

THE KERALA ENVIRONMENTAL COURTS BILL

A BILL

for the establishment of Environmental Courts for effective and expeditious disposal of cases on environmental matters;

Preamble.—WHEREAS it is considered necessary to establish Environmental courts for the effective and expeditious disposal of cases on environmental matters;

Be it enacted in the Fifty ninth year of the Republic of India as follows:

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

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

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

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

(a) “Environmental Court” means the Court constituted under Section 3.

(b) “Environmental Expert” means a person having knowledge and experience in any of the matters affecting environment.

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

3. *Constitution of Environmental Court.*—(1) the Government shall, in consultation with the High Court of Kerala constitute environmental courts in each of the revenue districts.

(2) The Environmental Court shall consist of the following members, namely,

(a) A Judicial Magistrate not below the rank of a Chief Judicial Magistrate who shall be the Presiding Officer.

(b) Such number of environmentalists as may be decided by the Presiding Officer, from the panel of environmentalists prepared under Section 4, who shall be members of the Court.

4. *Preparation of panel of Environmentalist.*—(1) Government shall constitute a Committee consisting of the following members, for the selection and preparation of a panel of environmentalists, namely:

(a) A sitting judge of the High Court, nominated by the Chief Justice,

(b) Chief Secretary to the Government of Kerala,

(c) An expert in environmental matters.

(2) The Committee constituted under sub-section (1) may decide the procedure and the method of selection of environmentalists for the preparation of the panel.

(3) The Committee shall prepare the panel of environmentalists taking into consideration of the number of Courts to be constituted and the number of experts in different fields of environment necessary to be included in the panel.

5. Jurisdiction of Environmental Courts. — (1) Notwithstanding anything contained in any other law for the time being in force, the environmental courts shall have jurisdiction to try all the offences under the Acts specified in the Schedule to this Act.

(2) The Environmental Court shall have jurisdiction to make conciliatory efforts to settle environmental matters.

(3) While trying the cases under the provisions of this Act, the Environmental Court shall be guided generally by the procedural provisions contained in the code of Criminal Procedure Act, 1973 (Central Act 2 of 1974); but shall not be strictly bound by it. The Court may adopt such procedure in keeping with the principles of natural justice and fair play with a view to avoid procedural delays.

(4) No conviction shall be interfered with solely for violation of any of the procedural provisions in the code of Criminal Procedure Act, 1973 (Central Act 2 of 1974) unless it is shown that such violation has resulted in gross injustice to any of the affected parties.

(5) The decision of the court may either be a unanimous decision or a majority decision.

(6) In cases where the court is not in a position to reach either unanimous or majority decision, the decision taken by the presiding judge shall be treated as the decision of the court. Members may record their views independently if found necessary.

(7) On pronouncing its decision, a copy of the judgment shall be supplied to the parties free of cost.

(8) The aggrieved party may prefer an appeal to the High Court against any final decision of the environmental court within 30 days from the date of order.

(9) The decision of the High Court shall be final.

6. Service Conditions of Presiding Officers and Members.— The service conditions of the Presiding Officer shall be that of a Chief Judicial Magistrate in the service and that of the Members shall be as may be prescribed by Government.

7. *Power to make rules.*—(1) The Government may by notification in the Gazette, make rules to carry out the provisions of this Act.

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

SCHEDULE

Central Acts

1. The Mines Act, 1952 (35 of 1952)
2. The Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).
3. Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).
4. Forest (Conservation) Act, 1980 (69 of 1980).
5. Environment (Protection) Act, 1986 (29 of 1986).
6. Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).
7. Public Liability Insurance Act, 1991 (6 of 1991).
8. Biological Diversity Act, 2002 (Act 18 of 2003).
9. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade, Commerce, Production, Supply and Distribution) Act, 2003(34 of 2003).

State Act

1. Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (18 of 2001).

Statement of Objects and Reasons

The object for which and the reasons for recommending the new legislation is to materialize the judicial suggestion made in a judgement of the Supreme Court reported in **M.C. Mehta vs. Union of India and others** [1986(2) SCC 175]. To ensure peaceful and healthy life to the people it is essential that environment is protected to the maximum extent possible. Though there are laws both Central and State to protect environment from undue exploitation, more legal controls are essential for the proper preservation of environment. The Bill recommends the Constitution

of a special court for entertaining and conducting prosecutions against persons who commits offences under the various Acts both Central and State included in the schedule to the Bill in a speedy and effective manner avoiding undue procedural delays.
