

THE KERALA PROTECTION FROM LYNCHING BILL, 2020

A

BILL

to provide for the prevention and punishment of acts of lynching, for effective protection of Constitutional rights to vulnerable persons, to provide for designated courts for the expeditious trial of such offences, for rehabilitation of victims and family members of the victim of mob lynching and for matters connected therewith or incidental thereto.

BE it enacted in the seventy first year of the Republic of India as follows:-

1. ***Short title, extent and commencement*** .- (1) This Act may be called The Kerala Protection from Lynching Act, 2020.

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

(3) It shall come into force at once.

2. ***Definitions***.- (1) In this Act, unless the context otherwise requires,-

(a) “hostile environment” means intimidating or coercive environment that is created against the victim or the family members of the victim or any witness or any one providing assistance to the victim or witness, and includes the following acts.-

(i) boycott of trade or business of such person or making it otherwise difficult for him to earn a living; or

- (ii) extern such person or his family from the locality where he or his family is or has normally been residing; or
- (iii) public humiliation through exclusion from public services, including education, health and transportation or any act of indignity; or
- (iv) deprive or threaten to deprive such person of his fundamental rights; or
- (v) force such person to leave his home or place of ordinary residence or livelihood; or
- (vi) any other act which has the effect of creating an intimidating, hostile or offensive environment.;
- (b) “Kerala Victim Compensation Scheme” means the Kerala Victim Compensation Scheme, 2014, as amended from time to time;
- (c) “lynching” means any act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by two or more persons on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual morality, sexual orientation, moral policing, ethnicity or any other related grounds and includes any act involved in spreading hate speeches, provocative statements and fake news;
- (d) “offensive material” means any material that can be reasonably construed to have been made to incite two or more persons to lynch a person on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, sexual morality, moral policing, ethnicity or any other related grounds;
- (e) “State” means the State of Kerala;
- (f) “victim” means any person who has suffered physical, mental, psychological or monetary harm as a result of the commission of any offence under this Act and includes his guardian and legal heirs’

(g) “witness” means any person who is acquainted with the facts and circumstances or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry, or trial of any crime involving an offence under this Act and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;

(2) Words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or the Indian Penal Code, 1860 (Central Act 45 of 1860) shall have the meanings assigned to them respectively in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), or in the Indian Penal Code, 1860 (Central Act 45 of 1860), as the case may be.

3. Designation of State Nodal Officer and District Nodal officer.- (1) The State Police Chief shall designate an officer not below the rank of Inspector General of Police as the State Nodal Officer and an officer not below the rank of District Police Chief as District Nodal Officer for taking measures to prevent incidents of lynching.

(2) District Nodal Officer shall be assisted by an officer not below the rank of Deputy Superintendent of Police, designated by the State Nodal Officer.

4. Duties of Nodal Officers.- (1) The State Nodal Officer shall hold review meetings, at least once in six months, with all the District Nodal Officers and head of the State Police Intelligence so as to tackle lynching related issues at State level.

(2) Every District Nodal Officer shall hold meetings, at least once in three months, with the local intelligence units in the district along with all Station House Officers of the District so as to identify the existence of the tendency of lynching in the District and forward a report of the same to the State Nodal Officer.

(3) District Nodal Officer shall take steps to prohibit instances of dissemination of offensive materials.

(4) District Nodal Officer shall make efforts to eradicate hostile environment against any person, community, caste or sect.

(5) The District Nodal Officer shall ensure that the Station House Officers shall cause police patrolling in sensitive areas for taking measures to prevent and lynching.

(6) The State Nodal Officer shall submit an action taken report in this regard, every year, to the Secretary, Home Department of the State.

5. Duties of Police Officer.- (1) All police officers in charge of police stations shall take all reasonable steps to prevent any act of lynching including its incitement and commission; and to that end,-

(i) make all possible efforts to identify and prevent instances of dissemination of offensive material or any other means employed in order to incite or promote lynching of a particular person or group of persons and take all residual measures;

(ii) make all possible efforts to prevent and eradicate the creation of hostile environment against a person or group of persons which is targeted in such incidents;

(iii) obtain information regarding the likelihood of an act of lynching; and

(iv) act in furtherance of the duty to prevent any act of lynching in accordance with the powers vested in them.

(2) Every police officer exercising powers under this Act shall discharge his duties in a fair, impartial and non-discriminatory manner without any delay.

6. Duties of District Magistrate.- (1) Whenever the District Magistrate has reason to believe that there is an apprehension of lynching in any area within his jurisdiction, he may, by order in writing, prohibit any act which in his opinion is likely to lead to the incitement or commission of an act of lynching.

(2) Any person or group of persons who violates the order issued under sub-section (1) shall on conviction be punished with

imprisonment for a term which may extend to three months or with fine which may extend to rupees ten thousand or with both:

Provided that the offence under this section shall be cognizable, bailable and shall be tried by a Judicial Magistrate of First Class having jurisdiction.

(3) The District Magistrate shall take every possible action to prevent the creation of hostile environment against a person or group of persons which is targeted in such incidents.

7. Power to exercise authority.- In exercise of the powers conferred under section 5 of this Act, a police officer in-charge of a police station may use such powers as vested in him under section 129 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

8. Offence under this Act.- Any act of lynching, conspiracy, abatement or attempt to lynch, obstructing legal process, dissemination of offensive material or enforcing hostile environment shall be an offence under this Act.

9. Punishment for offence of lynching.- Whoever commits an act of lynching,-

- (a) where the act leads to the victim suffering hurt shall on conviction be punished with imprisonment of either description for a term which may extend to three years and with fine which may extend to ten thousand rupees;
- (b) where the act leads to the victim suffering hurt by means of dangerous weapons shall on conviction be punished with imprisonment of either description for a term which may extend to five years and with fine which may extend to fifty thousand rupees;
- (c) where the act leads to the victim suffering grievous hurt shall on conviction be punished with imprisonment of either description for a term which may extend to ten years and with fine which shall not be less than twenty thousand rupees and may extend to one lakh rupees;

- (d) where the act leads to the death of the victim shall on conviction be punished with imprisonment for life and with fine which shall not be less than one lakh rupees and may extend to five lakh rupees.

10. Punishment for conspiracy or abetment or attempts to lynch.- (1)

Whoever takes part in a conspiracy or conspires to lynch another person or abets an act of lynching shall be punished in the same manner as if he had himself committed lynching.

(2) Whoever attempts an act of lynching under this Act shall be punished in the same manner as provided under section 511 of Indian Penal Code, 1860 (Central Act 45 of 1860).

11. Punishment for obstructing legal process.- Any person who,-

- (a) knows or has reason to believe that any other person is guilty of an offence under this Act, gives that person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, investigation or trial for the said offence shall on conviction be punished with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to fifty thousand rupees;
- (b) threatens a victim or witness with any injury to his person or property or to the person or property of any one in whom that person is interested with intent to cause harm to that person or to compel that person to refrain or withdraw from being a witness in any investigation or trial under this Act shall on conviction be punished with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to fifty thousand rupees.

12. Punishment for dissemination of offensive material.- Notwithstanding anything contained in any other law for the time being in force, whoever publishes, communicates or disseminates by any method, physical or electronic, any offensive material, shall on conviction be

punished with imprisonment of either description for a term which may extend to three years and with fine which may extend to fifty thousand rupees.

- 13. Punishment for enforcing hostile environment.-** Whoever contributes or enforces hostile environment on a person or a group of persons shall on conviction be punished with imprisonment which may extend to three years and shall also be liable to fine which may extend to fifty thousand rupees.
- 14. Application of Code of Criminal Procedure, 1973.-** The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply for matters which are not specifically provided under this Act.
- 15. Offences to be cognizable, non-bailable and non-compoundable.-** The offences specified under this Act shall be cognizable, non-bailable and non-compoundable.
- 16. Investigation by senior police officer.-** No police officer below the rank of Inspector of Police shall investigate any offence committed under this Act.
- 17. Offences to be triable by Special Court.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or in any other law for the time being in force, the offences specified under this Act shall be tried by Special Court designated under this Act.
- 18. Power to Designate Special Courts to try the offences.-** For the purpose of providing speedy trial, the State Government may, with the concurrence of the Chief Justice of the High court, by notification in the Official Gazette, designate a Court of Session to be a Special Court to try the offences under this Act for any district or districts, as may be specified in the notification.

- 19. Procedure and powers of the Judge of the Special Court.-** (1) A Judge of the Special Court may take cognizance of any offence upon a police report without the accused being committed to it for trial,.
- (2) In conducting trial against the accused person, the Judge of the Special Court shall follow the procedure for the trial of warrant cases prescribed by the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
- (3) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Judge of the Special Court and for the purposes of the said provisions, the Court of the Judge of the Special Court shall be deemed to be a Court of Session.
- (4) Where a person is arrested for commission of an offence under this Act, he may be produced before a Judicial Magistrate of First Class under sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole and on expiry of such a term the Magistrate may order the accused to be produced before the Judge of the Special Court.
- (5) The Judge of the Special Court may exercise, in relation to the person produced before him under sub-section (4), the same powers as a Magistrate may exercise under section 167 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
- (6) When trying an offence under this Act, a Judge of the Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be charged at the same trial.
- (7) The Judge of the Special Court shall hold the trial of an offence under this Act as expeditiously as possible.

- 20. Special Public Prosecutor.-** For every Special Court, State Government shall, by notification in the Official Gazette, specify a Public prosecutor as a Special Public Prosecutor for the purpose of conducting cases in the Special Court.
- 21. Rights of victims and witnesses during trial.- (1)** A Judge of the Special Court may, on an application made by a witness in any proceedings before it or by the Special Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness confidential.
- (2) A victim shall have the right to reasonable and timely notice of any court proceedings and shall be entitled to be heard at any proceedings under this Act in respect of bail, discharge, release, withdrawal from prosecution, conviction or acquittal, sentence or parole of an accused.
- (3) The victim shall have the right to receive copy of any statement of the witness recorded during investigation or inquiry and also copies of all statements, documents and report filed under section 173 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)
- (4) A victim shall be entitled to receive free legal aid, if he so chooses, and to engage any Advocate whom chooses from among those included in the legal aid panel under the Legal Services Authorities Act, 1987 (Central Act 39 of 1987) and the Legal Services Authority established under the said Act shall pay all costs, expenses and fees of the Advocate appointed by the victim or informant in accordance with relevant rules.
- (5) It shall be the duty and responsibility of the State Government for making arrangements for the protection of victims and witnesses against any kind of intimidation, coercion or inducement of violence or threats of violence.

(6) It shall be the duty of the police officer to receive and record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement of violence or threats of violence, whether given orally or in writing, and copy of the same shall be sent to the Special Court within twenty four hours of recording it.

22. Treatment of victim.- (1) All hospitals, public or private, shall immediately provide the first aid or medical treatment free of cost to victim and shall immediately inform the police of such incident.

(2) The expenditure incurred by the Private Hospitals under sub section (1) may be reimbursed by the Government in such manner as may be prescribed.

23. Compensation of lynching.- The State Government shall provide compensation to the victim as per the Kerala Victim Compensation Scheme, 2014.

24. Displacement.- (1) Where the offence under this Act has led to displacement of the victim from his residence, the State Government shall arrange for the accommodation of the victim and take all necessary steps to rehabilitate such victim.

(2) Where the offences under this Act has lead to the displacement of more than fifty persons, the State Government shall set up relief camps in the manner as may be prescribed.

25. Establishment of relief camps.- (1) The State Government shall establish relief camps in safe locations for all victims.

(2) Relief camps established under sub-section (1) shall continue to be operated by the State Government until such persons return to their original habitations or are resettled in a new suitable location.

(3) Relief camps established under sub-section (1) shall, provide such persons with,-

(a) basic shelter which is appropriate and adequate to protect the residents of the camps from extremes of

weather and which provides due privacy especially to women and girls;

- (b) twenty four hour security at the relief camp;
- (c) adequate, nutritious and culturally appropriate food;
- (d) potable water;
- (e) adequate clothing which includes appropriate weather protective;
- (f) essential medical services including antenatal and postnatal care of expectant mothers, paediatric care and emergency and rehabilitative services for the injured and referral services, wherever necessary;
- (g) adequate sanitation;
- (h) psycho-social and trauma counselling and psychiatric services;
- (i) child-care services for infants and small children;
- (j) educational facilities for children;
- (k) special facilities and assistance, as may be necessary and reasonable for the medical condition and treatment of certain residents of the relief camps, as children, especially unaccompanied minors, mothers with young children, female heads of households, elderly and disabled persons with special needs.

26. Appeal.- (1) An appeal from any judgment, sentence or order, not being an interlocutory order, of a Special Court shall lie to the High Court.

(2) Every appeal under this section shall be preferred within a period of sixty days from the date of judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

- 27. Power to remove difficulties.-** (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

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

- 28. Act to be in addition to any other law.-** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

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

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two successive sessions and if, before the expiry of the sessions 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 Constitution of India guarantees to all persons the right to life and personal liberty and also equality before law and equal protection of laws. In recent times there have been many incidents resulting in loss of livelihood, injuries and death of persons at the hands of mobs. Hon'ble Supreme Court of India has considered the inhuman evil activities of mob violence in the name of religion, race caste, sex, place of birth, dietary practices, sexual morality, sexual orientation etc. and in its Judgment dated 17th July, 2018 in Writ Petition (Civil) No.754/2016(Tehseen S.Poonawalla V. Union of India and Others) has recommended for enacting legislation in this regard by every State Government. The Hon'ble Supreme Court in the above Judgment suggested some proposals for the constitution of State and District Nodal Officers for taking measures to prevent incidents of mob violence and lynching and also proposed to take steps to curb and stop dissemination of irresponsible and explosive messages, hate speeches and other material on social media which have a tendency to incite mob violence and lynching. It has also pointed out that State Government shall enforce a lynching/mob violence Victim Compensation Scheme for interim relief to the victims or to the next of kin of the deceased. The Hon'ble Supreme Court further recommended to establish special courts for speedy trial of the offences relating to mob violence and lynching.

The provisions of Indian Penal Code relating to offences connected with the subject of lynching are totally insufficient to meet the present situation. A flexible law of lynching and incidental matters

with clear, effective and stringent penal provisions capable of combating the increasing activities of lynching has to be brought in force without any delay.

In these circumstances, it is proposed to bring statutory provisions to prevent spreading of hatred or incitement to lynching by creating special offences against such acts. Therefore State Government has decided to enact a new legislation in this respect.

The Bill seeks to achieve the aforesaid objectives.

Hence the Bill.