

THE KERALA PREVENTIION OF FRAUD BILL,2020

A

BILL

to prevent the commission of massive fraud in various sectors in the State of Kerala and to provide for stringent punishment for commission, conspiracy, abetment or attempt to commit fraud and to provide remedial measures to the victims of fraud and for other matters connected there with or incidental thereto.

Preamble.- WHEREAS, it is expedient to prevent the growing menace of large scale fraud, cheating ,misrepresentation and impersonation in various sectors with in the State;

AND WHEREAS, such fraudulent practices impair faith of public in the justice delivery system;

AND WHEREAS, such large scale cheating and fraudulent activities results in huge financial scams which cause financial loss to the common man;

AND WHEREAS, the provisions of Indian Penal Code relating to deception based offences are insufficient to meet the present scenario caused by such activities;

AND WHEREAS, effective and stringent penal provisions are needed for combating such fraudulent activities in these sectors;

AND WHEREAS, provisions for remedial measures to the victims of fraud have to be brought in to force;

AND WHEREAS ; Government have decided to enact a Law to prevent the commission of massive fraud in various sectors in the State of Kerala and to provide for stringent punishment for commission, conspiracy, abetment or attempt to commit fraud and to provide remedial measures to the victims of fraud and for other matters connected therewith or incidental thereto;

BE it enacted in the seventy first year of the Republic of India as follows:-

1. ***Short title and commencement.-*** (1) This Act may be called the Kerala Fraud Act, 2020.

(2) It shall come in to force on such date as the State Government may, by notification, appoint.
2. ***Definitions.-*** (1) In this Act, unless the context otherwise requires :-
 - (a) "Authority" means the authority appointed by the Government under section 18;
 - (b) "fraud" has the meaning assigned to it in sections 3 to 7 of this Act;
 - (c) "notification" means the notification published in the official gazette;
 - (d) "prescribed" means prescribed by rules made under this Act;
 - (e) "State" means the State of Kerala.

(2) Words and expressions used but not defined in this Act and defined in the Indian Penal Code 1860 (Central Act 45 of 1860) in the Indian Contract Act, 1872 (Central Act 9 of 1872), in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall have the same meaning assigned to them respectively in the afore said Acts.

3. Act of Fraud.- A person shall be guilty of fraud, if he dishonestly and maliciously commits any of the acts specified below with intent to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss, namely ;-

- (a) making false representation;
- (b) disclose false information, concealment of information or failing to disclose information;
- (c) abuse of position;
- (d) impersonation.

4. Fraud by False representation.- (1) If a person dishonestly make a false representation or an untrue or misleading representation, which he knows is or might be untrue or misleading, he shall be guilty of fraud by false representation.

(2) Such representation may be express or implied with intent to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss.

Explanation I.- Representation means any suggestion as to the facts or Law including a representation as to the state of mind of the person making representation.

Explanation II.-For the purpose of this section, representation includes any suggestion submitted in any form to any system or device designed to receive, convey or respond to communication, with or without human intervention.

5. **Fraud by false information.**- If a person dishonestly makes a false information or fails to disclose information which he is under a legal obligation to disclose or makes active concealment of information to another person, which he knows is or might be untrue or misleading, so as to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss, he shall be guilty of fraud by false information.

6. **Fraud by abuse of position.**- (1) If a person occupies a position in which he is expected to safeguard or not to act against the financial or other interests of another and dishonestly abuses that position with intent to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss, he shall be guilty of fraud by abuse of position.

(2) A person may be regarded as having abused his position if his conduct consisted of an omission or an act.

(3) If an Employer, Master, Owner or any other officer who occupies a position in dealing with a fact or law expected to safeguard the interest of another, dishonestly abuses his position with intent to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss, he shall be guilty of fraud under this section.

7. **Fraud by impersonation.**-If a person dishonestly makes false or fictitious identity or capacity or pretending to be representative of another person or organization or opening a bank account or securing credit in the name of another person with intend to defraud another so as to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss, he shall be guilty of fraud by impersonation.

8. **Effect of Gain and loss.**- The gain and loss referred to in sections 3 to 7 shall have the following effects, namely:-

(i) any such gain or loss which extends only to gain or loss in money or other property, both movable and immovable, whether real or personal including chose in action and other intangible property;

(ii) gain includes retaining what one has as well as gained what one does not have; and

(iii) loss includes a loss by not getting what one might get as well as a loss by parting with what one has.

9. **Offence under this Act.**- Any act of fraud under sections 3 to 7 , conspiracy, abetment or attempt to commit fraud, possession or supply of articles for the use in fraud, participation in fraudulent business or obtaining services dishonestly shall be an offence under this Act.

10. **Punishment for offence of fraud.**- Any person who commits fraud by false representation, failing to disclose information, abuse of position or impersonation under sections 4 to 7 shall on conviction be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine.

11. **Punishment for Conspiracy, abetment or attempt to commits fraud etc. .-** (1) Whoever takes part in any conspiracy to defraud or abets an act of fraud shall be punished in the same manner as if he had himself committed fraud.
 (2) Whoever attempts an act of fraud under this Act shall be punished in the same manner as provided under section 511 of Indian Penal Code, 1860 (Central Act 45 of 1860).

12. **Punishment for possession of articles or supplying articles for use in fraud.**-(1) Any person who is in possession or has under his control any article for use in the course of or in connection with any fraud shall on conviction be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.
 (2) Any person who makes ,adapts ,supplies or offers to supply any article knowing that it is designated or adapted for use in the course of or in connection with fraud or intending to be used to commit or assist in the commission of fraud shall on conviction be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.- Articles for use in the course of or in connection with fraud includes any programme ,data or any other internet facility held in electronic form.

- 13. Punishment for participating in fraudulent business.-** Any person who is carrying on any fraudulent business as a sole trader or by a company or by a person who is outside the purview of the Companies Act , 2013 (Central Act 18 of 2013) or a person or a company carrying on fraudulent trade with intent to defraud creditors or any other person or for any other fraudulent purpose shall on conviction be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- 14. Punishment for obtaining services dishonestly.-** Any person who obtains services for himself or another by a dishonest act , if they are made available on the basis that payment is or has been or will be made for or in respect of them or he obtains them without any payment have been made for or in respect of them or without payment having been made in full and when he obtains them, he knows that they are made available on the basis described above or that they might be , but intends that payment will not be made in part or full shall on conviction be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.
- 15. Offences By Companies .-** (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
 Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

- 16. Offences to be cognizable, non-bailable and non-compoundable.-** The offences specified under this Act shall be cognizable, non-bailable and non-compoundable.
- 17. Investigation by senior police officer.-** Any police officer not below the rank of Inspector of Police shall investigate an offence committed under this Act.
- 18. Appointment of an Authority under this Act.-** The Government may, by notification, appoint an officer, who is or has been a District Judge, as the Authority under this Act for taking further actions in respect of the proceeds of the commission of fraud.
- 19. Officers and staff of the Authority.-** (1)The Government may appoint such officers and staff, as it deems necessary, in such manner as may be prescribed, for assisting the Authority in its performance and functions.
- (2)The salary and other expenses of the authority and the officers and staff of it shall be, as may be prescribed.**

(3)The authority shall deposit 7.5% of the sale proceeds of the assets sold either in public auction or in any other manner, with the Government, in the manner as may be prescribed.

- 20. Powers, duties and functions of the Authority.**- (1) The Authority shall take such remedial measures so as to compensate the loss sustained by the victims due to the commission of fraud, in the manner as may be prescribed.
- (2) The authority may take steps to ascertain the assets of such persons alleged to have committed the offence of fraud. For this purpose the authority may collect the details of the assets either suo moto or with the assistance of the investigating officer of the alleged offence of fraud.
- (3) The authority may, if it deems necessary, direct the person alleged to have committed the offence of fraud, his relatives or any other person who appears to have connection with the alleged offence of fraud to furnish the details of their entire assets including the proceeds of the offence and other assets.
- (4) The person so bound by the direction under sub section (3) shall disclose the details of the entire assets belonging to him without any concealment or suppression. If the authority, after affording an opportunity of being heard, finds that the details so furnished is vague, incomplete or fraudulent, the Authority shall impose a fine, which may extend up to twenty five thousand rupees.
- (5) If the Authority finds that the assets so ascertained or disclosed, as the case may be, are involved in the alleged offence of fraud the authority may, by order in writing, conditionally attach the assets of the accused.
- (6)** Along with the order of conditional attachment under sub section (5), the Authority shall serve a notice of not less than fifteen days calling upon the concerned person to show cause why his entire assets

involved in the alleged offence of fraud should not be attached and proceeded with.

(7) The Authority shall also serve a notice of not less than fifteen days calling upon the relatives or any other person who appears to have connection with the alleged offence of fraud to show cause why the assets involved in the alleged offence of fraud belonging to them should not be attached and proceeded with.

(8) On the basis of the explanation if any, or after the lapse of stipulated time limit aforesaid, the Authority shall, after holding inquiry as it deems necessary, by order in writing, confirm the conditional attachment made under sub section (5) and the other assets ascertained from the relatives or any other person who appears to have connection with the alleged offence of fraud.

(9) Where the conditional order of attachment has been confirmed under sub section (8), the Authority shall take necessary steps for the disposal of the assets either by public auction or in any other manner, as may be prescribed.

(10) If the Authority finds it is not practicable to attach as above, the Authority may make an order to freeze such assets, whereupon the assets shall not be transferred or otherwise dealt with, except with the permission of the Authority making such order and a copy of such order shall be served on the person concerned.

(11) The Authority may issue a public notice calling upon the victims of the alleged offence of fraud to prefer claim petitions, in the manner as may be prescribed.

(12) The claim petitions preferred by the victims under sub section (11) shall be adjudicated by the Authority in the manner as it deems fit after affording an opportunity of being heard.

(13) The Authority shall have powers to dispose the assets either by public auction or in any other manner, as may be prescribed and to rateably distribute the amount so received to the victims of fraud , as may be fixed by the Authority.

(14) Where any claim or petition has been adjudicated and the order made thereon by the Authority shall have the same force and be subjected to the same conditions as to appeal or otherwise as if it were a decree.

(15) The Authority shall submit detailed reports and statement of accounts under this section to the Government, in the manner as may be prescribed.

(16) The Authority shall , for the purpose of this Act, have the same powers as are vested in a civil Court under the Code of Civil Procedure , 1908(Central Act 5 of 1908) .

(17) Every proceedings under this section shall be deemed to be a judicial proceedings with in the meaning of section 193 and 228 of the Indian Penal Code (Central Act 45 of 1860).

(18) Upon the constitution of the Authority under section 18 any question relating to the assets shall be in accordance with the provisions of this Act and the provisions of Travancore – Cochin Insolvency Act 1955 (Act 11 of 1956) shall have no application.

Explanation.- For the purpose of this Act the word “assets” includes, lands, houses or other building, goods, money, bank notes, cheques, bills of exchange, promissory notes, bonds or other securities for money , debts, shares in partnership or other institutions, all other saleable property both movable and immovable belonging to the offender , or over which, or profits of which , he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the offender or another person in trust for him or in his behalf.

21. ***Bar of suits in Civil Courts.***- No suit shall be brought in any civil court to set aside or modify any proceedings taken or order made under this Act and no prosecution, suit or other proceedings shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.
22. ***Act to have over riding effect.***- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force
23. ***Power to remove difficulties.***- (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
- Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature.
24. ***Power to make rules.***- (1) The State Government may make rules for carrying out the purposes of this Act.
- (2) All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the sessions in which they are so laid or of the sessions immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

STATEMENT OF OBJECTS AND REASONS

Statistical review of crimes registered in the State reveals that offence of massive cheating, fraud and misrepresentation have become a recurring feature in the State over the last few years. It reflects the ineffectiveness of existing penal provisions to curb the offences of large scale cheating and fraud also by the advent of new technology in banking, industrial and other fields of trade, new form of crimes like ATM fraud, stock market fraud, Bank fraud, Corporate fraud, cheating of customers , cheating of chit funds etc. Growing menace of large scale fraud results in financial scam which makes gain to one person and loss to another. Fraudulent and malicious practices impair faith of the public in the justice delivery system. The Hon'ble High Court in its judgment in B.A.No.5077 of 2013 (Shalu Menon @Shalu Venugopal V. State of Kerala) observed that, it is high time that those who are at the helm of affairs view seriously the need for enacting a special legislation to deal with the offence of fraud with clear and stringent penal provisions effectively curbing and meeting out punishment to those who dupe and defraud innocent public by fraudulent activity has to be brought in to force without any delay. The penal laws now in force cannot effectively punish such culprits.

Therefore Government have decided to enact a legislation to prevent the commission of fraud in various sectors in the State and to provide stringent punishment for the offence of fraud.

The Bill seeks to achieve the aforesaid purpose.