Health Centre ;
- (i) “Masseur/Therapist” means a person employed for the treatment as directed by a registered medical practitioner in an Ayurveda Health Centre and having recognised qualifications as prescribed;
- (j) “notification” means a notification published in the Official Gazette;
- (k) “Nurse” means a person employed for nursing duty in an Ayurveda Health Centre and having equivalent qualification, as prescribed;

The Kerala Public Health Code

(l) “Prescribed” means prescribed by rules made under this Act;

(m) “Registered Medical Practitioner” means an Ayurveda Medical Practitioner registered under the Travancore-Cochin Medical Practitioners Act, 1953 (9 of 1953) or Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) as A-Class;

(n) “register” means the register mentioned by the Authority;

(o) “State” means the State of Kerala;

(p) “standards” means condition that the Government may prescribe under section for the registration of Ayurveda Health Centre.

(q) “State Council” means the State Council for Ayurveda Health Centre established under section 3.

(r) “Treatment” means all types of treatments provided as per Indian systems of treatment such as Ayurveda, Siddha, Unani, for the cure of any particular disease or improving the health of any person.

CHAPTER II

THE STATE COUNCIL

246. *Establishment of State Council.*—(1) with effect from such date as the Government may, by notification, appoint in this behalf, there shall established for the purpose of this part of the Code a Council to be called the State Council for Ayurveda.

(2) The State Council shall consist of—

(a) Director of Indian Systems of Medicine

(b) Director of Insurance Medical Services

(d) Drugs Controller of Kerala

(e) One representative each nominated by the

(f) Nursing Council of India constituted under section 36 of the Indian Nursing Council Act, 1947

(g) Pharmacy Council of India constituted under section 3 of the Pharmacy Act, 1948.

The Kerala Public Health Code

(h) One representative each of the recognized association of registered medical practitioners of Ayurveda, Siddha and Unani.

(i) One representative each from the Health Department and Law Department of the Secretariat.

(3) The persons nominated shall hold office for so long as he holds appointment of the office by virtue of which he was nominated to the Council.

(4) The members of the Council shall be entitled for such allowance as may be prescribed by the Government.

(5) The Council may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(6) The Council may constitute sub-committees and may appoint to such sub-committee, as it deems fit, consisting of members who are not members of the Council for such periods, not exceeding *one year*, for the consideration of particular matters.

(7) The functions of the Council may be exercised notwithstanding any vacancy therein.

247. *Functions of the Council.*—The Council shall have the following functions, namely:—

(a) determine the standards for ensuring proper health care by the Ayurveda Health Centre;

(b) classify the Ayurveda Health Centre into different categories according to the facilities available there;

(c) develop the minimum standards and their periodic review;

(d) compile, maintain and update a State register of Ayurveda Health Centre;

(e) collect the statistics in respect of Ayurveda Health Centre;

(f) perform any other function determined by the State of Government, from time to time.

248. *Power to seek advice or assistance.*—The Council may associate with itself any person or body whose assistance or advice it may desire in carrying out any of the provisions of this part of the Code.

The Kerala Public Health Code

CHAPTER III

REGISTRATION AND STANDARDS FOR AYURVEDA HEALTH CENTRES

249. *Registrar of Ayurveda Health Centre.*—The Government shall, by notification, designate a subordinate of the Director of Indian System of Medicine or any other officer as the Registrar of Ayurveda Health Centre. It shall be the responsibility of the Registrar of Ayurveda Health Centre to compile and update the State register of Ayurveda Health Centre.

250. *Authority for Registration.*—The State Government shall, by notification, designate an officer of the Indian System of Medicine at District level as an authority to be called the District Registering Authority for each District for registration of Ayurveda Health Centre.

251. *Registration for Ayurveda Health Centres.*—No person shall carry on Ayurveda Health Centre unless it has been duly registered in accordance with the provisions of this Act.

252. *Conditions for Registration.*—For registration and continuation, every Ayurveda Health Centre shall fulfill—

- (i) the standards of facilities and services as may be specified according to the catagorisation;
- (ii) the minimum qualifications for the personnel as may be prescribed;
- (iii) provisions for maintenance of records and timely and completed reporting as may be prescribed;
- (iv) such other conditions as may be prescribed.

253. *Catagorisation.*—(1) Ayurveda Health Centres shall be classified into three categories according to the following facilities:—

(I) Category (A)

- (a) The patients shall have convenient accommodation facility in separate rooms or ward;
- (b) There shall be treatment rooms in the proportion one for eight patients;
- (c) The treatment room shall have an area of at least 100 Square feet and bathroom and toilet facilities shall be attached thereto;
- (d) There shall be a 'dhroni' made up of wood or fibre having at least 7 feet length and 2 1/2 feet width in the treatment room;

The Kerala Public Health Code

- (e) Drinking water, air and light shall be available in the treatment room;
- (f) Stove and hygienic accessory equipments shall be available in the treatment room;
- (g) There shall be a Medical Practitioner's consultation room with equipments such as examination tables, stethoscope and B.P. apparatus;
- (h) Scientifically made Vasthi Yanthra and necessary utensils shall be available ;
- (i) There shall be at least one registered Medical Practitioner of full time service;
- (j) There shall be at least two male therapists/masseurs and two female therapists/masseurs and the proportion of therapists/masseurs shall be increased according to the number of treatment room, as prescribed;
- (k) There shall be a nurse for full time service in an Ayurveda Health Centre and if it exceeds 8 beds, there shall be nurses in the proportion one for eight;
- (l) Necessary employees shall be there for cleaning work, etc.;
- (m) There shall be a responsible Manager in the treatment centre.

(II) Category (B)

- (a) The treatment room shall have an area of at least 100 Square feet and bathroom and toilet facilities shall be attached thereto;
- (b) There shall be a 'dhroni' made up of wood or fibre having at least 7 feet length and $2\frac{1}{2}$ feet width in the treatment room;
- (c) Drinking water, air and light shall be available in the treatment room;
- (d) Stove and hygienic accessory equipments shall be available in the treatment room;
- (e) There shall be a Medical Practitioner's consultation room with equipments such as examination tables, stethoscope, and B.P. apparatus etc.;
- (f) There shall be at least one male therapist/masseur and a female therapist/masseur and the proportion of therapists/masseur shall be increased according to the number of treatment rooms, as prescribed.
- (g) The service of a Registered Medical Practitioner shall be available during working hours.

The Kerala Public Health Code

(III) Category (C)

(a) The treatment rooms shall have an area of at least 100 sq. ft. and bathroom and toilet facilities shall be attached thereto;

(b) There shall be a 'dhroni' made up of wood or fibre having at least 7 feet in length and 2¹/₂ feet width in the treatment room;

(c) Drinking water, air and light shall be available in the treatment room;

(d) Stove and hygienic accessory equipments, shall be available in the treatment room;

(e) There shall be a Medical Practitioner's consultation room with minimum equipments such as examination tables, stethoscope and B.P. apparatus;

(f) There shall be at least one male therapist/masseur and a female therapist/masseur and the proportion of therapist/masseur shall be increased according to the number of treatment rooms, as prescribed;

(g) The service of a Registered Medical Practitioner shall be available during working hours.

(2) In-patient treatment shall not be carried out in Ayurveda Health Centres included in Category (B). Complicated treatments and 'Panchakarma' treatments such as, 'Vamanam', 'Virechanam', 'Vasthy' and 'Nasyam' shall not be carried out in the Ayurveda Health Centres included in Category (C) but 'Massaging' and Udvarthanam can be carried out.

(3) The following general conditions shall apply to all categories of Ayurveda Health Centres, namely:—

(i) The therapist/masseur shall wear uniform, as prescribed during working hours;

(ii) The treatment of male patients who come to a centre for treatment shall be done only by male therapist/masseurs and the treatment of female patient shall be done only by female therapist/masseurs;

(iii) Only quality medicines shall be used in an Ayurveda Health Centre for treatment and the components of the medicines shall be convinced to the examiner;

(iv) The medicines and oils used for one patient shall not be used for another patient and arrangement shall be made in such Ayurveda Health Centre for the destruction and disposal of the same and other wastes in such a manner not harmful to the environment;

(v) Every Ayurveda Health Centre shall be established in healthy surroundings only and shall be free from sound pollution, as far as possible;

The Kerala Public Health Code

(vi) The name, registration number, details of the registration and working hours of each Ayurveda Health Centre shall be exhibited in the building or premises where it is established in a manner clearly visible from outside;

(vii) Register containing the details of the persons coming for treatment in an Ayurveda Health Centre and case sheet shall compulsorily be kept;

(viii) Every Ayurveda Health Centre shall exhibit the details of employees of that Centre, working hours, the methods of treatment provided therein and the fees fixed for each item of treatment etc., as prescribed.

254. *Application for Provisional Certificate of Registration.*—(1) For the purposes of registration of the Ayurveda Health Centre under section 139, an application in the prescribed pro forma along with the prescribed fee shall be furnished to the authority.

(2) The application shall be furnished in person or by post.

(3) The application shall be made in such form and shall be accompanied by such details as may be prescribed under this part of the Code or rules made thereunder.

(4) If any Ayurveda Health Centre is in existence at the time of the commencement of this part of the Code, an application for its registration shall be made within six months from the date of the commencement of this part of the Code.

(5) If any Ayurveda Health Centre is already registered under any existing law requiring registration of such establishments, even then it shall apply for registration as referred to in sub-section (1).

255. *Provisional Certificate.*—(1) In the first instance every Ayurveda Health Centre shall apply for provisional registration, one month prior to the expected date of starting of establishment.

(2) The authority shall, within a period of fifteen days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and such information, as may be prescribed.

256. *No Inquiry prior to Provisional Registration.*—(1) The authority may not conduct any inquiry prior to the grant of provisional registration.

(2) Notwithstanding the grant of the provisional certificate of registration, the authority shall, within a period of forty-five days from the grant of provisional registration, cause to be published in such manner, as may be prescribed, all particulars of the Ayurveda Health Centre proposed to be registered.

The Kerala Public Health Code

257. *Validity of Provisional Certificate.*—Every provisional registration shall be valid to the last day of the twelfth month from the date of issue of the certificate of registration and such registration shall be renewable.

258. *Duplicate Certificate.*—In case the certificate is lost, destroyed, mutilated or damaged, the authority shall issue a duplicate certificate on the request of the Ayurveda Health Centre and on payment of such fees, as may be prescribed.

259. *Certificate to be non transferable.*—The certificate of registration shall be non-transferable and, in the event of change of ownership or change of category or change of management or on ceasing to function as a Ayurveda Health Centre, the certificate of registration shall be surrendered to the authority and the Ayurveda Health Centre shall apply afresh for grant of certificate of registration.

260. *Renewal of Registration.*—Application for renewal of registration shall be made thirty days before the expiry of the validity of the certificate of provisional registration and, in case the application for renewal is made after the expiry of the provisional registration, the authority shall allow renewal of registration on payment of such fine, as may be prescribed.

261. *Time-limit for Provisional Certificate.*—Ayurveda Health Centres registered under provisional registration shall be assessed by the District Registering Authority and shall be granted permanent registration suited for the category or denied registration, if they fall below the minimum standard permitted within one year.

262. *Application for Permanent Registration.*—Application for permanent registration by a Ayurveda Health Centre shall be made to the authority in such form and be accompanied by such fees, as may be prescribed.

263. *Verification of application.*—The Ayurveda Health Centre shall submit evidence of the Ayurveda Health Centre having complied with the prescribed standards for the level of the category in such manner, as may be prescribed.

264. *Standards for permanent registration.*—(1) Permanent registration shall be granted only when an Ayurveda Health Centre fulfills the prescribed minimum conditions for registration by the Council.

(2) The registering authority shall inspect every registered establishment at least once in two years to check for compliance of the standards.

(3) Each permanent registration shall be valid for a period of three years following which it may be renewed prior to the expiry by payment of prescribed fees. Late applications may be renewed by payment of prescribed fine.

The Kerala Public Health Code

265. *Allowing or Disallowing of Registration.*—The authority shall pass an order immediately after the expiry of the prescribed period and within the next thirty days thereafter either –

(a) allowing the application for permanent registration at a particular level of category; or

(b) disallowing the application;

Provided that the authority shall record its reasons, if it disallows an application for permanent registration.

266. *Certificate of Permanent Registration.*—The authority shall issue a certificate of permanent registration in such form and containing such particulars, as may be prescribed, if the authority allows an application.

267. *Fresh Application for Permanent registration.*—The disallowing of an application for permanent registration shall not debar an Ayurveda Health Centre from applying afresh for permanent registration under section 144 and after providing such evidence, as may be required, of having rectified the deficiencies on which grounds the earlier application was disallowed.

268. *Cancellation of registration.*—(1) If, at any time after any Ayurveda Health Centre has been registered, the authority is satisfied that,—

(a) the conditions of the registration are not being complied with; or

(b) the person entrusted with the management of the Ayurveda Health Centre has been convicted of an offence punishable under this part of the Code, it may issue a show cause notice as to why its registration under this part of the Code should not be cancelled for the reasons to be mentioned in the notice.

(2) If after giving a reasonable opportunity to the Ayurveda Health Centre, the authority is satisfied that there has been a breach of any of the provisions of this part of the Code or the rules made thereunder, it may, without prejudice to any other action that it may take against such Ayurveda Health Centre, cancel its registration.

(3) Every order made under sub-section (1) shall take effect—

(a) where no appeal has been preferred against such order, immediately on the expiry of the period prescribed for such appeal, and

(b) where such appeal has been preferred and it has been dismissed, from the date of the order of such dismissal;

Provided that the authority, after cancellation of registration for reasons to be recorded in writing, may restrain immediately the Ayurveda Health Centre from carrying on if there is imminent danger to the health and safety of patients.

The Kerala Public Health Code

269. *Inspection of registered Ayurveda Health Centres.*—(1) The authority or an officer authorized by it, shall have the right to cause an inspection of, or inquiry in respect of any Ayurveda Health Centre, its building, laboratories and equipment and also of the work conducted or done by the Ayurveda Health Centre, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the Ayurveda Health Centre and that establishment shall be entitled to be represented thereat.

(2) The authority shall communicate to the Ayurveda Health Centre the views of that authority with reference to the results of such inspection or inquiry and may, after ascertaining the opinion of the Ayurveda Health Centre thereon, advise that establishment upon the action to be taken.

(3) The Ayurveda Health Centre shall report to the authority, the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time, as the authority may direct.

(4) Where the Ayurveda Health Centre does not, within a reasonable time, taken action to the satisfaction of the authority, it may, after considering any explanation furnished or representation made by the Ayurveda Health Centre, issue such directions, as that authority deems fit, and the Ayurveda Health Centre shall, comply with such directions.

270. *Power to enter.*—The authority or an officer authorized by it may, if there is any reason to suspect that anyone is carrying on a Ayurveda Health Centre without registration, enter and search in the manner, prescribed, at any reasonable time and the Ayurveda Health Centre, shall offer reasonable facilities for inspection or inquiry and be entitled to be represented thereat:

Provided that no such person shall enter the Ayurveda Health Centre without giving sufficient notice of his intention to do so.

271. *Finance and Accounts.*—(1) The Council may fix fees for different categories of Ayurveda Health Centres, as may be prescribed.

(2) It shall be the responsibility of the Registrar of Ayurveda Health Centres to ensure that the amount is remitted to the State Council, on time.

272. *Appeal.*—(1) Any person, aggrieved by an order of the registering authority refusing to grant or renew a certificate of registration or revoking / revising a certificate of registration may, in such manner and within such period as may be prescribed, prefer an appeal to the State Council;

The Kerala Public Health Code

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the Appellate Authority shall after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

273. *Revision.*—The Government may suo moto or on an application made to it by any applicant call for the records of any case in which an order has been passed by the Authority and if it appears to the Government, that the order is improper or illegal, after giving an opportunity of being heard to the concerned, the Government may pass such order as it deems fit.

CHAPTER IV

REGISTER OF AYURVEDA HEALTH CENTRES

274. *Register of Ayurveda Health Centres.*—(1) The authority shall maintain a register or digital format of Ayurveda Health Centres, registered by it and it shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner, as may be prescribed by the Government.

(2) Each authority, including any other authority set up for the registration of Ayurveda Health Centres under any other law for the time being in force, shall supply in digital format to the State Registrar of Ayurveda Health Centres a copy of every entry made in the register of Ayurveda Health Centres in such manner, as may be prescribed to ensure that the State Register is constantly *updated* with the registers maintained by the registering authority in the State.

275. *Maintenance of State Register of Ayurveda Health Centres.*—The Council shall maintain in such form and containing such particulars, as may be prescribed by the Government, a register to be known as the State register of Ayurveda Health Centres in respect of Ayurveda Health Centres.

276. *Penalty.*—Whoever contravenes any provision of this part of the Act shall, if no penalty is provided elsewhere, be punishable for the first offence with fine which may extend to ten thousand rupees, for any second offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend upto five lakh rupees depending on the gravity.

277. *Penalty for non registration.*—(1) Whoever carries on a Ayurveda Health Centre without registration shall, on conviction for first offence, be punishable with a fine up to fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for any subsequent offence with fine which may extend upto five lakh rupees depending on the gravity.

The Kerala Public Health Code

278. *Disobedience of order, obstruction and refusal of information.*—

(1) Whoever willfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this part of the Code to discharge, shall be punishable with fine which may extend to *one* lakh rupees.

(2) Whoever being required by or under this part of the Code to supply any information willfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall be punishable with fine which may extend to one lakh rupees.

279. *Penalty for minor deficiencies.*—Whoever contravenes any provision of this part of the Code or any rule made thereunder resulting in deficiencies that do not pose any imminent danger to the health and safety of any patient and can be rectified within a reasonable time, shall be punishable with fine which may extend to ten thousand rupees.

280. *Offences by Companies.*—(1) Where an offence under this part of the Code has been committed by a company, every person who at the time the offence was committed was incharge of and was responsible to the company or 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, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this part of the Code has been committed by a company and it is proved that the offence has been committed with the consent or commission 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 deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(b) “company” means any body corporate and includes a firm, a Co-operative society or other Association of individuals; and

(c) “director” in relation to a firm, means a partner in the firm.

281. *Offences by Government Departments.*—(1) Where an offence under this part of the Code has been committed by any Department of Government, the officer responsible shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

The Kerala Public Health Code

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

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

282. *Recovery of fine.*—Whoever fails to pay the fine, the Registrar of Ayurveda Health Centre may prepare a certificate signed by him specifying the fine due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder, as if it were an arrear of land revenue and remitted to the State Council.

CHAPTER V MISCELLANEOUS

283. *Protection of Action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any authority or any member of the State Council or any officer authorized in this behalf in respect of anything, which is in good faith done or intended to be done in pursuance of the provisions of this part of the Code or any rule made thereunder.

(2) No suit or other legal proceedings shall lie against a State Government or the State Council in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this part of the Code or any rule made thereunder.

284. *Furnishing of returns etc.*—Every Ayurveda Health Centre shall, within such time or within such extended time, as may be prescribed in that behalf, furnish to the authority or the State Registrar such returns or the statistics and other information in such manner, as may be prescribed by the State Council, from time to time.

285. *Power to give directions.*—Without prejudice to the foregoing provisions of this part of the Code, the authority shall have the power to issue such directions, including furnishing returns, statistics and other information for the proper functioning of Ayurveda Health Centres and such directions shall be binding.

The Kerala Public Health Code

286. *Employees of the Authority etc. to be public servants.*—Every employee of the authority and the State Council while acting or purporting to act under the provisions of this part of the Code or any Rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

287. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this part of the Code, the Government as occasion may require, by order do anything not inconsistent with this part of the Code or the rules made there under which appears to them necessary for the purpose of removing the difficulty:

Provided that no such order shall be issued after the expiry of a period of two years from the date of commencement of this part of the Code.

(2) Every order issued under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

288. *Power to make rules.*—(1) The Government may, by notification, in the Gazette make rules for carrying out all or any of the provisions of this part of the Code.

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

- (a) the conditions for registration under section 250;
- (b) the pro forma and the fee to be paid for registration under sub-section (1) of section 252;
- (c) the form and details of application under section 252;
- (d) the particulars and information contained in certificate of provisional registration under section 253;
- (e) the manner of publication of all particulars of the Ayurveda Health Centre proposed to be registered under section 254 (2);
- (f) the fees to be paid to issue a duplicate certificate under section 256;
- (g) the enhanced fine to be charged for renewal after expiry of provisional registration under section 258;
- (h) the form of the application and fees to be charged for permanent registration under section 260;
- (i) the manner of submitting evidence of the Ayurveda Health Centres having complied with the minimum standards under section 261;
- (j) the manner of displaying information of the Ayurveda Health Centres having complied with the minimum standards for filing objection under section 262;

The Kerala Public Health Code

- (k) the period within which the reasons to be communicated to the Ayurveda Health Centre under section 263;
- (l) the expiry of period specified in section 263;
- (m) the form and particulars of the certificate of registration under section 264;
- (n) the manner of entry and inspection of Ayurveda Health Centre under section 267;
- (o) the fees to be charged for different categories of Ayurveda Health Centres under sub-section (l) of section 269;
- (p) the manner and the period within which an appeal may be preferred to the State Government under sub-section (1) of section 270;
- (q) the form and the fee to be paid for an appeal under sub-section (2) of section 270;
- (r) the form and the manner in which the register to be maintained under sub-section (1) of section 272;
- (s) the manner of supply to the State Registrar in digital format the entry made in the register of Ayurveda Health Centres under sub-section (2) of section 272;
- (u) the manner and the time within which the information is to be furnished under section 273;
- (v) any other matter which is required to be or may be prescribed by the Government.

(3) Every rule made under this part of the Code 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.

PART V

SOLID WASTE MANAGEMENT

289. *Application.*—(1) This part of the Code shall apply to every municipality responsible for collection, segregation, storage, transportation, processing and disposal of solid waste.

(2) Government may by notification in the Gazette extend its application to any panchayat or such other areas as may be specified in the notification.

The Kerala Public Health Code

Explanation.—Municipality means the Municipality established under the Kerala Municipality Act, 1994 (20 of 1994) and Panchayat means the Panchayat established under the Kerala Panchayat Raj Act, 1994 (13 of 1994).

290. *Definitions.*—In these rules, unless the context otherwise requires,—

i. **“anaerobic digestion”** means a controlled process involving microbial decomposition of organic matter in the absence of oxygen;

ii. **“authorization”** means the consent given by the Board or Committee to the “operator of a facility”;

iii. **“biodegradable substance”** means a substance that can be degraded by micro-organisms;

iv. **“biomethanation”** means a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;

v. **“collection”** means lifting and removal of solid wastes from collection points or any other location;

vi. **“composing”** means a controlled process involving microbial decomposition of organic matter;

vii. **“demolition and construction waste”** means wastes from building material debris and rubble resulting from construction, re-modelling, repair and demolition operation;

viii. **“disposal”** means final disposal of municipal solid wastes in terms of the specified measures to prevent contamination of ground-water, surface water and ambient air quality;

ix. **“generator of wastes”** means persons or establishments generating municipal solid wastes;

x. **“landfilling”** means disposal of residual solid wastes on land in a facility designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind-blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion;

xi. **“leachate”** means liquid that seeps through solid wastes or other medium and has extracts of dissolved or suspended material from it;

xii. **“lysimeter”** is a device used to measure rate of movement of water through or from a soil layer or is used to collect percolated water for quality analysis;

The Kerala Public Health Code

xiii. “municipal solid waste” includes commercial and residential wastes generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes;

xiv. “operator of a facility” means a person who owns or operates a facility for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes and also includes any other agency appointed as such by the municipal authority for the management and handling of municipal solid wastes in the respective areas;

xv. “pelletisation” means a process whereby pellets are prepared which are small cubes or cylindrical pieces made out of solid wastes and includes fuel pellets which are also referred as refuse derived fuel;

xvi. “prescribed” means presented by rules issued by the Government;

xvii. “processing” means the process by which solid wastes are transformed into new or recycled products;

xviii. “recycling” means the process of transforming segregated solid wastes into raw materials for producing new products, which may or may not be similar to the original products;

xix. “segregation” means to separate the municipal solid wastes into the groups of organic, inorganic, recyclables and hazardous wastes;

xx. “State Board” means the Pollution Control Board of State;

xxi. “storage” means the temporary containment of municipal solid wastes in a manner so as to prevent littering, attraction to vectors, stray animals and excessive foul odour;

xxii. “transportation” means conveyance of municipal solid wastes from place to place hygienically through specially designed transport system so as to prevent foul odour, littering, unsightly conditions and accessibility to vectors;

xxiii. “vadose water” water which occurs between the ground, surface and the water table that is the unsaturated zone;

291. *Responsibility of municipal authority.*—(1) Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of this part of the Code and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of solid wastes.

(2) The municipal authority or an operator of a facility shall make an application in the prescribed Form, for grant of authorization for setting up waste processing and disposal facility including landfills from the State Board.

(3) The municipal authority shall furnish its annual report to the State Board in such form as may be prescribed,

The Kerala Public Health Code

(a) to the State Board in case of Municipal Corporations;

(b) to the District Collector in case of all other Municipality or any other area notified by the Government with a copy to the State Board on or before the 30th day of June every year.

292. *Responsibility of the State Government.*—(1) The Secretary in-charge of the Department of Urban Development shall have the overall responsibility for the enforcement of the provisions of these part of the Code.

(2) The District Collector of the concerned district shall have the overall responsibility for the enforcement of the provisions of this part of the Code within the territorial limits of his jurisdiction.

293. *Responsibility of the State Pollution Control Board and the State.*—(1) The State Board shall monitor the compliance of the standards regarding ground water, ambient air, leachate quality and the compost quality including incineration standards as may be prescribed.

(2) The State Board, after the receipt of application from the municipal authority or the operator of a facility for grant of authorization for setting up waste processing and disposal facility including landfills, shall examine the proposal taking into consideration the views of other agencies like the State Urban Development Department, the Town and Country Planning Department, Air Port or Air Base Authority, the Ground Water Board or any such other agency prior to issuing the authorization.

(3) The State Board shall issue the authorization in the prescribed Form to the municipal authority or an operator of a facility within forty five days stipulating compliance criteria and standards prescribed including such other conditions, as may be necessary.

(4) The authorization shall be valid for a given period and after the validity is over, a fresh authorization shall be required.

294. *Management of municipal solid wastes.*—(1) Any municipal solid waste generated in a city or a town, shall be managed and handled in accordance with the compliance criteria and the procedure as may be prescribed.

(2) The waste processing and disposal facilities to be set up by the municipal authority on their own or through an operator of a facility shall meet the specifications and standards as may be prescribed.

295. *Annual Reports.*—(1) The State Board shall prepare and submit to the Central Pollution Control Board an annual report with regard to the implementation of these rules by the 15th of September every year in the prescribed Form.

(2) The Central Pollution Control Board shall prepare the consolidated annual review report on management of municipal solid wastes and forward it to the Central Government along with its recommendations before the 15th of December every year.

The Kerala Public Health Code

296. *Accident Reporting.*—When an accident occurs at any municipal solid wastes collection, segregation, storage, processing, treatment and disposal facility or landfill site or during the transportation of such wastes, the municipal authority shall forthwith report the accident in the prescribed Form to the District Collector.

Power to make rules.—(1) The Government may, by notification, in the gazette make rules for carrying out all or any of the provisions of this part of the Code.

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

(a) the form of application to be made under sub-section (2) of section 289;

(b) the form annual report to be submitted under sub-section (3) of section 289;

(c) the standards to be maintained under sub-section (1) of section 291;

(d) the form and other condition of authorization under sub-section (3) of section 291;

(e) the compliance criteria and the procedure under section 292 (1);

(f) the specifications and standards under sub-section (2) of section 292;

(g) the form of annual report under sub-section (1) of section 293;

(h) the form for reporting accident under section 294.

297. *Overriding effect of office laws.*—The provisions of this part of the code shall be in addition to, and not in derogation of the provisions of any Central Act or State Act on the subject.

Statement of Objects and Reasons

The Health Code Bill is being recommended to enact a complete code containing provisions to provide an efficient public health care assistance system and to regulate the functioning of all insitutions established to dispense health care assistance to the public. The Bill deals with the Constitution of separate State Councils for different systems of medicines having power to grant or refuse registration of practitioners and to control the professional conduct of the registered practitioners and to lay down the standard to be maintained by them. Further there are provisions prescribing conditions to be satisfied by different categories of medical care centres, hospitals etc. There are also provisions intended to lay down the precautionary steps to be taken to prevent contagious diseases causing danger to the public. The object and reasons for the Bill are as indicated above.

**THE KERALA SENIOR CITIZENS (MAINTENANCE, CARE,
PROTECTION, WELFARE AND CREATIVE
INVOLVEMENT) BILL**

**A
BILL**

to provide maintenance, protection, care, welfare and for creative involvement of all senior citizens in activities of public good and to lay down the measures to be taken by the State to ensure the same and matters connected therewith and incidental thereto;

WHEREAS Article 41 of the Directive Principles of the Constitution of India directs the State to provide for public assistance for senior citizens; to live in dignity and justice;

WHEREAS the care, protection and assurance of creative involvement of all senior citizens is a basic duty of a welfare State and the Indian Constitution mandates a welfare State for all the people;

WHEREAS the number of senior citizens is going up exponentially (in 1961 it was 5.83% of the population of Kerala; in 1991 it became 8.82% and in 2001 was 9.79%; in 2011 it is estimated to go upto 11.74% of the population) and it is necessary that their welfare be assured as integral to fundamental rights as well as for social stability and progress;

WHEREAS a large section of the senior citizens have valuable energy, experience and expertise, acquired by them during their working life, which constitute a rich resource for national development and progressive prosperity, if it is fully utilized and it is for the State and society to create fair opportunities for the senior citizens actively to involve themselves in educational, industrial, cultural, social and other developmental activities;

WHEREAS it has to be widely recognized that the ageing and the aged, especially in the lower income groups, need physical and financial help from the State and the society; this is particularly so because of the breakdown of the joint family system and materialistic changes in social attitudes;

AND WHEREAS though the State Government issued a senior citizen's policy in 2006 with various provisions which are forward looking and salutary, so far no measures have been taken to implement the policy and no budgetary provision has been made in this behalf and this makes necessary that there should be a legislative sanction and direction to lay down the measures to be taken by the State.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) 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 Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Act ____

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into effect on such date as the Government may notify in the official Gazette.

2. *Definitions.*— In this Act unless the context otherwise requires:—

(a) “Government” means the Government of Kerala.

(b) “Senior Citizen” shall mean every Indian citizen, man or women of the age of 60 years and above but shall be deemed to include also persons who are under the service of the State or Central Government, statutory body or other public or private sector employer and is required to retire at an earlier age than 60 years.

(c) “Competent Authority” means the authority constituted by the Government under Section 8 (2) of the Act.

(d) “Senior Citizen pension” means the quantum of pension determined by the competent authority under Section 8(3) of the Act as payable by the State.

3. *Four categories of Senior Citizens.*— For the purpose of this Act, Senior Citizens may be classified into four categories.

(a) Those who draw no pension but has income from other sources sufficient to lead a reasonably dignified life.

(b) Those who draw no pension or other fair retiral benefits under any scheme or from any employer but was an employee at the time of retirement.

(c) Those who draw pension but do not have the right of reimbursement of—

(i) Medical expenses;

(ii) Medical expenses for treatment of any injuries caused by accidents, natural calamity or other adversities resulting from crime, tort or similar causes.

(d) Those who draw pension and right of reimbursement of expenses mentioned in sub-clauses (i) and (ii) of clause (c).

4. *Register of Senior Citizens.*—The Government shall direct all Panchayats, Municipalities, District Collector’s Offices and Police Stations to maintain a register of Senior Citizens with such details and particulars and in such manner as may be prescribed.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill

5. *Compulsory maintenance and care of Senior Citizens by their children.*—(1) Notwithstanding anything contained in any other law for the time being in force it shall be the duty of every person within the limits of his financial capacity to take care, look after and maintain his/her parents and grandparents and dependent minor children and widowed sisters without the means of minimal sustenance and to assure them a life with dignity and creative involvement.

(2) In case of non-compliance with the provision in sub-section (1), the Senior Citizen concerned or any person on behalf such Senior Citizen may file an application in the prescribed form against the defaulter for an order for payment of monthly allowance or lump sum payment for the maintenance of the Senior Citizen or Citizens concerned or dependent brothers or sisters.

(3) The application under sub-section (2) may be filed before a Magistrate of the first class within whose jurisdiction the Senior Citizen concerned is normally residing.

(4) The Magistrate may before passing orders in the application consider all or any of the following matters—

(a) The average income from all sources of the person against whom maintenance is claimed;

(b) The standard of living of the family to which Senior Citizen belongs;

(c) The minimum needs of the Senior Citizen or Citizens for whom maintenance is claimed; and

(d) Any other matter which, in the circumstances of each case, the Magistrate may consider relevant.

(5) An appeal shall lie to the High Court from any order made by the Magistrate under this section.

6. *Punishment for failure to comply with the order passed under Section 5.*—(1) Failure to comply with the orders passed under Section 5 without sufficient reasons, shall be treated as an offence punishable with imprisonment for a period of not less than one year and not more than two years and with a fine which may extend to Rs. 5 lakhs.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill

(2) The Magistrate who has passed the order alleged to have been violated or any Magistrate of the Ist Class within whose jurisdiction offender usually resides may on a complaint filed try and punish the offender following the procedure prescribed in the Criminal Procedure Code.

7. *Senior Citizen's right for reimbursement of medical expenses.*— In the case of Senior Citizens belonging to the categories mentioned in sub-sections (b) and (c) of Section 3, the State, statutory body or employer in the public or private sector shall fully reimburse the expenditure incurred consequent on, any sickness, injury or damage sustained in the course of employment or otherwise where the claimant is not in any manner or to any degree culpable.

8. *Constitution of Competent Authority and payment of pension to the Senior Citizens.*—(1) All Senior Citizens above the age of 60 years except those belonging to category mentioned in sub-section (a) of Section 3 may apply for pension from the State sufficient to lead a reasonably dignified life, in the prescribed form before the competent authority constituted under sub-section (2) detailing the circumstances which justifies the claim for such pension from the State.

(2) Government may designate in each District an officer not below the rank of Sub Collector as the competent authority to entertain and dispose of the application filed under sub-section (1) in accordance with the rules prescribed in that behalf under the Act.

(3) The competent authority may conduct such enquiries as he deems fit to collect all relevant facts and circumstances required for recording a definite finding regarding the eligibility of the claimant to claim pension under the Act and about the appropriate quantum of pension payable by the State.

(4) In the case of Senior Citizens who draws pension under the relevant service rules or schemes the claimant shall establish special circumstances for raising the claim and the competent authority shall state special reasons for granting pension under Section 8 in such cases.

(5) In cases where an order is passed for payment of pension, the Government shall make appropriate arrangements to pay the amount ordered to the Senior Citizens in the first week of every month if the payment is to be made on a monthly basis. In other cases within the time indicated in the order by the Competent Authority.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill

9. *Medical treatment facilities to be provided to the Senior Citizens by the State.*—The Government shall provide to all Senior Citizens excluding those belonging to category referred to in sub-section (a) of Section 3 and those who are entitled to reimbursement of medical expenses from employers other than Government, special and speedy medical treatment facilities in Government Hospitals and dispensaries free of cost. Government shall also enter into appropriate and effective arrangements with private hospitals, nursing homes, and clinics recognized by the Government for providing Senior Citizens referred to above, special and speedy medical treatment without claiming payment of expenses needed for treatment from the senior citizens but only from the Government.

10. *Other facilities to be provided to the Senior Citizens.*—Government shall frame and implement schemes.

(a) for travel facilities either wholly free or at concessional rates in public transport vehicles and privately owned transport vehicles.

(b) For reservation of seats in all modes of public transports owned by the Government or by private owners by issuing necessary instructions to all authorities and making violation of these instructions punishable with imposition of prescribed penalty.

11. *Utilization of experience, energy and expertise of Senior Citizens for social, educational and economic development of the State.*—The Government shall devise appropriate schemes and ensure with the full involvement of municipalities, panchayats, non-governmental organizations, educational authorities and institutions, senior citizens forums wherever they exist, appropriate means and methods for the full utilization as far as possible without payment, of the experience, energy and expertise acquired by the Senior Citizens in the course of their working life for the general welfare and progress of the State as a whole.

12. *Establishment of Senior Citizen's homes.*—(1) The Government shall establish and maintain sufficient number of Senior Citizen's homes at accessible places in the State in consultation with the Senior Citizen's associations of the State if there is one and provide all necessary facilities in such homes as may be prescribed.

(2) The management of the Senior Citizen's homes shall, as far as possible, be entrusted to the Senior Citizen's association or non-governmental organizations whose functional capacity and commitment are found satisfactory on due enquiry.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill

(3) Apart from the facilities for living, the homes shall provide means of entertainment, library and recreational advantages and also activities which develop the physical, mental and moral qualities of the Senior Citizens.

13. *Setting up of a new Department for Senior Citizen's Affairs.*—The Government shall set up a Department for Senior Citizen's Affairs headed by a senior officer of the level of joint secretary, charged with the task of collecting information about Senior Citizens and their welfare and of ensuring implementation of the provisions of this Act and with the task of having regular consultations with the Senior Citizen's association and also create an appropriate forum for such regular consultations.

14. *Revision of existing policy of Senior Citizens.*—The Government shall review the existing policy in the light of this Act and also take all necessary steps, administrative, and otherwise, for the implementation of the provisions of this Act.

15. *Awareness programmes for inculcating values of respect, care and love for Senior Citizens in the young ones.*—The Government shall take appropriate steps to direct all educational authorities to introduce awareness programmes and extra curricular activities aimed at inculcating in the young minds values of respect, care and love for Senior Citizens.

16. *Free legal aid for certain Senior Citizens.*—The Government shall ensure that Senior Citizens who are granted Senior Citizen's pension are provided with free legal aid for the purpose of the solution of any problem which they may face.

17. *Duty of the police in charge of a Police Station to provide security for Senior Citizens.*—It shall be the duty of the officer in charge of every local Police Station to provide maximum security to every lonely Senior Citizen or lonely couple residing within its jurisdiction in such manner as may be prescribed.

18. *Promoting study of problems of gerontology etc.*—The Government shall promote institutions and NGOs for study of problems of gerontology and for research into problems and issues related to ageing and the aged.

19. *Government shall make necessary budget allocations annually.*—The Government shall make due provision in the Annual Budget and provide requisite funds for implementing the beneficial provisions of this Act.

The Kerala Senior Citizens (Maintenance, Care, Protection, Welfare and Creative Involvement) Bill

20. *Provisions in the Act to have overriding effect.*—The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to Senior Citizens in any part of the country.

21. *Power of the Government to make rules.*—(1) The Government may, by notification in the Official Gazette, make rules for implementing 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 Objects and Reasons

The population of Senior Citizens has registered an upward increase recently and is estimated to go up in future. Article 41 of the Constitution of India directs the State to provide for public assistance to the Senior Citizens and to ensure their welfare and well-being. A large number of Senior Citizens is endowed with considerable experience acquired during their active life which, if channeled, would be of considerable benefit to the society at large. At the same time, it is also necessary to provide assistance to them to ensure their welfare. It is the duty of the State to take care of their needs in their old age. Their children too, if they are able and affluent, have a duty to share their income with them so that they would be able to live in peace in the evening of their lives. Hence this Bill to provide compulsory maintenance to Senior Citizens by way of pension and other benefits. The Bill also seeks to create offences for the willful neglect of the Senior Citizens by their children.

THE KERALA ENERGY SELF-SUFFICIENCY BILL

A BILL

to provide for the exploitation of alternative sources of energy in the State on a large scale.

Preamble. — WHEREAS the rate of consumption of electricity in the State is increasing day by day;

AND WHEREAS the production of sufficient electricity is essential for the development of the State;

AND WHEREAS the Kerala is rich in alternative sources of energy;

AND WHEREAS the exploitation of the alternative source of energy is necessary for the development of the 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 Energy Self-Sufficiency Act, —

(2) It shall come into force on such date as may be notified by the Government.

(3) It extends to the whole of Kerala.

2. *Energy from alternative sources.*—(1) The Government shall promote the production of electricity from natural sources of energy like water, wind, sunlight, waves and waste.

(2) The Kerala State Electricity Board shall use its resources and relevant expertise to prepare strategies and implement them with high priority for the purpose of producing energy from Waterfalls, Water storage, Wind power, Tidal power, Solar power and Garbage or other waste which could be converted into Biogas or Electricity in an ecologically friendly manner.

(3) The Board shall prepare and submit an annual report to the legislature on the measures taken for energy generation from the source stated in sub-section (2).

(4) The Government shall issue appropriate direction to the Board for the purposes stated in the above sub-section and in case of neglect or dereliction, entrust it to alternative bodies for carrying out energy strategies from the natural resources available in the State.

The Kerala Energy Self-Sufficiency Bill

3. *Industrial establishment to produce electricity.*—(1) Every industrial establishment public or private in the State shall make endeavor to produce electricity for use in their establishment from any of the alternative sources of energy.

(2) The Kerala State Electricity Board shall provide all the necessary technical support to the industrial establishment for production of electricity from alternative sources.

(3) There shall also be agreement with the Board for the purchase of electricity from the industrial establishment in cases where they produce more electricity than the actual use in their establishments.

Statement of Objects and Reasons

The energy needs of the people of Kerala are met mostly by hydro-electric power generated out of water resources dependent entirely on the regularity of monsoons and adequate rainfall. Power shortage has become common when monsoons fail and reservoirs become empty. Power is essential for the development of industries in the State and for the various needs of the people. It is not as if there are no alternative sources of energy. Energy can be generated from Wind Power, Tidal Power, and more so from Solar Power, Garbage and other waste which could be converted into Electricity or Biogas. Some advanced countries have developed mechanism to harness the Solar Power for manifold purposes which can be adopted in this State also. It is to ensure self-sufficiency and promotion of production of energy from alternative sources that the Bill is proposed.

THE KERALA EQUAL OPPORTUNITIES COMMISSION BILL

A BILL

to promote equality of opportunity to all sections of people and towards that end to establish an Equal Opportunities Commission and an equal opportunity enforcement authority to effectively intervene in policy development, programme implementation, punishment of offenders and public administration on behalf of deprived and discriminated groups and for matters connected therewith or incidental thereto:

Preamble.—WHEREAS it is necessary to promote equality of opportunity to all sections of people and towards that end to establish an Equal Opportunities Commission and an equal opportunity enforcement authority to effectively intervene in policy development, programme implementation, punishment of offenders and public administration on behalf of deprived and discriminated groups 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 Equal Opportunities Commission Act,—
 - (2) It extends to the whole of State of Kerala.
 - (3) It shall come into force at once except such provisions of the Act which the Government may by order reserve for implementation on a later date.

CHAPTER II DEFINITIONS AND INTERPRETATION

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—
 - (a) “Act” shall mean the “Kerala Equal Opportunities Commission Act”.
 - (b) “Authority” means “Kerala Equal Opportunity Enforcement Authority” constituted under Section 12 (4) of this Act.

The Kerala Equal Opportunities Commission Bill

(c) “Commission” means the Kerala Equal Opportunities Commission established under Section 4 of this Act.

(d) “Equal Opportunity Practice Code” means practices declared as such for any sector or region by the Commission under Section 28 of this Act.

(e) “Good Practice Code” means practices declared as such for any sector or region by the Commission under Section 27 of this Act.

(f) “Deprived group” is a group that is identified by the Commission as such in a specified context after verifying the facts relating to deprivation, discrimination or any other matter relevant thereto.

(g) “Deprivation Index” means the formula and methodology by which the Commission would identify the “deprived groups”. These may vary according to the sectors and regions surveyed in relation to the equality goal. There may be levels of deprivation as well. The formula thus evolved may include indicators such as caste, religion, income, region, place of residence, occupation of parents, the kinds of early education and several others found relevant by the Commission by giving weighted scores to various differences on the above indicators in order to evolve a cumulative score, which is fair and equal to all concerned. However, such weighted scores may not necessarily have the same validity across sectors as the relevant factors vary in relation to education, health, employment, housing, etc.

What the “deprivation index” aims to do is to evolve an evidence-based objective understanding of the alleged deprivations and consequent denial of equal opportunity vis-a-vis deprived groups.

(h) (i) “Discrimination” means any distinction, exclusion or restriction made on the basis of sex, caste, language, religion, disability, age, descent, place of birth, residence, race or any of the factor which results in less favourable treatment or has the effect or likelihood of impairing or nullifying the recognition, enjoyment or exercise of equality of opportunity.

(ii) Discrimination includes direct or indirect discrimination.

(iii) ‘Direct discrimination’ occurs when a person intentionally or with knowledge violates the equal protection clauses guaranteed by the Constitution.

(iv) Any other discrimination which has the effect or likelihood of impairing or nullifying the exercise of equality of opportunity or which results in less favourable treatment will be deemed to be ‘indirect discrimination’.

The Kerala Equal Opportunities Commission Bill

(i) “Equal Opportunity” in respect of this Act refers to steps taken for the progressive elimination of discrimination – direct and indirect – against deprived groups, and the creation of steps evolved for equal access to education and employment and such other sectors notified by the Commission with approval of Government.

(j) “Equal Opportunity Audit” means a socio-legal audit of Government bodies, public or private enterprises and autonomous institutions that may be carried out by the Commission for the purpose of evaluating provisions for equal opportunities in such enterprises or institutions.

(k) “Group” is an aggregate of people who are identifiable in terms of shared attributes and circumstances.

(l) “His” or “He” shall be deemed to include “her” or “she” as the case may be for the purposes of this Act.

(m) “Member” means a Member of the Kerala Equal Opportunity Commission and includes the Chairperson.

(n) “Equal Opportunity Status Report” refers to a report that may be published by the Commission in addition to the annual and periodical reports submitted by it to the legislature in order to assess the state of equal opportunities at the State level.

(o) “Notification” means a notification published in the official Gazette under this Act.

(p) “Orders” means orders issued by the Commission under Section 25 of the Act.

(q) “Prescribed” means prescribed by rules made under this Act.

(r) “Public servant” shall have the meaning assigned to it in Section 21 of the Indian Penal Code.

(s) “Record” means the official data or documents authenticated by an officer of the Commission designated for the purpose.

(t) “Rules” means the rules made by the State Government under Section 34 or rules made by the Commission under Section 35 of the Act as applicable.

3. *Interpretation.*—1. The equal opportunity provisions of Part III and Part IV of the Constitution including the statutes enacted thereunder shall inform and guide the interpretation of the provisions of this Act and the Rules.

The Kerala Equal Opportunities Commission Bill

2. Words and phrases used in this Act or the Rules and Regulations made under it shall be construed in the light of the general purposes of the Act and the statement of objects and reasons appended to the Act. Any omission in the Act, Rules, or Regulations may be appropriately dealt with through recourse to the general purposes of the Act and the principles stated above.

3. The principles enunciated in relevant international conventions, covenants or treaties acceded to by India and relating to discrimination and equality of opportunity in so far as they have a bearing on the appreciation or understanding of the meaning or content of the provisions of this Act or for enhancing the purposes of this Act, shall be legitimate instruments in the interpretation of the Act.

4. Apart from the Staff, the Commission may constitute an equal opportunity Enforcement Authority for such regions as the Government notifies in consultation with the Chief Minister, the Minister concerned and the Opposition Leader.

CHAPTER III
STATE COMMISSION

4. *Establishment of State Commission.*—(1) The State Government shall establish a Commission to perform the functions assigned to it and exercise the powers conferred upon it, under this Act.

(2) The State Commission shall consist of a Chairperson and four members.

5. *Appointment of Chairperson and other members.*—The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of:

- (a) The Chief Minister—Chairperson
- (b) Speaker of the Legislative Assembly—Member
- (c) Minister-in-charge of the Ministry of Minority Affairs in the Government of Kerala—Member
- (d) Leader of the Opposition in the Legislative Assembly—Member
- (e) Chief Secretary of the State—Member Secretary

Provided that in constituting the State Commission, every effort shall be made to give representation to persons from deprived groups.

And provided that at least one of the five members shall be a woman.

The Kerala Equal Opportunities Commission Bill

6. *Removal of a member of the State Commission.*—(1) The Governor may by order remove from office any member if such Member,

- Becomes an undischarged insolvent; or
- Gets convicted and sentenced to imprisonment for criminal misconduct.
- Refused to act or becomes incapable of acting as a member.

(2) Provided that no person shall be removed under this clause until that person has been given reasonable opportunity to be heard in the matter.

7. *Term of office of members.*—(1) Every member shall hold office for a period of five years.

(2) A member may by writing and addressed to the State Government, resign from the office of Chairperson or, as the case may be from membership at any time.

(3) A vacancy arising from removal, resignation or otherwise shall be filled by fresh appointment not later than six months after such vacancy arises.

8. *Member to discharge the Chairperson's functions in certain circumstances.*—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his/her 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/her functions owing to absence on leave or otherwise, one of the Members as the Governor may, by notification, authorize on his/her behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his/her duties.

9. *Terms and conditions of service of Members.*—The honorariums 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 honorarium and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

10. *Vacancies, etc., not to invalidate the proceedings of the State Commission.*—No act or proceedings of the State Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of such Commission.

The Kerala Equal Opportunities Commission Bill

11. *Procedure to be regulated by the State Commission.*—(1) The State Commission shall meet at such time and place as it may think fit.

(2) The State Commission shall regulate its own procedure.

(3) All orders and decisions of the State Commission shall be authenticated by such officer that it may designate in this behalf.

12. *Officers and other staff of the State Commission.*—(1) The State Government shall make available to the State Commission and the Equal Opportunities Enforcement Authority constituted under this section such other officers as may be necessary for the effective functioning of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical scientific staff and Equal Opportunity Enforcement Authorities to prosecute and punish the violators of the two Codes referred to in Section 28 as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

(4) The State Commission may constitute an Equal Opportunity Enforcement Authority for such regions of the State in consultation with Chief Minister, Minister for Minority Affairs and the Leader of the Opposition and the Speaker of the House in accordance with the Rules framed in that behalf by Government specifying the qualifications, terms and conditions to be satisfied by the person/persons appointed as the authority.

13. There shall be in every District an Equal Opportunity Enquiry Committee constituted by Panchayats in consultation with the Commission or any officer empowered in that behalf by the Commission and such committee shall have jurisdiction to receive complaints about the violation of any of the aspects included in the Good Practice Code or the Equal Opportunity Practices Code referred to in Section 27 and enquire into such complaints and forward the same to the Commission with its own report for appropriate action in accordance with law.

Such Committees may have three members of which one must be a woman and other a person having three years experience as an advocate. The members of the committee may function in accordance with the terms and conditions fixed as per rules framed by the Government in this behalf.

The Kerala Equal Opportunities Commission Bill

CHAPTER IV

JURISDICTION, FUNCTIONS AND POWERS

14. *Jurisdiction.*—(1) The jurisdiction of the Commission extends to all “deprived groups” who have been denied or who claim to have been denied equal opportunities by Government, public and private bodies, and in particular with reference to:

(a) Access to employment including self-employment and conditions thereof.

(b) Access to education including primary, secondary, tertiary, special education, professional and vocational, and conditions thereof.

(c) Such other areas outside education and employment which the appropriate Government may decide and request the Commission to include in its jurisdiction.

(2) The Commission may assume jurisdiction on any of the above suo motu or on any complaint or representation by an individual or a group or by reference to it by the Central or State Government:

Provided the complaint manifests a group equality dimension, that is to say that it is not an isolated incident and is a practice, including systematic practice, that may constitute discrimination.

15. *Functions.*—The functions of the Commission are as follows:

(a) To work towards ensuring the elimination of discrimination and denial of equal opportunities in all walks of life.

(b) To investigate practices/presence of inequality of opportunities particularly in education and employment and propose remedial measures.

(c) To evaluate the attainment of equal opportunities and the obstacles to such attainment for different groups of people.

(d) To inquire and investigate into specific complaints of denial of equal opportunity.

(e) To mediate, conciliate and settle disputes relating to the denial of equal opportunities.

(f) To intervene, initiate and facilitate judicial proceedings in matters involving denial of equal opportunities.

(g) Conduct public inquiries or hearings in matters of denial of equal opportunities and to ask the party concerned to take remedial measures within a specified period.

The Kerala Equal Opportunities Commission Bill

(h) To conduct Equal Opportunity Audit in public and private enterprises, Government departments and other institutions and to invite their attention to shortcomings, deficiencies or other factors affecting the equality of opportunities and to require them to draw up action programmes for ensuring equal opportunities.

(i) To undertake research, collection of data, information and materials relating to deprived groups either by itself or through the census or any other accredited source (public or private) and engage in its dissemination so as to promote an evidence based understanding of the equal opportunity situation in different sectors.

(j) To evolve “equal opportunity practice codes” for the promotion of understanding and acceptance of equal opportunity practices in Government, public and private enterprises and institutions.

(k) To report to Government on its own or when so requested as to the laws that should be made or programmes of action to be undertaken to eliminate the denial of equal opportunity.

(l) To examine enactments and proposed enactments (when so requested by a department/ministry of the Government) to find out its impact on equality of opportunity in education or employment and to report to the Ministry the results of such examination.

(m) To direct the Government or authority to take action including prosecutions or the imposition of civil sanctions or penalties on persons in authority found to be acting in a manner prejudicial to the implementation measures suggested by the Commission.

(n) To study the reports of other commissions at the Central and State level if any which have a bearing on the promotion of equality of opportunity and strive towards an integrated approach in policy development and programme implementation.

(o) To interact with institutions of Local Government and to advise them towards adoption of measures to eliminate discriminatory practices leading to denial of equal opportunities at the level of Panchayats and Municipalities.

(p) To prepare annual and periodical performance reports and the State Equal Opportunity Status Report if and when considered necessary.

(q) To perform such other functions as it may find appropriate for giving complete equality of opportunities to all sections as mandated by the Constitution.

16. *Powers relating to Inquiries.*—(1) While inquiring into complaints under the Act, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular the following powers, namely:

The Kerala Equal Opportunities Commission Bill

(a) Summoning and enforcing the attendance of witnesses and examining them on oath;

(b) Discovery and production of any document;

(c) Receiving evidence on affidavits;

(d) Requisitioning any public record or copy thereof from any court or office;

(e) Issuing commissions for the examination of witnesses or documents;

(f) Any other matter which may be prescribed.

(2) The Commission shall have the 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:

(a) Summon and enforce the attendance of any person and examine him;

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

(c) requisition any public record or copy thereof from any office.

(3) The provisions of Section 19 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

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

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (3) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

17. *Power to provide legal assistance.*—(a) In all cases where the complainant is eligible for legal aid, the Commission can order provision of appropriate legal aid under the Legal Services Authority Act, 1987.

(b) In special cases, if the Commission so desires to have professional expertise, it may appoint *amicus curiae* or engage legal counsel.

The Kerala Equal Opportunities Commission Bill

18. *Powers to give Orders and Directions to Demand Information and to Inspect Records and Premises.*—In addition to the powers to carry out inquiries and investigations under Sections 15 and 16, the Commission is empowered to issue orders and directions to demand information and to inspect the premises of Government bodies, public and private enterprises and of autonomous institutions to facilitate the discharge of its functions under section 15.

19. *Statement made by persons to the Commission.*—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceeding, 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 to answer; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry; it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER V
PROCEDURE

20. *General and Special Investigations.*—(1) (a) The Commission may suo motu decide to conduct a formal investigation in matters of equal opportunity for the purpose of any of its functions under Section 15.

(i) The Commission shall conduct a formal investigation in matters relating to equal opportunities if requested to do so by the Central or State Governments.

(ii) The terms of reference for the investigation shall be drawn up by the Commission or, if the Commission is required by the Government to conduct the investigation, by the Government after consulting the Commission.

(iii) The Commission shall give notice of the holding of the general investigation, but if the investigation is confined to the activities of certain persons, then the Commission shall give notice to such persons.

The Kerala Equal Opportunities Commission Bill

(iv) Where the Commission is of the belief that certain persons have engaged or are engaging in acts that are contrary to the object of the legislation, it can conduct a special investigation and shall—

(a) inform that person of its belief and of its proposal to investigate the acts in question; and

(b) offer an opportunity of making oral or written representations; and a person so names who avails of the opportunity of making oral representations may be represented—

(a) by counsel; or

(b) by some other person of his/her choice.

(v) The Commission may at any time decide to stop or suspend investigations under this section. In case of investigations directed by the Government, then any decision to stop or suspend investigations may be done in consultation with the Government.

(vi) For the purposes of an investigation under the Act, the Commission may—

1. Nominate one or more commissioners to conduct the investigation on its behalf; and

2. Authorise the commissioner to exercise such of its functions in relation to the investigation as it may determine.

(vii) The Commission or, if the Commission were required by the Government to conduct the investigation, the Government, after consulting the Commission may from time to time revise the terms of reference.

(b) For the purposes of an investigation under sub-section (1), the Commission by a notice in the prescribed form served on him/her in the prescribed manner;

(a) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in her possession or control relating to, any matter specified in the notice.

(b) If a person fails to comply with a notice served on him/her under clause

(a) or the Commission has reasonable cause to believe that he/she intends not to comply with it, the Commission may apply to an appropriate authority for an order requiring him/her to comply with it.

The Kerala Equal Opportunities Commission Bill

21. *Inquiry into Complaints.*—The Commission while inquiring into the complaints of denial of equal opportunity may—

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

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, the Commission may initiate an inquiry.

22. *Processing of Individual Complaint.*—(1) Whenever a complaint is filed by or on behalf of a person claiming to be aggrieved alleging denial of equal opportunity, the Commission shall serve a notice of the complaint (including the date, place and circumstances of the alleged unlawful employment practice) on such employer or educational institution within 30 days from the date of filing of the complaint, and shall make an investigation thereof.

(2) Complaints shall be in writing under oath or affirmation and shall contain such information and be in such form as may be prescribed by the Commission.

(3) The Commission may maintain confidentiality of the proceedings as it deems fit.

(4) While investigating a charge, the Commission may make written requests for information, interview people, review documents and as needed, visit the premises where the alleged discrimination occurred.

(5) If the Commission determines after such investigation that there is no reasonable cause to believe that the complaint is true, or that the complaint does not reveal group discrimination, it shall dismiss the complaint and immediately notify the person and the respondent of its decision.

(6) If the Commission determines that there is reasonable cause to believe that the complaint is true, it shall endeavour to eliminate any such alleged discriminatory practice by informal methods of mediation and conciliation.

The Kerala Equal Opportunities Commission Bill

(7) The Commission shall make its determination on reasonable cause not later than 90 days from the filing of the complaint.

(8) If within 90 days after a complaint has been filed with the Commission, it has been unable to secure a conciliation agreement that is acceptable, it may proceed to dispose the matter according to law.

(9) If the Commission decides to intervene for conciliatory settlements, it may either do so by itself or adopt such courses of action as prescribed under S. 89 of the Code of Civil Procedure.

(10) Where the Commission carried out conciliation by itself, and the respondent does not abide by the conciliatory settlements, the Commission may proceed to enforce such settlements according to law including imposition of costs and penalties.

23. *Disclosure of Information.*—(1) No information given to the Commission by any person in connection with an investigation shall be disclosed by the Commission, except—

(a) on the order of any court;

(b) with the informant's consent;

(c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;

(d) in a report of the investigation published by the Commission or made available for inspection;

(e) to the Commissioners, additional Commissioners or employees of the Commission, or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons;

(f) for the purpose of any judicial proceedings under this Act to which the Commission is a party.

(2) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with their duties and the object of the report, any matter which relates to the private affairs of any individual or the business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

The Kerala Equal Opportunities Commission Bill

24. *Review of proposed legislations and Schemes.*—The Commission may suo motu or on request by any person or groups aggrieved take up for consideration any legislative proposal or scheme of the State Government which has or is likely to have an impact on equal opportunities and if it finds necessary, propose to the Government such measures which, in the opinion of the Commission will promote equality of opportunity in matters covered by such legislation or scheme.

CHAPTER VI

MAKING EQUAL OPPORTUNITY PRACTICE PART OF EVERY ENTERPRISE

Enforcement of Orders and Directives

25. (1) If the Commission finds that the respondent has intentionally engaged in or is continuing to engage in, discriminatory practices and denial of equal opportunity, it may—

(a) provide a copy of the inquiry report to the petitioner or his representative asking to explain or justify the conduct found to be discriminatory;

(b) enjoin the respondent to refrain from engaging in such practices and order appropriate action which may deem suitable;

(c) it may recommend to the Government or authority the initiation of appropriate proceedings as the Commission may deem fit against the defaulting person or persons;

(d) approach the High Court concerned seeking such directions, orders or writs as that Court may deem necessary;

(e) The Commission shall publish its inquiry report together with the comments of the Government or authority, if any, as well as the action taken or proposed to be taken by the Government or authority on the recommendations of the Commission.

(2) If the Commission finds that the respondent has unintentionally and without knowledge engaged in discriminatory practices, it may make, inter alia, one of the following orders as it considers just and equitable:

(a) Require the respondent to—

(i) propose an adequate action plan within a specified period with a view to attaining equal opportunities in his/her enterprise;

(ii) once an action plan proposed by him/her has become final, to take action thereunder within a specified period;

(b) An order requiring the respondent to compensate costs.

The Kerala Equal Opportunities Commission Bill

26. It shall be the endeavour of the Commission to make equal opportunity and non-discrimination a normal practice of every enterprise as envisaged by the Constitution not only in public services but also in the non-state sector as well. For this, the Commission may adopt a two-fold approach of incentives and disincentives factored into an Equal Opportunity Practices Code prepared sector-wise or, if necessary, sub-sector wise in activities taken up by the Commission.

27. *Equal Opportunity Practices Code to have two Parts—A Good Practice Code and an Equal Opportunity Practice Code.*—(a) “A Good Practice Code” is what the Commission may issue with information already available in particular sectors, supported or verified by such inquiries/investigations/consultations it might wish to conduct before issuing such codes so that the parties likely to be affected may have notice of it.

(b) “A Good Practice Code” shall apply to all enterprises in the relevant sector; it might involve not only obligations of good practice as prescribed, but also duty to document and notify such information as prescribed by the Commission.

(c) The compliance with good practices under the Code will remain entirely voluntary and enterprises may explain in their submission/explanation why they are not able to comply with all or any of them.

(d) On the basis of such experiential evidence, the Commission may revise the “Good Practice Code” for particular sectors if found necessary.

(e) It is open to the Commission to recommend to the Government to recognize such enterprises which keep a consistent record of following the prescribed codes of practice by giving such incentives as may be permissible under the existing law.

(f) The annual and periodical reports put out by the Commission shall contain detailed analysis of the state of equal opportunity in identified sectors which the Commission would have taken up during that period identifying areas where policy changes or governmental action would be necessary.

28. *Equal Opportunity Practice Code.*—(a) Within five years of the establishment of the Commission, the Commission shall formulate and notify “Equal Opportunity Practice Code” in as many sectors as possible after analyzing the data on the question, looking at the experience gained in implementing the Good Practice Code and after consulting the stakeholders involved, particularly the State.

The Kerala Equal Opportunities Commission Bill

(b) “The Equal Opportunity Practice Code” is binding law in the same way as the “Standing Orders” are binding on establishments under the Industrial Disputes Act, though the methods of its enforcement in case of violation will be as prescribed under this Act/Rules.

(c) It shall be the duty of every enterprise identified in the Equal Opportunity Practice Code to organize its affairs within two years of notification of such a code in such manner as it thinks fit to fully conform to the provision of the Equal Opportunity Practice Code. During this grace period if it finds any practical problems, the Commission’s advise may be extended to overcome them if sought by any enterprise. The consequences of infringement of the Code will follow only after the two year grace period.

(d) On the basis of experiential evidence gathered or research conducted during the above two year period, the Commission thinks it necessary to revise and notify the “Equal Opportunity Practice Code” it may do so in such sectors as found necessary.

(e) Infringement of the code after the grace period by any enterprise may invite one or more of the following consequences:

(i) A notice will be issued to the defaulting enterprise and after due hearing and investigation, the Commission may issue such orders within its power which include compensation, denial of privileges, blacklisting or a civil, criminal or constitutional action in Court.

(ii) Before passing the orders under (e)(i) above, it may ask a duly authorized officer to try and conciliate/mediate a settlement under such conditions which the Commission may decide.

(iii) Recommend to the Government as well as Public and Private authorities to blacklist that enterprise and impose such sanctions so that it may not find it socially and economically viable to be in public activities without conforming to Constitutional requirements of equality.

(iv) In any proceedings under this Act before a Court or tribunal, the Equal Opportunity Practice Code issued under this section shall be admissible in evidence and if such court or tribunal finds it relevant to any question before it, it shall be open to the court or tribunal to decide such question accordingly.

The Kerala Equal Opportunities Commission Bill

CHAPTER VII

29. *Grants by the Government.*—(1) The Government shall after due appropriation made by the Assembly by law in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

30. *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 Government in consultation with the Accountant General of Kerala.

(2) The Accounts of the Commission shall be audited by the Accountant General at such intervals as may be specified by him/her and any expenditure incurred in connection with such audit shall be payable by the Commission to the Accountant General.

(3) The Accountant General or any person appointed by him/her in connection with the audit of the accounts of the Commission shall have the same rights, privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Accountant General or any other person appointed by him/her in this behalf together with the audit report thereon shall be forwarded only to the Government by the Commission and the State Government shall cause the audit report to be laid as soon as may be after it is received before the Legislative Assembly.

CHAPTER VIII

REPORTING TO LEGISLATIVE ASSEMBLY AND FOLLOW UP

31. *Annual Performance and Audit Report.*—The Commission shall present a comprehensive report on its working to the Legislative Assembly annually along with the audited statement of accounts:

Provided that if the Commission finds necessary, it may submit other reports to Legislative Assembly on issues of relevance to equal opportunities.

The Kerala Equal Opportunities Commission Bill

CHAPTER IX
MISCELLANEOUS

32. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against the State Government, Commission, or any member thereof or any person acting under the direction of the State Government, Commission in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the State Government, Commission of any report or other proceedings.

33. *Members and officers to be public servants.*—Every Member of the Commission and every officer appointed or authorized by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

34. *Power of State Government to make rules.*—(1) The State Government may, by notification, make rules to carry out the provisions of this act.

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

(a) The salaries and allowances and other terms and conditions of service of the Members under Section 9;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 12;

(c) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of Section 30; and

(d) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid before the Legislative Assembly for a total period of thirty days. If the Assembly agree on any modifications to the rule or agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or not have any effect, as the case may be.

35. *Power of the Commission to make Rules.*—The Commission is empowered to make such rules and regulations as it may deem necessary for the effective implementation of the Act.

The Kerala Equal Opportunities Commission Bill

Statement of Objects and Reasons

Equality is not only a guaranteed fundamental right but is one of the cherished values of the Freedom Movement. Equality has many dimensions, some integral to civil liberties and non-arbitrary behaviour, while others concern to equal opportunity to access resources and exercise freedom of choice. Largely speaking, one set of equality rights relate to equality before law and non-discrimination based on caste, religion etc., the other talks about developing a level playing field through affirmative action in favour of disadvantaged groups. The Indian Constitution provides for both these dimensions of equality, some through the guaranteed rights in Articles 14 to 18 of Part III and others through Directive Principles for State Action in Part IV. Unless every person is provided equal opportunity for access to public assets and sharing of fruits of development, disparities will grow taking away even the existing capacity of already impoverished persons to avail of opportunities provided by development. It is in this context, an Equal Opportunity Commission is found necessary to enable inclusive growth fulfilling the goals of social justice in the spirit of the Directive Principles.

It is noticed that even after 60 years of freedom, persons belonging to the lowest strata of society are over-represented in low-paying, unskilled occupations while very few of them are found in highly paid professional jobs despite the reservations already granted in education and employment. Discriminatory practices reportedly continue to exist in education, employment, housing and other areas where women, dalits, tribals, disabled persons, minorities and other “deprived sections” are denied equal opportunity. They are handicapped to seek remedies because of insufficient data available in public domain in different sectors of society and of the economy. It is this data deficit that the proposed Equal Opportunity Commission is expected to address. The Commission by marshalling facts and undertaking investigation in sectors where discrimination is pronounced will endeavour to remedy the problem through appropriate interventions and evidence-based advocacy on behalf of deprived groups. It will have the power to negotiate and settle at the enterprise level, to initiate legal action if practices are not corrected within reasonable time, to prescribe equal opportunity practices and to recommend incentives and disincentives to promote the objectives of equal opportunity in public services, resources and outlays.

The Kerala Equal Opportunities Commission Bill

The functions of the proposed Commission are not specifically in the domain of any of the existing Commissions though some of them share the objectives. In some countries the Commission on Human Rights and Equal Opportunities is a joint one. The National Human Rights Commission Act however has not specifically envisaged the equal opportunity issue as part of its primary functions. This gap is redressed by the proposed Bill.

THE KERALA POLICE BILL

Preamble

A Bill to consolidate and amend the law for the regulation of the Police in Kerala State.

WHEREAS the nation's founding faith is the primacy of the Rule of Law and the police must be organized to promote a dynamic Rule of Law and to render impartial service to people;

AND WHEREAS the police has the paramount obligation and duty to function according to the requirements of the Constitution, law and the democratic aspirations of the people and to safeguard their Human Rights and protect their civil, political, social and economic and cultural rights;

AND WHEREAS it is necessary to bring in a new spirit of humanism and constitutional responsibility in every police person;

AND WHEREAS such functioning of the police requires it to be professional and service oriented, and free from extraneous influences and yet accountable to the people;

AND WHEREAS it is expedient to redefine the police role, duties and responsibilities;

AND WHEREAS it is necessary to provide the police with appropriate powers to ensure its functioning as an efficient and effective agency for the above purposes;

AND WHEREAS it is necessary to constitute State Security Commission, Police Complaints Authority, Police Establishment Board, Separation of investigation and law and order functions and provide a fixed minimum tenure for various police functionaries as directed by the Supreme Court;

AND WHEREAS it is necessary to consolidate and amend the law relating to the regulation of the police and exercise of powers and performance of functions by policemen for the investigation and prevention of crimes, maintenance of public order and security of State;

AND WHEREAS it is necessary to provide for certain other purposes, hereinafter appearing; it is hereby enacted as follows:—

The Kerala Police Bill

CHAPTER I
PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Police 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, by notification in the Official Gazette, specify in this behalf.

2. *Definitions.*—In this Act, unless the context otherwise requires:—

(a) ‘Act’ means the Kerala Police Act;

(b) ‘Competent authority’; when used with reference to the exercise of any power or discharge of any duty under the provisions of this Act, means—

(i) in relation to areas for which a Commissioner of Police is appointed under Section 5, the Commissioner or the Additional Commissioner when specially empowered in that behalf by the State Government.

(ii) in relation to the areas other than those referred to in clause (i), the Superintendent or any other police officer specially empowered in that behalf by the State Government;

(c) ‘Cyber Crimes’ means and includes offences under the Information Technology Act, 2000;

(d) ‘District’ means the territorial area declared under Section 6 to be a district;

(e) ‘Place’ includes—

(i) any building, tent, booth or other erection, whether permanent or temporary; and

(ii) any area, whether enclosed or open;

(f) ‘Police or Police Force’ means the police force referred to in Section 3 and includes—

(i) all persons appointed as special police officers under sub-section (1) of section 26 and additional police officers under Section 27; and

(ii) all other persons; by whatever name known, who exercise any police function in any part of the State of Kerala;

The Kerala Police Bill

(g) '*Place of public amusement*' means any place where music, singing, dancing or game or any other amusement, diversion or recreation or the means of carrying on the same is provided, to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted and includes a race course, circus, theatre, music hall, billiard or bagatelle room, gymnasium, fencing school, swimming pool or dancing hall;

(h) '*Place of public entertainment*' means a boarding and lodging house or residential hotel, and includes any eating house in which any kind of liquor or intoxicants is supplied (such as a tavern, a wine shop, a beer shop or a spirit, arrack, toddy, ganja, bhang or opium shop) to the public for consumption in or near such place;

(i) '*Police Officer*' means any member of the Kerala Police Service;

(j) '*Prescribed*' means prescribed by rules enacted under this Act ;

(k) '*Public place*' means any place to which the public have access, whether as of right or not, and includes—

(i) a public building and monument and precincts thereof; and

(ii) any place accessible to the public for drawing water, washing or bathing or for purposes of recreation;

(l) '*Regulations*' means regulations made under Section 91 of this Act;

(m) '*Rules*' means rules made under Section 91 of this Act;

(n) '*Street*' includes any highway, bridge, way over a causeway, viaduct or arch or any road, lane, footway, square, court, alley or passage accessible to the public, whether or not it is a thoroughfare;

(o) '*Superintendence*' means superintendence for the purpose of ensuring that police performance is in strict accordance with law;

(p) '*Subordinate ranks*' means the members of the police force of any below the rank of the Inspector;

(q) '*Vehicle*' means any carriage, cart, van, dray, truck, handcart or other conveyance or any conveyance of any description and includes a bicycle, tricycle, a rickshaw, a motor vehicle, a vessel or an aeroplane;

Words and expressions used in this Act but not defined specifically shall have the same meaning as provided in the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860.

The Kerala Police Bill

CHAPTER II

ORGANIZATION OF THE POLICE FORCE

3. *Constitution of Police Force.*—(1) There shall be one Police Force for the State of Kerala and all members of the police force shall be liable for posting to any branch of the force including the Armed Police/Armed Police Battalions.

(2) Subject to the provisions of this Act:—

(a) the Police Force shall consist of such number in the several ranks and have such organization and such powers, functions and duties as the State Government may by general or special order determine;

(b) the present rank structure of the police is :

- a. Police Constable
- b. Police Head Constable
- c. Assistant Sub Inspector of Police
- d. Sub Inspector of Police
- e. Inspector of Police
- f. Deputy Superintendent of Police
- g. Superintendent of Police
- h. Deputy Inspector General of Police
- i. Inspector General of Police
- j. Additional Inspector General of Police
- k. Special Inspector General of Police
- l. Additional Director General of Police
- m. Director General of Police

(c) the composition of the Police Service shall, as far as possible, reflect adequate representation of all sections of society, including minorities and women and the Social Justice concerns of the State.

(d) the pay, allowances and working conditions of Police personnel shall be as prescribed by rules, from time to time. These shall always be commensurate with the arduous nature of their duties.

(e) Police personnel shall at all times remain accountable to the law and responsive to the lawful needs of the people and shall observe codes of ethical conduct and integrity, as prescribed:

The Kerala Police Bill

Provided that nothing in clause (b) shall apply to the recruitment, pay, allowances and other conditions of service of the members of the Indian Police Services.

(3) For the direction, control and supervision of the Police Force, the State Government shall in the manner prescribed, appoint a Director General of Police who shall exercise such powers and perform such functions and duties and shall have such responsibilities and such authority as may be provided by or under this Act or rules made thereunder.

(4) The post of Director General of Police shall be the senior-most position in the hierarchy of the Police Service of the State and no other officer senior or equivalent in rank to the incumbent Director General of Police shall be posted to any position within the police organization to ensure that the unity of command is maintained at all times.

(a) The State Government may appoint one or more Inspector General or one or more Special Inspector General, one or more Additional Inspector General and one or more Deputy Inspector General of Police.

(b) The State Government may direct that any of the powers, functions, duties and responsibilities and the authority of the Director General may be exercised, performed or discharged, as the case may be, by an Inspector General, a Special Inspector General or an Additional Inspector General or a Deputy Inspector General. Provided that no such order shall deprive the Director General of Police of his overall charge of any branch of the Police Force, so that the unity of command is not disrupted or disturbed.

(c) The State Government may also by a general or special order direct that an Inspector General/Special Inspector General or an Additional Inspector General or a Deputy Inspector General shall assist and aid the Director General in the performance, exercise and discharge of his powers, functions, duties, responsibilities and authority in such manner and to such extent as may be specified in the order.

4. *Director General of Police.* — Selection and term of office of the Director General of Police:—

(1) The State Government shall appoint the Director General of Police from amongst three senior-most officers of the State Police Service, empanelled for the rank.

The Kerala Police Bill

(2) The empanelment for the rank of Director General of Police shall be done by the State Security Commission created under this Act, considering, inter alia, the following criteria:

(a) Length of service and fitness of health standards as prescribed by the State Government;

(b) Assessment of the Performance Appraisal Reports of the previous 15 years of service by assigning weightages to different grading, namely, 'Outstanding', 'Very Good', 'Good', and 'Satisfactory';

(c) Range of relevant experience, including experience of work in Central Police Organizations, and training courses undergone;

(d) Indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases;

(e) Due weightage to award of medals for gallantry, distinguished and meritorious service.

(3) The Director General of Police so appointed shall have a minimum tenure of two years irrespective of his normal date of superannuation:

Provided that the Director General of Police may be removed from the post before the expiry of his tenure by the State Government through a written order specifying reasons, consequent upon:

(a) Conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or

(b) Punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower post, awarded under the provisions of the All India Services (Discipline and Appeal) Rules or any other relevant rule; or

(c) Suspension from service in accordance with the provisions of the said rules; or

(d) Incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or

(e) Promotion to a higher post under either the State or the Central Government, subject to the officer's consent to such a posting.

The Kerala Police Bill

(4) An officer who has functioned as the Director General of Police, shall not be eligible for any employment under the Government of India or under the State Government or in any public undertaking in which Government of India or the State Government have a financial interest after his retirement from service.

(5) The State Government may appoint a Personnel Adviser, a Financial Adviser and a Police Welfare Adviser to assist and aid the Director General of Police, and shall frame rules for the purpose.

5. *Commissioner of Police.*—(1) The State Government may appoint a Police Officer to be the Commissioner of Police of any area comprising a city or town specified in a notification issued by the State Government in this behalf and published in the Official Gazette.

(2) The State Government may also appoint one or more Additional Commissioners of Police for the areas specified in clause (1). The State Government may also appoint sufficient numbers of Deputy Commissioners/Assistant Commissioners and Officers of other ranks as deemed necessary.

(3) The Commissioner shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority as are provided by or under this Act or rules made thereunder:

Provided that any of the powers, functions, duties, responsibilities, or authority exercisable or to be performed or discharged by the Commissioner shall be exercised, performed or discharged subject to the control of the Director General.

(4) The State Government may, by general or special order, empower an Additional Commissioner to exercise and perform in the areas for which a Commissioner is appointed under sub-section (1) all or any of the powers, functions or duties to be exercised or performed by a Commissioner under this Act or under any law for the time being in force.

6. *Declaration of area as District.*—(1) The State Government may by notification declare that as from such date as may be specified in the notification, any area in the State shall be a District for the purposes of this Act.

(2) The State Government may appoint for each District a Superintendent of Police and one or more Additional, Assistant and Deputy Superintendents of Police as it may think necessary.

(3) The State Government may, by a general or special order, empower an Additional Superintendent to exercise and perform in the District for which he is appointed or in any part thereof, all or any of the powers, functions or duties to be exercised or performed by a Superintendent under this Act or under any law for the time being in force.

The Kerala Police Bill

(4) The Superintendent may, with the previous permission of the Director General of Police, delegate any of the powers (except the power to make regulations) and functions conferred on him by or under this Act to an Assistant or Deputy Superintendent.

7. *Superintendent of Police.*—(1) The administration of the police throughout a District, or part thereof, shall be vested in the Superintendent of Police appointed under this Act.

(2) For the purpose of efficiency in the general administration of the District it shall be lawful for the District Officer, known as District Collector in the State of Kerala, to coordinate the functioning of the police with other agencies of the District administration in respect of the following:—

(a) in matters relating to the promotion of land reforms and the settlement of land disputes;

(b) in matters related to extensive disturbance of the public peace and tranquility in the District;

(c) in matters relating to the conduct of elections to any public body;

(d) in matters relating to the handling of natural calamities, and the rehabilitation of the persons affected thereby;

(e) in matters relating to situations arising out of any external aggression;
and

(f) in any similar matter, not within the purview of any one department and affecting the general welfare of the people of the District.

(3) For the purpose of such coordination, the District Officer, may

(a) call for information of a general or special nature, as and when required from the police, and any other agency connected with the general administration of the District;

(b) call for a report regarding the steps taken by the police or other agency to deal with the situation; and

(c) give such directions in respect of the matters, as are considered necessary by him to the police and the concerned agency;

(d) for the purpose of coordination the District Officer shall ensure that all departments of the District, whose assistance are required for the efficient functioning of the police, render full assistance to the Superintendent of Police.

The Kerala Police Bill

(4) The Superintendent of Police or the head of the police agency, shall render all assistance to the District Officer for the purpose of coordination, as specified above.

Explanation.—Coordination in this context means to combine or integrate harmoniously all the above functions.

8. *Technical and Support Services.*—(1) The State Government shall create and maintain such ancillary technical agencies and services, under the overall control of the Director General of Police, and considered necessary or expedient for promoting efficiency of the police service.

(2) (a) The services so created shall include a full-fledged Forensic Science Laboratory at the State level, a Regional Forensic Science Laboratory for every Police Range and a Mobile Forensic Science Unit for every District, with appropriate equipment and scientific manpower, in keeping with the guidelines laid down by the Directorate of Forensic Science or the Bureau of Police Research and Development of the Government of India and the emergence of new forms of hi-tech crimes like Cyber crime, crimes using the gains of information and communications technology and paper less procedures employed by financial institutions.

(b) It shall be the responsibility of the State Government to ensure regular maintenance of all scientific equipment and regular replenishment of consumables in the Forensic Laboratories.

(c) The State Government shall take all measures to encourage and promote the use of science and technology in all aspects of policing.

(3) The State Government shall appoint for the whole State or any part thereof, one or more Directors of Police Telecommunications, not below the rank of Deputy Inspector General of Police and as many Superintendents of Police and Deputy Superintendents of Police as deemed necessary to assist them.

(4) The State Government shall similarly appoint for the whole State or any part thereof, one or more Directors of Police Transport, not below the rank of Deputy Inspector General of Police, and as many Superintendents of Police and Deputy Superintendents of Police as deemed necessary to assist them.

(5) The State Government shall ensure regular maintenance of all the needed equipment and regular replenishment of consumables for the Police Telecommunications, the Police Transport Services and other units of the Technical and Support services.

The Kerala Police Bill

9. *Director of State Police Academy and Principals of Police Training Colleges/Schools.*—(1) The State Government shall establish a full-fledged Police Training Academy at the State level and as many fully-equipped Police Training Colleges and Schools as are deemed necessary for ensuring efficient induction training of all directly recruited police personnel in various ranks, post-induction training, pre-promotion training for all those promoted to higher levels and such thematic and specialized in-service training courses for police personnel of different ranks and categories as deemed necessary from time to time.

(2) The State Government may appoint by prescribed rules, any police officer not below the rank of Inspector General of Police to be the Director of the State Police Academy, and an officer not below the rank of Deputy Inspector General of Police to head each Police Training College and an officer not below the rank of Superintendent of Police as the Principal of each Police Training School.

(3) The State Government shall also provide for appointment, by rules prescribed, of appropriate number of officers from the Police service, in such Police Training Academy College(s) and Schools after careful selection having due regard to aptitude, academic qualifications, professional competence, experience and integrity. The State Government shall evolve a scheme of monetary and other incentives to attract and retain the best of the available talent in the Police service to the faculties of such Training institutions.

(4) The State shall also ensure appointment of persons with academic accomplishments in the fields of law, sociology, psychology, criminology, computer technology, communications, forensic science and other subjects relevant to police profession to the permanent faculty positions in these training institutions.

10. *Organization of Research.*—The State Government may set up such bodies and take such other steps as considered necessary or expedient for the purpose of undertaking research into matters affecting the efficiency of the police and incorporate the findings of such studies and research as inputs in developing Strategic Policing Plan/Annual Policing Plan for the State.

11. *State Intelligence and Criminal Investigation Departments.*—(1) There shall be a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Criminal Investigation Department for investigating inter-State, inter-district crimes and other specified offences, in accordance with the provisions of this Act.

(2) The State Government shall appoint police officers of appropriate rank to head each of the two Departments.

The Kerala Police Bill

(1) The Criminal Investigation Department shall have specialized wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of these wings shall be headed by an officer not below the rank of a Deputy Inspector General of Police.

(2) The Government shall, by order, separate investigating police from the law and order police in towns/urban areas which have a population of ten lakhs or more and gradually extend to smaller towns/urban areas also in order to ensure speedier investigation, better expertise and improve rapport with the victims of crime, witnesses and other stake-holders.

(3) The State Intelligence Department shall have specialized wings, to deal with and co-ordinate specialized tasks such as measures for counter terrorism, counter militancy and VVIP Security. Districts shall have similar units to collect, and collate, intelligence, on crime as well as law and order.

(4) The State Government shall appoint by rules prescribed under this Act, an appropriate number of officers from different ranks to serve in the Criminal Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled.

12. *Constitution of Police Divisions.*—(1) Subject to the control of the State Government, the Commissioner, for the area for which he is appointed and the Director General of Police for other areas, shall,

(a) constitute within the area under his charge, Police Divisions, Sub-Divisions, Circles and Police Stations;

(b) define their limits and extent of such divisions, circles and sections.

(2) Each sub-division shall be under the charge of an officer of a rank not below that of an Assistant Commissioner or Deputy Superintendent of Police, as the case may be, and each circle shall be in charge of an officer of the rank not below that of an Inspector of Police and Police Stations in charge of a Sub-Inspector.

13. *Police Stations.*—(1) The State Government may, in consultation with the Director General of Police and by notification, create as many Police Stations with as many outposts as necessary, in a Police District, duly keeping in view the population, the area, the crime situation, the workload in terms of law and order and the distance to be traversed by the inhabitants to reach the Police Station.

(2) Two or more Police Stations may be designated a Police Circle for the purpose of control and supervision:

The Kerala Police Bill

Provided that larger Police Stations may be placed under the supervision of officers of the rank of Inspector of Police and above.

(3) A police station shall be headed by a Station House Officer not below the rank of Sub-Inspector of Police. However the State Government may in consultation with the Director General of Police provide for multiple SHOs in a Police Station, each independently handling separate categories of offences.

(4) The State Government shall ensure availability of adequate strength of staff at each police station, duly based on the population, incidence of crime, law and order-related workload, and the geographical area.

(5) The State Government shall provide each Police Station with all essential amenities including a reception-cum-visitors room, separate toilets for men and women and separate lock-ups for men and women. The object should be to make the Police Station freely accessible to people, just like any other public office subject only to security restraints.

(6) Each Police Station shall have a Women and Child Protection Desk, staffed, as far as practicable by women police personnel, to record complaints of crimes against women and children and to deal with the tasks relating to administration of special legislations relating to women and children.

(7) Each Police Station shall prominently display all the relevant information required to be made public as well as the guidelines and directions issued by the Supreme Court regarding the persons arrested and held in lock-ups and other standing orders on arrests, bail, and other relevant information on legal aid and assistance available.

14. *Term of office of key Police functionaries.*—(1) An officer posted as a Station House Officer in a Police Station or as an officer in-charge of a Circle or Sub-Division or as a Superintendent of Police of a District or Deputy Inspector Generals in charge of Ranges, Inspector Generals in charge of Zones shall have a minimum term of two years:

Provided that any such officer may be removed from his post before the expiry of the minimum tenure of two years consequent upon:

- (a) promotion to a higher post; or
- (b) conviction, or charges having been framed, by a court of law in criminal offence; or

The Kerala Police Bill

(c) punishment of dismissal, removal, discharge or compulsory retirement from service or of reduction to a lower rank awarded under the relevant Discipline & Appeal Rules; or

(d) suspension from service in accordance with the provisions of the said Rules; or

(e) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or

(f) the need to fill up a vacancy caused by promotion, transfer, or retirement.

(2) In exceptional cases, an officer may be removed from his post by the competent authority before the expiry of his tenure for gross inefficiency and negligence or where a prima facie case of a serious nature is established after a preliminary enquiry:

Provided that in all such cases, the competent authority shall report in writing the matter with all details to the next higher authority as well as to the Director General of Police. It shall be open to the aggrieved officer, after complying with the order, to submit a representation against his premature removal to the Police Establishment Board, which shall consider the same on merit and recommend due course of action to the competent authority.

Explanation.—Competent authority means an officer authorized to order transfers and postings for the rank concerned.

15. *Railway Police.*—(1) The State Government may by notification in the Official Gazette, create one or more special police districts embracing such railway areas in the State as it may specify, and appoint a Superintendent of Police, one or more Assistant and Deputy Superintendent and such other police officers for each such special district as it may deem fit.

(2) Subject to the control of the Director General of Police, such police officers shall discharge police functions connected with the administration of railways situated within their respective charges, and such other functions as the State Government may from time to time assign to them.

(3) Any police officer whom the State Government may by general or special order empower to act under this sub-section, may, subject to any orders which that government may make in this behalf, exercise within the special district or any part thereof any of the powers of an officer-in-charge of a Police Station in that district. While exercising such powers he shall, subject to any such order as aforesaid, be deemed to be an officer-in-charge of the Police Station discharging the functions of such officer within the limits of his station.

The Kerala Police Bill

(4) Subject to any general or special orders which the State Government may make in this behalf, such police officers shall, in the discharge of their functions, be vested within every part of the State, with the powers and privileges and be subject to the liabilities of police officers under this Act or any other law for the time being in force.

(5) The Superintendent of Police may, with the previous permission of the State Government, delegate any of the powers and functions conferred on him by or under this Act, to an Assistant or Deputy Superintendent.

16. *Recruitment and Training.*—(1) Recruitment to the Force should be made at the level of Constables, Sub-Inspectors (both General Executive and Armed Police Reserve/Armed Police Battalion). In view of the special nature of the police profession, the need to evaluate physical, mental, psychological and attitudinal attributes of the candidates and to avoid piling up of vacancies for long, the State Government may by appropriate orders constitute a State Police Recruitment Board in the Kerala Public Service Commission and ensure that vacancies are filled up continuously. The minimum educational qualification for recruitment as a Constable should be a pass in twelfth standard or equivalent and that of Sub-Inspectors that of Graduation. The recruitment standards and the details of the procedure including written test, physical and medical test, interview etc. shall be prescribed by the said Board. The recruitment should be made in such a way as to ensure that the reservation in employment given to different communities are safeguarded and the composition of the force truly represents the minorities, scheduled castes and scheduled tribes and women.

(2) The entry point for Constables should be the Armed Police Battalions from where after training and service for a minimum period prescribed by the State Government in consultation with Director General of Police, they are transferred to the District Armed Reserves and to the local police (District Local Police). This system aims to make available young and healthy personnel for arduous law and order duties and for specialized training. To the rank of Sub-Inspectors in the General Executive and the Armed Police Battalions/District Armed Police recruitment may be made separately.

17. *Training.*—(1) Training for all ranks of the police force would be on the basis of a Training Manual approved by the Government and modified from time to time.

The Kerala Police Bill

(2) Training given to the ranks directly recruited to the force at the Police Academy/Police Training College/School as well as in-service training should conform to the recommendations of the **Committee on Police Training (Gore Committee)** and should be periodically updated to incorporate the gains of science and technology and developments in law and social sciences.

(3) The training should not de-humanize the trainee, but should help to inculcate in him a spirit of service and commitment and develop character and a value system.

(1) Besides the initial training of new recruits it shall also be ensured that all ranks undergo Annual Refresher Training Programme, by rotation, over and above specialized training in different skills as needed by different categories. To achieve this, appropriate strengths of 'Training Reserves' will be created in each District Armed Reserve setup.

Each Battalion will have one full Company earmarked as the 'Training Reserve', to provide for rotational training to all personnel.

(2) The annual refresher training course shall be treated as mandatory, and under no circumstance the personnel undergoing such training shall be withdrawn for deployment on law and order, or any other duty.

(3) The curricula for the initial as well as the annual refresher training courses, besides physical skills and fitness, shall lay due emphasis on the knowledge of constitutional and legal rights of the citizens as well skills relating to individual and collective interaction with the public, with special emphasis on courteous and impartial behaviour.

(4) The content and methodology of the annual refresher training courses as well as the other specialized courses for the personnel of the District Armed Reserves and the State Armed Police Battalions shall be reviewed and revised from time to time by the officer heading the State Armed Police Battalion set-up, in consultation with the Training Wing of the State police, and under the overall guidance of the Director General of Police.

(5) The Director General of Police may issue orders on daily physical training, drill, teaching on police system and procedure, and briefing on intelligence, etc., for Police personnel working in Police Stations and other Units in small numbers.

18. *Oath by Police Officers.*—(1) Every member of the police force enrolled under this Act shall, on appointment, make and subscribe before the Superintendent of Police or Commissioner as the case may be or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose.

The Kerala Police Bill

(2) Every Police Officer of the grade of Inspectors or below shall on appointment receive a certificate in the prescribed form. The certificate shall be issued under the seal of such officer as the State Government may by general or special order direct.

(3) A certificate of appointment shall become null and void whenever the person named therein ceases to belong to the Police Force or shall remain inoperative during the period within such person is suspended from such force.

(4) The powers, functions and privileges vested in a police officer shall remain suspended while such Police Officer is under suspension from office:

Provided that notwithstanding such suspension the person shall not cease to be a Police Officer and shall continue to be subject to the control of the same authorities to which he would have been, if he was not under suspension.

19. *Special Police Officers for temporary period.*—(1) The Superintendent of Police or any officer, specially empowered in this behalf by the State Government, may, at any time by a written order issued under the hand and seal of such officer, appoint, for a period as specified in the appointment order, any able-bodied and willing person between the age of 18 and 50 years, whom he considers fit to be a Special Police Officer to assist the Police Service.

(2) Every Special Police Officer so appointed shall:

(a) on appointment, undergo prescribed training and thereafter receive a certificate in a form approved by the State Government in this behalf; and

(b) shall have the same powers, privileges and immunities and be liable to the same duties and responsibilities and be subject to the same authorities as an ordinary police officer.

20. *Appointment of Additional Police.*—(1) Additional police comprising officers of such ranks or grades may be appointed or deputed for the purpose prescribed by the State Government for such time and on such pay as the authority prescribed in that behalf may determine.

(2) Every Additional Police Officer upon such appointment shall:

(a) receive a certificate in a form approved by the State Government in this behalf;

(b) be vested with all or such of the powers, privileges, duties and immunities of a police officer as are specially mentioned in the certificate; and

(c) be subject to the orders of the Superintendent of Police.

The Kerala Police Bill

(3) The deployment or deputation of such Additional Police Officer may be made at the request of any person requiring such police, and the cost of such deployment shall be recovered in such manner as is prescribed under this Act or any other law for the time being in force.

21. *Superintending power of Director General.*—The Director General, throughout the State and the Commissioner in the area for which he is appointed, shall have authority to investigate and regulate all matters connected with the Police in the State or in the area, as the case may be, and all persons concerned shall be bound to give him reasonable aid and facilities in conducting such investigations and should conform to his orders consequent thereto.

22. *Service Conditions of Primary Ranks of the Police Service.*—(1) Three promotions should ordinarily be available to all meritorious officers. The Police Recruitment Board shall evolve and lay down merit cum-seniority criteria for promotion through a transparent process, for different ranks.

(2) Every promotion of police officers should be linked with screening examinations and intensive training, so as to ensure higher levels of professional competence and accountability.

(3) In order to provide a fast track for career progression for Constables and Head Constables who are academically qualified to be a Sub-Inspector, 50 per cent of direct recruitment to the posts of Sub-Inspectors in the General Executive shall be earmarked for those who have put in between seven and ten years of service including the period of probation, to be filled through a Limited Departmental Competitive Examination.

(4) The Government shall endeavour to introduce a shift system in the Police Stations to ensure proper working hours consistent with efficiency in performance.

(5) The Director General of Police, with the approval of the State Government, shall outsource as many non-core police functions as possible, to enable police officers to concentrate on core police functions.

23. *Duties of Local Police Officers (Police Stations).*—(1) The Duties of all officers of and the different ranks of the Local Police (Police Stations) shall include, *inter alia*, the following:

- (a) serving and protecting the citizens;
- (b) engaging with the citizens and gaining their co-operation;
- (c) policing the Beat;
- (d) patrolling;

The Kerala Police Bill

- (e) Law and Order duties;
- (f) collecting intelligence to support police work;
- (g) traffic control duties;
- (h) investigations, enquiries, maintaining Police Station records and registers;
- (i) auxiliary duties such as technology support, special skill support, staff support, out station duties, and such other tasks as assigned by senior officers from time to time; and
- (j) assisting and co-operating with local self government bodies/ authorities on proper disposal of garbage, prevention of environmental degradation, littering and throwing of waste and garbage on roads, highways and public places and the control of noise pollution and proper use of public places, public services and facilities.

(2) The Director General of Police with the approval of the Government may delegate some functions of investigation to the members of the Constabulary under the close supervision of the Head Constables/Assistant Sub-Inspectors.

(3) The Director General of Police may with the approval of the Government introduce measures like Community Policing to interact closely with the people and to transform the police to a people friendly, service oriented group of public servants.

CHAPTER III

ARMED POLICE UNITS

24. *District Armed Reserves and State Armed Police Battalions.*—To assist the civil police promptly and efficiently in dealing with group protests and violent disturbances involving breaches of peace or law and order, and in disaster management duties, as well as to discharge such duties which require the assistance of armed police, the State Government shall create Armed Police units with appropriate manpower strength in the form of an Armed Police Reserve for each Police District, and appropriate number of Armed Police Battalions for the State, including Women units.

25. *Role and functions of Armed Police Battalions.*—(1) The Armed Police Battalions will be a State-level reserve, to be deployed under specific orders of the Director General of Police, to aid and assist the civil police in dealing with virulent and widespread problems of public disorder or other forms of violence, needing deployment of Armed Police beyond the resources of the District Police.

The Kerala Police Bill

(2) The District Armed Reserve, which will function under the control, direction and supervision of the District Superintendent of Police shall be the armed wing of the District Police to deal with any emergent law and order problem or any violent situation in the District, and for providing security guards or escort of violent prisoners, or such other duties as may be prescribed.

26. *Organizational structure of District Armed Reserves.*—(1) The District Armed Police Reserve shall be headed by an officer of the rank of either a Deputy Superintendent of Police (Armed Reserve) or an Additional Superintendent of Police (Armed Reserve), depending on the manpower strength of the Armed Reserve set-up of the District.

(2) The District Armed Reserve will be subdivided into appropriate numbers of Platoons, each headed by a Reserve Sub Inspector. The Platoons will be further sub-divided into Sections, each of which will be headed by an Assistant Reserve Sub Inspector. Each Section shall have two Head Constables who could lead half Sections when so deployed.

(3) The deployment of the District Armed Reserve for performing law and order duty with arms shall ordinarily not be in less than Section strength. Only when large-scale deployments have to be made, covering a wide area, and when firearms are not needed, the Armed Reserve set-up could be utilized in the strength of half Sections.

(4) Each Armed Reserve set-up shall have an appropriate number of Reserve Inspectors to deal with general administration, maintenance of equipment and stores, and training.

(5) It shall be the duty of the District Superintendent of Police to ensure that the personnel of the District Reserve are deployed in a manner that ensures their regular training and constant preparedness for their tasks, as also a fair rotation between duty and rest for them.

27. *Organizational structure of the Armed Police Battalions.*—(1) A Commandant, equivalent in rank to Superintendent of Police, shall head each Armed Police Battalion. The Commandant shall be assisted by a Deputy Commandant, equivalent in rank to Additional Superintendent of Police, who will also be the Second-in-Command of the Battalion. Each Battalion shall be divided into appropriate number of Service Companies and a Headquarters Company, each of which will be headed by an Assistant Commandant, equivalent in rank to Deputy Superintendent of Police.

The Kerala Police Bill

(2) The Armed Police Battalions of the State shall be headed by an officer of or above the rank of Deputy Inspector General, depending on the number of Battalions in the State, who shall be responsible for the administration, training, operational preparedness and welfare of the personnel of all the Armed Police units in the State, under the overall guidance and supervision of the Director General.

(3) In fixing the strength of senior officers for the Armed Police Battalions, it shall be ensured that for supervising the functioning and preparedness of every 3-4 Battalions, a senior officer of the rank of Deputy Inspector General is provided, and if there are more than one such Deputy Inspectors General, the Armed Police Battalions set-up shall be headed by an officer of the rank of Inspector General or Additional Director General, as necessary.

(4) The duties of the head of the Armed Police Battalions set-up, the Deputy Inspector General, the Commandant, Deputy Commandants, Assistant Commandants, Reserve Inspectors of the Service and the Headquarters Companies shall be as prescribed by the State Government from time to time.

28. *Recruitment to Armed Police Battalions.*—(1) Direct recruitment to the Armed Police Battalions, other than in the ministerial and technical cadres, shall be limited to the ranks of Constable and Armed Police Sub Inspectors and should, as far as possible, reflect adequate representation to all sections of society with due compliance of the policy of the State on reservation in employment and gender representation.

(2) The minimum qualification for recruitment as Constable shall be a pass in 12th standard or equivalent, and the age group shall be 18-21 years. For the recruitment to the rank of Reserve Sub Inspectors, the minimum qualification shall be graduation and the age limit 21 to 24 years.

(3) The recruitment to the rank of Constables and Armed Police Sub Inspectors shall be made through the Police Recruitment Board constituted under the Kerala State Public Service Commission.

29. *Training.*—(1) The initial training of new recruits would be in the Battalion or the Police Recruits School.

(2) The training period and curriculum should be based on the recommendations of the Report of the Committee on Police training (Gore Committee).

The Kerala Police Bill

(3) Besides the initial training of new recruits it shall also be ensured that all ranks in these units undergo an Annual Refresher Training Programme, by rotation, over and above specialized training in different skills as needed by different categories. To achieve this, appropriate strengths of 'Training Reserves' will be created in each District Armed Reserve set-up. Each Battalion will have one full Company earmarked as the 'Training Reserve', to provide for rotational training to all personnel.

(4) The Annual Refresher Training Course shall be treated as mandatory, and under no circumstances the personnel undergoing such training shall be withdrawn for deployment on law and order, or any other duty.

(5) The curricula for the initial as well as the annual refresher training courses, besides physical skills and fitness, shall lay due emphasis on the knowledge of constitutional and legal rights of the citizens as well as skills relating to individual and collective interaction with the public, with special emphasis on courteous and impartial behavior.

(6) The content and methodology of the Annual Refresher Training Courses as well as other specialized courses for the personnel of the District Armed Reserves and the State Armed Police Battalions shall be reviewed and revised from time to time by the officer in charge of the State Armed Police Battalion set-up, in consultation with the Training Wing of the State Police, and under the overall guidance of the Director General of Police.

30. *Deployment.*—(1) The deployment of units and sub-units of the District Armed Reserves and the State Armed Police Battalions shall be strictly restricted to only those situations where such deployment is considered absolutely necessary.

(2) The District Superintendent of Police shall carefully scrutinize each request for deployment of District Armed Reserves, received from the field officers. Similarly, the Director General shall closely scrutinize each request for deployment of any force from the State Armed Police Battalions, received from District Superintendents of Police, Deputy Inspector General of Police of a Range, or any other field officer, before ordering such deployment. The scrutiny will include a realistic determination of the quantum of force required as also the duration for which the deployment is required.

(3) The deployment shall be made for a fixed period, as specified in the order, and unless the same is extended by a specific order, the force shall return to its Headquarters, on the expiry of the initial period.

The Kerala Police Bill

(4) It shall be the duty, in the case of District Armed Reserves, of the District Superintendent of Police and that of the head of the Armed Police Battalion set-up of the State in respect of the Battalion personnel, to ensure that the personnel of these armed units are deployed in a manner that ensures their regular training and constant preparedness for their tasks, as also a fair rotation of duty between the various sub-units of the Reserve or a Battalion.

(5) While ordering deployment of any armed police unit, due care will also be taken to ensure, as far as possible, that the personnel are able to take due rest and also avail a weekly off.

(6) Under no circumstance Armed Police personnel either from the District Reserves or Battalions shall be attached to local Police Stations or distributed in small penny packets.

31. *Adequacy of Arms, Equipment and Accoutrement.*—The adequacy of arms, equipment and accoutrement for each Battalion as well as the District Armed Reserves shall be assessed regularly on an annual basis by the officer heading the State Armed Police Battalions set-up, in terms of the type, quality and quantities of each such item needed for each unit, in consultation with the Commandants and the District Superintendents of Police concerned.

CHAPTER III A

SPECIAL JUVENILE POLICE UNIT

31A. *Constitution of Special Juvenile Police Unit.*—For the purpose of dealing with child in need of care and protection, a Special Juvenile Police Unit shall be established.

Explanation.—For the purpose of this Chapter, the child in need of care and protection shall be having the same meaning as defined in the Juvenile Justice (Care and Protection of Children) Act, 2000.

31 B. *Role and Functions of Special Juvenile Police Battalions.*—(1) The Special Juvenile Police Battalions will be a State-level reserve, to be deployed under specific orders of the Director General of Police, to aid and assist the children in need of care and protection.

(2) Special training on dealing with the said children shall be imparted to the personnel of the Special Police Unit to deal with the children and to do all duties for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000.

(3) Every member of Juvenile Police Unit shall undergo before appointment a course in Juvenile Jurisprudence, Child Care Justice and Laws governing reform of juveniles in conflict with law.

The Kerala Police Bill

CHAPTER IV

SUPERINTENDENCE AND ADMINISTRATION OF POLICE

32. *Superintendence of police to vest in the State Government.*—(1) It shall be the responsibility of the State Government to ensure an efficient, effective, responsive and accountable Police Service for the entire State. For this purpose, the power of Superintendence of the Police Service shall vest in and be exercised by the State Government in accordance with the provisions of this Act.

(2) The State Government shall exercise its superintendence over the police in such manner and to such an extent as to promote the professional efficiency of the police and ensure that its performance is at all times in accordance with the law. This shall be achieved through laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police perform their tasks in a professional manner with functional autonomy.

CHAPTER V

STATE SECURITY COMMISSION

33. *Constitution of the State Security Commission.*—(1) The State Government shall, within six months of the coming into force of this Act, establish a State Security Commission to exercise the functions assigned to it under this Chapter.

(2) The State Security Commission shall consist of the following members:—

- (a) the Home Minister as its Chairperson;
- (b) the Leader of the Opposition in the State Assembly;
- (c) a retired High Court Judge, nominated by the Chief Justice of the High Court;
- (d) the Chief Secretary;
- (e) the Principal Secretary of the Home Department;
- (f) the Director General of Police as its Member–Secretary; and
- (g) five independent members who should be non-political persons of proven reputation for integrity and competence (hereinafter referred to as “Independent Members”) from the fields of academia, law, public administration, media or NGOs, to be appointed on the recommendation of the Selection Panel constituted under Section 34.1.

(3) The composition of the Commission shall reflect adequate gender and minority representation, and the Commission will have not less than two women, as members.

The Kerala Police Bill

(4) No Government employee in service shall be appointed as an Independent Member.

(5) Any vacancy in the State Security Commission shall be filled up as soon as practicable, but not later than three months after the seat has fallen vacant.

34.1. *The Selection Panel for Selection of Independent Members.*— The panel for selection of Independent Members shall consist of;

(a) a retired Chief Justice of a High Court as its Chairperson to be nominated by the Chief Justice of the High Court;

(b) the Chairperson of the State Human Rights Commission; and

(c) the Lok Ayukta/Upa Lok Ayukta of the State.

34.2. *Term of Office of Independent Members.*—A person shall be appointed as an Independent Member for a period of three years. The same person shall not be appointed for more than two consecutive terms.

34.3. *Grounds of Ineligibility for Independent Members.*—No person shall be appointed as an Independent Member of the State Police Board if he:

(a) is not a citizen of India; or

(b) has been convicted by a court of law or against whom charges have been framed in a court of law; or

(c) has been dismissed or removed from service or compulsorily retired on the grounds of corruption or misconduct; or

(d) holds an elected office, including that of Member of Parliament or State Legislature or a local body, or is an office-bearer of any political party or any organization connected with a political party; or

(e) is of unsound mind.

34.4. *Removal of Independent Members.*—(1) An Independent Member may be removed from the State Security Commission by a two-thirds majority of members of the Board on any of the following grounds:

(a) proven incompetence; or

(b) proven misbehaviour; or

(c) failure to attend three consecutive meetings of the State Police Board without sufficient cause; or

The Kerala Police Bill

(d) incapacitation by reasons of physical or mental infirmity or otherwise becoming unable to discharge his functions as a member.

(2) In addition, an Independent Member shall be removed from the State Commission if he incurs any of the grounds of ineligibility specified under Section 34.3.

(3) The State Security Commission shall explicitly State in writing the grounds for such removal.

35. *Functions of the State Security Commission.*—The State Security Commission shall perform the following functions:

(a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law;

(b) prepare panels of police for the rank of Director General of Police against prescribed criteria with the provisions of Section 4 of Chapter II;

(c) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, *inter alia*, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards; and

(d) in accordance with the provisions of Chapter XIII (Police Accountability), review and evaluate organizational performance of the Police Service in the State as a whole as well as district-wise against (i) the Annual Plan, (ii) performance indicators as identified and laid down, and (iii) resources available with and constraints of the police.

36. *Meetings of the Commission.*—The Commission shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meeting as may be prescribed:

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

37. *Expenses of the State Security Commission.*—The expenses on account of remuneration, allowances and travel in connection with official business of the State Security Commission, in respect of the Independent Members of the Board shall be borne by the State Government.

The Kerala Police Bill

38. *Annual Report of the State Security Commission.*—(1) The Commission shall, at the end of each financial year, present to the State Government a report on its work during the preceding year as well on the evaluation of performance of the Police Service, as provided.

(2) The State Government shall lay the Annual Report before the State Legislature in the budget session. The Annual Report shall be made easily accessible to the public.

39. *Strategic Policing Plan and Annual Policing Plan.*—(1) The State Government shall:

(a) in accordance with the recommendations made by the State Security Commission draw up a Strategic Policing Plan for a such period and setting out an action plan for their implementation;

(b) place before the State Legislature, within three months of the coming into force of this Act, the Strategic Plan for the first year. The subsequent Strategic Plans shall, thereafter, be laid before the State Legislature every three years;

(c) place before the State Legislature, at the beginning of each financial year, a Progress Report on the implementation of the Strategic Plan as well as an Annual Policing Plan (Annual Plan for short) that prioritizes the goals of the Strategic Plan for the year in question.

(2) The Strategic and the Annual Plans shall be prepared after receiving inputs on the policing needs of the districts from the District Superintendents of Police who, in turn, shall formulate the same in consultation with the community.

(3) The Strategic Plan, the Progress Report and the Annual Plan shall be made readily accessible to the public.

40. *Temporary Association of persons with Commission for particular purposes.*—(1) The Commission may associate with itself in such manner, and for such purposes, as may be prescribed any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Commission under sub-section (1) for any purpose shall have a right to vote at a meeting of the Board, and shall not be a member for any other purpose.

(3) A person associated with the Commission under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board, as may be prescribed.

The Kerala Police Bill

41. *Vacancy in the State Security Commission not to invalidate acts or proceedings.*—No act or proceeding of the State Security Commission or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Commission or such committee, as the case may be.

CHAPTER VI

ADMINISTRATION OF POLICE SERVICE, POLICE ESTABLISHMENT BOARD

42. *Administration of Police Service.*—(1) The administration of the Police Service throughout the State shall be vested in the Director General of Police and in such Additional Directors General, Inspectors General, Deputy Inspectors General and other officers appointed under this Act.

(2) The administration of the police in a District shall be vested in the District Superintendent of Police.

(3) Administration of the Police will mean the management of the Police Service, subject to law, rules and regulations under this Act; and will include framing of regulations, supervision of the functioning of the police at all levels; appointment to subordinate ranks of the Service, deployment of the police personnel, posting, transfers, and the requisite disciplinary action upto and including the rank of Inspector of Police; and advising the Government and the Police Establishment Board on the placement of officers of and above the rank of Assistant/Deputy Superintendent of Police:

Provided that the State Government may intervene in the exercise of the powers of administration by the Director General of Police or any other authorized officer only in accordance with the prescribed rules, regulations or in exceptional circumstances involving urgent public interest, reasons for which shall be recorded in writing.

43. *Police Establishment Board.*—(1) The State Government shall constitute a Police Establishment Board (hereinafter referred to as the 'Establishment Board') with the Director General of Police as its Chairperson and four other senior most officers within the Police organization of the State as members.

(2) The Police Establishment Board shall recommend names of suitable officers, below the rank of Deputy Superintendent of Police, to be transferred and to places to where they are to be posted at the time of appointment to the Government.

The Kerala Police Bill

(3) The State Government shall pass appropriate orders in accordance with the recommendations suitable orders of transfer and posting. No deviation shall be made from the recommendations, unless the State Government is of the opinion that the order passed by the Board is unreasonable.

(4) While effecting transfers and postings of police officers of all ranks, the concerned competent authority shall ensure that every officer is ordinarily allowed a minimum tenure of two years in a posting. If any officer is to be transferred before the expiry of this minimum term, the competent authority must record detailed reasons for the transfer.

44. *Procedure for promotion of Police Officers.*—Promotion to each rank in the Police Service shall be based on merit, which would include seniority, to be evaluated through the result of a qualifying examination and performance evaluation in respect of each officer. The Director General of Police shall, with the approval of the State Government, frame the evaluation criteria for each rank and category of police personnel.

45. *Training-cum-Education Policy for the Police.*—(1) The State Government shall lay down a Training-cum-Education Policy covering all ranks and categories of police personnel. This Policy shall ensure that all police personnel are adequately trained to perform their job, taking due care of proper attitudinal development, and shall be linked to career development scheme of police personnel in different ranks and categories.

(2) The policy shall also aim to promote a service culture among police personnel acquiring appropriate educational and professional qualifications as they advance in their careers.

46. *Financial management.*—(1) The Director General of Police shall be responsible for submitting the budgetary requirements of the Police Service as a whole to the State Government, sufficiently in advance in the preceding financial year.

(2) The budgetary requirements shall be carefully worked out on the basis of realistic needs of each branch, wing, unit and sub-unit of the Police Service, obtained from the unit officers concerned.

(3) The District Superintendents of Police shall take special care to ensure that the financial requirements of each Police Station in the district are worked out meticulously and adequately projected in the budgetary demands of the district, thus leaving no scope for the Police Stations to feel handicapped for meeting the legitimate expenditure on day-to-day police work.

The Kerala Police Bill

(4) The budgetary allocations made by the Legislature shall be placed at the disposal of the Director General of Police who shall be vested with full powers to spend the amounts earmarked under each head of the Budget Account.

(5) In order to meet different kinds of contingency expenditure, sufficient imprest cash shall be provided to police stations and other police units, the amount of which shall be reviewed and revised from time to time, as per the exigencies of circumstances.

CHAPTER VII

**ROLE, FUNCTIONS, DUTIES AND RESPONSIBILITIES OF
THE POLICE**

47. *Powers and responsibilities of the Director General of Police.*—As Head of the State Police Service, it shall be the responsibility of the Director General of Police to:

(a) operationalise the policies, the Strategic Plan and the Annual Plan prepared by the State Government, referred to in Section 39 of this Act; and

(b) administer, control and supervise the Police Service to ensure its efficiency, effectiveness, responsiveness and accountability.

48. *Functions and duties of the police.*—The role and functions of the police shall broadly be:

(a) to uphold and enforce the law impartially, and to protect life, liberty, property, human rights, and dignity of the members of the public;

(b) to promote and preserve public order;

(c) to protect internal security, to prevent and control terrorist activities, breaches of communal harmony, militant activities and other situations affecting Internal Security;

(d) to protect public properties including roads, railways, bridges, vital installations and establishments etc. against acts of vandalism, violence or any kind of attack;

(e) to prevent crimes, and reduce the opportunities for the commission of crimes through their own preventive action and measures as well as by aiding and co-operating with other relevant agencies in implementing due measures for prevention of crimes;

The Kerala Police Bill

(f) to accurately register all complaints brought to them by a complainant or his representative, in person or received by post, e-mail or other means, and take prompt follow-up action thereon, after duly acknowledging the receipt of the complaint;

(g) to register and investigate all cognizable offences coming to their notice through such complaints or otherwise, duly supplying a copy of the First Information Report (FIR) to the complainant, and where appropriate, to apprehend the offenders, and extend requisite assistance in the prosecution of offenders;

(h) to create and maintain a feeling of security in the community, and counsel and as far as possible prevent conflicts and promote amity;

(i) to provide, as first responders, all possible help to people in situations arising out of natural or man-made disasters, and to provide active assistance to other agencies in relief and rehabilitation measures;

(j) to aid individuals, who are in danger of physical harm to their person or property, and to provide necessary help and afford relief to people in distress situations;

(k) to facilitate orderly movement of people and vehicles, and to control and regulate traffic on roads and highways;

(l) to collect intelligence relating to matters affecting public peace, and all kinds of crimes including social offences, communalism, extremism, terrorism and other matters relating to national security, and disseminate the same to all concerned agencies, besides acting, as appropriate on it themselves.

(m) to take charge, as a police officer on duty, of all unclaimed property and take action for their safe custody and disposal in accordance with the procedure prescribed.

(n) to co-operate with the local self-government institutions/authorities as instructed by the Government from time to time.

49. *Social responsibilities of the police.*—Every police officer shall:

(a) behave with the members of the public with due courtesy and decorum, particularly so in dealing with senior citizens, women, and children;

(b) guide and assist members of the public, particularly senior citizens, women, children, the poor and indigent and the physically or mentally challenged individuals, who are found in helpless condition on the streets or other public places or otherwise need help and protection;

The Kerala Police Bill

(c) provide all requisite assistance to victims of crime and of road accidents, and in particular ensure that they are given prompt medical aid, irrespective of medico-legal formalities, and facilitate their compensation and other legal claims;

(d) ensure that in all situations, especially during conflict between communities, classes, castes and political groups, the conduct of the police is always governed by the principles of impartiality and human rights norms, with special attention to protection of weaker sections including minorities;

(e) prevent harassment of women and children in public places and public transport, including stalking, making objectionable gestures, signs, remarks or harassment caused in any way;

(f) render all requisite assistance to the members of the public, particularly women, children, and the poor and indigent persons, against criminal exploitation by any person or organized group;

(g) arrange for legally permissible sustenance and shelter to every person in custody and making known to all such persons provisions of legal aid schemes available from the Government and also inform the authorities concerned in this regard;

(h) take all steps inconformity with the State policy to safeguard environment, natural resources, public assets and public facilities and services.

50. *Duties in Emergency Situations.*—(1) The State Government may, by notification in the official gazette, declare any specified service to be an essential service to the community, for a specified period, which may be extended from time to time, by a notification, as necessary.

(2) Upon a declaration being made under sub-section (1) and so long as it remains in force, it shall be the duty of every police officer to obey any order given by any officer superior to him in connection with the service specified in the declaration.

51. *Senior Police Officer Performing Duties of a Subordinate Officer.*—A senior police officer may perform any duty assigned by law or by a lawful order to any officer subordinate to him, and may aid, supplement, supercede or prevent any action of the subordinate by his own action or that of any person lawfully acting under his command or authority, whenever the same shall appear necessary or expedient for giving more complete or convenient effect to the law or for avoiding any infringement thereof.

The Kerala Police Bill

CHAPTER VIII

POLICING RURAL AREAS

52. *Police Stations covering rural areas.* —(1) Police Stations covering rural areas shall be so organized as to be self-sufficient in matters of accommodation, for amenities as well as in communication facilities, transport and police housing. Each Police Station will also be equipped with adequate facilities of forensic science and scientific aids to investigation.

(2) Special attention shall be paid to the security of each Police Station, particularly in areas prone to violence or mass disturbances. It shall also be ensured that the manpower posted in such Police Stations, is not diverted elsewhere except when specially authorized by the Director General of Police for a specific purpose and a specified period.

(3) The jurisdictional area of a Police Station shall be divided into a suitable number of Beats, each covering a cluster of villages, to be kept under the direct charge of a Head Constable or an Assistant Sub Inspector to maintain regular and close contact with the villages under his charge.

(4) The officer in charge of each Police Station (SHOs/SI of Police) shall ensure that every village in his jurisdiction is covered by a Beat Police Officer as per the minimum frequency prescribed by the Superintendent of Police by a general or special order.

53. *Duties and responsibilities of Police Officers on Beat Duty.*—

(1) The duties and responsibilities of Police Officers on Beat Duty, shall, *inter alia*, be:

(a) to liaise with community elders, members of the Community Liaison group, if any, the Village Defence Party, the Village Guard, and the residents of each village under his charge, and to review, during every visit, the crime prevention measures in the village;

(b) to collect information relating to crimes and criminals and activities of subversive, militant and anti-social nature, if any, in the village and communicate the same to the Station House Officer;

(c) to maintain watch over history-sheeted criminals, if any, and others with criminal record or bad characters;

(d) to acquaint himself with local disputes having potential for violence or with caste or communal overtones, and inform the Station House Officer of the Police Station of the same with all available details;

The Kerala Police Bill

(e) to carry out any other policing task in respect of the village assigned by the State Government, the Director General of Police, the District Superintendent of Police or by Station House Officer of the Police Station through a general or special order;

(f) to record any public grievances and complaints in relation to policing; and

(g) to maintain a record of aforesaid duties and responsibilities carried out by him during his visit and submit the same to the officer in charge of the Police Station.

54. *Village visits by Station House Officer and supervisory officers.*—The Station House Officer shall visit every village under his jurisdiction, as per the minimum frequency prescribed by the Superintendent of Police through a general or special order, and shall interact with as many local residents as possible so as to assess the level of public satisfaction with the police.

55. *Community Liaison Group.*—(1) The District Superintendent of Police shall constitute a Community Liaison Group for each Police Station, comprising respectable local residents of the area with unimpeachable character and antecedents, including retired public servants and heads of teaching institutions, if any, as representatives of the community, to generally advise the police in their functioning. The Community Liaison Group shall have a fair representation of gender, and all other segments and professions, of the society in villages falling in the Police Station area. The Community Liaison Group shall have two representatives nominated by concerned local self-government institution in the jurisdiction of the concerned Police Station from amongst its members:

Provided that no person convicted by a court of law or against whom charges have been framed by a court of law in a criminal case, or dismissed, removed, discharged or compulsorily retired from any employment on grounds of corruption, moral turpitude or misconduct shall be eligible to be inducted into the Community Liaison Group:

Provided further that no person who is connected with any political party or an organisation allied to a political party, other than the nominated representatives of the concerned local self-government institution, shall be eligible to be inducted into the Community Liaison Group.

The Kerala Police Bill

(2) The Community Liaison Group will identify the existing and emerging policing needs of the area, which will be taken into consideration by the Station House Officer while preparing the annual policing strategy and action plan for his jurisdiction, for submission to the District Superintendent of Police. The Community Liaison Group shall perform such other functions as prescribed. It will meet as frequently as necessary, and at least once in each quarter of a year. The meetings of the Community Liaison Group shall be attended by the Subdivisional Police Officer as well as the officer in charge of the Police Station and the Circle Inspector. The meetings shall be open to public.

CHAPTER IX

CONSTITUTION OF POLICE FOR METROPOLITAN CITIES

56. *Constitution of Metropolitan Police.*—The State Government shall constitute for each of the metropolitan areas, other major urban areas with a population of 10 lakhs or more, and such other areas as notified for the purpose from time to time, a police system which is capable of handling the typically complex problems of crime, public order and internal security in urban areas, which call for quick and comprehensive response springing from purposeful direction, unitary chain of command, professional competence, functional specialization, and legal authority coupled with accountability, in accordance with the provisions of this Chapter.

57. *Commissioner of Metropolitan Police.*—There shall be a Commissioner of Police in whom the administration of police is vested in such metropolitan area and he may be an officer of the rank of Deputy Inspector General of Police or above, depending on the population, and the magnitude and complexity of policing tasks in such area.

58. *Additional, Joint, Deputy and Assistant Commissioners of Police for Metropolitan area.*—The Government may divide the area specified in Section 12 into convenient territorial units and appropriate special units, and appoint one or more Additional, Joint, Deputy and Assistant Commissioners to assist the Commissioner of Police in the discharge of his duties.

59. *Powers, functions and duties of Metropolitan Police.*—The Commissioner and other officers under him shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority, as prescribed :

Provided that any of these powers, functions, or duties, exercised or performed by the Commissioner, shall be subject to the overall control and direction of the Director General of Police.

The Kerala Police Bill

60. *Commissioner Metropolitan area will be District Magistrate.*—Subject to such conditions and limitations as may be specified by the State Government:

(a) the Commissioner of Police shall exercise the powers and duties of a District Magistrate under such provisions of the Code of Criminal Procedure 1973, and such other Acts, as may be specified;

(b) any officer subordinate to the Commissioner of Police (not being an Officer below the rank of Assistant Commissioner of Police) shall exercise the powers and duties of an Executive Magistrate, under the provisions of the Code of Criminal Procedure, 1973, as may be specified, under the overall control and supervision of the Commissioner of Police.

61. *Appointment of Financial Adviser and Legal Adviser.*—The Government shall appoint a Financial Adviser and one or more Legal Advisers to aid and assist the Commissioner of Police on financial and legal matters respectively.

62. *Constitution of Police Districts, Police Subdivisions and Police Stations.*—The State Government, in consultation with the Director General of Police, shall:—

(a) constitute appropriate number of Police Districts within each Commissionerate;

(b) divide such Police Districts into Police Subdivisions and specify the Police Stations comprised in each Subdivisions; and

(c) define the limits and extent of such Police Districts, Police Subdivisions and Police Stations.

63. *Officers-in-charge of Police Districts, Police Subdivisions and Police Stations.*—(1) Each Police District shall be under the charge of a Deputy Commissioner of Police, who may, if necessary, be assisted in the discharge of his duties by one or more Additional Deputy Commissioners of Police.

(2) Each Police Subdivision shall be under the charge of an Assistant Commissioner of Police and each Police Station shall be under the charge of an Inspector of Police.

64. *Preservation of Order and Regulation of Traffic.*—The Commissioner of Police may, from time to time, make rules and regulations, not inconsistent with this Act, and subject to any Government Orders, in respect of the following:

(a) for regulating the use of public roads, streets and public places by persons walking, driving, cycling, or accompanying animals, and for parking of vehicles including bicycles, with a view to ensuring smooth and orderly movement of traffic;

The Kerala Police Bill

(b) licensing, or regulating, or if necessary in public interest, prohibiting for reasons to be recorded in writing, the keeping of a place of public amusement or public entertainment, or running cinemas and other forms of public amusement or public entertainment, for ensuring the safety and well-being of persons likely to be affected;

(c) licensing, or regulating or, if necessary in public interest, prohibiting the playing of music in public streets or public places, and the using of a loud speaker or any other sound system in any public place, or places of public entertainment; and

(d) regulating the entry or exit at any place of public amusement, public entertainment, or at any public meeting or assembly, and providing for the maintenance of public peace and prevention of disturbance at such places.

65. *Regulation of public assemblies and processions.*—(1) Any person intending to organise a procession, religious, social, political or otherwise, on any road, street, or thoroughfare, or convene an assembly in any public place, in an area specified in this Chapter, shall give intimation in writing to the officer-in-charge of the concerned Police Station.

(2) The Commissioner of Police or any Officer not below the rank of Inspector, authorised by the Commissioner of Police, may, on receipt of such intimation or otherwise, give, from time to time, such orders not inconsistent with this Act, about the following, orally or in writing, as may be necessary:—

(a) the mode of any assembly or passing of any procession, or the conduct, behaviour or acts of members of such assembly or procession;

(b) prescribing the routes and the time at which such processions may or may not pass;

(c) preventing obstruction on the occasion of such a procession or assembly in the neighbourhood of any place of worship during the time of public worship, and in every case when any road, street or public place or any place of public resort may be thronged or is likely to be obstructed; or

(d) maintaining order on roads, streets, public places and all other places where public throng :

Provided that all orders and directions in respect of any procession or assembly for which intimation has been received from the organisers, shall be issued, as far as possible, within 48 hours of receipt of intimation.

66. *Licence for the usage of loudspeakers.*—(1) No person shall use any loudspeaker or any noise amplifying device without the written permission from the concerned Deputy Superintendent of Police or Commissioner of Police of the concerned area.

The Kerala Police Bill

(2) Licence shall be issued for the usage of loudspeakers only in accordance with the Noise Pollution (Regulation and Control) Rules, 2000.

(3) The licence issued shall specify the place where it is to be used and no licence shall be issued for using it in any silent zone as specified in the Noise Pollution (Regulation and Control) Rules, 2000.

67. *Prevention of disorder.*—The Commissioner of Police may, whenever and for such time, as he considers necessary for the preservation of the public peace and safety, by notification, issue an order to the public or to a particular individual or organisation, prohibiting the following:

(a) carrying in any public place, or road, street or thoroughfare, fire arms, swords, spears, bludgeons, knives, other offensive weapons, or any explosive material;

(b) collection or carrying of stones or missiles, or any objects or means of casting missiles;

(c) keeping, carrying along or offering for exhibition any corpses or effigies or other provocative pictures, boards or placards with offensive slogans; and

(d) making a provocative speech, gesture, or any kind of public display which is indecent, offensive or explosive, or which is likely to create religious tension or hatred between different communities, groups or individuals, or which instigates disobedience of lawful authority.

(e) any attempt or act or preparation to damage/destroy public property and/or other property and take steps to realize the cost of every such damage from the perpetrators or organizers or whoever is found responsible for such damage/destruction.

68. *Prevention of danger to human life and imminent threat to peace and order.*—The Commissioner of Police or any Officer not below the rank of Assistant Commissioner of Police may direct, in the manner as specified, any person to abstain from a certain act or to take action with respect to any nuclear, biological, chemical or any other dangerous material under his possession or control, with a view to preventing danger or damage to human life or property, or an imminent threat to peace and order.

69. *Security for keeping peace and order.*—(1) The Commissioner of Police or any Officer of and above the rank of Assistant Commissioner, on receipt of information that a person:

The Kerala Police Bill

(a) is likely to do any wrongful act that may lead to disturbance of public order; or

(b) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under Section 489A, 489B, 489C or 489D of that Code; or

(c) habitually commits, or attempts to commit, or abets the commission of offences involving a breach of the peace; or

(d) is so dangerous as to render his being at large hazardous to the community; may require by an order, such person to show cause why he should not be ordered to execute a bond, with or without sureties, for good behaviour in the interest of peace and order in his jurisdiction, for a period not exceeding one year.

(2) An Officer acting under sub-section (1) shall conduct the proceedings and issue orders in accordance with the procedure laid down in Sections 111 to 122, and 124 of the Code of Criminal Procedure, 1973.

70. *Removal of persons about to commit offences.*—Whenever it appears to the Commissioner of Police—

(1) that the movements or acts of any person are causing or are likely to cause alarm, danger or harm to person or property, in the jurisdiction of the Commissionerate, or

(2) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, XVII or XXII of the Indian Penal Code, 1860 or under Sections 290 or Sections 489A to 489E (both inclusive) of that Code or in the abetment of any such offence; or

(3) that such person:

(a) is so dangerous as to render his being at large in the area of the Commissionerate hazardous to the community; or

(b) has been found habitually intimidating other persons by acts of violence or by show of force; or

(c) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of money or threatens people for illegal pecuniary gain for himself or for others; or

The Kerala Police Bill

(d) has been habitually outraging the modesty of, or molesting, women and children, and witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or their family members or their property, the Commissioner of Police may, by order in writing duly served on such person, or through public announcement or other means, as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside the area of the Commissionerate by such route and for such time as the Commissioner of Police may specify, and not to enter or return to the Commissionerate or part thereof, as the case may be from which he was directed to remove himself.

Explanation.—A person who during a period within one year immediately preceding the commencement of an action under this Section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have ‘habitually committed that act’.

(4) No order under this Section shall be passed without giving a reasonable opportunity of tendering an explanation to the person sought to be removed.

(5) An order made under this Section shall not exceed the period of two years.

(6) A person aggrieved for any action taken under this Section may appeal to the State Government within thirty days of passing of the order.

(7) The State Government or the Commissioner of Police may by order permit any person in respect of whom an order has been passed under this Section to enter or return to the area of the Commissionerate for a temporary period as may be specified in the order.

(8) If any person violates an order passed under this Section shall be liable to imprisonment for a term not exceeding six months and fine.

71. *Establishment of Special Armed Police Units.*—The Government may establish such special armed police units, including special riot control squads, for the areas covered under this Chapter, for meeting diverse requirements of riot or mob control, disaster management and VIP security, as necessary, and provide for the requisite equipment, and training consistent with Human Rights standards, for such units.

72. *Prevention and Detection of Crime.*—For effective prevention of crime, and speedy and efficient investigation of criminal cases reported within the area notified under Section 87 (Please Check), the Government may, in consultation with the Director General of Police and the Commissioner of Police:

The Kerala Police Bill

(a) create and maintain at every Police Station, a dedicated team of police personnel of different ranks exclusively for the purpose of investigation of crime, with a provision of an appropriate number of supervisory officers;

(b) constitute one or more Specialised Investigation Teams for dealing with major and complex crimes, including organised crime, cyber crime, and economic offences;

(c) establish a Special Criminal Intelligence Unit with adequate technical infrastructure and manpower support, capable of tackling the requirements of counter-intelligence work;

(d) constitute one or more Special Task Forces for prevention and control of activities of organised criminal groups and anti-social gangs;

(e) create a Special Desk in each Police Station, and one or more Specialised Units at the Commissionerate level, for dealing with crimes against women and children and the tasks relating to administration of special legislations on crimes involving women and children;

(f) create appropriate Cells to deal with crimes relating to senior citizens and tourists;

(g) provide one or more State-of-the-art Mobile Forensic Science Units, manned by well-trained scientific staff and police personnel, and adequate facilities for scientific interrogation; and

(h) establish a centralised facility for custody of those arrested, in accordance with established standards of human rights of persons in custody.

73. *Emergency Response System.*—The Government may establish for each area notified under Section 12, a well-equipped Control Room with adequate communication facilities, dedicated network of patrol vehicles and other necessary wherewithal. The Control Room should be in a State of preparedness to meet any emergency situation with utmost speed and highest efficiency.

74. *Constitution of comprehensive schemes for special conditions.*—The Commissioner of Police shall prepare, and regularly update, comprehensive schemes for Riot Control and Disaster Management, *inter alia*, in accordance with the directions, if any, of the Government and the Director General Police.

75. *Community participation in policing.*—(1) The Commissioner of Police shall ensure involvement of the community in policing by constituting a Citizens' Policing Committee, every two years, for each locality or a group of localities or colonies, including slums. These Citizens' Policing Committees, aimed at promoting people's participation in safeguarding their own life and property, should consist of

The Kerala Police Bill

an appropriate number of local residents of the area with unquestionable character, integrity and antecedents, and having commitment to public safety and security. The Citizens' Policing Committees shall have a fair representation from all strata and professions of the society in the area, as also due gender representation.

(2) The police will take the assistance of the Citizens Policing Committees in identifying the existing and emerging needs and priorities of policing in the area, besides involving them in working out and implementing policing strategies and action plans, and in the performance of such other functions as prescribed.

(3) The police will provide to the public, through the Citizens' Policing Committees, at regular intervals, a feedback on the action taken on the identified policing needs, and will also endeavour to create public awareness on policing issues by promoting two-way communication through these Committees.

(4) The meetings of these Committees will be convened, as frequently as deemed necessary, but at least once in every three months. The concerned Assistant Commissioner of Police, besides the officer in-charge of the Police Station, shall attend the meetings of the Committee.

76. *Police to be associated in urban planning.*—While planning for any major developmental activity including development of new colonies, in any area notified under Section 12, the concerned agency shall consult the Commissioner of Police to assess the likely impact of the proposed developmental activity on the safety and security needs of the citizens or any other policing requirements, and the suggestions based on such assessment shall be given due consideration in finalizing the plan.

77. *Liaison and Co-ordination with other Government Agencies.*—In order to ensure proper liaison, consultation and co-ordination between the police, the municipal authorities, the district administration and such other departments of the Government, whose functioning impacts the working of the police, the State Government by notification, will constitute appropriate co-ordination machinery and lay down procedures. The structure of the machinery will be as notified.

CHAPTER X

POLICING IN THE CONTEXT OF PUBLIC ORDER AND INTERNAL SECURITY CHALLENGES

78. *Internal Security Schemes.*—(1) The Director General shall, with the approval of the State Government, draw up an Internal Security Scheme for the entire State as well as for each of the Districts and urban areas notified under Section 12, to deal with problems of Public Order and Security of State, as specific to the area.

The Kerala Police Bill

(2) The Internal Security Schemes so formulated shall be reviewed, and revised as necessary, at least once annually and more frequently if required.

(3) The Internal Security Schemes will, as far as possible, cover all major problems, the area is prone to or which can otherwise be anticipated in the whole or any part thereof. In preparing the Schemes, the Director General of Police shall give special attention to likely disturbance of public order arising out of non-implementation of developmental programmes in the backward and not so easily accessible areas.

(4) The schemes will provide that officers deploying the police to deal with situations of conflict between communities, classes, castes and political groups shall ensure that its composition, as far as possible, reflects social diversity of the area including adequate representation of weaker sections and minorities.

(5) The Internal Security Scheme shall, *inter alia*, cover the role of the police with regard to the security of any establishment or installation relating to critical infrastructure, if any located in the area.

(6) Any organisation, while taking up any activity or programme which is otherwise unobjectionable but may have the potential for disturbing law and order may inform the police, and thereupon, the police shall take such measures as deemed necessary to deal with the situation.

(7) While preparing the Internal Security Scheme under Section 80, the police shall take into consideration the contingencies of specific law and order problems, and security requirements that may arise in such situations.

(8) The Internal Security Schemes will incorporate regularly updated and comprehensive Standard Operating Procedures for the action to be taken by the police, independently or in co-ordination with other concerned agencies in the period preceding, during, and in the aftermath of problems of each kind.

79. *Creation of Special Security Zones.*—(1) If and when the security of State in an area is threatened by insurgency, any terrorist or militant activity, or activities of any organised crime group, the Union Government may, with the concurrence of the State Government, declare such area as a Special Security Zone:

Provided that any such notification shall be placed before the appropriate legislature for ratification, within a period of six months from the date of issue, or the first sitting of the legislature, whichever is earlier:

Provided further that the period of the notification shall not exceed two years unless it is ratified by the Parliament with the concurrence of the State Legislature.

The Kerala Police Bill

(2) The State Government shall create an appropriate police structure and a suitable command, control, and response system, for each such Special Security Zone.

(3) The State Government, in order to ensure co-ordinated functioning of different wings of the administration, shall set up, in each Special Security Zone, a suitable administrative structure which will integrate administrative and developmental measures in the area with the police response to deal with the problems of public order and security.

(4) The Director General of Police shall, with the concurrence of the State Government, issue orders, laying down Standard Operating Procedures to be followed by police in a Special Security Zone.

(5) The Union Government, at the request of the concerned State Governments, may declare areas falling in more than one State, as a Special Security Zone and provide for an appropriate integrated mechanism to be funded and resourced by the concerned State Government and the Union Government.

(6) The State Government may, on the recommendation of the Director General, and for reasons to be recorded in writing, ban or regulate the production, sale, storage, possession or entry of any devices, or equipment, or any explosive, poisonous, chemical, biological or radioactive articles or substances, or any inflow of funds, in a Special Security Zone, if the use of such devices, equipment, material, article or funds, is reasonably considered a threat to Internal Security or public order in the area, in any manner.

(7) The State Government, for any Special Security Zone falling within the State, may make rules to prevent and control the activities of persons or organisations, which may have an impact on Internal Security or Public Order.

(8) In cases where the Special Security Zone extends to more than one State, the Union Government shall, in consultation with the concerned State Governments, make appropriate rules for the purpose as contemplated in Section 118.

80. *Involvement of the Community.*—(1) To ensure the involvement of the community and civil society in effectively dealing with problems of Internal Security or Public Order, the State Government, in consultation with the Director General of Police, shall issue guidelines with regard to constitution of Citizens' Policing Committees to promote the Community's participation in prevention and control of problems, and for the protection of Human Rights.

81. *Constitution of Courts in Special Security Zones.*—To facilitate proper prosecution and speedy trial of cases, the State Government may create additional Courts or Benches in the Special Security Zone with appropriate infrastructure, and technological facilities.

The Kerala Police Bill

CHAPTER XI

EFFECTIVE INVESTIGATION OF CRIME, USING SCIENCE AND TECHNOLOGY

82. *Special Investigation Unit.*—(1) The State Government shall ensure that in all Urban Police Stations, and those in the crime-prone rural areas, a Special Crime Investigation Unit, headed by an officer not below the rank of Sub Inspector of Police, is created with an appropriate strength of officers and staff, for the investigating economic and heinous crimes. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the Director General of Police.

(2) The officers posted in Special Crime Investigation Units will be selected on the basis of their aptitude, professional competence and integrity. Their professional skills will be upgraded, from time to time, through specialised training in investigative techniques, particularly in the application of scientific aids to investigation and forensic science techniques.

(3) Officers posted to Special Crime Investigation Units will normally have a minimum tenure of three years and a maximum of five years, after which they will be rotated to law and order and other assignments.

(4) The officers posted to the special crime investigating units will investigate crimes such as murder, kidnapping, rape, dacoity, robbery, dowry-related offences, serious cases of cheating, misappropriation and other economic offences, as notified by the Director General of Police, besides any other cases specially entrusted to the unit by the District Superintendent of Police.

(5) All other crimes will be investigated by other staff posted in such Police Stations.

(6) Each Police Station shall be provided with an appropriate number of Crime Scene Technicians to promptly visit the scenes of crime along with the Investigating Officer concerned to spot and gather all available scientific clues. These Crime Scene Technicians will be Civil Police Officers, Grade II or Grade I, specially selected and adequately trained for the purpose.

83. *Assistance to Investigations.*—Necessary legal, forensic, technical and scientific advice will be made available to investigating officers during investigations.

The Kerala Police Bill

84. *Supervision of Investigations.*—(1) The investigations of cases taken up by the Special Crime Investigation Unit Personnel, over and above the supervision of the Station House Officer concerned, will be supervised at the district level by an officer not below the rank of Additional Superintendent of Police, who will report directly to the District Superintendent of Police. This supervisory officer may be assisted by an appropriate number of officers of the rank of Deputy Superintendent of Police, posted for the specific purpose of ensuring quality investigation on professional lines:

Provided that in smaller districts where the volume of work does not justify posting of an Additional Superintendent of Police, an officer of the rank of Deputy Superintendent of Police shall be posted for this purpose.

(2) At the headquarters of each Police District, one or more Special Investigation Cells will be created, with the requisite strength of officers and staff, to take up investigation of offences of a more serious nature and other complex crimes, including economic crimes. These Cells will function under the direct control and supervision of the Additional Superintendent of Police.

(3) The officers and staff to be posted to this Cell shall also be selected and specially trained.

85. *Criminal Investigation Department.*—(1) The Criminal Investigation Department of the State, created under Section 11 of Chapter II, shall take up investigation of such crimes of interstate, inter-district or of otherwise serious nature, as notified by the State Government from time to time, and as may be specifically entrusted to it by the Director General of Police in accordance with the prescribed procedures and norms.

(2) The Criminal Investigation Department will have specialised units for investigation of cyber crime, organised crime, homicide cases, economic offences, and any other category of offences, as notified by the State Government and which require specialised investigative skills.

(3) The officers posted to the Criminal Investigation Department will be selected on the basis of their aptitude, professional competence, experience and integrity. They will undergo appropriate training upon induction, and their knowledge and skills will be upgraded from time to time through appropriate refresher and specialised courses.

(4) Officers posted to the Criminal Investigation Department shall have a minimum tenure of three years and a maximum of five years.

The Kerala Police Bill

(5) The Criminal Investigation Department will be provided with an appropriate number of legal advisors and crime analysts to guide, advise and assist the investigating officers.

(6) The Criminal Investigation Department shall be provided with adequate staff and funds. The head of this Department will be vested with financial powers of a head of the department.

(7) The Crime Investigation Units in Police Station, the Specialised Investigation Cells at the district level and the Criminal Investigation Department shall be equipped with adequate facilities of scientific aids to investigation and forensic science including qualified and trained manpower, in accordance with the guidelines, if any, issued in this regard by the Directorate of Forensic Science or the Bureau of Police Research and Development of the Government of India.

86. *Cyber Patrol*.—(1) The Government shall constitute a Cyber Patrol Unit for the investigation of cyber crimes and other offences under the Information Technology Act, 2000.

(2) The Cyber Patrol shall consist of such expert persons who have undergone specialized course and training prescribed by the State Government.

CHAPTER XII

TRAINING POLICY, RESEARCH AND DEVELOPMENT

87. *Training*.—(1) The State Government shall evolve a Training-cum-Education Policy for the police, keeping in view the current and anticipated requirements of policing. The Policy will, as far as possible, take into account any guidelines in respect of police training as may be issued by the Union Government from time to time. The training policy shall aim at achieving the objectives of imparting knowledge in police subjects, developing of professional skills, inculcating the right attitudes, and promoting constitutional and ethical values among police personnel.

(2) This Training Policy shall ensure that police personnel are adequately trained to efficiently perform their job. Successful participation in appropriate training programmes shall be linked, as far as possible, to the promotion of police personnel of different ranks, and to their postings to different assignments, in a structured manner, as notified by the State Government from time to time.

(3) In evolving the training policy, optimum advantage shall be taken of the methodologies of distance learning, outsourcing and on-the-job training.

(4) The State Government shall create and upgrade, from time to time, the infrastructure and capabilities of their training institutions in consonance with the holistic training needs of police personnel of different ranks, which shall include,

The Kerala Police Bill

besides all types of specialised training, a compulsory refresher training course of appropriate duration, for all ranks annually. For this purpose, the State Government shall also create a suitable training centre with the requisite infrastructure in each Police District or Armed Police Battalion, as the case may be.

(5) The State Government shall ensure that full advantage is taken of the training facilities available in central and regional police training institutions, to adequately train police personnel of the State in specialised professional subjects, and to train the trainers of the State police training institutions.

(6) In upgrading their training infrastructure as well as the content and methodologies of their training courses, the training institutions shall take maximum advantage of the standards and practices evolved or guidelines issued by organisations such as the Bureau of Police Research & Development of Government of India, and the National Police Academy.

(7) For an objective periodical evaluation of the Training Policy of the State and its implementation, the State Police may utilise the available assistance of organisations such as the Bureau of Police Research and Development, Government of India.

88. *Research and Development.*—(1) The State Government may establish a State Bureau of Police Research & Development with provision for appropriate staff, funds and other resources to regularly undertake research and analysis on all such subjects and issues which may lead to improvement in the standards of police functioning and performance. The State Government may also sponsor, in other reputed organisations and institutions, special studies and research in subjects having relevance to policing.

(2) The State Government may also take appropriate measures to harness developing technology for scientific and technical assistance in the investigation and detection of crime, and other policing tasks.

(3) The tasks of the State Bureau of Police Research & Development shall include:

(a) preparation of five-year Perspective Plans to modernise and upgrade police infrastructure with the objective of enhancing the professional competence and efficient management of the Police Service. This Plan shall cover mobility, weaponry, communication, training, forensic infrastructure, equipments and protective gears, official and residential accommodation, and any other subject which may have a bearing on qualitative improvement in policing;

The Kerala Police Bill

(b) keeping abreast of the latest equipment and innovative technologies successfully introduced by other police organisations within the country or abroad, and assessing the adaptability or otherwise of such equipment and technologies by the State police. These may include new products, arms and ammunition, riot control equipment, traffic control equipment, police transport and various scientific and electronic equipments useful for scientific aids to investigation or other policing tasks;

(c) liaising and co-ordinating with the Bureau of Police Research and Development of Government of India, the academia, reputed scientific organisations, institutions and laboratories and private sector undertakings on relevant matters;

(d) studying specific and developing problems of policing in the State with the objective of evolving solutions and remedial measures;

(e) examining the prevalent system of policing and suggesting structural, institutional, and other changes that need to be introduced in the police to make its functioning more efficient and responsive; and

(f) concurrently evaluating and documenting the impact of modernization and training policies of the State police and reporting its findings to the Director General of Police and the State Government.

89. *Career planning.*—The State Government shall formulate a policy for career progression of police personnel in a manner that will ensure avenues for at least three promotions to meritorious officers in their career, through a transparent process.

CHAPTER XIII

REGULATION, CONTROL AND DISCIPLINE

90. *Framing of rules and regulations for administration of police.*—Subject to the approval of the State Government, the Director General of Police shall make rules, regulations or issue orders, not inconsistent with this Act or with any other enactment for the time being in force for:

(a) prevention and investigation of crime;

(b) maintenance of law and order;

(c) regulation and inspection of the police organisation, and of the work performed by police officers;

(d) determining the description and quantity of arms, accoutrements, clothing and other wherewithal to be provided to the Police Service;

The Kerala Police Bill

(e) prescribing the places of residence of members of the Police Service;

(f) institution, management and regulation of any non-government fund for purposes connected with the police administration or welfare of police personnel;

(g) regulation, deployment, movements and location of the police;

(h) assigning duties to officers of all ranks and grades, and prescribing the manner and the conditions subject to which, they shall exercise and perform their respective powers and duties;

(i) regulating the collection and communication of intelligence and information by the police;

(j) prescribing the records registers and forms to be maintained and the returns to be submitted by different police units and officers; and

(k) generally, for the purpose of rendering the police more efficient, and preventing abuse of power and neglect of duties by them.

91. *Disciplinary Penalties.*—(1) Subject to the provisions of Article 311 of the Constitution and the Rules and Regulations made under this Act, an officer of the rank of Superintendent of Police or above may award any of the following punishment to a police officer of a rank for which he is the appointing authority:

(a) reduction in rank;

(b) compulsory retirement;

(c) removal from service; or

(d) dismissal.

(2) Any police officer of the rank of Superintendent of Police or above, subject to the rules made in this behalf, may award any of the following punishments to any non-gazetted police officer subordinate to him:

(a) reduction in pay;

(b) withholding of increment;

(c) withholding of promotion;

(d) fine not exceeding one month's pay; or

(e) reprimand or censure.

(3) An Assistant Superintendent of Police or any officer of equivalent rank may award the punishment of reprimand or censure to an officer of or below the rank of Sub Inspector of Police.

The Kerala Police Bill

(4) Any officer of and above the rank of Inspector may award punishments to Constables and Head Constables, as prescribed.

(5) Any punishment mentioned in sub-sections (1), (2), (3) or (4), awarded to an officer, will not affect his liability for prosecution for any criminal offence committed by him in the same transaction for which departmental action has led to award of punishment to him for any transgression of departmental rules.

92. *Suspension.*—(1) A police officer of or above the rank of Superintendent of Police may place a police officer of the rank of Inspector or below subordinate to him, under suspension:

(a) where a disciplinary proceeding for award of punishment against him is contemplated or is pending;

(b) where in the opinion of the aforesaid authority, there is a *prima facie* case that such officer has engaged himself in activities prejudicial to the Security of State for which an enquiry is contemplated or pending; or

(c) where in the opinion of the aforesaid authority there is *prima facie* evidence in respect of any criminal offence under investigation, inquiry or trial.

(2) Every order of suspension passed under this section shall be in writing, giving briefly the reasons.

(3) Where an officer is placed under suspension, whether in connection with a disciplinary proceeding or otherwise, and another disciplinary proceeding is ordered against him during the currency of that suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, direct that the officer shall continue to be under suspension until the completion of all or any of such proceedings.

(4) An order of suspension so made may at any time be revoked or modified, or in any case be reviewed every six months or earlier, *suo motu* or on a representation made by the officer under suspension, by the authority which made the order or by any authority to which such authority is subordinate.

(5) In case the period of suspension exceeds two years, the case shall be referred to the State Police Board (State Security Commission) for appropriate directions.

(6) Suspension orders of officers of subordinate rank shall be made only by police officers above or of the equivalent rank of Superintendent of Police.

The Kerala Police Bill

93. *Misconduct.*—A police officer shall, in addition to any other delinquent act or behaviour, as specified in the relevant rules, be liable for disciplinary action for any of the following misconduct:

- (a) disobedience of lawful orders;
- (b) neglect of duty;
- (c) insubordination or any oppressive conduct;
- (d) unauthorised malingering or absence from duty;
- (e) act of cowardice;
- (f) misuse of authority; or
- (g) any act unbecoming of an officer.

94. *Appeals against orders of punishment.*—An appeal against any order of punishment passed against an officer under Section 149 (Please Check) or any rules made thereunder, shall lie:

(a) where the order is passed by the Director General of Police, to the State Government; and

(b) where the order is passed by an officer subordinate to the Director General of Police, to the officer next higher in rank in the police hierarchy who passed such order.

95. *Separate set of rules for police personnel.*—The State Government shall frame the Classification, Control and Appeals Rules for police personnel, which will, among other things, ensure timely disposal of disciplinary proceedings.

96. *Police officers always on duty.*—(1) Every officer not on leave or under suspension shall, for all purposes of this Act, be considered to be always on duty and may at any time be deployed in any part of the State.

(2) The State Government shall, however, ensure the grant of at least one day off in a week to all police personnel or make provision of appropriate compensatory benefits in lieu of such weekly off, if under extraordinary situations the same cannot be granted to any of them.

(3) No police officer shall abdicate his duties or withdraw himself from his place of posting or deployment, without proper authorization.

The Kerala Police Bill

Explanation.—An officer who, being absent on authorized leave, fails without reasonable cause to report for duty at the expiration of such leave, shall be deemed within the meaning of this Section to withdraw himself from the duties of his office.

(4) No police officer shall engage in any other employment or office of profit whatsoever, other than his duties under this Act. No police officer shall associate himself with individuals or organizations with doubtful reputation or questionable activities, likely to bring discredit to himself and the police organization.

CHAPTER XIV

STATE AND DISTRICT POLICE COMPLAINTS AUTHORITY

97. *State Level Police Complaints Authority.*—(1) The State Government shall, within three months of the coming into effect of this Act, establish a State Level Police Complaints Authority to look into complaints against police officers above the rank of Deputy Superintendent of Police.

(2) The State Level Police Complaints Authority shall consist of three members, Chaired by a retired Judge of the High Court and two independent members appointed by the State Government from the panel of names proposed by the Chief Justice of the High Court.

(3) The State Level Police Complaints Authority shall take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody.

98. *District Police Complaints Authority.*—(1) The State Government shall, within three months of the coming into effect of this Act, establish a District Police Complaints Authority to look into complaints against police officers below the rank of the Deputy Superintendent of Police .

(2) The District Level Complaints Authority shall consist of three members, Chaired by a retired District Judge and two independent members appointed by the State Government from the panel of names proposed by the Chief Justice of the High Court.

(3) The State Government is empowered to appoint more persons in the District Level Committee, depending on the volume of complaints from the panel prepared by the State Human Rights Commission, Lok Ayukta, and Kerala State Public Service Commission. The said panel may include members from among retired civil servants, police officers or officers from any other department or from civil society.

The Kerala Police Bill

(4) The District Level Police Complaints Authority will inquire into all complaints against police officers, other than incidents involving death, grievous hurt or rape in police custody.

99. *Recommendations of the State and District Level Police Complaints Authority.*—The recommendations of the State and District Level Police Complaints Authority shall be binding on the authority who is empowered to take disciplinary proceedings against such delinquent officer.

100. *Ineligibility for membership.*—A person shall be ineligible to be a member of the Authority, if he—

- (a) is not a citizen of India;
- (b) is serving in any police, military or allied organisation, or has so served in the twelve months preceding such appointment;
- (c) is employed as a public servant;
- (d) holds any elected office, including that of Member of Parliament or State Legislature or any local body;
- (e) is a member of, or is associated in any manner with, an organization declared as unlawful under an existing law;
- (f) is an office-bearer or a member of any political party;
- (g) has been convicted for any criminal offence involving moral turpitude or for an offence punishable with imprisonment of one year or more;
- (h) is facing prosecution for any offence mentioned in sub-section above and against whom charges have been framed by a court of law; or
- (i) is of unsound mind and has been so declared by a competent court.

101. *Term of office and conditions of service of members and Chairperson.*—(1) The term of office of a member, and the Chairperson, shall be three years unless:

- (a) he resigns at any time before the expiry of his term; or
- (b) he is removed from the office on any of the grounds mentioned in Section 102.

(2) Members shall be eligible for reappointment on the expiry of term, provided that no member shall be eligible to hold office for more than two terms.

The Kerala Police Bill

(3) The remuneration, allowances and other terms and conditions of service of the members shall be as notified by the State Government from time to time and shall not be varied to their disadvantage after appointment.

102. *Removal of members.*—Any member of the Authority may be removed from office, on the recommendation of the Authority, by an order of the State Government on the grounds of:

- (a) proven misconduct or misbehaviour;
- (b) persistent neglect to perform duties of the Commission;
- (c) occurrence of any situation that would make a member ineligible for appointment to the Authority under Section 100; or
- (d) any member engaging himself during his term of office in any paid employment outside the duties of his office.

103. *The staff of the Authority.*—(1) Members of the Commission shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions of the Authority.

(2) The strength of the staff may be prescribed by the State Government, keeping in view the size of the State, its population, and the average number of complaints against the police, and shall be periodically reviewed and revised.

(3) The staff shall be selected by the Authority, inter alia, on a contractual basis, through a transparent process.

(4) The remuneration and other terms and conditions of service of the staff shall be as prescribed from time to time.

104. *Conduct of business.*—The Authority shall frame its own regulations for the conduct of its business.

105. *Powers of the State and District Level Police Complaints Authority.*—(1) In the cases directly enquired by it, the State and District Level Police Complaints Authority shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;

The Kerala Police Bill

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing authorities for the examination of witnesses or documents; and

(f) any other matter as may be prescribed.

(2) The State and District Level Police Complaints Authority shall have the power to require any person, subject to legal privilege, 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 Sections 176 and 177 of the Indian Penal Code, 1860.

(3) The State and District Level Police Complaints Authority shall be deemed to be a civil court, and when any offence, as defined in Sections 175, 178, 179, 180 or 228 of the Indian Penal Code, 1860, is committed in the view or presence of the authority, the authority 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. The Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.

(4) Every proceeding before the State and District Level Police Complaints Authority shall be deemed to be a judicial proceeding within the meanings of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, 1860, 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.

(5) The State and District Level Police Complaints Authority shall have the power to advise the State Government on measures to ensure protection of witnesses, victims, and their families who might face any threat or harassment for making the complaint or for furnishing evidence.

(6) The State and District Level Police Complaints Authority may visit any police station, lock-up, or any other place of detention used by the police and, if it thinks fit, it may be accompanied by a police officer.

The Kerala Police Bill

106. *Statements made to the State and District Level Police Complaints Authority.*—No Statement made by a person in the course of giving evidence before the State and District Level Police Complaints Authority shall subject that person to a civil or criminal proceeding or be used against him in such proceeding, except a prosecution for giving false evidence:

Provided that the Statement

(a) is made in reply to the question which he is required by the State and District Level Police Complaints Authority to answer; or

(b) is relevant to the subject-matter of the inquiry:

Provided further that on conclusion of the inquiry into a complaint of ‘serious misconduct’ against the police personnel, if the Commission is satisfied that the complaint was vexatious, frivolous or mala fide, the Commission may impose such fine as considered appropriate on the complainant.

107. *Persons likely to be prejudicially affected to be heard.*—If, at any stage of the inquiry, the State and District Level Police Complaints Authority considers it necessary to inquire into the conduct of any person, or is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his support:

Provided that nothing in this section shall apply where the credibility of a witness is being impeached.

108. *Decisions and Directions of the State and District Level Police Complaints Authority.*—(1) In the cases directly inquired by the State and District Level Police Complaints Authority, it may, upon completion of the inquiry, communicate its findings to the Director General of Police and the State Government with a direction to:—

(a) register a First Information Report; and/or

(b) initiate departmental action based on such findings, duly forwarding the evidence collected by it to the police. Such directions of the Commission shall be binding:

The Kerala Police Bill

Provided that the State and District Level Police Complaints Authority, before finalising its own opinion in all such cases shall give the Director General of Police an opportunity to present the department's view and additional facts, if any, not already in the notice of the State and District Level Police Complaints Authority:

Provided further that, in such cases, the State and District Level Police Complaints Authority may review its findings upon receipt of additional information from the Director General of Police that may have a material bearing on the case.

(2) The State and District Level Police Complaints Authority may also recommend to the State Government payment of monetary compensation by the Government to the victims of the subject-matter of such an inquiry.

109. *Reports of the State and District Level Police Complaints Authority.*—(1) The State and District Level Police Complaints Authority shall prepare an annual report at the end of each calendar year, *inter alia*, containing:

(a) the number and type of cases of “serious misconduct” inquired into by it;

(b) the number and type of cases of “misconduct” referred to it by the complainants upon being dissatisfied by the departmental inquiry into his complaint;

(c) the number and type of cases including those referred to in (b) above in which advice or direction was issued by it to the police for further action;

(d) the number of complaints received by the District Accountability Authorities, and the manner in which they were dealt with;

(e) the identifiable patterns of misconduct on the part of police personnel in the State; and

(f) recommendations on measures to enhance police accountability.

(2) The annual report of the State and District Level Police Complaints Authority shall be laid before the State Legislature in the budget session and shall be a public document, made easily accessible to the public.

(3) The State and District Level Police Complaints Authority may also prepare special reports with respect to specific cases directly inquired into by it. These reports shall also be made easily accessible to the public.

The Kerala Police Bill

110. *Interference with the functioning of the State and District Level Police Complaints Authority.*—(1) No person shall interfere with the functioning of the State and District Level Police Complaints Authority.

(2) If any person interferes with the functioning of the authority such person shall be liable for punishment which may extend to a term of one year or with fine upto fifty thousand rupees or with both.

Explanation.—Any threat, coercion or inducement offered to any witness or victim of police misconduct or serious misconduct, shall be deemed to be interference with the functioning of the Commission for the purposes of this Section.

111. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against the State Government, the State Security Commission, its members and staff, the Police Accountability Authority, its members, staff or any person acting under the direction of the State Security Commission or the Authority, or members or staff of the District Accountability Authorities, in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Chapter.

112. *Funding.*—The State Government shall ensure that adequate funds are provided to the State Commission and the District Accountability Authorities for the effective performance of their functions and that the police shall not be required to provide any material or human resources to the Commission or the District Accountability Authorities for their smooth functioning.

CHAPTER XV

**WELFARE AND GRIEVANCE REDRESSAL MECHANISMS FOR
POLICE PERSONNEL**

113. *Welfare Bureau.*—(1) There shall be a Police Welfare Bureau, (hereinafter referred to as 'Bureau') headed by an officer not below the rank of Deputy Inspector General of Police, in the office of the Director General of Police to advise and assist him in the implementation of welfare measures for police personnel.

The Kerala Police Bill

(2) The functions and duties of the Bureau shall, *inter alia*, include administration and monitoring of welfare measures for police personnel, such as:

(a) health care, particularly in respect of chronic and serious ailments, and including post-retirement health care schemes for police personnel and their dependents;

(b) full and liberal medical assistance to police personnel suffering injury in the course of performance of duty;

(c) financial security for the next of kin of those dying in harness;

(d) post-retirement financial security;

(e) group housing;

(f) education and career counseling and training in appropriate skills for dependents of police officers; and

(g) appropriate legal facilities for defence of police officers facing court proceedings in matters relating to bona fide discharge of duty.

(3) The Bureau shall have as many members as prescribed, and shall comprise of representatives from all police ranks. It may also include other members in an advisory capacity. The members of the Bureau shall be nominated by the Director General of Police.

(4) The Bureau shall lay down norms and policies relating to police welfare, and monitor welfare activities undertaken by various police units in the State.

(5) The Bureau shall interact with other Government departments, public sector undertakings and other organisations to facilitate gainful employment for retired police officers, and for the dependents of police personnel who have laid down their lives in due discharge of their duties.

(6) A Police Welfare Fund, under the administration and control of the Bureau, shall be created for the welfare activities and programmes for police personnel, which will have two components:

(a) outright financial grant by the State; and

(b) matching grant by the State to the contributions made by the police personnel, towards the welfare fund.

The Kerala Police Bill

114. *Insurance cover, allowances and medical facilities.*—(1) The State Government shall provide adequate insurance coverage for all police personnel against any injury, disability, or death caused in the course of performance of their duty.

(2) Police Officers posted in special wings, such as Counter-terrorism Operations Units, Bomb Disposal Squads, Commando Groups etc. shall be paid risk allowance, commensurate with the risks involved in those duties.

(3) In addition to facilities as may be made available in police hospitals for general treatment and specialised services, police personnel shall also be provided with a medical insurance cover that would enable them to keep up the required standards of health and physical fitness.

(4) Facilities for stress management, including psychological counseling, to cope with professional stress, shall be given due attention in all police units and establishments.

115. *Grievance Redressal.*—(1) The Director General of Police, with the approval of the State Government shall put in place, a fair, transparent and participatory grievance redressal mechanism as outlined in Vol I of the Report of the National Police Commission 1977–1981, for looking into individual as well as collective grievances of police personnel, which shall be freely received and channelled upwards from all levels of the organisation.

(2) The grievances that cannot be redressed by the said mechanism shall be forwarded to the State Security Commission, which in turn, shall make appropriate recommendations to the State Government for remedial measures.

(3) An analysis of the grievances, their causes and their impact on the morale and efficiency of the Police Service shall be carried out annually. This analysis shall be included in the annual report of the State Security Commission .

116. *Working hours.*—The State Government shall take effective steps to ensure that the average hours of duty of a police officer do not normally exceed eight hours a day:

Provided that in exceptional situations, the duty hours of a police officer may extend upto 12 hours or beyond. In such cases, adequate compensation and facilities shall be provided to the police personnel.

The Kerala Police Bill

CHAPTER XVI

GENERAL OFFENCES, PENALTIES, AND RESPONSIBILITIES

117. *Regulation of public assemblies and processions.*—(1) The District Superintendent of Police or an officer not below the rank of Assistant/Deputy Superintendent of Police may, where necessary, direct the conduct of all assemblies and processions on any public road, street or thoroughfare, and prescribe the routes by which and the time at which such processions may pass.

(2) It shall be the duty of any person intending to organize a procession on any road, street or thoroughfare, or to convene an assembly at any public place, to give intimation in writing to the Officer-in-Charge of the concerned Police Station.

(3) The District Superintendent or any officer not below the rank of Assistant/Deputy Superintendent of Police, on receipt of such intimation or otherwise and upon being satisfied that such an assembly or procession, if allowed without due control and regulation, is likely to cause a breach of peace, may prescribe necessary conditions including provisions for satisfactory regulatory arrangements, on which alone such assembly or procession may take place. Under special circumstances to be recorded in writing, the concerned officer may also prohibit the assembly or procession in public interest. All orders and directions should be given within 48 hours of receipt of intimation, as far as possible.

118. *Assemblies and processions violating prescribed conditions.*—(1) The District Superintendent of Police or any Police Officer not below the rank of Sub Inspector, authorised in this behalf by the District Superintendent of Police, may stop any assembly or procession which violates the conditions set under sub sections (1) and (3) of Section 117, and order such assembly or procession to disperse.

(2) Any assembly or procession which neglects or refuses to obey any order given under sub-section (1) above shall be deemed to be an “unlawful assembly” under Chapter VIII of the Indian Penal Code 1860.

119. *Regulation of the use of music and other sound systems in public places.*—Any Officer not below the rank of Deputy Superintendent of Police may regulate the time and the volume at which music and other sound systems are used in connection with any performances and other activities in or near streets or any public place that cause annoyance to the residents of the neighbourhood in accordance with the provisions of Noise Pollution (Regulation and Control) Rules, 2000.

The Kerala Police Bill

120. *Directions to keep order on public roads.*—(1) The District Superintendent of Police or any other Police Officer duly authorized by him, through a general or special order, may take appropriate penal action against any one who refuses to comply with the directions to keep order on the public road, regulate the use of music or take out procession violating directions.

(2) Such penal action includes simple imprisonment upto one year and fine upto fifty thousand rupees.

(3) The above provision will be in addition to the penal action as contemplated under the Prevention of Damage to Public Property Act, 1984 and the disciplinary proceedings under the service conditions.

121. *Damage to public property.*—(1) The District Superintendent of Police or any other Police Officer duly authorized by him, through a general or special order, may take appropriate penal action against any one who damages or attempts to damage public property.

(2) Such penal action includes in a simple imprisonment upto one year and fine upto fifty thousand rupees.

(3) The above provision will be in addition to penal action as contemplated under the Prevention of Damage to Public Property Act, 1984 and other enactments.

122. *Power to reserve public places and erect barriers.*—(1) The District Superintendent of Police may, by public notice, temporarily reserve for any public purpose any street or other public place, and prohibit the public from entering the area so reserved, except on such conditions as may be specified.

(2) (a) The District Superintendent of Police may authorize any police officer to erect barriers and other necessary structures on public roads and streets, to check vehicles or occupants there of for violation of any legal provisions by them.

(b) In making such order, the District Superintendent of Police shall prescribe the necessary steps for ensuring the safety of passersby.

(c) These temporary structures shall be removed once the purpose for which they were installed is over.

The Kerala Police Bill

CHAPTER XVII

OFFENCES AGAINST THE POLICE

123. *Obstructing the police work.*—Any person, who obstructs the discharge of duties and functions of a police officer, shall, on conviction, be liable to simple imprisonment not exceeding three months or fine or both.

124. *Unauthorized use of police uniform.*—Whoever, not being a member of the Police Service wears, without obtaining permission from an officer authorised in this behalf by the State Government by a general or special order, a police uniform or any dress having the appearance or bearing of any of the distinctive marks of that uniform, shall, on conviction, be punished with imprisonment not exceeding six months or fine or both.

125. *False or misleading Statement made to the police.*—Whoever makes a false Statement or a Statement which is misleading in material particulars to a police officer for the purpose of obtaining any benefit shall, on conviction, be punished with imprisonment for a term which may extend to three months or a fine or both.

126. *Refusal to deliver up certificate etc. on ceasing to be police officers.*—Whoever, having ceased to be a police officer, does not forthwith deliver up his/her certificate of appointment, clothing, accoutrements and other wherewithal supplied to him for the execution of his duty, shall on conviction by a court of law, be liable to a fine.

CHAPTER XVIII

OFFENCES BY THE POLICE

127. *Dereliction of duty by a police officer.*—(1) Whoever, being a police officer:

(a) willfully breaches or neglects to follow any legal provision, procedure, rules, regulations applicable to members of the Police Service; or

(b) without lawful reason, fails to register a First Information Report as required by Section 154 of the Code of Criminal Procedure, 1973; or

(c) is found in a state of intoxication, while on duty; or

(d) malingers or feigns illness or injury or voluntarily causes hurt to himself with a view to evading duty; or

(e) acts in any other manner unbecoming of a police officer; shall, on conviction, be punished with imprisonment for a term which may extend to three months or with a fine which may extent to five thousand rupees or both.

The Kerala Police Bill

(2) Whoever, being a police officer:

(a) is guilty of cowardice; or

(b) abdicates duties, or withdraws from duties, or remains absent without authorisation from duty for more than 21 days; or

(c) uses criminal force against another police officer, or indulges in gross insubordination; or

(d) engages himself or participates in any demonstration, procession or strike, or resorts to, or in any way abets any form of strike, or coerces or uses physical force to compel any authority to concede anything; or

(e) is guilty of sexual harassment in the course of duty, whether towards other police officers or any member of the public; shall, on conviction, be punished with imprisonment for a term which may extend to one year or with a fine which shall not be less than Rs.5,000 or both.

128. *Arrest, search, seizure and violence.*—Whoever, being a police officer:

(1) without lawful authority or reasonable cause enters or searches, or causes to be entered or searched, any building, vessel, tent or place; or

(2) unlawfully and without reasonable cause seizes the property of any person; or

(3) unlawfully and without reasonable cause detains, searches, or arrests a person; or

(4) unlawfully and without reasonable cause delays the forwarding of any person arrested to a Magistrate or to any other authority to whom he is legally bound to forward such person; or

(5) subjects any person in her/his custody or with whom he may come into contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour; or

(6) holds out any threat or promise not warranted by law; shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall be liable to fine.

129. *Offences by the public.*—(1) Any person who commits any of the following offences on any road, or street or thoroughfare, or any open place, within the limits of any area specially notified by the State Government or a Local Government for the purpose of this Section, to the inconvenience, annoyance or danger of the residents or passersby shall, on conviction by a court, be liable to a fine:

The Kerala Police Bill

(a) allowing any cattle to stray or keeping any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or leaving any conveyance in such a manner as to cause inconvenience or danger to the public;

(b) being found intoxicated and riotous;

(c) neglecting to fence in or duly protect any well, tank, hole or other dangerous place or structure under his charge or possession; or otherwise creating a hazardous situation in a public place;

(d) defacing, or affixing notices, or writing graffiti on walls, buildings or other structures without the prior permission of the custodian of the property;

(e) willfully entering or remaining without sufficient cause in or upon any building belonging to the Government or land or ground attached thereto, or on any vehicle belonging to Government;

(f) knowingly spreads rumours or causing a false alarm to mislead the police, fire brigade or any other essential service or;

(g) wilfully damaging or sabotaging any public alarm system;

(h) knowingly and wilfully causing damage to an essential service, in order to cause general panic among the public;

(i) acting in contravention of a notice publicly displayed by the competent authority in any Government building :

Provided that the police shall take cognizance of this offence only upon a complaint made by an authorised functionary of the concerned office.

(j) causing annoyance to a woman by making indecent overtures or calls or by stalking:

Provided that the police shall take cognizance of this offence only upon a complaint made by the victim.

(2) The offences Stated above shall be cognizable and non-bailable.

(3) Whoever commits the above offences shall be liable to imprisonment for a term which may extend upto one year or with fine which may extend to Rs. 10,000 or with both;

(4) Whoever commits any offence under sub-section (1), on subsequent conviction shall be liable to enhanced punishment.

130. *Procedure for posting directions and public notices.*—(1) All general directions, regulations and public notices issued under this chapter shall be published by posting notices in the office of the District Officer, Taluk Office, Tehsil Office and the concerned local Self Government Institution and by affixing copies in

The Kerala Police Bill

conspicuous places near the building or place to which the notice specially relates, or by announcing it through media including in the web site and other media, or by any other means as the Superintendent of Police may deem fit:

Provided that the Superintendent of Police may, on being satisfied that it is in public interest to bring any regulation into force with immediate effect, make such direction or regulation without previous publication.

(2) If any direction or regulation made under this section relates to any matter with respect to which there is a provision in any law, rule or bye-law of the local Self Government in relation to public health, convenience or safety of the locality, such regulation shall be subject to such law, rule or bye-law.

131. *Prosecution of police officers.*—No court shall take cognizance of any offence under this Act when the accused person is a police officer except on a report in writing of the facts constituting such offence by, or with the previous sanction of an officer authorised by the State Government in this behalf.

132. *Prosecution for offences under other laws.*—Subject to the provisions contained in Section 300 of the Code of Criminal Procedure, 1973, nothing in this Act shall be construed as preventing any person from being prosecuted and punished under any other law for anything made punishable by this Act.

133. *Summary disposal of certain cases.*—(1) A court taking cognizance of an offence punishable, the maximum punishment of which is less than five thousand rupees may state, upon the summons to be served to the accused person, that he may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter, and remit to the court such sum as the court may specified therein.

(2) Where an accused person pleads guilty and remits the sum specified in the summons under sub-section (1), no further proceedings in respect of the offence shall be taken against that person.

134. *Recovery of penalties and fines imposed by Magistrates.*—Provisions of Sections 64 to 70 of the Indian Penal Code, 1860 and Sections 386 to 389 of the Code of Criminal Procedure, 1973 shall apply to penalties and fines imposed under this Act on conviction before a Magistrate:

Provided that notwithstanding anything contained in Section 65 of the Indian Penal Code, 1860, any person sentenced to fine under Section 133 of this Chapter may be imprisoned in default of payment of such fine, for any period not exceeding eight days.

135. *Limitation of cognizance.*—No court shall take cognizance of any offence under this Chapter after the expiry of the period of limitation provided for in Section 468 of the Code of Criminal Procedure, 1973. For computing the limitation period, provisions of Chapter XXXVI of the Code of Criminal Procedure shall apply.

The Kerala Police Bill

CHAPTER XIX

SETTLEMENT OF DISPUTES THROUGH MEDIATION

136. *Settlement of disputes through mediation.*—(1) The Director General of Police is empowered to settle disputes brought before him through mediation and pass appropriate order in agreement.

(2) Any police officer below the rank of Inspector General of Police finds that the subject-matter of complaint raised by the complainant and the proposed accused is of a civil nature and the parties agree for a settling of the dispute, he may refer the dispute to the Inspector General of Police and he shall pass an order accordingly.

(3) The decision taken by the Inspector General of Police shall be binding on the parties as if it is an agreement and is enforceable in any court of law.

CHAPTER XX

MISCELLANEOUS

137. *Powers of District Superintendent of Police to be exercised by Commissioner of Police.*—All powers, functions and duties of the District Superintendent of Police described in this Act shall be exercised, in respect of areas notified under Section 56 of Chapter IX, by the Commissioner of Police or any other officer authorised in this behalf.

138. *Disposal of fees and rewards.*—All fees paid for licences or written permission issued under this Act, and all sums paid for the service of processes by police officers and all rewards, forfeitures and penalties or shares thereof which are by law payable to police officers as informers shall, save in so far as any such fees or sums belong under the provisions of any enactment in force to any local authority, be credited to the State Government:

Provided that with the sanction of the State Government, or under any rule made by the State Government in that behalf, the whole or any portion of any such reward, forfeiture or penalty may for special services, be paid to a police officer, or be divided amongst two or more police officers.

139. *Method of proving orders and notifications.*—Any order or notification published or issued by the State Government or by a Magistrate or officer under any provision of this Act, and the due publication or issue thereof may be proved by the production of a copy thereof in the Official Gazette, or of a copy thereof signed by such Magistrate, or officer, and by him certified to be a true copy of an original published or issued according to the provisions of the section of the Act applicable thereto.

The Kerala Police Bill

140. *Register of tenants in the area.*—(1) It shall be obligatory on the landlord of every building within the police station area to send a communication by registered post with acknowledgement due card to the nearest Police Station within whose jurisdiction the building let out is situated furnishing the full name, age, fathers' name, the address of his employment, date of commencement of tenancy, the monthly rent, along with a photostat copy of the identify proof of the tenant.

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

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

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

(4) 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.

141. *Validity of rules and orders.*—No rule, regulation, order, direction, or notification made or published and no adjudication, inquiry or act done under any provision of this Act, or under any rules made thereunder, which is in substantial conformity with the same, shall be deemed illegal, void or invalid by reason of any defect of form.

142. *Officers holding charge of or succeeding to vacancies competent to exercise powers.*—Whenever in consequence of the office of a Commissioner, Magistrate or police officer becoming vacant, any officer holds charge of the post of such Commissioner, Magistrate, or police officer or succeeds, either temporarily or permanently, to his office, such officer shall be competent to exercise all the powers and perform all the duties respectively conferred and imposed by this Act on such Commissioner, Magistrate or police officer, as the case may be.

143. *Licences and written permissions to specify conditions, and to be signed.*—(1) Any licence or written permission granted under the provisions of this Act shall specify the period and locality for which and the conditions and restrictions subject to which, the same is granted, and shall be given under the signature of the competent authority and such fee than be charged there for as is prescribed by any rule under this Act in that behalf.

The Kerala Police Bill

(2) Any licence or written permission granted under this Act may at any time be suspended or revoked by the competent authority, if any of its conditions or restrictions is infringed or evaded by the person to whom it has been granted, or if such person is convicted of any offence in any matter to which such licence or permission relates.

(3) When any such licence or written permission is suspended or revoked, or when the period for which the same was granted has expired, the person to whom the same was granted shall for all purposes of this Act, be deemed to be without a licence or written permission until the order for suspending or revoking the same is cancelled, or until the same is renewed, as the case may be.

(4) Every person to whom any such licence or written permission has been granted, shall, while the same remains in force, at all reasonable time, produce the same, if so required by a police officer.

Explanation.—For the purpose of this section any such infringement or evasion by, or conviction of, a servant or other agent acting on behalf of the person to whom the licence or written permission has been granted shall be deemed to be infringement or evasion by, or as the case may be, conviction of the person to whom such licence or written permission has been granted.

144. *Public notices how to be given.*—Any public notice required to be given under any of the provisions of this Act shall be in writing under the signature of a competent authority and shall be published in the locality to be affected thereby, by affixing copies thereof in conspicuous public places, by advertising the same in two local newspapers which shall have wide circulation in the area in different languages:

Provided that the competent authority may, on being satisfied that it is in public interest to bring any regulation into force with immediate effect, make such direction or regulation without previous publication.

145. *Consent of a competent authority may be proved by writing under his signature.*—Whenever under this Act, the doing or the omitting to do anything or the validity of anything depends upon the consent, approval, declaration, opinion or satisfaction of a competent authority, a written document signed by a competent authority purporting to convey or set forth such consent, approval, declaration, opinion or satisfaction shall be sufficient evidence thereof.

The Kerala Police Bill

146. *Signature on notices may be stamped.*—Every licence, written permission, notice, or other document, not being a summons or warrant or search warrant, required by this Act, or by any rule thereunder, to bear the signature of the competent authority, shall be deemed to be properly signed if it bears a facsimile of his signature stamped thereon.

147. *Power to make rules.*—The Government may make rules for carrying out the purposes of this Act.

148. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act the State Government may, by notification in the Official Gazette, make such provisions as it deems necessary or expedient for removing the difficulty.

(2) Every notification issued under this section shall, as soon as may be after it is issued, be laid before the appropriate legislature.

149. *Notification of rules and regulations in the Official Gazette and laying of rules and regulations.*—(a) Every rule and regulation made under this Act shall be made by notification in the Official Gazette.

(b) Every rule and regulation made under this Act 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 thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, agree in making any modification in the rule or regulation, as the case may be, or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

150. *Persons aggrieved may apply to State Government to annul, reverse or alter any rule or order.*—In the case of any rule or order made by the State Government under an authority conferred by this Act and requiring the public or a particular class of persons to perform some duty or act, or to conduct or order themselves or those under their control in a manner therein described, it shall be competent to any aggrieved person to make a representation to the State Government to annul, reverse, or alter the aforesaid rule or order.

The Kerala Police Bill

151. *Repeal and saving.*—(1) The Kerala Police Act, 1960 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or any proceeding instituted under the Act so repealed shall be deemed to have been done or taken or instituted under the corresponding provisions of this Act.

(3) All references in any enactment to any of the provisions of the Act so repealed shall be construed as references to the corresponding provisions of this Act.

Statement of Objects and Reasons

In safeguarding the freedoms of life in our time, the police play a vital role. Society for its defense needs a well-led, well-trained and well-disciplined force of police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to Justice.

The Police has a duty to act fairly and properly. At the same time, it is the duty of every responsible citizen to support the Police and to recognize that they are the front line of defence against violence and intimidation.

The functioning of the Police requires to be strictly professional and free from extraneous influences and yet accountable to the people. The Supreme Court in Prakash Singh's case has directed all the States to enact a Police Act which provides for the Constitution of a State Security Commission, Police Complaints Authority, Police Establishment Board, Separation of investigation and law and order and for fixing a minimum tenure for various Police functionaries. Therefore, it has become necessary to replace the Kerala Police Act, 1960 and enact a comprehensive law as directed by the Supreme Court. The present Bill seeks to achieve this above purposes.

THE KERALA CLEAN AIR BILL

A BILL

to prevent the Air Pollution generated by the motor vehicles in the State by using non-polluting fuels;

Preamble.—WHEREAS it is considered necessary that in order to prevent pollution by automobiles and maintain the health of the people from the air pollution being generated by the motor vehicles, all motor vehicles shall use only non-polluting fuels like CNG, LPG, Biogases and Electricity.

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 Clean Air 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,—

(1) “Government” includes Transport Department of the State Government.

(2) “Compressed Natural Gas” or “CNG” means compressed gaseous fuel composed predominantly of methane (CH₄).

(3) “LPG” means Liquefied Petroleum Gas consisting principally of propane and butane stored in metal cylinders and used as fuel and cooking and heating fuel.

(4) “Person” includes owner and driver of a motor vehicle.

(5) The definitions given in the Motor Vehicles Act, 1988 and under its Rules (both State and Central) will have the same meaning for the words as defined under this Act.

3. *Declaration of usage of CNG for vehicles.*—(1) The State Government shall issue a notification declaring that all the motor vehicles shall use within the State of Kerala only CNG or LPG or Electricity as fuel in a phased manner as directed in the notification.

(2) All the existing three wheelers shall convert their vehicles to make them fit for using CNG at any rate before 1st January, 2010.

The Kerala Clean Air Bill

(3) All the Kerala State Road Transport Corporation buses shall be converted to make them fit for using CNG at any rate before 1st June, 2010.

(4) All the existing bus operators shall convert their vehicles to make them fit for using CNG at any rate before 1st June, 2010.

(5) All the existing taxi owners and other stage carriage operators shall convert their vehicles to make them fit for using CNG, LPG or Electricity at any rate before 31st December, 2009.

(6) No public transport vehicle shall be allowed to be used in the Kerala State unless they are converted to make them fit to use CNG with effect from 1st January 2010.

(7) No diesel vehicles shall be used in the State of Kerala from 1st January, 2010.

4. *Vehicles using diesel for operation not to be registered.*—No vehicles operated by diesel shall be registered in the State on and after 18th January 2010.

(8) All notifications issued under this Act shall be published in the Kerala Gazette.

5. *Offences.*—(1) Any person found plying a vehicle within the State on or after the dates notified in Section 3 above in contravention of the provisions contained in this Act, shall be punishable with imprisonment up to one month or fine upto five thousand rupees.

(2) Punishment for committing the above offence shall be recorded in the Registration Certificate of the vehicle and the Driving Licence of the driver.

(3) If any person commits the same offence once over again, he shall be liable for imprisonment up to three months and fine upto one lakh of rupees.

Statement of Objects and Reasons

Vehicles and industries are mainly responsible for the deterioration of air quality in the State as both create noise and emit air pollutants, said a report published by the Kerala State Council for Science, Technology and Environment (for short the Council).

The impact of vehicular emission and noise is widespread whereas the industrial emission is limited to the areas around the industries. Though advanced manufacturing techniques have considerably reduced the noise and emission from automobiles and cleaner production process the emission from industries, the benefits are offset by the rapid increase in number of vehicles and industries, said the State of Environment Report Kerala, 2005, brought out by the Council.

The Kerala Clean Air Bill

The ever-increasing use of fossil fuel in transportation and industrial sectors are adversely affecting the air quality and increasing the ambient noise.

It is estimated that there are 25 lakh licensed vehicles on Kerala roads whereas the length of the carriage way is 21,347 km. Kerala recorded an astonishing increase of 2,000 per cent in the number of vehicles during the 1975-2002 period.

The number of vehicles on Kerala roads rose to 2,315,372 in 2002 from 119,720 of 1975. At the same time, the rate of increase in road length was just 44 per cent during this period. The road length reached 21,347 km. from 14,870 of 1975, the study report said.

Kochi, Thiruvananthapuram and Kozhikode account for nearly 40 per cent of the vehicles registered in the State. Personal transport vehicles constitute 72 per cent of the vehicle population in the State. Scooters and motorcycles accounted for 77 per cent of the personal transport vehicles in the State.

According to the official figures, there are 4 46,959 vehicles in Kochi followed by 350,455 in Thiruvananthapuram and 207,117 in Kozhikode. Wayanad had the least number of vehicles 33,550.

The ambient air quality of Ernakulam has been adversely affected by the presence of most number of major and medium-scale industries and maximum number of vehicles. Of the 640 large or medium industries in the State, nearly 510 are located at Kochi. Air quality degradation was observed in Kanjikode in Palakkad due to the large number of electric furnace-based industries located there, the report said.

The major industrial units of Eloor, Udyogamandal and Ambalamugal in Kochi and Kanjikode account for almost half of the air polluting industries in the State. Studies have revealed that the Suspended Particulate Matter and Reparable Suspended Particulate Matter (RSPM) regularly exceed the allowable limits in Kochi, Thiruvananthapuram and Kozhikode cities.

Making available unadulterated fuel, compliance of emission norms through strict emission testing facility, replacement of older vehicles, introduction of low-sulphur fuels and use of catalytic converters have also been suggested.

Therefore it is essential to insist for the usage of alternate fuels like, compressed natural gas (CNG) or electricity or such other non-polluting energy sources in all motor vehicles in the State of Kerala.

This Bill is intended to achieve this object.

THE KERALA DISPOSAL OF GARBAGE AND WASTE MANAGEMENT BILL

A BILL

to make provision for effective management of garbage and waste disposal by the local authorities in the State.

Preamble.—WHEREAS it is expedient to make provision for the effective management of garbage and waste disposal by the local authorities in the 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 Disposal of Garbage and Waste Management Act, —.

(2) It shall come into force at once.

(3) It shall extend to the whole of the State of Kerala.

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

(i) ‘Local Authority’ means a Panchayat at any level or a Municipality or a Corporation.

(ii) ‘Buildings’ means any building whether residential or otherwise wherein garbage or waste is generated.

(iii) Words not defined in this enactment shall have the meaning assigned to them in the Municipal Solid Wastes (Management and Handling) Rules, 1999 and other similar enactments.

3. *Local Authority to arrange removal of garbage.*—(1) Every local authority shall make adequate arrangements for the removal of garbage and waste from all buildings.

(2) Local authority shall provide receptacle to the owner or occupier as the case may be of every buildings for keeping the garbage and waste. Separate receptacle may be provided for keeping the degradable and non-degradable garbage and waste.

(3) The garbage or waste kept by the owner or occupier of the buildings shall be collected by the local authority at a fixed time on every day with due intimation to them.

(4) The degradable garbage or waste collected by the local authority shall be used for the production of electricity, bio-gas or vermin compost.

The Kerala Disposal of Garbage and Waste Management Bill

(5) The collection as well as the disposal of the waste referred to in the above sub-sections may be made by the local authority themselves or on contract basis by any other agency.

(6) Local authority may collect such fees as may be decided by the council from the owner or occupier of every building for the collection of garbage or waste:

Provided that in cases where the collection is made by any agency on contract basis, the contractor shall be permitted to collect the fees fixed by the council from the owner or occupier of the buildings.

4. *Duty of owner or occupier to store the garbage in the receptacle provided by the local authority.*—(1) Every owner or occupier of buildings shall keep the garbage or waste degradable and non-degradable separately in the receptacles provided by the local authority.

(2) The garbage or waste so collected shall be handed over to the persons entrusted with the collection, in time.

5. *Owner or occupier may convert garbage into useful products.*—(1) The owner or occupier of buildings may convert the garbage or waste into useful products like bio-gas and vermin compost.

(2) In case where large quantity of garbage or waste is generated in any building, the local authority may direct the owner or occupier of the said building to set up a plant for the conversion and use of the waste or garbage into energy or other useful products.

(3) Any person who fails to carry out the direction in sub-section (2) shall be punishable with fine up to Rs. 500 per day.

6. *Effect of Municipal Solid Wastes (Management and Handling) Rules, 1999.*—This Act will be in addition to the Municipal Solid Wastes (Management and Handling) Rules, 1999.

Statement of Objects and Reasons

Though the Municipalities Act and Municipal Solid Wastes (Management and Handling) Rules, 1999 are in existence, the waste management in most of the cities is in chaotic conditions. The result is that public health is adversely affected by the said inaction of the Municipal authorities. Though the Supreme Court of India in the case of Municipal Council, Ratlam v. Vardhican, *AIR 1980 SC 1622* has held that it is the primary duty of the municipalities to provide drainage and proper sewerage system it is not done. This Act is intended to achieve the object of waste management in a more effective manner.

THE KERALA MUSLIM WOMEN (RELIEF ON IRRETRIEVABLE BREAKDOWN OF MARRIAGE AND PROHIBITION OF TALAKUL BIDAAT) BILL

Since it is expedient to recognize and streamline the provisions of Islamic Law providing relief to married women on an irretrievable breakdown of marriage it is hereby enacted as follows in the 59th year of the Republic of India.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Muslim Women (Relief on Irretrievable Breakdown of Marriage and Prohibition of Talakul Bidaat) Act, —.

(2) It shall come into force as soon as it is notified in the Official Gazette of Kerala, and

(3) It shall apply to all Muslims living or domiciled in the State of Kerala to whichever sect or school of law they may belong.

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

(a) “*iddah*” means the period of abstinence;

(b) “*Khula*” means the right of a married woman under Muslim Law to dissolve her marriage through an out-of-court divorce at her own instance with or without the intervention of a kazi;

(c) “*man*” means and includes a Muslim man.

(d) “*Talaq-e-tafwiz*” means the right of a married woman under Muslim Law to reserve for herself in her marriage contract the right to divorce her husband either in circumstances specified therein or in general in the case of an irretrievable breakdown of marriage.

3. *Divorce on irretrievable breakdown of marriage.*—(1) If the marriage of a Muslim woman has suffered an irretrievable breakdown, the court of competent jurisdiction shall on an application made by her in that behalf pass a decree of dissolution of her marriage on that ground.

(2) The fact that the parties to a marriage are living separate, as a result of their strained relations, for one year or more shall raise a rebuttable presumption of irretrievable breakdown of marriage for the purpose of sub-section (1) of this Section.

The Kerala Muslim Women (Relief on Irretrievable Breakdown of Marriage and Prohibition of Talakul Bidaat) Bill

4. *Recognition of khula and talaq-e-tafwiz.*—(1) If a married Muslim woman has exercised her right to *khula* or *talaq-e-tafwiz*, it may be recognized and affirmed by a court in any civil or criminal judicial proceeding:

Provided that in proceedings under the above sub-section, the court shall consider the question whether a Muslim woman has at her own free will exercised her right to *Khula* or *talaq-e-tafwiz*, without any technicality or formality and in a liberal manner:

Provided also that it will not be obligatory for the woman in any such case to necessarily obtain such an affirmation of her action by the court.

5. *Prohibition of oral talaq.*—(1) No man has a right to divorce a Muslim woman on the basis of oral *talaq*.

(2) If the person is illiterate he shall explain the reason for *talaq* to the Mahal Committee or Muthawalli of the Mosque where the person concerned resides who shall prepare the said communication on his behalf and the illiterate shall affix his mark thereto.

(3) The *talaq* made before the coming into force of this Act has no validity unless the said *talaq* is in compliance with the provisions of this enactment.

6. *Prohibition of Talakul Bidaat.*—Triple *talaq* at one stretch shall not be considered as an irrevocable *talaq*. Pronouncement of triple *talaq* shall be treated only as pronouncement of a single *talaq*.

Mediation for reconciliation—if for any reason any dispute or differences arise between the spouses which is likely to result in breakdown of marriage, it shall be mandatory to refer the matter to two mediator's one from the side of the wife and the other from the side of husband. The mediators shall make all efforts to bring about a reconciliation between the parties. No *talaq* shall be valid unless there is a prior mediation as aforesaid and an earnest attempt to bring the parties into reconciliation.

If mediation fails, it shall be open to the husband to pronounce a single *talaq* during a *tuhur* (period between menstruation) and if still no reconciliation takes place to pronounce a second *talaq* during the next *tuhur* and if again no reconciliation takes place, to pronounce the *talaq* during the succeeding *tuhur*, no intercourse taking place in between *tuhers*. It shall also be obligatory on the part of husband to allow the

The Kerala Muslim Women (Relief on Irretrievable Breakdown of Marriage and Prohibition of Talakul Bidaat) Bill

wife to stay under the same roof during the above periods. The pronouncement of the third talaq as aforesaid shall constitute an irrevocable talaq. The husband shall communicate the pronouncement of the third talaq in writing to the wife and also the Mahal Committee or Muthawalli of the Mosque where the wife resides.

7. *Right to appeal against talaq.*—(1) If the wife feels that the decision taken by the husband to *talaq*, confirmed by the Mahal Committee or Muthawalli of the Mosque concerned is unreasonable and is arbitrary she is entitled to file an appeal before the Family Court.

(2) The said appeal shall be filed within thirty days from the date of communication of the order.

(3) The family court has got the right to entertain such appeal, even after thirty days, if there is valid reason.

8. *Application of Dissolution of Muslim Marriages Act, 1939.*—On and after the commencement of this Act, the provisions of this Act will also apply to Muslims in Kerala in addition to all the provisions of The Dissolution of Muslim Marriage Act, 1939.

Statement of Objects and Reasons

The Muslim Law of divorce is based exclusively on the theory of irretrievable breakdown of marriage. This is the reason why it permits an out-of-court divorce both at the instance of either party to marriage and by their mutual consent.

Instant divorce by triple *talaq* is alien to Islam's spirit. In that case the women are the most aggrieved for the reason that they are not getting reasonable notice or an opportunity to challenge it. To stop such discrimination certain provisions are made in this Bill.

The grounds mentioned in the Dissolution of Muslim Marriages Act, 1939 are in the nature of indicative of breakdown of marriage. This Bill is being recommended to provide an additional channel of relief to Muslim women and was not meant to abolish or curtail their pre-existing divorce rights under Muslim Law. However, it is sometimes seen as an exhaustive law restricting married Muslim women's divorce rights to its own limited provisions. As this causes exceptional hardship and depravity to Muslim wives, it is expedient to clarify the Muslim Law in this regard and provide statutory recognition for the same.

THE KERALA PUBLIC SERVANT'S RIGHT TO MEDICAL ATTENDANCE AND REIMBURSEMENT BILL

A BILL

to confer a right on public servants to have medical assistance and reimbursement of medical expenses incurred while in service or after retirement from the State.

Be it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(a) This Act may be called the Kerala Public Servant's Right to Medical Attendance and Reimbursement Act, —.

(b) It shall extend to the whole of the State of Kerala.

(c) It shall come into force on such date as may be notified by the Government in the official Gazette.

2. *Definitions.*—For the purpose of this Act—

(a) *Family.*—Family means and includes wife and husband as the case may be and children, step-children and parents wholly dependent on the public servant.

(b) *Government.*—Government means the Government of Kerala.

(c) *Government Medical Institution.*—Government Medical Institution includes all Government Hospitals, Government Ayurveda and Homeo Institutions, Primary and Secondary Health Centres, Public Health Laboratories and special Institutions like T.B. Sanatorium, Leprosy Asylum and Mental Hospital maintained by Government for providing medical relief.

(d) *'Medical assistance'.*— means the professional advice and care rendered by medical practitioners during sickness or injury. It includes surgical treatment as also bacteriological, pathological, X-ray and all other clinical tests advised duly by the Medical Assistants while diagnosing the disease.

(e) *Medical Assistant.*—Medical Assistant means all medical practitioners duly qualified to practice in any of the recognized systems of medicine and licensed to render medical assistance.

(f) *Medicine.*—Medicine means all medical preparations advised by the Medical Assistant to patients without any restriction such as life saving or otherwise.

The Kerala Public Servant's Right to Medical Attendance and Reimbursement Bill

(g) *Recognized Medical Institutions.*—Any institution owned and controlled by an individual or group of individuals incorporated or otherwise where medical assistance is provided to the public in any of the systems of treatment, namely, Allopathy, Ayurveda or Homeopathy or other systems of medicine recognized by the Government.

3. *Public Servants to be of two categories.*—For the purpose of this Act, public servants shall be of two categories:

(a) A person holding or has held an office or post in the State Government or any statutory corporation or company or other organizations subject to the control of the Government or financed wholly or partly by it or in any local authorities like Municipalities and Panchayats.

(b) A person holding or has held an office or post in any corporation, company or other organizations not owned or controlled by the Government but duly recognized by it.

4. *Right to medical assistance.*—Notwithstanding anything to the contrary contained in any rule or law every public servant is entitled as of right to seek and get medical assistance from any medical institution of his choice for treatment of any sickness or injury suffered by him:

Provided that in the case of medical assistance obtained by public servants falling within category 3(a), from Government medical institutions it shall be free of cost. In the case of public servants falling under category 3(b), they shall meet the expenses for medical assistance initially and can claim reimbursement only from their employers concerned.

5. *Right to reimbursement of expenses for purchase of medicines incurred by public servant.*—Notwithstanding anything to the contrary contained in any other rule or law every public servant shall be entitled to get reimbursement of all expenses incurred for purchasing medicines as prescribed by any Medical Assistant from the respective authorities mentioned under clause 3(a) subject to the conditions prescribed by this Act and the rules framed thereunder from the State in the case of public servants of category mentioned in section 3(a) and in the other case from the employers concerned:

The Kerala Public Servant's Right to Medical Attendance and Reimbursement Bill

Provided that if any public servant is entitled to get the benefit of medical reimbursement of the expenses incurred for purchase of medicines from any other sources, authority, or under any law or scheme, he may opt for the benefit from any one of the sources, authority, or under any law or scheme and make a declaration to the State or employer as the case may be that he is not proposing to exercise his right from that authority:

Provided further that a public servant who is a senior citizen getting the benefits under this Act may not be entitled to claim the benefit of free medical assistance and medical reimbursement as per the Kerala Senior Citizen's (Maintenance, Care, Protection and Creative Involvement) Act.

6. *Overriding Effect.*—On and after the commencement of this Act, the provisions in this Act and the rules framed thereunder would prevail over all other rules now in force and which are contrary to the provisions in this Act and the Rules to be framed under this Act shall be null and void.

7. *Government to make Rules.*—(1) Government may make necessary rules for implementing the provisions of the 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.

Statement of Objects and Reasons

The right to life is a fundamental right guaranteed by Article 21 of the Constitution. To enjoy this constitutional right, one should be able to live with dignity. Health is a very important facet of life with dignity. As a matter of fact, these are days when medical expenses and expenses for treatment in medical institutions are unaffordable to a major chunk of the people. 'Public servants' is one category of persons constituting a major segment of people who suffer mostly for want of proper and timely medical assistance and treatment. This Bill seeks to secure to the public servants the right to free medical benefits and reimbursement of medical expenses.

THE KERALA PANCHAYAT COURTS BILL

A BILL

to establish Panchayat Courts in all Block Panchayats to ensure opportunities for securing justice, both civil and criminal to all citizens and for the speedy disposal of cases and for matters connected therewith or incidental thereto.

BE it enacted in the fifty ninth year of the Republic of India as follows:—

PART I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Panchayat Courts 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, by notification in the Gazette, appoint.

2. *Application of Act to suits or decrees pending.*—All suits and other proceedings pending in a Court at the commencement of this Act and which after such commencement would be cognizable by Panchayat Courts established under this Act, shall be continued in, and disposed of, by such Courts, as if this Act, had not been passed.

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

(i) “Munsiff” means the Munsiff within the local limits of whose jurisdiction the Panchayat Court is situated;

(ii) “Prescribed” means prescribed by rules made under this Act;

(iii) “Registrar” means the Registrar of Panchayat Courts appointed under this Act;

(iv) “Panchayat Court” means a Panchayat Court established under this Act;

(v) “Panchayat” means a local area of a Block Panchayat constituted under clause (b) of sub-section (1) of Section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994).

PART II

ESTABLISHMENT AND CONSTITUTION OF PANCHAYAT COURTS

4. *Establishment of Panchayat Courts.*—(1) The Government shall within six months from the date of commencement of the Act establish a Panchayat Court by notification in the Gazette in every Panchayat.

The Kerala Panchayat Courts Bill

(2) Panchayat Court may also be established by the Government for any other area as it may consider necessary, by notification in the Gazette.

(3) Government may also withdraw any area from the operation of this Act by notification in the Gazette.

5. *Constitution of Panchayat Courts.*—(1) A Panchayat Court established under this Act shall consist of five members, one of which shall be the Chairman of the Panchayat. The other four members shall be persons elected by the members of the Panchayat concerned from a panel of 10 persons prepared by the Chairman in such manner as may be prescribed. The remaining six persons in the panel shall be in the wait list, ranked on the basis of the total number of votes secured by them in the election. One member of the Panchayat court shall be an Advocate with 3 years standing as an Advocate, and one shall be a woman.

(2) The name of the Chairman and other names of the elected members in the order of merit shall be included in panel and sent to Government for appointment. Government may appoint the Chairman and other members in the order of ranks assigned to them in the list. The Government may deviate from the rank list for appointment for reasons to be recorded in writing.

(3) The term of the Chairman and elected members shall be three years, provided that Government may extend such period for a further period not exceeding one year.

(4) A member may, by writing under his hand and addressed to the Government through the Registrar, resign his office at any time.

(5) A vacancy arising by reason of resignation, removal or otherwise shall be filled up by the Government from the panel of names of persons sent to Government under sub-section (2):

Provided that the person so appointed shall hold office for the remaining period of the term of the person in whose place he is appointed.

(6) The Chairman may, if found necessary hold sittings by constituting a bench with such number of members not less than three. All decisions of the Panchayat court shall be taken on the basis of majority. In cases where the members are divided equally, the decision of the Chairman shall be final.

(7) The Chairman and other members of the Panchayat Court shall, notwithstanding the expiry of three years from the date of his appointment or the extended term, hold office, unless the Government otherwise direct, until the new chairman and members assume charge.

The Kerala Panchayat Courts Bill

(8) A Panchayat Court shall be presided over by the Chairman. If the Chairman is absent the members present shall elect one from among them to preside over the sitting.

(9) The Government may, on recommendation by the Registrar.—(1) remove any member, if he,—

(a) is declared as undischarged insolvent;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence which in the opinion of the Government involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Government abused his official position so as to render his continuance in office prejudicial to public interest:

Provided that the person may be given an opportunity of being heard before being proceeded against.

(2) Suspend any member pending enquiry on items (d) and (e) of sub-section (1).

(10) If the Chairman or any other member of the Panchayat Court absents himself for five consecutive sittings of the Panchayat Court without sufficient cause, he shall cease to be the Chairman or member as the case may be of the Panchayat Court.

(11) Subject to such rules as may be prescribed, the Chairman shall regulate the work in the Panchayat Court including work distribution.

PART III

JURISDICTION AND POWERS OF PANCHAYAT COURTS IN CIVIL CASES

6. *Territorial Jurisdiction.*—(1) The territorial jurisdiction of a Panchayat Court shall be the Block Panchayat.

(2) Government may, by notification vary or modify the area of jurisdiction of any Panchayat Court.

7. (1) The Panchayat Court shall be the lowest Civil Court and shall have subject to the conditions prescribed in sub-section (2) of this section; jurisdiction to try all suits of a Civil nature of which their cognizance is either expressly or impliedly barred.

The Kerala Panchayat Courts Bill

Explanation.—A suit in which the right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend on the decisions of a question as to religious rites or ceremonies.

(2) (a) In suits with money claim, the principal amount claimed in the suit does not exceed Rs. 25,000.

(b) In suits where the claim relates to any movable property or to a right in or over such movable property, the market value of it does not exceed more than Rs. 25,000.

(c) In suits where the claim relates to an immovable property or to any right in relation to such immovable property, the yearly property tax in respect of such property does not exceed more than Rs. 10,000.

(d) In suits other than the categories mentioned above the estimated value shown in the claim does not exceed Rs. 25, 000.

8. (1) Notwithstanding anything contained in the Court Fees & Suits Valuation Act, 1959 and the Rules framed therein, court fee payable on the suits filed before the Panchayat Courts shall be as prescribed in sub-section (2).

(2) (a) In suits falling under clauses (a) and (b) of sub-section (2) of Section 7, a fixed court fee of Rs. 25 shall be paid at the time of filing of the suit.

(b) In suits falling under clause (c) and (d) of sub-section (2) of Section 7, a fixed court fee of Rs.100 shall be paid at the time of filing the suit.

(c) On a counter-claim, the court fee payable shall be the same court fee payable on a suit if a suit was filed on the basis of the subject-matter of the counter-claim.

(d) The court fee payable on a memorandum of appeal shall be the same court fee paid or payable on the suit out of which the appeal arises.

(e) The head clerk of the office of the Panchayat Court or any officer authorized by the court in this behalf shall have jurisdiction to decide the correct quantum of court fee payable and the responsibility to collect the court fee payable.

(3) No other court shall have jurisdiction to entertain suits entertainable by the Panchayat Courts under this Act.

9. *Appearance in person, by agent, etc.*—(1) Any appearance, application or act required or authorized by law to be made or done by a party to a suit in any Panchayat Court shall be made or done in such Panchayat Court by the party in person:

The Kerala Panchayat Courts Bill

Provided that it shall be competent to the Panchayat Court to permit any party to the suit to be represented for all purposes by a recognized agent or pleader subject to the power to direct personal attendance of such party whenever necessary.

Explanation.—Recognised agent is a person holding a power of attorney from a party, authorizing him to make and do appearances, applications and acts on behalf of such party, and includes any person authorized in writing by a party to appear and plead for him.

(2) On the request of any of the parties, the court may to the extent possible provide legal aid in appropriate cases.

10. *Summons to defendant how served.*—When the plaint has been duly presented, the Panchayat Court shall cause the same to be registered, and shall, by summons in writing, require the defendant to appear and answer the claim on a specified day. The summons shall be served on the defendant personally or by registered post acknowledgment due or in any other manner prescribed. In case the summons is served on the defendant personally, his signature shall be taken on the summons by the person serving the summons and a copy thereof delivered to him; and in the case of postal service, an acknowledgment purporting to be signed by the defendant shall be deemed to be proof of service of such summons. If the service of summons is effected in any other mode acknowledgement of receipt of summons shall be obtained in the manner prescribed.

11. *Mode of service when defendant evades service.*—If the Panchayat Court is satisfied that the defendant is evading service of the summons, or has refused to affix his signature to the summons, or for any other sufficient reason the summons cannot be served in the manner provided for in S.10, the Panchayat Court may order that it be served by delivering a copy thereof to, an adult male member of the family of the defendant, residing with him, or that a copy thereof be affixed upon some conspicuous part of the house in which he generally resides.

12. *Mode of service when defendant is beyond local jurisdiction of Panchayat Court.*— Whenever it may be necessary to serve the summons upon a defendant beyond the local jurisdiction of the Panchayat Court, it shall be forwarded to the Chairman of the Panchayat Court within whose jurisdiction the defendant resides, who shall cause it to be served as if it had been a summons issued by himself and shall then return it to the Panchayat Court together with a report of such service. Such report shall be prima facie evidence of the facts stated therein. Where there is no Panchayat Court for the area within which the defendant resides, the summons shall be served through registered post and the return made by the service peon shall be prima facie evidence of the facts stated therein.

The Kerala Panchayat Courts Bill

13. *Procedure if defendant does not appear.*—(1) If a defendant does not appear in person or by agent or by pleader on the day fixed and it be proved that the summons was duly served, the Panchayat Court may proceed *ex parte*. If it is not proved that the summons was duly served, the Panchayat Court shall issue a fresh summons.

(2) Every defendant may claim five clear days' notice of suit, and if the summons was not served in sufficient time to enable him to answer on the day fixed, the hearing shall be adjourned to a future day, of which written notice shall be given to the defendant.

14. *Witnesses to be examined in open court.*— The evidence of witnesses in attendance shall be taken in open court orally on oath or affirmation in the presence and superintendence of the Panchayat Court except where the Panchayat Court orders that the evidence shall be taken *in camera*.

15. *How evidence shall be taken.*— The evidence of each witness shall be taken down in writing by the Chairman of the Panchayat Court or by any member authorized by the Chairman not ordinarily in the form of question and answer, but in the form of a narrative and when completed shall be read over in the presence of such members and of the witness and the members constituting the Panchayat Court shall sign it. The Panchayat Court shall require the witness to sign the deposition before the witness leaves the Court.

16. *Objections to jurisdiction.*—No objection as to the place of suing shall be allowed by any court of appeal unless such objection was taken before the date on which or the time when the statement is made or written statement is filed in the Panchayat Court and unless there has been a consequent failure of justice.

17. *Suit in which member is personally interested.*—(1) No member of a Panchayat Court who is a party to, or is personally interested in any suit shall sit as a member of the Panchayat Court which takes cognizance of such suit.

(2) If in a suit any of the parties allege any bias against any of the members, the Chairman may consider the allegation and exclude the member against whom the allegation is made if he is *prima facie* satisfied that allegation is not baseless.

18. *Cognizance of suits by Panchayat Courts.*—(1) Notwithstanding anything contained in the Kerala Civil Courts Act, 1957, every suit triable by a Panchayat Court shall be instituted in the Panchayat Court having jurisdiction to try the suit.

(2) No suit shall lie in any Panchayat Court unless at least one of the defendants against whom relief is claimed permanently resides or carries on business or works for gain within the local limits of its jurisdiction at the time of the institution of the suit or the cause of action has arisen wholly or in part within those limits.

The Kerala Panchayat Courts Bill

19. *Procedure in Civil Cases.*—(1) Institution of suit before the Panchayat Court shall be by filing a claim statement containing all the relevant facts necessary to establish the claim.

(2) The person or persons who institute the suit and the person or persons against whom the suit is instituted shall be called claimant/claimants and respondent/respondents respectively.

(3) The person or persons against whom a suit is instituted may file a counter-claim against the claimant or claimants if he has got a cause of action for filing an independent suit against the claimant/claimants in the same suit without filing a fresh suit in respect of such claim.

(4) The Panchayat Court shall not be bound by the strict procedure laid down in the Code of Civil Procedure, 1908 and the Rules of Evidence as laid down in the Indian Evidence Act, 1872, while trying and disposing of the suit, but shall be guided by the principles of natural justice. But, the Panchayat Court may be free to adopt the procedures prescribed in the C.P.C. to regulate various matters either as such or with modification in matters other than what is provided in this Act.

(5) In every proceeding of a civil nature instituted before the Panchayat Courts, it shall be the endeavour of the Court, in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade, and conciliate the parties in arriving at a settlement.

(6) Every decree and order of a Panchayat Court shall be final subject to the result of appeal and revision provided under this Act.

20. *Incidental determination of matters not cognizable by Panchayat Court.*—If, in the course of decision of a suit cognizable by a Panchayat Court, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit concerning title to immovable property, or the legal character of either of them or of those under whom they claim, or the existence of any contract or obligation, which, if it had been the immediate subject-matter of the suit, would not be cognizable under this Act by a Panchayat Court, it shall be competent to the Panchayat Court to decide such question of title, legal character, contract or obligation, as far as may be necessary for the determination of such suit; but such decision shall not be evidence of such title, legal character, contract or obligation in any other action though between the same parties or their representatives.

21. *Limitation.*—The provisions of the Limitation Act, 1980, shall apply to suits and applications under this Act.

The Kerala Panchayat Courts Bill

PART IV

THE DECREE PASSED IN CIVIL SUITS AND ITS EXECUTION

22. *On conclusion of hearing the Panchayat Courts to pass decrees.*—The Panchayat Court shall after hearing arguments, prepare and sign the decree to be passed in the case as shall appear to it to be just and equitable. Such decree shall be pronounced in open court by the members who drew up the decree or by other members at the next sitting of the Panchayat Court. The members of the Panchayat Court which pronounced the decree shall sign it and the decree shall bear the date on which it is pronounced. The period of limitation for all purposes in respect of the decree shall be computed from the date on which it was so pronounced.

23. *Contents of decree.*—(1) The decree shall be in Malayalam or if in respect of any area where the Government have notified any other local language, as the local language of the area, in such language and shall contain the number of the suit, the name of the parties, the particulars of the claim, the names of the witnesses examined, the title and date of the exhibits read, the decision in the case and the reasons for such decision.

(2) The decree shall specify the sum of money adjudged, the movable property to be delivered, the sum to be paid in default of delivery, the amounts of costs and interest thereon, if any, awarded by the Panchayat Court not exceeding twelve per cent per annum and by what parties and in what proportion costs shall be paid.

(3) Any member dissenting from the decree of the Panchayat Court shall state in writing the decision which he thinks should be passed and state his reasons for the same.

(4) The court which passes the decree may also fix a date on which the court shall take further steps in the matter, for execution of the decree unless the decree is in the meantime satisfied fully and the claimant or the respondent whether jointly or singly files a statement to that effect or the court is in receipt of an order of stay from any superior court granting stay of execution of the decree concerned. The parties shall also be directed to appear before the court on the above date and to state whether the decree has been satisfied or that the execution stands stayed by a superior court.

24. *In suits for money, decree may order interest.*—(1) In suits for money, Panchayat Court may, in addition to any interest adjudged on the principal sum for any period prior to the institution of the suit, order in the decree, interest at such rate not exceeding twelve per cent per annum as the Panchayat Court deems reasonable on such principal sum from the date of the suit to the date of payment.

The Kerala Panchayat Courts Bill

(2) Where such decree is silent with respect to the payment of interest as aforesaid, the Panchayat Court shall be deemed to have refused such interest and a separate suit therefore shall not lie.

(3) When a Panchayat Court decrees the payment of a sum of money, it may direct that it be paid by installments with or without interest at the rate mentioned above.

25. *Procedure in case of clerical or arithmetical error found in the decree.*—If any clerical or arithmetical error be found in the decree, the Panchayat Court shall, of its own motion or on the application of any of the parties, amend the decree so as to correct such error provided that reasonable notice has been given to the parties of the proposed amendment.

26. *Execution of decrees.*—The decree shall be executed by the Panchayat Court which passed it or by a Panchayat Court or Munsiff to whom it is sent for execution under the provisions hereinafter contained.

27. *Decree for specific movable how executed.*—If the decree be for any specific movable, it may be enforced by the seizure of the property and its delivery to the decree-holder. If the seizure of the property be not practicable, the decree shall be executed by enforcing payment of the sum decreed in the alternative.

28. *Payment of money under decree or adjustment to be made or recorded in open court.*—(1) Satisfaction of decrees passed by a Panchayat Court shall be made by—

(a) Payment of the decree amount into the Panchayat Court or the Munsiff's Court whose duty it is to execute the decree, and

(b) Payment to the decree-holder or his agent duly authorized in writing to receive such payment or otherwise as the Panchayat Court which passed the decree directs.

(2) Payments made to the decree-holder or his agents shall be made in open court and the fact that such payment was made shall be recorded in writing and signed by the decree-holder or his agent and attested by the members then constituting the Panchayat Court.

(3) If the decree is otherwise adjusted to the satisfaction of the decree-holder, the nature of such adjustment shall be recorded in writing and signed by him and attested by his agent or pleader. Where the party is not represented by an agent or pleader, such adjustment shall be recorded and signed by him in open court and attested by the members then constituting the Panchayat Court.

The Kerala Panchayat Courts Bill

(4) All payments or adjustments shall be endorsed by the Panchayat Court on the decree and recorded in the register of suits.

(5) No payment under a decree in whole or in part shall be recognized unless it has been made and recorded in the manner prescribed by this section.

29. *Money realized under decree and not claimed by decree-holder.—*

(1) If any money due under a decree is received or recovered by the Panchayat Court or the Munsiff's Court and such money is not claimed by the decree-holder within a week from the date of such receipt or recovery, the Panchayat Court or the Munsiff's Court shall issue a notice to the decree-holder requiring him to receive payment of such money.

(2) If the money is not claimed within a fortnight from the date of issue of the notice aforesaid, it shall be deposited in the nearest Treasury and credited to the Civil Court deposit of the Panchayat Court and shall be paid to the decree-holder on his application.

30. *Judgment-debtor not to be arrested or immovable property attached.—*(1) Subject to the provision of sub-section (3), no judgment-debtor shall be arrested by a Panchayat Court.

(2) No immovable property of a judgment-debtor shall be attached or sold by a Panchayat Court.

(3) Any Panchayat Court empowered in that behalf by the Government by notification in the Gazette may, subject to the provisions hereinafter contained, order on the application of the decree-holder, execution of the decree by issue of a warrant directed against the person of the judgment-debtor if he is within the local limits of the jurisdiction of that court. The Government may prescribe the jail in which any person so arrested shall be imprisoned:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Panchayat Court, for reasons recorded in writing, is satisfied—

(a) that the judgment debtor with the object or effect of obstructing or delaying the execution of the decree—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Panchayat Court; or

(ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property; or

The Kerala Panchayat Courts Bill

(b) that the judgment-debtor has or has had, since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property, which by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

31. *Arrest and detention.*—(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Panchayat Court; and his detention may be in any civil prison or any other place which the Government may appoint for the detention of persons ordered by such Panchayat Court to be detained:

Provided, first, that for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the officer authorized to make the arrest has duly gained access to any dwelling house he may break open the door of any room in which he has reason to believe the judgment-debtor is likely to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and after allowing a reasonable time for her to withdraw and giving her reasonable facilities for withdrawing may enter the room for the purpose of making the arrest.

Provided, fourthly, that where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Government may, by notification in the Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Government in this behalf.

The Kerala Panchayat Courts Bill

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Panchayat Court, the Panchayat Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security to the satisfaction of the Panchayat Court that he will within one month so apply and that he will appear when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Panchayat Court shall release him from arrest, and, if he fails so to apply and to appear, the Panchayat Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

(5) Where the judgment-debtor applies for time to enable him to pay the judgment-debt, the Panchayat Court may leave the judgment-debtor in the custody of an officer of the Panchayat Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Panchayat Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

32. *Prohibition of arrest or detention of women in execution of decree for money.*—Notwithstanding anything contained in this Chapter, the Panchayat Court shall not order the arrest or detention in the civil prison of a women in execution of a decree.

33. *Subsistence allowance.*—The Government may fix scales of monthly allowances payable for the subsistence of judgment-debtors by the decree holder.

34. *Detention and release.*—(1) Every person detained in the civil prison by a Panchayat Court in execution of a decree shall be so detained—

(a) where the decree is for the payment of a sum of money exceeding thousand rupees, for a period of three months and

(b) in any other case, for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of three months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

The Kerala Panchayat Courts Bill

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Panchayat Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

35. *Release on grounds of illness.*—(1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the Panchayat Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Panchayat Court may release him, if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Panchayat Court or any Court to which the Panchayat Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by S. 34.

36. *Power to permit judgment-debtor to show cause against detention in prison.*—(1) Notwithstanding anything contained in this Chapter where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Panchayat Court shall instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Panchayat Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

The Kerala Panchayat Courts Bill

Provided that such notice shall not be necessary if the Panchayat Court is satisfied, by affidavit or otherwise that, with the object of delaying execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Panchayat Court.

(2) Where appearance is not made in obedience to the notice, the Panchayat Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

37. *Warrant for arrest to direct judgment-debtor to be brought up.*—Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with the execution to bring him before the Panchayat Court with all convenient speed, unless the amount which he has been ordered to pay together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

38. *Judgment-debtor not to be arrested until subsistence allowance is paid.*—(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into the Panchayat Court such sum as the Panchayat Court thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Panchayat Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Panchayat Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under S.34, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Panchayat Court shall be supplied by the party, on whose application the judgment-debtor has been arrested by monthly payment in advance before the first day of each month.

(4) Such sum, if any, as the Panchayat Court thinks fit, sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the place of sitting of the Panchayat Court to the civil prison and from the civil prison, on his release, to his usual place of residence together with the first of the payments in advance under sub-section (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Panchayat Court before the judgment-debtor is committed to the civil prison and the subsequent payments, if any, shall be paid to the officer-in-charge of the civil prison.

(5) Sums disbursed under this section for the subsistence and cost of conveyance, if any, of the judgment-debtor shall be deemed to be costs in the suit.

The Kerala Panchayat Courts Bill

39. *Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.*—(1) When a judgment-debtor appears before the Panchayat Court in obedience to a notice issued under S. 30 or is brought before the Panchayat Court after being arrested in execution of a decree for the payment of money, the Panchayat Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the enquiry under sub-section (1), the Panchayat Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Panchayat Court or release him on his furnishing security to the satisfaction of the Panchayat Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-section (1), the Panchayat Court may, subject to the other provisions of this Chapter, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Panchayat Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Panchayat Court for his appearance at the expiration of the specified period, if the decree be not sooner satisfied.

(4) A judgment-debtor released under this section may be re-arrested.

(5) When the Court does not make an order of detention under sub-section (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

(6) No judgment-debtor shall be committed to the civil prison or brought before the Panchayat Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-section (1) unless and until the decree holder pays into Panchayat Court the sum sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort according to such scale as Government may by rules prescribe. Sub-section (5) of S. 38 shall apply to such payments.

40. *Arrest and release of debtors when the Panchayat Court is not sitting.*—When the Panchayat Court is not sitting, the Chairman or in his absence, any member duly empowered in this behalf by the Chairman may—

The Kerala Panchayat Courts Bill

(i) subject to the provisions of this Chapter, issue a warrant under S. 30 for commitment to the civil prison of any judgment-debtor,

(ii) release persons arrested on civil process where no detention batta is paid, and

(iii) detain an arrested person in the custody of an officer of the Panchayat Court for a period not exceeding seven days in the aggregate, if the requisite batta is paid.

41. *Attachment of movable property.*—On the application of the decree-holder, the Panchayat Court or when the Panchayat Court does not sit, the Chairman, or in his absence, any member may order attachment of any movable property within its jurisdiction belonging to the judgment-debtor to the value of the sum payable under the decree.

42. *Seizure of property in dwelling house.*—(1) No person executing any process under this Chapter directing or authorizing seizure of movable property shall enter any dwelling house after sunset and before sunrise.

(2) No outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling house is in the actual occupancy of a woman, the person executing the process shall give notice to such woman that she is at liberty to withdraw and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

43. *Seizure how made if property is in possession of judgment-debtor.*—If the property be in the possession of the judgment-debtor, it shall be attached by actual seizure and the Panchayat Court shall provide for its safe custody. It may be left in the custody of the judgment-debtor upon sufficient security being given in writing for its production when required. On default, the decree may be executed against the surety to the extent of the value of the property not produced.

44. *Seizure how made if property not in possession of judgment-debtor.*—If the property be not in the possession of the judgment-debtor, the attachment shall be made by a written order prohibiting the person in possession of the property from giving it over to the judgment-debtor.

The Kerala Panchayat Courts Bill

45. *Debts how attached.*—Debts and moneys due to the judgment-debtor, shall be attached by a written order prohibiting the judgment-debtor from recovering the sum of money, and the debtor from making payment thereof until further order of the Panchayat Court. Nothing in this section shall be held to authorize a Panchayat Court to attach or sell a debt charged on immovable property.

46. *Private alienation of property after attachment void.*— When an attachment has been made by actual seizure or by a written order, any private alienation of the property attached, whether by sale, gift, pledge or otherwise, and any payment of the debt to the judgment-debtor, during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

47. *Investigation of claim to attached property.*— If any claim be preferred to the property attached in execution of a decree, the Panchayat Court shall investigate the claim, and if it appears that the judgment-debtor has no saleable interest therein, such property shall be released from attachment.

48. *Property to be sold not less than fifteen days after attachment and sale to be proclaimed.*—As soon as possible after attachment, the Panchayat Court shall fix a day, not less than fifteen days from the date of attachment for the sale of the property attached and shall cause a written proclamation of the intended sale to be affixed outside the Panchayat Court and such sale shall be proclaimed further by publication in two news paper having wide circulation in the local area where the Panchayat Court situates:

Provided that where a claim has been preferred to the property attached under S. 47, the Panchayat Court may postpone the sale of the property pending adjudication on the claim:

Provided further that the Panchayat Court may on other sufficient grounds adjourn the sale, from time to time, for a period not exceeding three months in the aggregate from the date of attachment:

Provided also that—

- (1) with the consent in writing of the judgment-debtor, or
- (2) when the property seized is subject to speedy and natural decay, or

The Kerala Panchayat Courts Bill

(3) when the expense of keeping it in custody may exceed its value, the Panchayat Court may, after giving due notice by affixing it outside the Panchayat Court sell the attached property at any time within fifteen days from the date of attachment. In such case, the Panchayat Court shall hold the sale proceeds, subject to the provisions hereinafter made, for payment of moneys attached in execution of decree.

49. *Procedure in sale.*—(1) On the day fixed for the sale, the property shall be put up for sale by public auction in open court and sold to the highest bidder. But it shall be open for the court to adjourn the sale for another day if the court is of opinion that the bid amount is abnormally low. On sale the price shall be paid without delay, and in default, the property shall again be put up for sale.

(2) On payment of the purchase money, the Panchayat Court shall grant a receipt for the same, and the sale shall become absolute and no petition for setting aside such sale shall lie.

(3) Any loss on re-sale shall, at the instance of either the judgment-creditor, or judgment-debtor be recoverable from the defaulter as if a decree has been passed against him for the same.

50. *Power to adjourn sale.*—Subject to the provisions contained in Section 48, any sale advertised under this Act may, at the discretion of the Panchayat Court be adjourned to a specified day, public notice thereof being given in the manner prescribed by the said section.

51. *Members of the Panchayat Court and other officers not to bid for or buy property sold.*—No member of a Panchayat Court or other officer having any duty to perform in connection with any sale under this Act or any agent or pleader ordinarily practicing in that Panchayat Court shall, either directly, or indirectly, bid for or acquire any interest in any property sold at such sale.

52. *Stoppage of sale on tender of debt and cost.*— Every sale of property under this Act shall be stopped if, before the lot is knocked down, the amount due under the decree and the cost of the sale are tendered to the Panchayat Court.

53. *Division of proceeds of sale.*—Out of the moneys realized in execution, the cost of execution shall first be defrayed and then the amount due to the decree-holder. Any surplus which may remain shall be paid to the judgment-debtor.

The Kerala Panchayat Courts Bill

54. *Property actually seized to be delivered to purchaser.*— When the property sold is one of which actual seizure has been made, the property shall be delivered to the purchaser.

55. *In other case how property delivered to purchaser.*—When the said property sold is in the possession of any person other than the judgment-debtor, or is a debt due by any person to the judgment-debtor, delivery thereof to the purchaser shall be made by a written notice to such person prohibiting him from delivering possession of the property or paying the debt to any person except the purchaser, and whatever right the judgment-debtor had in such property or debt at the time of attachment shall vest in the purchaser.

56. *Decree may be transmitted for execution to another Panchayat Court or to the Munsiff.*—(1) Any decree passed by a Panchayat Court may, on the application of the decree-holder, be transmitted for execution to any Panchayat Court within whose jurisdiction the judgment-debtor resides or to any other Panchayat Court or to the Court of Munsiff within whose jurisdiction the judgment-debtor owns immovable or movable property.

(2) A Panchayat Court may, on application made to it by the decree-holder, transmit the decree for execution to the Munsiff who may then execute the decree as if it were a decree passed by himself.

PART V

**JURISDICTION AND POWERS OF PANCHAYAT COURTS IN
CRIMINAL CASES**

57. *Panchayat Courts to take cognizance of and try certain offences.*—
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Panchayat Court shall have the power to take cognizance of and try all or any of the offences when committed within the local limits of its jurisdiction and specified in the Schedule:

Provided that the Government may, in consultation with the High Court, by notification in the Gazette amend the Schedule from time to time by including new types of cases or taking out any of the cases included in it.

The Kerala Panchayat Courts Bill

(2) A draft of any notification proposed to be issued under subsection (1) shall be laid on the table of the Legislative Assembly and the notification shall not be issued unless the Assembly approves the draft either with or without any modification or addition; and upon such approval being given the notification may be issued in the form in which it has been approved and such notification, on being so issued shall be published in the Gazette and shall thereupon be of full force and effect.

(3) No court other than the Panchayat Court shall take cognizance of an offence capable of trial by a Panchayat Court except as provided in this Act.

(4) The Panchayat Court shall try the offences in the manner provided for summary trial (Chapter XXI of the Cr.P.C., 1973). However, the provisions of Chapter XXI A dealing with plea bargaining shall not be applied by the Panchayat Court.

PART VI

ADMINISTRATION OF PANCHAYAT COURTS

58. *Appointment of Registrar.*— The Government may appoint any officer not below the rank of District Judge to be the Registrar of Panchayat Courts to exercise administrative control over the Panchayat Court and may by rules prescribe the functions and duties of the Registrar.

59. *Powers of Superintendence.*— The Registrar appointed under Section 58, shall have powers of superintendence and inspection over the Panchayat Courts and to call for returns from them. The Government may from time to time, prescribe forms and registers for use and the books and accounts to be kept in the Panchayat Courts and the returns which they shall be bound to submit.

60. *Munsiffs to report to Government in certain cases.*— Whenever the Munsiff sets aside a decree or order of Panchayat Court on the ground of corruption, gross partiality or misconduct of the Chairman or any other member, he shall report every such case to the Government and the Registrar through the District Judge to whom he is subordinate.

61. *Withdrawal of powers of a Panchayat Court.*— The Registrar of the High Court may, on considering the report made to him under Section 60 or otherwise, if satisfied that any Panchayat Court has been guilty of gross partiality or misconduct and also after giving an opportunity to the Panchayat Court to show cause against the

The Kerala Panchayat Courts Bill

action proposed to be taken, report the same to the Government. The Government may order, by notification in the Gazette, that such Panchayat Court shall not exercise all or any of the powers under this Act for such period as may be specified in the order and such Panchayat Court shall cease to exercise such powers for the period so specified and in such case the Government shall take immediate steps to reconstitute the court.

PART VII

APPEALS FROM CIVIL AND CRIMINAL CASES

62. *Appeals in criminal matters.*—An appeal against any order or sentence passed by the Panchayat Court shall lie to the Court of Sessions exercising jurisdiction over the area within which the Panchayat Court is situated, within thirty days of passing of such order. The Sessions Court, may, pending the disposal of the appeal, direct the suspension of the sentence or the order appealed against.

63. *Appeals in Civil matters.*—An appeal against any final order or decree passed by the Panchayat Court shall lie to the District Court exercising jurisdiction over the area within which the Panchayat Court is situated, within thirty days of passing of such order. The Court, may, pending the disposal of the appeal, direct the stay of the order or judgment appealed against.

64. *Power of High Court to call for record of cases from the Munsiff.*—The High Court may either suo motu or on an application call for the record of any case in which the Munsiff has, in the exercise of his powers under Section 65 of this Act, exercised a jurisdiction not vested in him by law or failed to exercise a jurisdiction so vested or acted in the exercise of the jurisdiction illegally or passed an order contrary to law or set aside the decree on the ground of corruption, gross partiality or misconduct of the Chairman or any other member of the Panchayat Court and may pass such orders in the case as the High Court thinks fit.

65. *Revisions by Munsiff of Panchayat Court Proceedings.*—(1) The Munsiff Court may, on a petition being presented within sixty days from the date any decree or order of a Panchayat Court by any party deeming himself aggrieved by such decree or order, set aside such decree or order, on the ground of corruption, gross partiality or misconduct of the Chairman or any other member of the Panchayat Court or of the Court having exercised a jurisdiction not vested in it by law or to have failed to exercise such jurisdiction so vested or acted illegally or with material irregularity and may pass such other decree or order as it deems fit. No decree or order of a Panchayat Court shall be set aside without notice to the opposite party. Pending disposal of any such petition, the Munsiff may stay execution of the decree or order:

The Kerala Panchayat Courts Bill

Provided that in exceptional cases where the interest of justice so require, the decree may be set aside and the suit remanded for fresh disposal:

Provided further that the time requisite for obtaining a copy of the decree or order shall be excluded in computing the period of limitation.

(2) The Munsiff may, if he is satisfied with the cause shown for delay, entertain a petition after sixty days.

66. *Limitation.*—Section 5 of the Limitation Act shall apply to the filing of Appeals and Revisions against the decrees passed by the Panchayat Court.

67. *Constitution of Panchayat Courts in Municipal Areas.*— The Government may, by notification in the Gazette, apply all or any of the provisions of this Act to the areas comprised within the jurisdiction of a Municipality subject to the modification that for a Panchayat Court established in such areas the Chairman and other members shall be appointed by the Government in consultation with the Municipal Council concerned in accordance with the procedure prescribed in that behalf.

68. *Reference and Review.*—(1) (a) Where before or on the hearing of a suit, or where, in the execution of any decree, any question of law or usage having the force of law arises, on which the Panchayat Court trying the suit or executing the decree, entertains reasonable doubt, that court may either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the Munsiff. When a reference is made to the Munsiff, the Panchayat Court shall stay the suit or proceeding pending the decision of the Munsiff on the point referred.

(b) The Munsiff after hearing the parties, if they appear and desire to be heard, shall decide the point so referred and shall transmit a copy of his judgment, under his signature, to the Panchayat Court by which the reference was made and such court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision.

(c) The costs, if any, consequent on a reference for the decision of the Munsiff shall be costs in the case.

The Kerala Panchayat Courts Bill

(2) Person considering himself aggrieved by any decree or order of a Panchayat Court in its civil jurisdiction and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree or order was passed or on account of some mistake apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree made, or order passed against him, may apply for a review of the decree to the Panchayat Court which passed the decree or made the order.

69. *Contempt of Panchayat Court.*—(1) If any person intentionally offers any insult to a Panchayat Court or any member thereof, while the Panchayat Court is sitting in any stage of judicial proceedings, in its or his view or presence, the Panchayat Court may at any time before rising on the same day take cognizance of the offence and sentence the offender to a fine not exceeding two thousand rupees.

(2) The fine imposed under sub-section (1) shall be deemed to be a fine imposed in a criminal case.

70. *Power to make rules.*—(1) The Government may in consultation with the High Court, make rules to carry out all or any of the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power; such rules may—

(a) provide for the appointment of the Chairman and other members of the Panchayat Court when necessary;

(b) prescribe the qualifications for appointment as Chairman and other members and for payment of allowances and honoraria to the Chairman and/or other members;

(c) provide for the exercise of administrative control and the adjustment of the work in Panchayat Court by the Chairman and the other members;

(d) regulate any matter connected with the procedure of Panchayat Court and the mode of conduct of business;

(e) provide for the mode of service of the summons and prescribe the process fee of witnesses and parties;

The Kerala Panchayat Courts Bill

(f) fix the scale of allowances payable for the subsistence and travelling allowance of judgement-debtors and their escorts;

(g) prescribe the manner in which the Panchayat Court may take cognizance of offences and the procedure to be followed by them in the trial of offences;

(h) provide for the presentation, withdrawal and dismissal of complaints and the compounding of offences and prescribe the persons who may conduct the prosecution or represent the accused;

(i) prescribe the place of sitting of a Panchayat Court where such a Panchayat Court is constituted for more than one Panchayat or Panchayat;

(j) prescribe the procedure to be followed in setting up a plea of counter claim;

(k) prescribe the procedure to be followed in regard to third party procedure;

(l) provide for the summoning and attendance of the accused and for the summoning and examination of witnesses in criminal cases;

(m) prescribe the forms of all registers, returns and processes, the manner in which such returns shall be made and the officers to whom they shall be submitted;

(n) prescribe the functions and duties of the Registrar;

(o) provide for removing any difficulty in giving effect to the provisions of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of 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 make any modification in the rule or decide 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.

71. *Repeal and Savings.*—(1) The Kerala Village Courts Act, 1961 (6 of 1961) is hereby repealed.

The Kerala Panchayat Courts Bill

(2) The Cochin Village Courts Act, XII of 1118, the Travancore Village Panchayat Courts Act, 1090 (1 of 1090), the Madras Village Courts Act, 1888 (1 of 1889) the Travancore-Cochin Village Courts Act, 1953 (VII of 1954) and S. 132 of the Madras Village Panchayats Act, 1950, The Kerala Village Courts Act, 1961 are hereby repealed.

(3) All Panchayat Courts and Village Panchayat Courts constituted under any of the enactments hereby repealed are functioning as such on the commencement of this Act shall be deemed to be Village Courts constituted under this Act, notwithstanding anything contained in S.6 of this Act, but subject to the condition that the term of office of every member of the Village Court or Village Panchayat Court shall continue upto the date on which it would have expired under the respective enactments or until such earlier date as the Government may, by notification in the Gazette, specify.

SCHEDULE

(See Section 92)

(1) Offences punishable under Ss. 160, 172, 174, 179, 269, 277, 279, 283, 285, 289, 290, 294, 323, 334, 336, 352, 358, 504 and 510 of the Indian Penal Code.

(2) Offences punishable under S. 379 of the Indian Penal Code in respect of property not exceeding fifty rupees in value, when the offender has not been previously convicted of theft.

(3) Offences punishable under S. 426 of the Indian Penal Code when the loss or damage caused thereby does not exceed fifty rupees.

(4) Any other specified offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months only or with both.

Explanation.—The offences mentioned in this Schedule include abetment and attempt of such offences.

The Kerala Panchayat Courts Bill**Statement of Objects and Reasons**

In order to enshrine in the Constitution certain basic and essential features of Panchayat Raj institutions, a new part was added to the Constitution by the Constitution (Seventy-third Amendment) Act, 1992. The new Part provides, inter alia, constitution of Panchayats at Village levels. The Kerala Panchayat Raj Act, 1994 was enacted by the Kerala Legislative Assembly to implement the constitutional obligations of the State in relation to matters specified by the said Constitution Amendment Act. In order to supplement the provisions of the Kerala Panchayat Raj Act, it is felt necessary to enact a new law constituting Panchayat Courts at Panchayat level for speedy disposal of cases in which the money value involved is not more than Rs. 25,000 or the valuation of the claim is not above Rs. 25,000. At present the lowest court of civil jurisdiction is the Munsiff's Court whatever be the money value of the dispute between parties. If the jurisdiction of civil disputes involving not more than Rs. 25,000 is conferred on Panchayat Courts, it would be possible to render speedy justice to the parties while at the same time, the work load of Munsiff's Courts could be reduced substantially. This Bill seeks to achieve the said purpose by providing for establishment of Panchayat Courts at Panchayat levels consisting of five members of which the Chairman shall be the President of the Panchayat. The other members shall be persons elected by the Panchayat concerned from a panel of 10 persons prepared by the Chairman as prescribed by rules made under the Act.
