

LAW REFORMS COMMISSION KERALA

GOVERNMENT OF KERALA

Justice K.T.Thomas,
Chairman,
(Former Judge of the Supreme Court of India)

Shri.K.Sasidharan Nair,
Vice Chairman,
(Retired District Judge & Former State Election Commissioner)

Members

Dr.N.K.Jayakumar,
(Former Vice Chancellor, NUALS)

Smt.Lizamma Augustine,
(Retired District Judge)

Shri.K.GeorgeOommen,
(Retired District Judge).

Second Report of the Law Reforms Commission, Kerala

The Government of Kerala, vide GO (MS) 45/2017/Law dated 09.03.2017 have constituted the Law Reforms Commission, Kerala consisting of Mr.JusticeK.T.Thomas as Chairman, Shri.K.Sasidharan Nair as Vice Chairman and Dr.N.K.Jayakumar, Smt.Lizamma Augustine and Advocate M.K.Damodaran as members. The vacancy that arose on account of the sad demise of Shri.M.K.Damodharan has been filled up by the Government by appointing Shri.K.GeorgeOommen as member, vide G.O.(MS)24/2018/Law dated 16.02.2018.

2. The main objectives of the Commission, as per the Government Order are:

- (a) To examine the existing laws and suggest amendments as are necessary according to the present day needs;
- (b) To make recommendations for repealing obsolete and outdated laws;
- (c) To recommend new laws as are necessary in the present day context, and
- (d) To systematically develop and reform law.

3. The Commission started functioning on the 5th of April, 2017 and the first meeting of the Commission was convened on that day at the Rest House, Kottayam. Even without proper infrastructural facilities and office set up, the Commission has been actively involving in considering the various files forwarded to it by the Government which include a proposal for legislation of Kerala Vexatious Litigation (Prevention) Law, a legislation similar to Fraud Act prevailing in England etc.

4. The Registrar General, High Court of Kerala, in exercise of the powers conferred under Section 122 of the Code of Civil Procedure read with Article 225 of the Constitution of India had forwarded to the Government a draft of the proposed Vexatious Litigation Prevention (Kerala High Court) Rules-2016 along with a request to grant approval for its publication. In the explanatory note appended to the said draft Rules, it is stated that the necessity of a uniform law to curb vexatious litigations applicable to whole of Kerala has been long felt since the tendency to abuse the process of law for harassing others is on the rise and that as the Vexatious Litigation (Prevention) Act 1949

is inforce only in Malabar region, there is no law prevailing over the whole state to curb such tendencies.

5. The administrative Department in the Government sought the opinion of the Law Secretary and the Law Secretary opined that in Advocate General, Kerala State Vs. T.A.Rajendran (1988(1) KLT 305) the Hon'ble High Court has emphasised the need to enact a uniform legislation on this subject and that it is necessary to form a uniform law applicable to the whole State on this subject. Thereupon the Government forwarded this matter for the consideration of the Law Reforms Commission and a reply has been given by the Government to the High Court in this regard.

6. On receiving the file, this Commission considered all aspects of the proposed legislation. It is seen that the Madras Vexatious Litigation (Prevention) Act-1949 is still in force in the Malabar area of Kerala State, ie., the area which was included in the former Madras State and so the present proposal is for enacting such a law applicable to the whole of Kerala State. The Constitutional validity of the Madras Vexatious Litigation (Prevention) Act, 1949 was considered by the Apex Court in P.Mawle Vs. State of Andhra-Pradesh (1965 (ii) SCA 649) and the relevant portion of the said decision reads;

“The litigant who are to be prevented from approaching the Court without the sanction of the High Court are in a class by themselves. They are described in the Act as persons who ‘habitually’ and without ‘reasonable cause’ file vexatious actions civil or criminal. The Act is not intended to deprive such persons of their right to go to a Court. It only creates a check so that the court may examine the bonafides of any claim before the opposite party is harassed. Such an Act passed in England has been applied in several cases to prevent an abuse of the process of Court. In its object, the Act promotes public good because it

cannot be claimed that it is an inviolable right of any citizen to bring vexatious actions without control, either legislative or administrative . The Act sub serves public interest and the restraint that it creates is designed to promote public good. The Act does not prevent a person declared to be habitual litigant from bringing genuine and bonafide actions. It only seeks to cut short attempts to be vexatious. In our judgment, the Act cannot be described as unconstitutional or offending either Article 19 or Article 14.”

7. The Act indubitably is one which deprives a citizen of his rights which would but for the enactment be his right as a free citizen in the Malabar area of Kerala State, ie., the area included in the former Madras State and so the present proposal is in effect for enacting a law applicable to the whole of the State of kerala.

8. In the decision reported in Advocate General Vs. T.A.Rajendran (1988(1) KLT 305) the Division Bench of the High Court as held as follows:-

“Law to prevent Vexatious Litigation has been inforce in the State of Kerala only in the Malabar area for the last thirtyone years. After the new State of Kerala came into existence, no steps have been taken so far to enact a law to prevent Vexatious Litigation applicable throughout the State. Prevention of Vexatious Litigation is a very laudable object. People must refer to court for vindicating justice and not for harassing others. The tendency of abusing the process of court and harassing the innocent is on the increase. It is incongruous that law to prevent vexatious litigation is inforce only in a part of the State. We would therefore like to invite the attention of the Legislature of the State to the

urgent necessity of enacting the uniform law to prevent Vexatious Litigation applicable to the entire State of Kerala.”

9. At present there is no law to control or prevent Vexatious Litigations being filed in Civil and Criminal Courts including the High Court, except in the area which was formerly part of the Madras State. Accordingly, provisions have been included in the Bill empowering the High Court to declare a person as a vexatious litigant after hearing him, on an application filed by the Advocate General, Registrar General of the High Court or by a person against whom proceedings Civil or Criminal have been instituted. On declaring a person as a vexatious litigant by the High Court, such person can file cases before any court only with the permission granted by the High Court. Provisions have been incorporated in the bill to grant permission to the person declared as a Vexatious Litigant to institute proceedings Civil or Criminal in any Court or to continue any proceedings already instituted by him on sufficient grounds.

Hence it is recommended that the Government may bestow urgent attention in this regard and take further action to enact a law as proposed in the bill appended here under.

07.06.2018

JUSTICE K.T.THOMAS,
CHAIRMAN,
LAW REFORMS COMMISION KERALA
(FORMER JUDGE OF THE SUPREME COURT OF INDIA)

THE KERALA VEXATIOUS LITIGATION (PREVENTION) BILL-2018

A
BILL

to prevent the institution or continuance of vexatious litigations, civil or criminal, in the High Court and Courts subordinate to the High Court of Kerala.

Whereas it is expedient to prevent the institution or continuance of vexatious proceedings, civil or criminal, in the High Court and in the Courts subordinate to the High Court.

Be it enacted in the sixty-eighth 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-2017
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force at once.

2. Definitions:

- (1) Vexatious litigant means the person declared as vexatious litigant under sub section (i) of Sec.3
- (2) Institution or continuation of “criminal proceedings” means the commencement or continuation of a proceeding seeking investigation or prosecution by filing a complaint before a Criminal Court.

3. Declaration of a person as Vexatious Litigant,-

- (1) A person may be declared a vexatious litigant by the High Court either suomotu or on an application filed under Sub Section (2) if the High Court is satisfied that such person has, habitually and without any reasonable ground, instituted proceedings, civil or criminal, in any court against same or different persons, after giving such person who has instituted such proceeding an opportunity of being heard..

(2) An application for declaring a person as vexatious litigant may be filed,-

- By the Advocate General.
- By the Registrar General of High Court.
- With the leave of the High Court by a person against whom proceedings, civil or criminal have been withheld.

(3) When an application is filed by any person referred to in Clause (b) or (c) of Sub Section.(2) or when the action is taken suomotu by the High Court, the Advocate General shall also be heard. The proceedings under Sub Section (2) shall be heard by a Bench of the High Court constituting not less than two judges.

(4) Institution or continuation of “criminal proceedings” means the commencement or continuation of a proceeding seeking investigation or prosecution by filing a complaint before a Criminal Court.

5. Conditions necessary for a vexatious litigant to institute or continue any civil or criminal proceedings:-

- Subject to the provisions in Sub Section (2) upon a declaration made under Sub Section (1) of Section (3) such person shall stand debarred from instituting or continuing any proceedings in any court.
- It shall not be necessary for the person declared as Vexatious Litigant to obtain leave in the following cases:
 - Where, in any matter instituted against him, such person proposes to file or take appropriate proceedings to defend himself.
 - Where a proceeding instituted is continued by such person after obtaining leave from the appropriate court, the said person proposes to file or take appropriate further proceedings.

(3) Leave shall not be granted unless the appropriate Court is satisfied that the proceeding is not an abuse of the process of the Court and that there is *prima facie* ground for him to proceed.

6. Publication and Communication of Orders:-

(1) A copy of every order made under Sub Section (1) of Section 2, declaring a person as 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 to in Sub Section (1) shall also be communicated to all courts subordinate to the High Court.

7. Proceedings instituted or continued without leave of the appropriate Court, as the case may be, to be dismissed and other consequences,-

(1) Subject to Sub Section (2) of Section 3, any proceeding, civil or criminal, instituted or continued in any court by a person against whom an order under Sub Section (1) of Section 2 has been made, without obtaining leave as required from the High Court shall be dismissed by the said Court.

(2) The Court while dismissing a proceeding 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 proceeding without leave as aforesaid, may also be liable for punishment of contempt of High Court which had passed the order under Sub Section (1) of Section 2.

8. Power to make Rules,- The High Court may make rules for the purpose of carry out the provisions of this Act.

9. Saving

(1) 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 awarding compensatory costs or which require sanction or approval from any authority for the institution or continuation of any civil or criminal proceeding.

(2) On coming into force of this Act, the provisions of Madras Vexatious Litigation (Prevention) Act shall cease to have application in any part of the State of Kerala.

Statement of Objects and Reasons

The object of the Bill is to prevent or strictly control the institution and/or continuation of vexatious proceedings whether civil or criminal before the Courts. At present the provisions of Madras Vexatious Litigation (Prevention) Act are applicable to the Malabar area being part of the erstwhile Madras State. There is no enactment applicable in the Travancore-Cochin areas dealing with this matter. The High Court has repeatedly made observations emphasising the necessity for legislation to preventing vexatious and frivolous complaints/petitions and civil proceedings. The High Court in exercise of its powers under Section 122 of the Code of Civil Procedure, 1908, read with Article 225 of the Constitution of India has proposed a draft of the Vexatious Litigation Prevention (Kerala High Court) Rules 2016 and forwarded the same for approval of the Government.