

THE KERALA PANCHAYAT RAJ (AMENDMENT) BILL

A bill to amend the Kerala Panchayat Raj Act, 1994 for the purposes hereinafter appearing;

Preamble.—WHEREAS it is expedient further to amend the Kerala Panchayat Raj Act, 1994 (13 of 1994) for the purposes hereinafter appearing;

BE it enacted in the Fifty ninth Year of the Republic of India as follows:—

1. *Short title and commencement of the Act.*—(1) This Act may be called the Kerala Panchayat Raj (Amendment) Act —

(2) It shall come into force at once.

2. *Amendment of Section 1.*—In section 1 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) (hereinafter referred to as the principal Act) for sub-section (2), the following sub-section shall be substituted, namely:—

“It extends to the whole of the State of Kerala except the areas which are within the limits of the Cantonment, Nagar Panchayats, Municipal Councils, Municipal Corporations notified industrial areas of the State to the extent specifically exempted from the operation of this Act.

Explanation.—It is hereby clarified that the provisions of this Act will apply to the industrial areas as defined under any law of the State and would be governed by the provisions of this Act.”

3. *Amendment to Section 21.*—In Section 21 of the principal Act, after sub-section (2), the following explanation shall be added, namely:—

“*Explanation.*—A person who is detained as an undertrial prisoner in a jail or in custody of police or any other agency or as an inpatient in any hospital shall be considered as a person absenting himself temporarily from his residence.”

4. *Amendment to Section 76.*—In Section 76 of the principal Act, in sub-section (5), for the words “or otherwise or in the lawful custody of the Police”, the words “for a period more than one year or for an offence involving moral turpitude” shall be substituted.

5. *Amendment to Schedule 3.*—In Schedule 3 (A) Mandatory Provisions.—after entry 26 the following may be added as entry 26A and 26B.

“26A. Prohibition of manufacture, sale and use of Alcohol or any other substance containing Alcohol, Panmasala, Narcotic Drugs and Psychotropic substances within the entire area coming within the jurisdiction of the Panchayat or any particular Ward or any other specified area of the Panchayat.

26B. Issuance and cancellation of Licence for sale, manufacture and use of Alcohol or any substance containing Alcohol, Panmasala and Narcotic Drugs and substances

containing Narcotic Drugs and Psychotropic substances subject to such conditions as the Panchayat Committee decides.”

Objects and Reasons for the Amendment

In prisons there may be number of persons detained as under trial prisoners. Similarly there may be persons detained in the custody of police or other agencies but who have not been convicted of any offence. Such persons may be persons enrolled as voters entitled to vote in the wards in which they have been residing ordinarily. So long as they are not convicted of any offence by any competent court, the presumption of law is that they are innocent of the offence or offences charged against them. That apart, persons in the custody of police or other agencies even before framing charge sheet cannot be treated even as persons accused of any offence. As far as the above two categories of persons are concerned if they are voters enrolled in the electoral rolls in any of the wards they should be treated as voters qualified to vote in that ward. In the circumstances, unless it is made clear that such persons living in jails and police custody shall be deemed to be residents of the locality from where they were removed and put in jail or in the custody of police or other agencies; there may be difficulties for them to exercise their right to vote at the elections in the constituency where they were residing originally. They may not also be entitled to vote in the constituency where they are living in jails or in the custody of police or other agencies at the time of election in view of clause (4) of Sec. 21. The undertrial prisoners and persons in custody are now disqualified from voting at election by the provision in sub-section (5) of Sec.76. So long as such persons are not convicted of any offence by a competent court, it may be illegal and unconstitutional to disqualify them for voting and thus deny them of their right to vote. Schedule 3 is amending for preventing the manufacture, sale and use of Alcohol, or any other substance containing Alcohol, Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances within the whole or any particular area of the jurisdiction of the Panchayat or any particular ward of the Panchayat. Power to issue licence for manufacture, sale and use and cancellation of such licence is also being given to the Panchayat as part of the process of decentralization.