

THE KERALA ACCESS TO JUSTICE BILL

Preamble.—Public duties, fundamental in importance, is articulated by Article 51A of the Constitution. Humanism and compassion for living creatures, preservation of environment and ecology and a host of strategies for promotion of public good and living conditions of have not umans and access to justice, social, economic and justice with facilities within everyone’s reach, need activised implementation. Plural instrumentalities, with popular participation and dynamic in operation, are necessary if what is mere Constitutional thunder is to become social justice lightning. The State is currently somnolescent in these matters, the ruling class being lost in chase of power and Lucre and insatiable, acquisitive, affluenza through globalization, liberalization, pluralization and five-star glamorization. Our culture, which makes every person his/her brother’s or sister’s keeper, is the quintessence of the finest values of our heritage happily expressed in the supremalex. There are no means for the poor and the disabled, the marginalized and the forsaken to claim what belongs to them under the Constitution. Human rights, including the right to live in dignity, with a fair measure of education and good health, reasonably rewarded employment and other matters of social and economic justice are de facto denied to million of Indians. The masses of Kerala, including those who belong to the ‘Anthyodaya’ sector, are hungry and homeless and have social and economic privations and grievances. Their voices cannot have access to the judicial process in the present adversarial system. Free legal services and public interest litigation are part of poverty jurisprudence. But they have no instrumentality to approach or other means to agitate legally for redressal of legitimate disablements. Their religious autonomy and cultural development claims are in jeopardy because they have no pragmatic process, functional or financial. Here again, the need for a people-oriented organ which can reach the court or the executive is a felt necessity.

WHEREAS it is expedient and necessary to confer a right to have access to Courts and Tribunals for getting appropriate relief where anything done or omitted to be done goes or likely to go against the interest of the public or any section or group of persons especially the interests covered by Part III, Part IV, Part IV A of the Constitution of India;

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 Access to Justice Act, —

(2) It shall extent to the whole of 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) “Court” means all District Courts and High Court.

(b) “Matters affecting public interest” means,—

(i) Any administrative action or inaction or legislative measure, which is contrary to the socialist objectives or contrary to any provision of the constitution of the law or inconsistent with the interest of the weaker sections or working class, agrarian or industrial.

(ii) Any environmental and ecological issues.

(iii) Any executive act or legislative measure which is likely to promote the interests of a section or a class of people but to the prejudice of the interest and welfare of the people generally or which acts against the interest of the minorities, or handicapped categories or the poorer sections of the people.

(c) “Public interest litigation” means the proceedings initiated under Section 3.

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

(e) “Tribunal” means any instrumentality which exercises judicial or quasi judicial function presided over by a Judicial Officer not below the rank of a District Judge.

3. Initiation of Proceedings under the Act.—The following person shall be entitled to initiate proceedings under this Act in regard to matters affecting public interest, namely:—

Any individual or group of individuals having concern in legitimate public issue in question.

4. Proceedings in Court or Tribunal.—(1) On receipt of a petition under this Act, the Court or Tribunal may reject the application summarily if the Court or Tribunal considers it as frivolous, or against public interest, or motivated by personal or private interest or hostile intent or as an abuse of the process of the court.

(2) The Court or Tribunal may, if considers necessary, make an enquiry for ascertaining the correctness or otherwise of the facts stated in the petition through any recognized or approved body or through any public authority or through any other appropriate responsible Non-Governmental Organization or public officials, and obtain a report containing their findings.

(3) In cases where the Court or Tribunal decides to proceed with the case on examining the enquiry report and where the Court decides to proceed without a preliminary enquiry, notice may be issued to the parties whom the Court or Tribunal considers necessary to be heard to decide the case and to grant relief, if any.

(4) The Court or Tribunal shall give a copy of the inquiry report where an enquiry has been held under Sub-section (2), to the parties and invite the parties to make their submission, if any, in relation to the inquiry report.

(5) The Court or Tribunal may after hearing the parties, proceed to deliver its judgment or order disposing of the application by making any suitable direction or order.

(6) The Court or Tribunal may exercise all powers and procedures as in an ordinary litigation following the rules of natural justice and established principles of fair play.

(7) A court fee of Rs. 25 shall be payable on any petition filed under this Act.

(8) The costs, charges and expenses in respect of the proceedings under the Act shall be borne by the State or from any fund constituted by any social organization for public interest, except in so far as it may otherwise be directed by the Court or Tribunal in appropriate cases.

(9) All the petitions under this Act shall be disposed of by the Court or Tribunal as expeditiously as possible but not later than six months from the date of filing of such petition.

(10) While disposing of the proceedings finally, the Court or Tribunal may pass such orders regarding costs and expenses as it considers just and proper in the circumstances after giving due opportunity to the parties to be heard.

5. Appeal.—(1) There shall a right of appeal against the decisions of the Court or Tribunal to the High Court, unless the original decision is by the High Court.

(2) No appeal or revision shall lie before any court against any interim order or direction issued in any proceedings under the Act.

6. Any failure to implement or disobedience of the order or directions issued in public interest litigation shall be deemed to be contempt of court under the Contempt of Courts Act and shall be dealt with accordingly.

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.

Statement of Object and Reasons

One facet on which there is virtual unanimity on Public Interest Litigation (PIL) cases is that the rule of locus standi needs to be regularized. It has become necessary that any member of the public having sufficient interest could maintain an action for judicial redress of a public injury suffered by an indeterminate class of persons provided the petitioner acts bona fides and is not moved by oblique motivation. It has also become necessary to invest Courts and tribunals not below the rank of a District Judge to consider cases involving public interest to dispense with the need to move the High Court in such cases. The present Bill seeks to achieve the above purposes.