

THE KERALA PANCHAYAT COURTS BILL

A BILL to establish Panchayat Courts in all Block Panchayats to ensure opportunities for securing justice, both civil and criminal to all citizens and for the speedy disposal of cases and for matters connected therewith or incidental thereto.

BE it enacted in the fifty ninth year of the Republic of India as follows:—

PART I

PRELIMINARY

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

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

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. Application of Act to suits or decrees pending.—All suits and other proceedings pending in a Court at the commencement of this Act and which after such commencement would be cognizable by Panchayat Courts established under this Act, shall be continued in, and disposed of, by such Courts, as if this Act, had not been passed.

3. Definition.—In this Act, unless the context otherwise requires,—

(i) “Munsiff” means the Munsiff within the local limits of whose jurisdiction the Panchayat Court is situated;

(ii) “Prescribed” means prescribed by rules made under this Act;

(iii) “Registrar” means the Registrar of Panchayat Courts appointed under this Act;

(iv) “Panchayat Court” means a Panchayat Court established under this Act;

(v) “Panchayat” means a local area of a Block Panchayat constituted under clause (b) of sub-section (1) of Section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994).

PART II

ESTABLISHMENT AND CONSTITUTION OF PANCHAYAT COURTS

4. Establishment of Panchayat Courts.—(1) The Government shall within six months from the date of commencement of the Act establish a Panchayat Court by notification in the Gazette in every Panchayat.

(2) Panchayat Court may also be established by the Government for any other area as it may consider necessary, by notification in the Gazette.

(3) Government may also withdraw any area from the operation of this Act by notification in the Gazette.

5. Constitution of Panchayat Courts.—(1) A Panchayat Court established under this Act shall consist of five members, one of which shall be the Chairman of the Panchayat. The other four members shall be persons elected by the members of the Panchayat concerned from a panel of 10 persons prepared by the Chairman in such manner as may be prescribed. The remaining six persons in the panel shall be in the wait list, ranked on the basis of the total number of votes secured by them in the election. One member of the Panchayat court shall be an Advocate with 3 years standing as an Advocate, and one shall be a woman.

(2) The name of the Chairman and other names of the elected members in the order of merit shall be included in panel and sent to Government for appointment. Government may appoint the Chairman and other members in the order of ranks assigned to them in the list. The Government may deviate from the rank list for appointment for reasons to be recorded in writing.

(3) The term of the Chairman and elected members shall be three years, provided that Government may extend such period for a further period not exceeding one year.

(4) A member may, by writing under his hand and addressed to the Government through the Registrar, resign his office at any time.

(5) A vacancy arising by reason of resignation, removal or otherwise shall be filled up by the Government from the panel of names of persons sent to Government under sub-section (2):

Provided that the person so appointed shall hold office for the remaining period of the term of the person in whose place he is appointed.

(6) The Chairman may, if found necessary hold sittings by constituting a bench with such number of members not less than three. All decisions of the Panchayat court shall be taken on the basis of majority. In cases where the members are divided equally, the decision of the Chairman shall be final.

(7) The Chairman and other members of the Panchayat Court shall, notwithstanding the expiry of three years from the date of his appointment or the extended term, hold office, unless the Government otherwise direct, until the new chairman and members assume charge.

(8) A Panchayat Court shall be presided over by the Chairman. If the Chairman is absent the members present shall elect one from among them to preside over the sitting.

(9) The Government may, on recommendation by the Registrar.—(1) remove any member, if he,—

(a) is declared as undischarged insolvent;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence which in the opinion of the Government involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Government abused his official position so as to render his continuance in office prejudicial to public interest:

Provided that the person may be given an opportunity of being heard before being proceeded against.

(2) Suspend any member pending enquiry on items (d) and (e) of sub-section (1).

(10) If the Chairman or any other member of the Panchayat Court absents himself for five consecutive sittings of the Panchayat Court without sufficient cause, he shall cease to be the Chairman or member as the case may be of the Panchayat Court.

(11) Subject to such rules as may be prescribed, the Chairman shall regulate the work in the Panchayat Court including work distribution.

PART III

JURISDICTION AND POWERS OF PANCHAYAT COURTS IN CIVIL CASES

6. Territorial Jurisdiction.—(1) The territorial jurisdiction of a Panchayat Court shall be the Block Panchayat.

(2) Government may, by notification vary or modify the area of jurisdiction of any Panchayat Court.

7. (1) The Panchayat Court shall be the lowest Civil Court and shall have subject to the conditions prescribed in sub-section (2) of this section; jurisdiction to try all suits of a Civil nature of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend on the decisions of a question as to religious rites or ceremonies.

(2) (a) In suits with money claim, the principal amount claimed in the suit does not exceed Rs. 25,000.

(b) In suits where the claim relates to any movable property or to a right in or over such movable property, the market value of it does not exceed more than Rs. 25,000.

(c) In suits where the claim relates to an immovable property or to any right in relation to such immovable property, the yearly property tax in respect of such property does not exceed more than Rs. 10,000.

(d) In suits other than the categories mentioned above the estimated value shown in the claim does not exceed Rs. 25,000.

8. (1) Notwithstanding anything contained in the Court Fees & Suits Valuation Act, 1959 and the Rules framed therein, court fee payable on the suits filed before the Panchayat Courts shall be as prescribed in sub-section (2).

(2) (a) In suits falling under clauses (a) and (b) of sub-section (2) of Section 7, a fixed court fee of Rs. 25 shall be paid at the time of filing of the suit.

(b) In suits falling under clause (c) and (d) of sub-section (2) of Section 7, a fixed court fee of Rs. 100 shall be paid at the time of filing the suit.

(c) On a counter-claim, the court fee payable shall be the same court fee payable on a suit if a suit was filed on the basis of the subject-matter of the counter-claim.

(d) The court fee payable on a memorandum of appeal shall be the same court fee paid or payable on the suit out of which the appeal arises.

(e) The head clerk of the office of the Panchayat Court or any officer authorized by the court in this behalf shall have jurisdiction to decide the correct quantum of court fee payable and the responsibility to collect the court fee payable.

(3) No other court shall have jurisdiction to entertain suits entertainable by the Panchayat Courts under this Act.

9. Appearance in person, by agent, etc.—(1) Any appearance, application or act required or authorized by law to be made or done by a party to a suit in any Panchayat Court shall be made or done in such Panchayat Court by the party in person:

Provided that it shall be competent to the Panchayat Court to permit any party to the suit to be represented for all purposes by a recognized agent or pleader subject to the power to direct personal attendance of such party whenever necessary.

Explanation.— Recognised agent is a person holding a power of attorney from a party, authorizing him to make and do appearances, applications and acts on behalf of such party, and includes any person authorized in writing by a party to appear and plead for him.

(2) On the request of any of the parties, the court may to the extent possible provide legal aid in appropriate cases.

10. Summons to defendant how served.—When the plaint has been duly presented, the Panchayat Court shall cause the same to be registered, and shall, by summons in writing, require the defendant to appear and answer the claim on a specified day. The summons shall be served on the defendant personally or by registered post acknowledgment due or in any other manner prescribed. In case the summons is served on the defendant personally, his signature shall be taken on the summons by the person serving the summons and a copy thereof delivered to him; and in the case of postal service, an acknowledgment purporting to be signed by the defendant shall be deemed to be proof of service of such summons. If the service of summons is effected in any other mode acknowledgement of receipt of summons shall be obtained in the manner prescribed.

11. Mode of service when defendant evades service.—If the Panchayat Court is satisfied that the defendant is evading service of the summons, or has refused to affix his signature to the summons, or for any other sufficient reason the summons cannot be served in the manner provided for in S.10, the Panchayat Court may order that it be served by delivering a copy thereof to, an adult male member of the family of the defendant, residing with him, or that a copy thereof be affixed upon some conspicuous part of the house in which he generally resides.

12. Mode of service when defendant is beyond local jurisdiction of Panchayat Court.— Whenever it may be necessary to serve the summons upon a defendant beyond the local jurisdiction of the Panchayat Court, it shall be forwarded to the Chairman of the Panchayat Court within whose jurisdiction the defendant resides, who shall cause it to be served as if it had been a summons issued by himself and shall then return it to the Panchayat Court together with a report of such service. Such report shall be *prima facie* evidence of the facts stated therein. Where there is no Panchayat Court for the area within which the defendant resides, the summons shall be served through registered post and the return made by the service peon shall be *prima facie* evidence of the facts stated therein.

13. Procedure if defendant does not appear.—(1) If a defendant does not appear in person or by agent or by pleader on the day fixed and it be proved that the summons was duly served, the Panchayat Court may proceed *ex parte*. If it is not proved that the summons was duly served, the Panchayat Court shall issue a fresh summons.

(2) Every defendant may claim five clear days' notice of suit, and if the summons was not served in sufficient time to enable him to answer on the day fixed, the hearing shall be adjourned to a future day, of which written notice shall be given to the defendant.

14. Witnesses to be examined in open court.— The evidence of witnesses in attendance shall be taken in open court orally on oath or affirmation in the presence and superintendence of the Panchayat Court except where the Panchayat Court orders that the evidence shall be taken in camera.

15. How evidence shall be taken.— The evidence of each witness shall be taken down in writing by the Chairman of the Panchayat Court or by any member authorized by the Chairman not ordinarily in the form of question and answer, but in the form of a narrative and when completed shall be read over in the presence of such members and of the witness and the members constituting the Panchayat Court shall sign it. The Panchayat Court shall require the witness to sign the deposition before the witness leaves the Court.

16. Objections to jurisdiction.—No objection as to the place of suing shall be allowed by any court of appeal unless such objection was taken before the date on which or the time when the statement is made or written statement is filed in the Panchayat Court and unless there has been a consequent failure of justice.

17. Suit in which member is personally interested.—(1) No member of a Panchayat Court who is a party to, or is personally interested in any suit shall sit as a member of the Panchayat Court which takes cognizance of such suit.

(2) If in a suit any of the parties allege any bias against any of the members, the Chairman may consider the allegation and exclude the member against whom the allegation is made if he is prima facie satisfied that allegation is not baseless.

18. Cognizance of suits by Panchayat Courts.—(1) Notwithstanding anything contained in the Kerala Civil Courts Act, 1957, every suit triable by a Panchayat Court shall be instituted in the Panchayat Court having jurisdiction to try the suit.

(2) No suit shall lie in any Panchayat Court unless at least one of the defendants against whom relief is claimed permanently resides or carries on business or works for gain within the local limits of its jurisdiction at the time of the institution of the suit or the cause of action has arisen wholly or in part within those limits.

19. Procedure in Civil Cases.—(1) Institution of suit before the Panchayat Court shall be by filing a claim statement containing all the relevant facts necessary to establish the claim.

(2) The person or persons who institute the suit and the person or persons against whom the suit is instituted shall be called claimant/claimants and respondent/ respondents respectively.

(3) The person or persons against whom a suit is instituted may file a counterclaim against the claimant or claimants if he has got a cause of action for filing an independent suit against the claimant/claimants in the same suit without filing a fresh suit in respect of such claim.

(4) The Panchayat Court shall not be bound by the strict procedure laid down in the Code of Civil Procedure, 1908 and the Rules of Evidence as laid down in the Indian Evidence Act, 1872, while trying and disposing of the suit, but shall be guided by the principles of natural justice. But, the Panchayat Court may be free to adopt the procedures prescribed in the C.P.C. to regulate various matters either as such or with modification in matters other than what is provided in this Act.

(5) In every proceeding of a civil nature instituted before the Panchayat Courts, it shall be the endeavour of the Court, in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade, and conciliate the parties in arriving at a settlement.

(6) Every decree and order of a Panchayat Court shall be final subject to the result of appeal and revision provided under this Act.

20. Incidental determination of matters not cognizable by Panchayat Court.—If, in the course of decision of a suit cognizable by a Panchayat Court, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit concerning title to immovable property, or the legal character of either of them or of those under whom they claim, or the existence of any contract or obligation, which, if it had been the immediate subject-matter of the suit, would not be cognizable under this Act by a Panchayat Court, it shall be competent to the Panchayat Court to decide such question of title, legal character, contract or obligation, as far as may be necessary for the determination of such suit; but such decision shall not be evidence of such title, legal character, contract or obligation in any other action though between the same parties or their representatives.

21. Limitation.—The provisions of the Limitation Act, 1980, shall apply to suits and applications under this Act.

PART IV

THE DECREE PASSED IN CIVIL SUITS AND ITS EXECUTION

22. On conclusion of hearing the Panchayat Courts to pass decrees.— The Panchayat Court shall after hearing arguments, prepare and sign the decree to be passed in the case as shall appear to it to be just and equitable. Such decree shall be pronounced in open court by the members who drew up the decree or by other members at the next sitting of the Panchayat Court. The members of the Panchayat Court which pronounced the decree shall sign it and the decree shall bear the

date on which it is pronounced. The period of limitation for all purposes in respect of the decree shall be computed from the date on which it was so pronounced.

23. Contents of decree.—(1) The decree shall be in Malayalam or if in respect of any area where the Government have notified any other local language, as the local language of the area, in such language and shall contain the number of the suit, the name of the parties, the particulars of the claim, the names of the witnesses examined, the title and date of the exhibits read, the decision in the case and the reasons for such decision.

(2) The decree shall specify the sum of money adjudged, the movable property to be delivered, the sum to be paid in default of delivery, the amounts of costs and interest thereon, if any, awarded by the Panchayat Court not exceeding twelve per cent per annum and by what parties and in what proportion costs shall be paid.

(3) Any member dissenting from the decree of the Panchayat Court shall state in writing the decision which he thinks should be passed and state his reasons for the same.

(4) The court which passes the decree may also fix a date on which the court shall take further steps in the matter, for execution of the decree unless the decree is in the meantime satisfied fully and the claimant or the respondent whether jointly or singly files a statement to that effect or the court is in receipt of an order of stay from any superior court granting stay of execution of the decree concerned. The parties shall also be directed to appear before the court on the above date and to state whether the decree has been satisfied or that the execution stands stayed by a superior court.

24. In suits for money, decree may order interest.—(1) In suits for money, Panchayat Court may, in addition to any interest adjudged on the principal sum for any period prior to the institution of the suit, order in the decree, interest at such rate not exceeding twelve per cent per annum as the Panchayat Court deems reasonable on such principal sum from the date of the suit to the date of payment.

(2) Where such decree is silent with respect to the payment of interest as aforesaid, the Panchayat Court shall be deemed to have refused such interest and a separate suit therefore shall not lie.

(3) When a Panchayat Court decrees the payment of a sum of money, it may direct that it be paid by installments with or without interest at the rate mentioned above.

25. Procedure in case of clerical or arithmetical error found in the decree.—If any clerical or arithmetical error be found in the decree, the Panchayat Court shall, of its own motion or on the application of any of the parties, amend the decree so as to correct such error provided that reasonable notice has been given to the parties of the proposed amendment.

26. Execution of decrees.—The decree shall be executed by the Panchayat Court which passed it or by a Panchayat Court or Munsiff to whom it is sent for execution under the provisions hereinafter contained.

27. Decree for specific movable how executed.—If the decree be for any specific movable, it may be enforced by the seizure of the property and its delivery to the decree-holder. If the seizure of the property be not practicable, the decree shall be executed by enforcing payment of the sum decreed in the alternative.

28. Payment of money under decree or adjustment to be made or recorded in open court.—

(1) Satisfaction of decrees passed by a Panchayat Court shall be made by—

(a) Payment of the decree amount into the Panchayat Court or the Munsiff's Court whose duty it is to execute the decree, and

(b) Payment to the decree-holder or his agent duly authorized in writing to receive such payment or otherwise as the Panchayat Court which passed the decree directs.

(2) Payments made to the decree-holder or his agents shall be made in open court and the fact that such payment was made shall be recorded in writing and signed by the decree-holder or his agent and attested by the members then constituting the Panchayat Court.

(3) If the decree is otherwise adjusted to the satisfaction of the decree-holder, the nature of such adjustment shall be recorded in writing and signed by him and attested by his agent or pleader. Where the party is not represented by an agent or pleader, such adjustment shall be recorded and signed by him in open court and attested by the members then constituting the Panchayat Court.

(4) All payments or adjustments shall be endorsed by the Panchayat Court on the decree and recorded in the register of suits.

(5) No payment under a decree in whole or in part shall be recognized unless it has been made and recorded in the manner prescribed by this section.

29. Money realized under decree and not claimed by decree-holder.—(1) If any money due under a decree is received or recovered by the Panchayat Court or the Munsiff's Court and such money is not claimed by the decree-holder within a week from the date of such receipt or recovery, the Panchayat Court or the Munsiff's Court shall issue a notice to the decree-holder requiring him to receive payment of such money.

(2) If the money is not claimed within a fortnight from the date of issue of the notice aforesaid, it shall be deposited in the nearest Treasury and credited to the Civil Court deposit of the Panchayat Court and shall be paid to the decree-holder on his application.

30. Judgment-debtor not to be arrested or immovable property attached.—(1) Subject to the provision of sub-section (3), no judgment-debtor shall be arrested by a Panchayat Court.

(2) No immovable property of a judgment-debtor shall be attached or sold by a Panchayat Court.

(3) Any Panchayat Court empowered in that behalf by the Government by notification in the Gazette may, subject to the provisions hereinafter contained, order on the application of the decree-holder, execution of the decree by issue of a warrant directed against the person of the judgment-debtor if he is within the local limits of the jurisdiction of that court. The Government may prescribe the jail in which any person so arrested shall be imprisoned:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Panchayat Court, for reasons recorded in writing, is satisfied—

(a) that the judgment debtor with the object or effect of obstructing or delaying the execution of the decree—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Panchayat Court; or

(ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property; or

(b) that the judgment-debtor has or has had, since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property, which by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

31. Arrest and detention.—(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Panchayat Court; and his detention may be in any civil prison or any other place which the Government may appoint for the detention of persons ordered by such Panchayat Court to be detained:

Provided, first, that for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the officer authorized to make the arrest has duly gained access to any

dwelling house he may break open the door of any room in which he has reason to believe the judgment-debtor is likely to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and after allowing a reasonable time for her to withdraw and giving her reasonable facilities for withdrawing may enter the room for the purpose of making the arrest.

Provided, fourthly, that where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Government may, by notification in the Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Panchayat Court, the Panchayat Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security to the satisfaction of the Panchayat Court that he will within one month so apply and that he will appear when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Panchayat Court shall release him from arrest, and, if he fails so to apply and to appear, the Panchayat Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

(5) Where the judgment-debtor applies for time to enable him to pay the judgment-debt, the Panchayat Court may leave the judgment-debtor in the custody of an officer of the Panchayat Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Panchayat Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

32. Prohibition of arrest or detention of women in execution of decree for money.—Notwithstanding anything contained in this Chapter, the Panchayat Court shall not order the arrest or detention in the civil prison of a women in execution of a decree.

33. Subsistence allowance.—The Government may fix scales of monthly allowances payable for the subsistence of judgment-debtors by the decree holder.

34. Detention and release.—(1) Every person detained in the civil prison by a Panchayat Court in execution of a decree shall be so detained—

(a) where the decree is for the payment of a sum of money exceeding thousand rupees, for a period of three months and

(b) in any other case, for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of three months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Panchayat Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

35. Release on grounds of illness.—(1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the Panchayat Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Panchayat Court may release him, if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Panchayat Court or any Court to which the Panchayat Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that

prescribed by S. 34.

36. Power to permit judgment-debtor to show cause against detention in prison.—(1) Notwithstanding anything contained in this Chapter where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Panchayat Court shall instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Panchayat Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Panchayat Court is satisfied, by affidavit or otherwise that, with the object of delaying execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Panchayat Court.

(2) Where appearance is not made in obedience to the notice, the Panchayat Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

37. Warrant for arrest to direct judgment-debtor to be brought up.—Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with the execution to bring him before the Panchayat Court with all convenient speed, unless the amount which he has been ordered to pay together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

38. Judgment-debtor not to be arrested until subsistence allowance is paid.—(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into the Panchayat Court such sum as the Panchayat Court thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Panchayat Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Panchayat Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under S.34, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Panchayat Court shall be supplied by the party, on whose application the judgment-debtor has been arrested by monthly payment in advance before the first day of each month.

(4) Such sum, if any, as the Panchayat Court thinks fit, sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the place of sitting of the Panchayat Court to the civil prison and from the civil prison, on his release, to his usual place of residence together with the first of the payments in advance under sub-section (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Panchayat Court before the judgment-debtor is committed to the civil prison and the subsequent payments, if any, shall be paid to the officer-in-charge of the civil prison.

(5) Sums disbursed under this section for the subsistence and cost of conveyance, if any, of the judgment-debtor shall be deemed to be costs in the suit.

39. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.—

(1) When a judgment-debtor appears before the Panchayat Court in obedience to a notice issued under S. 30 or is brought before the Panchayat Court after being arrested in execution of a decree for the payment of money, the Panchayat Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the enquiry under sub-section (1), the Panchayat Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Panchayat Court or release him on his furnishing security to the satisfaction of the Panchayat Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-section (1), the Panchayat Court may, subject to the other provisions of this Chapter, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Panchayat Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Panchayat Court for his appearance at the expiration of the specified period, if the decree be not sooner satisfied.

(4) A judgment-debtor released under this section may be re-arrested.

(5) When the Court does not make an order of detention under subsection (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

(6) No judgment-debtor shall be committed to the civil prison or brought before the Panchayat Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-section (1) unless and until the decree holder pays into Panchayat Court the sum sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort according to such scale as Government may by rules prescribe. Sub-section (5) of S. 38 shall apply to such payments.

40. Arrest and release of debtors when the Panchayat Court is not sitting.— When the Panchayat Court is not sitting, the Chairman or in his absence, any member duly empowered in this behalf by the Chairman may—

(i) subject to the provisions of this Chapter, issue a warrant under S. 30 for commitment to the civil prison of any judgment-debtor, (ii) release persons arrested on civil process where no detention batta is paid, and (iii) detain an arrested person in the custody of an officer of the

Panchayat Court for a period not exceeding seven days in the aggregate, if the requisite batta is paid.

41. Attachment of movable property.—On the application of the decree-holder, the Panchayat Court or when the Panchayat Court does not sit, the Chairman, or in his absence, any member may order attachment of any movable property within its jurisdiction belonging to the judgment-debtor to the value of the sum payable under the decree.

42. Seizure of property in dwelling house.—(1) No person executing any process under this Chapter directing or authorizing seizure of movable property shall enter any dwelling house after sunset and before sunrise.

(2) No outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling house is in the actual occupancy of a woman, the person executing the process shall give notice to such woman that she is at liberty to withdraw and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

43. Seizure how made if property is in possession of judgment-debtor.— If the property be in the possession of the judgment-debtor, it shall be attached by actual seizure and the Panchayat Court shall provide for its safe custody. It may be left in the custody of the judgment-debtor upon sufficient security being given in writing for its production when required. On default, the decree may be executed against the surety to the extent of the value of the property not produced.

44. Seizure how made if property not in possession of judgment-debtor.— If the property be not in the possession of the judgment-debtor, the attachment shall be made by a written order prohibiting the person in possession of the property from giving it over to the judgment-debtor.

45. Debts how attached.—Debts and moneys due to the judgment-debtor, shall be attached by a written order prohibiting the judgment-debtor from recovering the sum of money, and the debtor from making payment thereof until further order of the Panchayat Court. Nothing in this section shall be held to authorize a Panchayat Court to attach or sell a debt charged on immovable property.

46. Private alienation of property after attachment void.— When an attachment has been made by actual seizure or by a written order, any private alienation of the property attached, whether by sale, gift, pledge or otherwise, and any payment of the debt to the judgment-debtor,

during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

47. Investigation of claim to attached property.— If any claim be preferred to the property attached in execution of a decree, the Panchayat Court shall investigate the claim, and if it appears that the judgment-debtor has no saleable interest therein, such property shall be released from attachment.

48. Property to be sold not less than fifteen days after attachment and sale to be proclaimed.—As soon as possible after attachment, the Panchayat Court shall fix a day, not less than fifteen days from the date of attachment for the sale of the property attached and shall cause a written proclamation of the intended sale to be affixed outside the Panchayat Court and such sale shall be proclaimed further by publication in two news paper having wide circulation in the local area where the Panchayat Court situates:

Provided that where a claim has been preferred to the property attached under S. 47, the Panchayat Court may postpone the sale of the property pending adjudication on the claim:

Provided further that the Panchayat Court may on other sufficient grounds adjourn the sale, from time to time, for a period not exceeding three months in the aggregate from the date of attachment:

Provided also that—

- (1) with the consent in writing of the judgment-debtor, or
- (2) when the property seized is subject to speedy and natural decay, or
- (3) when the expense of keeping it in custody may exceed its value, the Panchayat Court may, after giving due notice by affixing it outside the Panchayat Court sell the attached property at any time within fifteen days from the date of attachment. In such case, the Panchayat Court shall hold the sale proceeds, subject to the provisions hereinafter made, for payment of moneys attached in execution of decree.

49. Procedure in sale.—(1) On the day fixed for the sale, the property shall be put up for sale by public auction in open court and sold to the highest bidder. But it shall be open for the court to adjourn the sale for another day if the court is of opinion that the bid amount is abnormally low. On sale the price shall be paid without delay, and in default, the property shall again be put up for sale.

(2) On payment of the purchase money, the Panchayat Court shall grant a receipt for the same, and the sale shall become absolute and no petition for setting aside such sale shall lie.

(3) Any loss on re-sale shall, at the instance of either the judgment-creditor, or judgment-debtor be recoverable from the defaulter as if a decree has been passed against him for the same.

50. Power to adjourn sale.—Subject to the provisions contained in Section 48, any sale advertised under this Act may, at the discretion of the Panchayat Court be adjourned to a specified day, public notice thereof being given in the manner prescribed by the said section.

51. Members of the Panchayat Court and other officers not to bid for or buy property sold.—No member of a Panchayat Court or other officer having any duty to perform in connection with any sale under this Act or any agent or pleader ordinarily practicing in that Panchayat Court shall, either directly, or indirectly, bid for or acquire any interest in any property sold at such sale. ,

52. Stoppage of sale on tender of debt and cost.— Every sale of property under this Act shall be stopped if, before the lot is knocked down, the amount due under the decree and the cost of the sale are tendered to the Panchayat Court.

53. Division of proceeds of sale.—Out of the moneys realized in execution, the cost of execution shall first be defrayed and then the amount due to the decree-holder. Any surplus which may remain shall be paid to the judgment-debtor.

54. Property actually seized to be delivered to purchaser.— When the property sold is one of which actual seizure has been made, the property shall be delivered to the purchaser.

55. In other case how property delivered to purchaser.—When the said property sold is in the possession of any person other than the judgment-debtor, or is a debt due by any person to the judgment-debtor, delivery thereof to the purchaser shall be made by a written notice to such person prohibiting him from delivering possession of the property or paying the debt to any person except the purchaser, and whatever right the judgment-debtor had in such property or debt at the time of attachment shall vest in the purchaser.

56. Decree may be transmitted for execution to another Panchayat Court or to the Munsiff.—(1) Any decree passed by a Panchayat Court may, on the application of the decree-holder, be transmitted for execution to any Panchayat Court within whose jurisdiction the judgment-debtor resides or to any other Panchayat Court or to the Court of Munsiff within whose jurisdiction the judgment-debtor owns immovable or movable property.

(2) A Panchayat Court may, on application made to it by the decree-holder, transmit the decree for execution to the Munsiff who may then execute the decree as if it were a decree passed by himself.

PART V

JURISDICTION AND POWERS OF PANCHAYAT COURTS IN CRIMINAL CASES

57. Panchayat Courts to take cognizance of and try certain offences.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Panchayat Court shall have the

power to take cognizance of and try all or any of the offences when committed within the local limits of its jurisdiction and specified in the Schedule:

Provided that the Government may, in consultation with the High Court, by notification in the Gazette amend the Schedule from time to time by including new types of cases or taking out any of the cases included in it.

(2) A draft of any notification proposed to be issued under subsection (1) shall be laid on the table of the Legislative Assembly and the notification shall not be issued unless the Assembly approves the draft either with or without any modification or addition; and upon such approval being given the notification may be issued in the form in which it has been approved and such notification, on being so issued shall be published in the Gazette and shall thereupon be of full force and effect.

(3) No court other than the Panchayat Court shall take cognizance of an offence capable of trial by a Panchayat Court except as provided in this Act.

(4) The Panchayat Court shall try the offences in the manner provided for summary trial (Chapter XXI of the Cr.P.C., 1973). However, the provisions of Chapter XXI A dealing with plea bargaining shall not be applied by the Panchayat Court.

PART VI

ADMINISTRATION OF PANCHAYAT COURTS

58. Appointment of Registrar.— The Government may appoint any officer not below the rank of District Judge to be the Registrar of Panchayat Courts to exercise administrative control over the Panchayat Court and may by rules prescribe the functions and duties of the Registrar.

59. Powers of Superintendence.—The Registrar appointed under Section 58, shall have powers of superintendence and inspection over the Panchayat Courts and to call for returns from them. The Government may from time to time, prescribe forms and registers for use and the books and accounts to be kept in the Panchayat Courts and the returns which they shall be bound to submit.

60. Munsiffs to report to Government in certain cases.— Whenever the Munsiff sets aside a decree or order of Panchayat Court on the ground of corruption, gross partiality or misconduct of the Chairman or any other member, he shall report every such case to the Government and the Registrar through the District Judge to whom he is subordinate.

61. Withdrawal of powers of a Panchayat Court.— The Registrar of the High Court may, on considering the report made to him under Section 60 or otherwise, if satisfied that any Panchayat Court has been guilty of gross partiality or misconduct and also after giving an opportunity to the Panchayat Court to show cause against the action proposed to be taken, report the same to the Government. The Government may order, by notification in the Gazette, that such Panchayat

Court shall not exercise all or any of the powers under this Act for such period as may be specified in the order and such Panchayat Court shall cease to exercise such powers for the period so specified and in such case the Government shall take immediate steps to reconstitute the court.

PART VII

APPEALS FROM CIVIL AND CRIMINAL CASES

62. Appeals in criminal matters.—An appeal against any order or sentence passed by the Panchayat Court shall lie to the Court of Sessions exercising jurisdiction over the area within which the Panchayat Court is situated, within thirty days of passing of such order. The Sessions Court, may, pending the disposal of the appeal, direct the suspension of the sentence or the order appealed against.

63. Appeals in Civil matters.—An appeal against any final order or decree passed by the Panchayat Court shall lie to the District Court exercising jurisdiction over the area within which the Panchayat Court is situated, within thirty days of passing of such order. The Court, may, pending the disposal of the appeal, direct the stay of the order or judgment appealed against.

64. Power of High Court to call for record of cases from the Munsiff.— The High Court may either suo motu or an application call for the record of any case in which the Munsiff has, in the exercise of his powers under Section 65 of this Act, exercised a jurisdiction not vested in him by law or failed to exercise a jurisdiction so vested or acted in the exercise of the jurisdiction illegally or passed an order contrary to law or set aside the decree on the ground of corruption, gross partiality or misconduct of the Chairman or any other member of the Panchayat Court and may pass such orders in the case as the High Court thinks fit.

65. Revisions by Munsiff of Panchayat Court Proceedings.—(1) The Munsiff Court may, on a petition being presented within sixty days from the date any decree or order of a Panchayat Court by any party deeming himself aggrieved by such decree or order, set aside such decree or order, on the ground of corruption, gross partiality or misconduct of the Chairman or any other member of the Panchayat Court

or of the Court having exercised a jurisdiction not vested in it by law or to have failed to exercise such jurisdiction so vested or acted illegally or with material irregularity and may pass such other decree or order as it deems fit. No decree or order of a Panchayat Court shall be set aside without notice to the opposite party. Pending disposal of any such petition, the Munsiff may stay execution of the decree or order:

Provided that in exceptional cases where the interest of justice so require, the decree may be set aside and the suit remanded for fresh disposal:

Provided further that the time requisite for obtaining a copy of the decree or order shall be excluded in computing the period of limitation.

(2) The Munsiff may, if he is satisfied with the cause shown for delay, entertain a petition after sixty days.

66. Limitation.—Section 5 of the Limitation Act shall apply to the filing of Appeals and Revisions against the decrees passed by the Panchayat Court.

67. Constitution of Panchayat Courts in Municipal Areas.— The Government may, by notification in the Gazette, apply all or any of the provisions of this Act to the areas comprised within the jurisdiction of a Municipality subject to the modification that for a Panchayat Court established in such areas the Chairman and other members shall be appointed by the Government in consultation with the Municipal Council concerned in accordance with the procedure prescribed in that behalf.

68. Reference and Review.—(1) (a) Where before or on the hearing of a suit, or where, in the execution of any decree, any question of law or usage having the force of law arises, on which the Panchayat Court trying the suit or executing the decree, entertains reasonable doubt, that court may either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the Munsiff. When a reference is made to the Munsiff, the Panchayat Court shall stay the suit or proceeding pending the decision of the Munsiff on the point referred.

(b) The Munsiff after hearing the parties, if they appear and desire to be heard, shall decide the point so referred and shall transmit a copy of his judgment, under his signature, to the Panchayat Court by which the reference was made and such court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision.

(c) The costs, if any, consequent on a reference for the decision of the Munsiff shall be costs in the case.

(2) Person considering himself aggrieved by any decree or order of a Panchayat Court in its civil jurisdiction and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree or order was passed or on account of some mistake apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree made, or order passed against him, may apply for a review of the decree to the Panchayat Court which passed the decree or made the order.

69. Contempt of Panchayat Court.—(1) If any person intentionally offers any insult to a Panchayat Court or any member thereof, while the Panchayat Court is sitting in any stage of

judicial proceedings, in its or his view or presence, the Panchayat Court may at any time before rising on the same day take cognizance of the offence and sentence the offender to a fine not exceeding two thousand rupees.

(2) The fine imposed under sub-section (1) shall be deemed to be a fine imposed in a criminal case.

70. Power to make rules.—(1) The Government may in consultation with the High Court, make rules to carry out all or any of the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power; such rules may—

(a) provide for the appointment of the Chairman and other members of the Panchayat Court when necessary;

(b) prescribe the qualifications for appointment as Chairman and other members and for payment of allowances and honoraria to the Chairman and/or other members;

(c) provide for the exercise of administrative control and the adjustment of the work in Panchayat Court by the Chairman and the other members;

(d) regulate any matter connected with the procedure of Panchayat Court and the mode of conduct of business;

(e) provide for the mode of service of the summons and prescribe the process fee of witnesses and parties;

(f) fix the scale of allowances payable for the subsistence and travelling allowance of judgement-debtors and their escorts;

(g) prescribe the manner in which the Panchayat Court may take cognizance of offences and the procedure to be followed by them in the trial of offences;

(h) provide for the presentation, withdrawal and dismissal of complaints and the compounding of offences and prescribe the persons who may conduct the prosecution or represent the accused;

(i) prescribe the place of sitting of a Panchayat Court where such a Panchayat Court is constituted for more than one Panchayat or Panchayat;

(j) prescribe the procedure to be followed in setting up a plea of counter claim;

(k) prescribe the procedure to be followed in regard to third party procedure;

(l) provide for the summoning and attendance of the accused and for the summoning and examination of witnesses in criminal cases;

(m) prescribe the forms of all registers, returns and processes, the manner in which such returns shall be made and the officers to whom they shall be submitted;

(n) prescribe the functions and duties of the Registrar;

(o) provide for removing any difficulty in giving effect to the provisions of this Act.

(3) 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 session in which it is so laid or the session immediately following, the Legislative Assembly make any modification in the rule or decide 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.

71. Repeal and Savings.—(1) The Kerala Village Courts Act, 1961 (6 of 1961) is hereby repealed.

(2) The Cochin Village Courts Act, XII of 1118, the Travancore Village Panchayat Courts Act, 1090 (1 of 1090), the Madras Village Courts Act, 1888 (1 of 1889) the Travancore-Cochin Village Courts Act, 1953 (VII of 1954) and S. 132 of the Madras Village Panchayats Act, 1950, The Kerala Village Courts Act, 1961 are hereby repealed.

(3) All Panchayat Courts and Village Panchayat Courts constituted under any of the enactments hereby repealed are functioning as such on the commencement of this Act shall be deemed to be Village Courts constituted under this Act, notwithstanding anything contained in S.6 of this Act, but subject to the condition that the term of office of every member of the Village Court or Village Panchayat Court shall continue upto the date on which it would have expired under the respective enactments or until such earlier date as the Government may, by notification in the Gazette, specify.

SCHEDULE

(See Section 92)

(1) Offences punishable under Ss. 160, 172, 174, 179, 269, 277, 279, 283, 285, 289, 290, 294, 323, 334, 336, 352, 358, 504 and 510 of the Indian Penal Code.

(2) Offences punishable under S. 379 of the Indian Penal Code in respect of property not exceeding fifty rupees in value, when the offender has not been previously convicted of theft.

(3) Offences punishable under S. 426 of the Indian Penal Code when the loss or damage caused thereby does not exceed fifty rupees.

(4) Any other specified offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months only or with both.

Explanation.—The offences mentioned in this Schedule include abetment and attempt of such offences.

Statement of Objects and Reasons

In order to enshrine in the Constitution certain basic and essential features of Panchayat Raj institutions, a new part was added to the Constitution by the Constitution (Seventy-third Amendment) Act, 1992. The new Part provides, inter alia, constitution of Panchayats at Village levels. The Kerala Panchayat Raj Act, 1994 was enacted by the Kerala Legislative Assembly to implement the constitutional obligations of the State in relation to matters specified by the said Constitution Amendment Act. In order to supplement the provisions of the Kerala Panchayat Raj Act, it is felt necessary to enact a new law constituting Panchayat Courts at Panchayat level for speedy disposal of cases in which the money value involved is not more than Rs. 25,000 or the valuation of the claim is not above Rs. 25,000. At present the lowest court of civil jurisdiction is the Munsiff's Court whatever be the money value of the dispute between parties. If the jurisdiction of civil disputes involving not more than Rs. 25,000 is conferred on

Panchayat Courts, it would be possible to render speedy justice to the parties while at the same time, the work load of Munsiff's Courts could be reduced substantially. This Bill seeks to achieve the said purpose by providing for establishment of Panchayat Courts at Panchayat levels consisting of five members of which the Chairman shall be the President of the Panchayat. The other members shall be persons elected by the Panchayat concerned from a panel of 10 persons prepared by the Chairman as prescribed by rules made under the Act.

