

THE KERALA PUBLIC CHARITABLE SOCIETIES BILL

An Act to define the concept of 'Public Charitable Societies' in a more comprehensive manner and to provide for the regulation and registration of all public charitable societies formed and functioning in the State of Kerala.

BE it enacted as follows:

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Public Charitable Societies Act, ____.

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

(3) It shall come into force on such date which the Government of Kerala fixes.

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

(a) 'Governing body' means the President, Chairman/Chairperson, Directors, committee members, trustee or other body to whom, by the rules and regulations of the society, the management of its affairs is entrusted.

(b) 'Member' means a person who, having been admitted in a society according to the rules and regulations thereof, and shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned or removed in accordance with the rules and regulations of the society.

(c) 'Public Charitable Society' means any society formed for the purpose of promoting any literature, science, education, arts, music, culture, diffusion of knowledge, relief of the poor, medical relief or furthering process for public causes, advancement of other object of general public utility and includes a church, wakf, kshethra samrakshana samithi and such other organizations formed by other religious denominations by whatever name they may be called.

(d) 'Charity Commissioner' means any Government Officer preferably working in the Co-operative Department nominated by the Government who is competent to discharge powers and duties assigned to Charitable Commissioner under this Act.

(e) 'Society' means a society registered under this Act and deemed to be registered as per Section 28 of this Act.

3. *Societies to be formed by memorandum of association and registration.*—(1) Any seven or more persons associated for any public charitable purpose may by subscribing their names to a memorandum of association and filing the same with the Charity Commissioner, form themselves into a society under this Act:

Provided that not more than two members of a family can be a member of society at a time.

(2) No Government Servant can become a member of such a society.

(3) The application for registration shall be in such form as the State Government may prescribe in this regard.

(4) The application must contain the following particulars :—

(i) The approximate value of the movable and immovable property of the society along with a list of the said items.

(ii) The gross average income and expenses of the society estimated.

(iii) The names and addresses of the society and the manager.

(5) On receipt of the application the Charity Commissioner shall make an enquiry regarding the following matters:

(i) whether the society exists as a matter of fact and whether it has been constituted for a public charitable purpose as contemplated by this Act;

(ii) whether the particulars of the property if any given are true and correct and whether such property is owned and possessed by the said society;

(iii) whether the whole or any substantial portion of the subject-matter of the society is situated within his jurisdiction;

(iv) the names and addresses of the members;

(v) the origin, nature and object of the society;

(vi) any other matters necessary to ensure that such society is validly in existence and is not a fictitious one.

4. *Memorandum of association.*—(1) The memorandum of association shall contain the following particulars, namely:—

(1) The name of the society; the objects of the Society; the address of its registered office; the names, addresses and occupations of the President/Chairman/ Chairperson councils, directors, committee or other governing body to whom, by the rules of the society the management of its affairs is entrusted.

(2) A copy of the rules and regulations of the Society certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association before the Charity Commissioner at the time of registration.

(3) Along with the memorandum of association, a declaration shall be filed with a statement showing the assets of the society, and full name and address of the person contributing the same.

(4) On furnishing the said details the Charity Commissioner shall consider and register the society and issue a certificate to the society.

5. *Registered Office of Society.*—(1) A society shall, have a registered office at the time of its registration itself to which all communications and notices shall be addressed.

(2) Notice of any change of registered office shall be given by the governing body of the society, within 14 days from the date of the change to the Charity Commissioner who shall record the same.

(3) A society, already registered and in existence at the commencement of this Act, shall, give notice of any change of it's registered office within 14 days of the change, to the Charity Commissioner who shall record the same.

(4) If the governing body of a society fails to comply with the requirements of this section every member of the governing body shall unless, the Charity Commissioner for reasons to be recorded in writing condones the delay, be liable to a fine not exceeding five rupees for every day during which the non-compliance continues.

6. General meetings and minutes of proceedings of such meetings.—(1) It shall be the duty of the governing body of a society to convene the first general meeting of the society within 6 months from the date of its registration and thereafter once at least in every calendar year and not more than 15 months after the holding of the last preceding meeting.

(2) At the annual general meeting so held, election of members to the governing body shall be made as provided for in the rules and regulations of the society, provided the minimum number of persons in the governing body shall be three.

(3) A list of members of the first governing body of a society shall be filed with the Charity Commissioner within fourteen days from the date of registration of the society and thereafter the list of the governing body shall be filed with the Charity Commissioner within fourteen days after the date of every annual general meeting.

(4) Every society shall cause minutes of all proceedings of general meetings to be entered in books kept for that purpose. Such minutes shall be written in the handwriting of the secretary or other person authorized in that behalf and signed by the chairman of the meeting and members present at which the proceedings were held as early as possible at any rate within 3 days from the date of the meeting.

(5) If default is made in holding the annual general meeting, filing the list of governing body or recording the minutes of proceedings of general meetings as laid down in this section, the society and every member of its governing body who is willfully in default, shall be liable to a fine not exceeding one hundred rupees per day till the default continues.

(6) One third of the member of the Governing body shall retire by rotation on every year and new members shall be nominated in their places. For first and second years, the one third persons who has to be retired shall be determined by the General body.

(7) No President/Chairman/Chairperson has got a right to continue as such continuously for more than a period of two years.

7. Property of society how vested.—The property movable and immovable, belonging to a society, if not vested in an individual whether a member or not as trustee, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

8. Regulation on acquisition and transfer of property, donations, funds etc.—(1) No sale, mortgage, exchange or gift or purchase of any immovable property the value of which is more than Rs. 50,000 (fifty thousand) and no lease for a period exceeding ten years in the case of agricultural land and three years in the case of non-agricultural land or building

belonging to a society shall be valid unless prior intimation is given to the Charity Commissioner notified or appointed under this Act.

(2) The power to take a decision to transfer property as contemplated under Sec.8 vests with the general body and can be exercised by simple majority.

(3) If the society wants to transfer, any movable or immovable property as referred to in sub-section (1) it shall make an application to the Charity Commissioner. The application shall be accompanied by a report of a Chartered Accountant stating the present financial position of the society.

(4) On receipt of application the Charity Commissioner shall consider as to whether such transfer of the movable or immovable property is necessary in the interest of the society and pass appropriate orders.

(5) An appeal shall lie to the Government against any order passed by the Charity Commissioner.

(6) Such an appeal shall be filed within ninety days of the passing of the order.

9. Suits by and against societies.—(1) Every society may sue or be sued in the name of the President, Chairman, or Principal, Secretary, or Trustees, as shall be determined by the rules and regulations of the society and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

(2) If along with the suit any application is filed for interim orders, the Civil Court shall consider the same and pass appropriate orders *ex parte* or otherwise as found necessary.

(3) After passing interim orders under sub-section (2) the court shall in all cases immediately refer the dispute between the parties to the “Conciliation and Mediation Authority” constituted by the governing body as per rules to see whether an amicable settlement of the dispute is possible or not.

(4) On such reference being received by the Conciliation and Mediation Authority, the authority shall direct the parties to appear before them and shall try to settle the dispute by conciliation and/or mediation as early as possible at any rate within 3 months from the date of receipt of the file. If a settlement is reached, the terms of settlement shall be forwarded to the Civil Court for recording the same and disposing the suit as settled outside court by mediation. If no settlement is reached the authority may send back the file with a certificate stating that the attempt to settle the matter amicably has failed and directing the parties to appear before the Civil Court on a date to be fixed in the order itself.

(5) On receipt of such failure report, the Civil Court shall take back the suit on file and dispose of the same in accordance with law.

10. Suits not to abate.—No suit or proceedings by or against a society in any civil court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued dying or ceasing to fill the character in the name whereof he shall have sued, or been sued but the same suit or proceeding shall be continued in the name of or against the successors of such person.

11. *Enforcement of decree against society.*—(1) If a decree is against the person or officer named on behalf of the society such decree shall not be executed against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

(2) If there is any negligence or deliberate default on the part of any of the members of the society as a result of which the decree has been passed, such person is personally liable for the said amount decreed.

(3) For the purpose of determining there is any such negligence or deliberate default the corporate veil of the society can be lifted by the executing court or tribunal.

12. *Books of accounts to be kept by society.*—(1) The governing body of a society shall cause to be kept proper books of accounts with respect to—

- i. all sums of money received and expended for and on behalf of the society and the matters in respect of which the receipt and expenditure take place; and
- ii. the assets and liabilities of the society;
- iii. the minutes of all the meetings.

(2) The said accounts have to be audited by a Chartered Accountant and he shall furnish a detailed report on a number of points such as whether accounts are maintained according to law and regularly, whether an inventory has been maintained of the movables of the society, whether any property or funds of the society have been applied on an object or purpose not authorized by the society, whether the funds of the society have been invested or immovable property alienated contrary to the provisions of the memorandum of association or without obtaining the necessary sanction as contemplated under Section 8 of this Act.

(3) If default is made in complying with the requirements of this section, every member of the governing body who has knowingly by his act or omission, caused such default, shall be liable to a fine not exceeding one hundred rupees for the first offence. In case of continuous offence he is liable to be imprisoned for not more than one year with fine not exceed fifty thousand rupees.

13. *Annual Balance Sheet.*—(1) The governing body of every society shall at some date not later than six months from the date of registration of the society and subsequently once at least in every calendar year lay before the society in general meeting a Balance sheet and Income and Expenditure Account for the period, in the case of first account since the registration of the society and in any other case since the preceding account made up to a date not earlier than six months from the date of such meeting.

(2) The Balance sheet and Income and Expenditure Account shall be audited as contemplated under Section 12 (2) of this Act.

(3) The Balance Sheet and Income and Expenditure Account shall be signed by at least three members of the governing body when the number of the governing body exceeds three and by all the members when the number is only three.

(4) After the Balance Sheet, Income and Expenditure Account and the report of the Chartered Accountant have been laid before the general body meeting of the society, a

copy of the balance sheet certified by at least three members of the governing body shall be filed with the Charity Commissioner within 14 days from the date of the general meeting.

(5) If the requirements of this section are not complied with, every member of its governing body, who knowingly and willfully authorizes or permits the default, shall be liable to a fine not exceeding five hundred rupees for every month of delay and in case of the offence being continued for more than twelve months, then the every person in the governing body shall be liable for imprisonment upto six months.

14. Recovery of penalty accruing under bye-law.—Whenever by any byelaw duly made in accordance with the rules and regulations of the Society, or, if the rules do not provide for the making of bye-laws by any bye-law made at a special meeting of the members of the society convened for the purpose (for the making of which the votes of three-fifths of the members present at such meeting shall be necessary) any pecuniary penalty is imposed for the breach of any rule or bye-law of the Society, such penalty, when accrued may be recovered through any court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

15. Society to keep a register of members.—(1) Every Society shall have a register of its members wherein the following particulars are to be entered:—

- i. the names and addresses and the occupation, if any, of the members;
- ii. the date on which each person became a member;
- iii. the date on which any person ceased to be a member;
- iv. the number of shares held by them.

(2) If default is made in complying with the requirements of this section, every member of the governing body, who knowingly and willfully authorizes or permits the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

16. Members liable to be sued as strangers.—Any members who may be in arrear of subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of, or detain, any property of the society, in a manner,or for a time, contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear, or for the damage accruing from such detention, injury or destruction of property in the manner herein before provided.

17. Members guilty of offence punishable as strangers.—(1) Any member of the society who commit theft or misappropriation of any money or other property or willfully and maliciously destroys or injures any property of such society or forges any deed, bond, security for money receipt or other instrument, whereby the funds of the society may be exposed to loss, shall be liable to be punished proceeded against and furnished in accordance with the provisions in the Indian Penal Code and Criminal Procedure Code.

(2) If such person is proceeded against and punished for any of the above offences by a court of law, and when that conviction become final, he shall be immediately removed from the membership of the society and shall not be admitted in it for 5 years from the date of such removal.

(3) If default is committed in implementing the provisions in subsection (2) the Charity Commissioner may initiate proceedings against the governing body for imposition of appropriate punishment including its removal.

18. *Societies enabled to alter, extent or abridge their purposes.*— Whenever it shall appear to the governing body of any society, which has been established for any particular purpose, or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially with any other society, such governing body may submit such proposal to the members of the society in a written report and shall convene a special meeting for the consideration thereof according to the rules and regulations of the society. But no such proposal shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body, for the consideration thereof, nor unless such proposition shall have been confirmed by the votes of three-fifths of the members present at the special meeting.

19. *Power to call for accounts and inspection of books, etc.*—(1) The Charity Commissioner or the State Government may at any time call upon the governing body of any society to submit periodically; accounts of income and expenditure and of the assets and liabilities of the society. The Charity Commissioner or any other officer authorized by the State Government shall by giving at least 7 day's notice periodically examine the accounts and other books of the society and submit to the Government a report on the result of such inspection. For the above purpose the inspecting officer may enter the premises of the society and the governing body and the servants of the society shall furnish him with all information he may call for and shall also render him all the assistance necessary to enable him to conduct the examination and make the report. It shall be the duty of the governing body and of all persons who are or have been servants of the society to produce before the officer so deputed all books and documents in their custody or power relating to the society and to answer any question relating to the affairs of the society.

(2) Whenever the Inspecting Officer, has reason to believe that the accounts or other books and documents of the society are withheld without sufficient excuse ,he may after recording the reasons and grounds of his belief, enter and search or cause to be searched any place or may seize such account books or documents.

(3) The State Government may, for the efficient and better management of the society, review the report submitted under sub-section (1) and pass such orders as they deem fit other than those referred to in clause (i) to (iii) of sub-section (1) of Section 25 and place such review reports before the assembly from time to time.

20. *Power to fine any member of the governing body or servant of the society and dismiss him for disobedience.*—(1) The State Government may fine any member of the governing body or servant of the society who willfully disobeys any order passed by them under Section 19; an amount not exceeding five hundred rupees for each act of disobedience. If the said member or servant fails to carry out the said order within one week from the date of receipt by him of the order imposing the fine, the State Government may dismiss him from the membership of the society. The governing body of the society shall be bound to give effect to the order passed by the State Government under this section and any failure on their part to give effect to such order shall be deemed to be disobedience within the meaning of this section.

(2) A person dismissed under sub-section (1) shall be disqualified to be a member of the society for a period of 5 years from the date of such removal unless the disqualification is removed by the State Government.

21. *Vacancy to be filled up in accordance with the rules and regulations of the Society.*—In cases in which a member is of the governing body, the vacancy shall be filled up in accordance with the rules and regulations of the society.

22. *Amendments to memorandum or the rules and regulations of a society.*—(1) When any amendment is made in the provisions of the memorandum or the rules and regulations of a society, a copy of the resolution effecting the amendment, certified to be a correct copy by not less than three members of the governing body shall be filed with the Charity Commissioner within fourteen days from the date of the general meeting at which the resolution was passed.

(2) If delay is made in so filing with the Charity Commissioner a copy of the resolution mentioned in sub-section (1) of this section, the society and every member of its governing body shall be liable to a fine not exceeding ten rupees for every day during which the default continues.

23. *Provision for dissolution of societies and adjustment of their affairs.*—Any number not less than three-fourth of the members of any society may determine that the society shall be dissolved, and thereupon it shall be dissolved forthwith or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient: Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustments of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the registered office of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided further that no society shall be dissolved unless three-fourths of the members shall have expressed a wish for such dissolution, by their votes delivered in person, or by proxy, at a general meeting convened for the purpose;

Provided also that whenever the State Government is a member of or a contributor to, or otherwise interested in, any society such society shall not be dissolved without the consent of the State Government.

24. Upon a dissolution no member to receive profit.—If upon the dissolution of any society, there shall remain after the satisfaction of all its debts and liabilities, any property, whatsoever, the same shall not be paid to, or distributed among the members of the said society, or any of them, but shall be given to the State Government upon such terms and conditions as may be mutually agreed upon or to some other society which has for its object, the furtherance of aims similar, as near as may be, to be objects of the dissolved society to be determined by the votes or not less than three-fifths of the members present, personally, or by proxy, at the time of the dissolution, or, in default thereof, by such court as aforesaid:

Provided, however, that this section shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of joint stock company

25. Application to court for dissolution, framing a scheme, dissolution, etc.—(1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the Society is registered, the court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders:—

- i. removing the existing governing body and appointing a fresh governing body; or
- ii. framing a scheme for the better and efficient management of the society; or
- iii. dissolving the society.

(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in court along with the application the sum of one thousand rupees in cash as security for costs.

26. Handing over of surplus assets by court.—When a society is dissolved under Section 25, the court may, if the Government are willing to accept the management of the society, order that such management shall be handed over to the State Government or that any surplus assets remaining after the satisfaction of the debts and liabilities of the society may be given to some other society which has for its objects, the furtherance of aims similar, as near as may be to the objects of the dissolved society.

27. Appeal against orders under Section 25.—Appeals shall lie to the High Court from orders passed under Section 25 as if they were decrees in suits and shall be presented within the time prescribed thereof.

28. *Registration of societies formed before this Act.*—(1) Any company or society registered previously to the passing of this Act under The Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860 hereafter, be deemed to be registered as a society under this Act if they re-register under this Act within a period of three months from the date of commencement of this enactment.

(2) During the interregnum no society registered under The Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860, shall transfer or incur expenses of more than one lakh rupees, without the written consent of the Charity Commissioner under this Act.

(3) No society can function under the said Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955 or Scientific and Charitable Societies in Cochin (Cochin Act 11 of 1088) or The Societies Registration Act, 1860 unless they are re-registered as per this provision.

29. *Charity Commissioner to maintain a register of societies.*—(1) The Charity Commissioner shall maintain a register of societies in which shall be entered the name of every society, the location of its office, the date of its registration and the names of the documents filed in pursuance of the provisions of this Act.

(2) The memorandum and all other documents relating to each society shall be kept filed in a separate file book maintained for each society.

(3) Where the Charity Commissioner has reasonable cause to believe that a society is not functioning, he shall send to the society by post a registered letter inquiring whether the society is functioning.

(4) If the Charity Commissioner either receives an answer from the society to the effect that it is not functioning or does not within one month after sending the letter referred to in sub-section (3), receive any answer, he may publish in the Kerala Government Gazette and send to the society by post a registered notice that at the expiration of three months from the date of that notice, the name of the society mentioned therein will unless cause is shown to the contrary, be struck off the register as defunct.

30. *Inspection of documents.*—Any person may require a copy or extract of any document or any part of any document to be certified by the Charity Commissioner, on payment of one rupee for every page of each copy or extract.

31. *Trial of offences under the Act.*—(1) No court inferior to that of a Magistrate of the First Class shall try any offence under this Act and the Magistrate shall not take action except upon a report received from the Charity Commissioner, or upon a complaint by any other person with the sanction in writing of the Charity Commissioner, or State Government or any other authority to whom such Charity Commissioner is subordinate, regarding such offence.

(2) The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the cost of the proceedings.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Charity Commissioner is authorized at any time on receipt of such compensation as may be fixed by him, to compound any offence punishable under the foregoing provisions of this Act. Such composition shall have the effect of an acquittal of the accused.

32. Mediation and Conciliation Committee.—(1) The Governing Body of the Society shall constitute a ‘Conciliation and Mediation Authority’ with 3 members to settle all dispute referred to it by the Civil Court under Section 9 of the Act. At least one of the members shall be a person well versed in law preferably a retired judicial officer and another person who has got experience in conciliation and mediation work gained by doing such work in Lok Adalat or otherwise. The members may be selected from persons who are willing to function as such accepting a honorarium to be fixed by the Governing Body from time to time.

(2) The Conciliation and Mediation Authority may function in the manner provided in the Rules to be framed by the governing body and at the place allotted to it by the governing body.

(3) The Conciliation and Mediation Authority may adopt such procedure which are in accordance with fairness and principles of natural justice.

33. Repeal.—The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and The Societies Registration Act, 1860 (Act XXI of 1860), so far as applicable to any of the areas of State of Kerala are hereby repealed.

Statement of objects and reasons

The Charitable Societies in this State are now governed by the provisions of The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and The Societies Registration Act, 1860 (Act XXI of 1860). They are found to be inadequate to meet the needs of the current situation, where transparency is very essential to eliminate corruption and safety of the public. Therefore to bring transparency and safety to the general public this enactment is made.
