

THE KERALA WOMEN'S CODE BILL

A bill to add new provisions to supplement the law relating to protection and safeguard the rights of women against violence and sexual exploitation and protect the rights of victims and witnesses of crimes in order to further the ends of justice.

1. *Short title, extent and commencement.*—(1) This Code shall be called The Kerala Women's Code, ____.
(2) It extends to the whole of Kerala
(3) It shall come into force at once.

2. *Definitions.*—in this Code, unless the context otherwise requires.—

- (a) “Appropriate provisions” include legislative, administrative, social, educational and cultural measures.
- (b) “Women” includes girl child also.
- (c) “Government” means Government of Kerala.
- (d) “Notification” means a notification published in the Kerala Gazette.
- (e) “Rights of women” means the fundamental and other rights recognized under the various provisions of this code and in other legislations in force.
- (f) “Sexual abuse” means commission of any illegal sexual act by a person on a woman and includes molestations, incest or rape as defined in S. 375 of the Indian Penal Code.
- (g) “Child” means a girl child who has not completed 18 years of age.
- (h) “Trafficking in persons” shall mean.—(i) The recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force, or coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or by giving or receiving payments and benefits to achieve the consent of a person, for the purpose of exploitation.
- (i) Exploitation.—shall include exploitation by prostitution of others or other forms of sexual abuse, forced labour or services, slavery or practices similar to slavery or servitude.
- (j) “Victim” means and includes.—(i) Children who have not completed the age of 18 years who are performing sex acts under the management, direction and control of adult persons, regardless of whether or not the children claim that they are voluntarily engaging in such acts.
(ii) Similarly situated adolescents whether or not they are voluntarily engaging in such acts.
(iii) Women above the age of 18 who claim that they, through force or threat of force, were required to perform sex acts with or without their consent by any person.
- (k) “Witness” Means any person including a child who has witnessed or has knowledge or information on the commission of a crime relating to trafficking for commercial

exploitation or sexual abuse and has testified or is about to testify before any judicial or quasi-judicial authority or before any investigating authority.

(l) “Competent Authority” means any judicial magistrate nominated by the Government under this Act for performing the functions assigned to competent authority under the Act.

3. *Protection and facilities to be provided to the witnesses.*—It shall be the duty of the State to provide the following facilities and protection to witnesses of trafficking, commercial exploitation or other sexual abuses.

(a) Residence facilities.—To be placed in a residence facility which is also a place of safety until he/ she has testified or until the threat, intimidation or harassment disappears or is reduced to manageable or tolerable level.

(b) Special protection.—To have special protection from the authorized law enforcement agency or any authorized Government agency including an NGO for herself/himself and members of the family.

(c) Economic support.—To provide economic support for him/her in such account as the Competent Authority shall decide.

(d) Medical treatment.—To be provided free medical treatment, hospitalization and medicines for injury/illness incurred or suffered by him/her because of being a witness.

4. Steps to be taken to ensure safety of the victims and to enable them to prosecute the prosecution proceedings against the offender. The State shall ensure the following procedures in respect of victims rescue operation and during the post-rescue period including the period of pendency of legal proceedings.

(i) Separation of victims from the accused.

(ii) Victims should be treated with respect and dignity by the police and other authorities.

(iii) Victims are immediately taken to a certified place of safety.

(iv) Access to victims under the supervision of a recognized NGO or a Social worker.

(v) Legal representation for the rescued victim.

(vi) Arrangement for recording the detailed statements of victim from the place of safety in the presence of the Superintendent of the Rescue Home/or a lawyer/or a Probation Officer for use in court proceedings, against the accused.

(vii) The state shall ensure that no rescued victims should be sent back to family without ensuring social acceptance, family support to prevent re-trafficking and further commercial exploitation.

(viii) The State shall ensure alternate livelihood options like Employment Guarantee Scheme medical support, subsistence allowance to the families of trafficked child victims.

(ix) All efforts should be made to persuade and motivate victims of trafficking and commercial exploitation to be reintegrated and re-habilitated in society to lead a dignified life.

5. Establishment of shelter homes for victims.—

- (1) The State shall establish in each revenue District a Shelter Home for housing the victims.
- (2) Separate Shelter Homes may be established for children or separate wings shall be provided for adults.
- (3) The Shelter Home shall be insulated against indiscriminate access/entry of unauthorized individuals.

*6. Free Legal Aid to inmates.—*The Shelter Homes shall have facilities to provide services of professional legal advisors at every stage, free of cost to the victims.

7. Fast Track Courts to hear and dispose of the complaints from victims.— Government shall issue necessary orders in consultation with the Chief Justice of the High Court empowering the Fast Track Courts wherever they function to entertain and dispose of the complaints relating to sexual harassment and other sexual abuses. In places where there is no Fast Track Court already established, local Judicial Magistrate Court may be empowered to entertain and disposes of such cases within a maximum period of 6 months.

8. Constitution of special police cell to deal with the cases involving sexual harassment and other sexual abuses.— (a) Government shall with a maximum period of 6 months from the date of commencement of this Act, constitute in each District a Special Cell of Police Officers under the control of an officer nominated by the District Superintendent of Police consisting of mainly woman police officials having special training to deal with cases involving women especially victims of sexual harassment and other sexual abuses.

(b) Government shall also pass necessary orders establishing a center at State level for giving special training to police officials preferably women police officials to deal with cases involving sexual harassment and abuses against women and girl children.

*9. Establishment of Special Call Centres.—*Government shall establish Special Call Centres to begin with at district level and later in rural areas also so as to enable on-line transmission of information about the commission of sexual offence and communication of complaints relating to such offences against women and girl child to police and other authorities and providing necessary protection and speedy legal assistance to the victims involved in the offence and the witnesses to such offences.

*10. Right of the victim to claim compensation.—*Notwithstanding anything contained in any other Act or decisions of any court, the Victims of the offence of sexual harassment or abuses shall be entitled to claim compensation invoking the provisions of the Right to Justice for Victims of Criminal Injuries Act 2008. Subject to the conditions and limitations in that Act.

11. *Rule making power*.—Government may frame appropriate Rules for the purpose of implementing the provisions of this Act.

Statement of Objects and Reasons

Indian humanity, in its grand story of cultural majesty, regards its sisterly half as sacred. Indian womanhood in its dignity and divinity, its indefeasible freedom from gender discrimination and molestation, is hallowed, enjoys sublime human right, transcending religion and region and transforming its status and stature and ensuring an impregnable immunity from violation, vice and vulgarity. This glory of famine felicity gains great sanctity in the vision of Indian Jurisprudence, civil and penal, regardless of age from cradle to grave, since such is the Constitutional magnanimity of gender justice. The degeneracy, which has overtaken this noble tradition, has led to a lawless situation where the weaker (?) sex is victimized in various ways although the exalted personality of girl to grandmother has a title to egalite in society, in official and public life, in marital status, inheritance and succession and in monogamous excellence. Human rights, if they show less legal reverence to the female gender, are less civilized and more barbarian. This shall not be. The person of a sister or mother is no less a cultural value, no poorer in the protection of law, no surer in the right to justice, social, economic and political, than that of the brother or father in the family or in the community. The penal law, in its stern insistence, shall defend the physical, psychic, moral and spiritual values of the womanhood so that she will never be regarded as a sex commodity for man's pleasure but ever give reverence as a solemn member of India's humanity. To police, justice, punish and build a glorious gender culture is the paramount duty of State and society. Conjugal dignity and sex-equal humanity of Indian Womanhood, whatever the religion or caste, shall be integral, inviolable jurisprudence, if need be, by a powerful scheme of Law Reform. Hence the Bill.