

THE KERALA WOMEN'S COMMISSION ACT, 1990

(ACT 17 OF 1995)

An Act to provide for the constitution of a Women's Commission to improve the status of women in the State of Kerala and to enquire into unfair practices affecting women and for matters connected therewith or incidental thereto.

Preamble.- WHEREAS it is expedient to provide for the constitution of a Commission to improve the status of women in the State of Kerala and to enquire into unfair practices affecting women and for matters connected therewith or incidental thereto;

BE it enacted in the Forty-second Year of the Republic of India as follows;

1. Short title, extent and commencement.- (1) This Act may be called the Kerala Women's Commission Act, 1991.

(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.

NOTES

The Bill as passed by the Legislative Assembly received the assent of the President on 22-8-1995. The Act was published in K.G. Ext. No. 920 dated 15-9-1995.

The State Government notified 1st day of December, 1995 as the date on which the Act shall come into force.

The Act was amended by the Kerala Women's Commission (Amendment) Act, 2002 (Act 6 of 2002). The amendment Act received the assent of the Governor on 16-7-2002 and published in K.G.Ext.No.1049 dated 17-7-2002.

***Statement of Objects and Reasons of the Bill** is as follows:- "It has come to the notice of the Government that many unfair practices against women prevail in the State resulting in the lowering of their status in the society. In order to provide for enquiry into the many unfair practices now prevailing in the State against women and to facilitate the redressal of their grievances, Government have decided to set up a Commission for women to be known as the Kerala Women's Commission. It is also proposed to confer on the Commission powers and functions conducive to the improvement of the status of women in the State.

2. The bill is intended to achieve the above objects.

3. The notes on clauses explain the various provisions in the bill."

Commencement:- The Act came into force on the 1st day of December, 1995 (See Notification).

2. Definitions.- In this Act, unless the context otherwise requires,-

- (a) "Commission" means the Commission constituted under section 5;
- (b) "Director" means the Director appointed under section 12;
- (c) "Government" means the Government of Kerala;
- (d) "member" means a member of the Commission and includes the Chairperson;
- (e) "person" includes a firm, company, corporation, or any public undertaking, association of persons, or the Government and its agencies including agencies receiving aid from the Government;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "public servant" means any employee of the Government or a local body or any corporation owned or controlled by the Government or of any Government agency or any public undertakings;
- (h) "registered" means registered with the Commission under the Act;
- [(ha) "Secretary" means the Member Secretary of the Commission appointed under sub-section (1) of section 12;]
- (i) "unfair practice" means any distinction, exclusion or restriction made on the basis of sex for the purpose of or which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women of fundamental constitutional rights, or of human rights, or of fundamental freedom in the political, economic, social, cultural, civil or any other field or the infringement of any right or benefit conferred on women by or under the provisions of any law for the time being in force or the mental or physical torture or sexual excesses on women.

3. Act not to apply in certain cases.- This Act shall not apply to,-

- (i) the Central Government; or
- (ii) any public sector undertaking of the Central Government, or any other institution owned or controlled or financed directly by the Central Government.

4. Application of other laws not barred.- Save as otherwise provided, the provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force, except to the extent the provisions of the other law are inconsistent with the provisions of this Act.

5. Constitution of the Commission.- ¹[(1) For the purposes of this Act the Government shall, by notification in the Gazette, constitute a Commission to be known as 'the Kerala Women's Commission', consisting of the following members, namely:-

(a) a Chairperson, who is committed to the cause of women, with sufficient knowledge and experience in dealing with women's problems;

(b) not more than four other members, of whom one shall be a person belonging to a Scheduled Caste or a Scheduled Tribe;

(c) the Secretary of the Commission

(2) The members appointed by the Government under clauses (a) and (b) shall be women.]

²[(3)] The members of the Commission shall be persons of ability, integrity, intelligence and standing and having adequate knowledge or experience or have shown ability in dealing with problems relating to safeguarding and promoting the interests, of women and protecting their rights.

1. Subs. by Act 27 of 2007 published in K.G. Ext. No. 1861 dated 15.10.2007 (w.e.f. 24.01.2007). Former sub-sections ran as follow: "(1) For the purpose of this Act the Government shall, by notification in the Gazette, constitute a commission to be known as the Kerala Women's Commission which shall consist of a Chairperson and not more than two other members to be appointed by the Government:

Provided that the members appointed to the Commission shall be women

(2) The Chairperson shall be an eminent women committed to the cause of women with sufficient knowledge and experience in dealing with women's problems."

Section 11 of the Amending Act provides as follows: "11. Special provision relating to the existing Commission.- (1) Notwithstanding anything contained in the principal Act, or in any other law or in any judgment, decree or order of any court, on and from the date of commencement of this Act, the Chairperson and members of the existing Commission constituted under the provisions of the principal Act shall, by virtue of this Act, be deemed to have vacated their offices as such.

(2) The Chairperson and members of the Commission who have ceased to hold office, by virtue of this Act, shall be entitled to honorarium and allowances only for the period for which they had held the office of the Chairperson or member of the Commission, as the case may be, and they shall not be entitled to honorarium and allowances or other benefits for the remaining period of their tenure, if any.

(3) All investigations, inquiries or other proceedings pending before the Commission on the date of commencement of this Act and which have not been disposed of, shall stand transferred to, and be continued by the Commission constituted under the principal Act, as amended by this Act, as if they were commenced before it."

2. Sub-sections (a), (b) and (c) of section 5 re-numbered respectively as sub-sections (1), (2) & (3) thereof by the Kerala Women's Commission (Amendment) Act, 2002 (w.e.f. 20-4-2002).

6. Term of office and conditions of service of members.- (1) Every member ¹[other than the Secretary] shall hold office for a period of five years.

(2) Notwithstanding anything contained in sub-section (1), a member ¹[other than the Secretary,] may,-

(i) by writing under his hand and addressed to the Government resign his office at any time;

(ii) be removed from his office in accordance with the provisions of section 11.

(3) A vacancy arising by reason of resignation or removal of any member of the Commission under sub-section (2) or otherwise shall be filled up in accordance with the provisions contained in section 5:

Provided that a person so appointed shall hold office for the remaining period of the term of the person in whose place such person is appointed :

²[(4) The members ¹[other than the Secretary,] shall receive a fixed honorarium and other allowances and shall be governed by such conditions of service, as may be prescribed:

Provided that the fixation of the honorarium shall be without taking into consideration the past service rendered by the person in any capacity before his appointment as a member.]

7. Quorum.- The quorum for a meeting of the Commission shall be ³[four].

8. Disposal of Business.- (1) The meeting of the Commission shall be presided over by the Chairperson or in her absence a member chosen for the purpose by the members present.

(2) All questions at a meeting of the Commission shall be decided by the majority of the votes of the members present and voting and in case of equality of votes the Chairperson or the member presiding, as the case may be, shall have a second or casting vote.

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1. Ins. by Act 27 of 2007 published in K.G.Ext. No. 1861 dated 15.10.2007 (w.e.f. 24.01.2007)
 2. Sub-section (4) substituted by the Kerala Woman's Commission (Amendment) Act, 2002 (w.e.f. 20-4-2002). The former sub-section ran as follows:- "(4) The members shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed:
Provided that such conditions of service shall not be varied to the disadvantage of a member after his appointment."
 3. The word "two" substituted by Act 27 of 2007 (w.e.f. 24.01.2007). Earlier the word "four" substituted by Amendment Act, 2002.

(3) The Commission may invite, if it is considered necessary, for such purposes and on such conditions as may be prescribed, any person with expert knowledge in a particular subject to be present at the meeting to assist the Commission in arriving at a decision but such person shall not be entitled to vote.

9. Constitution of *ad hoc* committee.- (1) The Commission may for the purpose of transacting any business before it or for any special issue constitute an *ad hoc* committee consisting of,—

(a) not more than two members of the Commission;

(b) not more than two experts on the particular subject before the Commission.

(2) If the Chairperson is a member of the committee the Chairperson or any other member shall preside over the meeting of the Committee.

(3) The provisions of section 7, section 8 and section 20 shall *mutatis mutandis* apply to the meetings of the Committee.

(4) The final report of the *ad hoc* committee shall be placed before the Commission for its approval and on the approval thereof by the Commission it shall be deemed to be the report of the Commission.

(5) The persons in the *ad hoc* committee shall be paid such remuneration as may be prescribed.

10. Acts of the Commission not to be invalidated by infirmity or any vacancy etc.- No act or proceeding of the Commission shall be invalidated by reason only of any defect or irregularity in its constitution or on the ground of existence of any vacancy in the office of any member.

11. Removal of members from office.- ¹[(1)] Any member ¹[other than the secretary] of the Commission may be removed from office by an order of the Government, if he,—

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which involves moral turpitude;

(c) becomes of unsound mind;

(d) refuses to act or becomes incapable of acting;

1. The existing section was numbered as sub-section (1) thereof and sub-section (2) added by Act 27 of 2007 (w.e.f. 24.01.2007).

(e) is without obtaining leave of absence from the Commission absents from three consecutive meetings of the Commission; or

(f) In the opinion of the Government has so abused the position of Chairperson or member as to render that person's continuance in office detrimental to the public interest:

Provided that a member shall not be removed under this section until that person has been given a reasonable opportunity of being heard in the matter.

'[(2) The Secretary shall hold office during the pleasure of the Government.]

12. Appointment of Director and other staff of the Commission.- (1) ²{The Government may appoint a Member Secretary to the Commission, who shall be the Chief Executive Officer of the Commission. The Government may also appoint a Director, in consultation with the Commission, for making investigation for the purposes of this Act.

The Member Secretary and the Director shall carry out such directions issued by the Commission, besides exercising the functions conferred on them by this Act.] The Government may appoint such other staff as may be necessary to assist the Commission by deputation or by direct recruitment and prescribe their conditions of service:

Provided that in the case of direct recruitment, the provisions of rules 14, 15, 16 and 17 of the Kerala State and Subordinate Service Rules, 1958, shall apply.

(2) The qualifications, terms of appointment and other conditions of service of ³{the Secretary and] the Director shall be such as may be prescribed.

(3) In the discharge of their functions under this Act the Director and other staff referred to in sub-section (1) shall be subject to the administrative control of the Chairperson.

1. Inserted by Act 27 of 2007 (w.e.f. 24.01.2007).

2. The opening sentence "The Government may, in consultation with the Commission, appoint a Director for making investigations for the purposes of this Act and to carry out such directives given to him by the Commission besides the functions conferred on him by this Act." substituted by Act 27 of 2007 (w.e.f. 24-01-2007)

3. Inserted by *ibid.*

13. Provision for salaries, allowance, etc.- The ¹[honorarium and allowances payable to the members] and the administrative expenses, including the salaries, allowances and pensions payable to, ²[or in respect of the Secretary, the Director] and the other staff of the Commission, shall be charged on the Consolidated Fund of the State.

14. Registration of women's organisation.- (1) Any women's organisation governed by written rules, regulations or bye-laws and working for the uplift, development, welfare or promotion of the interests of women or women's wing of any other organisation having all or any of the above activities as one of its objectives may apply to the Director for registration of such organisation with the Commission, in such form and in such manner as may be prescribed.

(2) The Director shall verify the applications in such manner as may be prescribed and recommend to the Commission, the organisations qualified for registration and reject the other applications.

(3) The Commission may consider the recommendation and direct that the name and particulars of the organisations qualified to be registered be entered in the Register maintained for the purpose in the manner prescribed and shall issue a certificate of registration in the prescribed form.

(4) The Commission may, at any time either on its own motion or otherwise cancel the registration of any organisation, after giving an opportunity to be heard and on being satisfied that it is no longer qualified to continue as a registered organisation.

(5) The party aggrieved by the decision of the Director under sub-section (2) may file an appeal before the Commission within such time and in such manner as may be prescribed and thereupon the Commission shall after, conducting such enquiry as it deems fit and giving the party an opportunity of being heard, pass appropriate orders thereon.

15. Powers of the Commission.- (1) The Commission shall, for the purpose of any inquiry under this Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-

1. The words "salaries and allowances payable to the members" substituted by the Kerala Woman's Commission (Amendment) Act, 2002 (w.e.f. 20-4-2002).
2. The words, "or in respect of the Director" substituted by Act 27 of 2007 (w.e.f. 24-01-2007)

- him;
- (a) summoning and enforcing the attendance of any witness and examining him;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public records or copy thereof from any public office;
 - (e) issuing commissions for the examination of witnesses.

(2) any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and the Commission shall be deemed to be a court for the purpose of section 195 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

16. Functions of the Commission.- (1) The Commission shall perform all or any of the following functions, namely:-

- (i) inquire into any unfair practice, take decision thereon and to recommend to the Government the action to be taken in that matter;
- (ii) cause in investigations to be made by the Director on issues of importance concerning women and issues concerning unfair practice and to report thereon to the Government on the corrective measures to be taken;
- (iii) submit to the Government annual report on,-
 - (a) the lacunae, inadequacies, or shortcomings in the laws in force which affect the constitutional right to equality and fair treatment of women and also on the remedial legislative measures to be taken to meet the situation;
 - (b) the monitoring of the working of laws in force concerning women with a view to identifying the areas where the enforcement of laws is not adequately effective or has not been streamlined and recommending executive or legislative measures to be taken;
 - (c) monitoring the recruitments made to State Public Services and State Public Undertakings and promotions within the said services and scrutinising the rules and regulations governing such recruitments and promotions with a view to reporting to the Government action, if any, required to guarantee equal opportunity to women in the matter of such recruitments and promotions;

(iv) (a) inspect or cause to be inspected, by the Director or any officer of the Commission authorised by the Commission in that behalf, prisons, police stations, lock-ups, sub-jails, rescue homes or other places of custody where women are kept as prisoners or otherwise, or shelters for women or other places run by the Government or any of its agencies including agencies receiving aid from the Government for the purpose of offering rescue or shelter to women, or hostels intended for women or girls run by any person and such other places wherein unfair practice to women is complained of and cause further, inquiries to be made about the treatment that women and girls are subjected to at such places and to report to the Government for taking remedial action.

(b) in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of women recommended to the concerned disciplinary authority to initiate disciplinary action;

(v) recommend to Government, the welfare measures to be adopted and implemented by the Government with a view to ameliorating the conditions of women;

(vi) formulate a comprehensive and affirmative scheme for securing equal opportunities to women and devise a programme for implementing such scheme which shall be forwarded to the Government for approval and on obtaining approval thereof with or without modifications, implement the same;

(vii) empower the Director to recommend to the appropriate authority to take prosecution proceedings in respect of offences committed against women under any statute providing for penalty for violation of the provisions of such statute.

(viii) maintain comprehensive Data Bank relating to the social, economic and political conditions of women including comparative study, updating the same from time to time making available such data for use in actions for vindication of the rights of women;

(ix) recommend to Government to initiate legislation for removal of discrimination in the case of inheritance, guardianship, adoption and divorce or for matters relating to the safeguarding of the dignity of women and the honour of motherhood;

(x) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(xi) participate and advise on the planning process of socio-economic development of women;

(xii) fund litigation involving issues affecting a large body of women;

(xiii) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(xiv) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for, reducing drudgery and occupational health hazards and for increasing their productivity;

(xv) any other matter which may be referred to it by the Government.

(2) The Government shall lay the recommendations of the commission under sub-section (1) before the Legislative Assembly during its next session and cause action to be taken thereon by the authority concerned within two months from the date of laying such recommendations.

17. Inquiry into unfair practices.- (1) The Commission shall inquire into any unfair practice,-

(a) on receiving a written complaint from any woman alleging that she has been subjected to any unfair practice or on a similar complaint from any registered women's organisation;

(b) on its own knowledge or information;

(c) on any request from the Government.

(2) Where the complaint has been made under clause (a) of sub section (1), the Commission may, before the issue of any process to the person complained against, cause a preliminary investigation to be made by the Director in such manner as it may deem fit, for the purpose of satisfying itself that the complaint requires to be inquired into.

(3) where the person against whom the complaint has been made, appears and shows cause or fails to appear on the day appointed for that purpose the Commission may proceed to inquire into the matter in the complaint and take a decision thereon and if the Commission finds that there is unfair practice, it shall recommend to the Government the action to be taken thereon or initiate prosecution.

(4) The Government shall, within two months from the date of receipt of the recommendation of the Commission under sub-section (3) take a decision thereon and intimate the same to the Commission.

NOTES

There cannot have any prosecution under sections 17 and 18 for the failure of the appearance of the person against whom complaint is filed before the Commission in pursuance of a summons issued to him to answer the allegation. But if the summons are issued to appear as a witness it is obligatory to appear and give evidence. *Sali v. Kerala Women's Commission, 1997 (2) KLT 499: 1997 (2) KLJ 315: ILR 1998 (1) Ker.415.*

18. Initiation of prosecution.- If, after investigation into any complaint under section 17, the Commission is satisfied that a person has committed any criminal offence and that he should be prosecuted in a court of law for such offence, then it may pass an order to that effect and initiate prosecution of the person concerned, if there is no necessity for prior sanction, and if prior sanction of any authority is required for such prosecution, then notwithstanding anything contained in any law, such sanction shall be granted by that authority within thirty days of the request by the Commission and if such sanction is not granted within the said period such sanction shall be deemed to have been granted by that authority.

NOTES

There cannot have any prosecution under sections 17 and 18 for the failure of the appearance of the person against whom complaint is filed before the Commission in pursuance of a summons issued to him to answer the allegation. But if the summons are issued to appear as a witness it is obligatory to appear and give evidence. *Sali v. Kerala Women's Commission, 1997 (2) KLT 499: 1997 (2) KLJ 315: ILR 1998 (1) Ker.415.*

19. Annual report to be laid before the Legislative Assembly.- The annual report submitted to the Government by the Commission in accordance with clause (iii) of sub-section (1) of section 16 shall be laid, before the Legislative Assembly, as soon as may be, after the report is received by the Government.

20. Sitting of the Commission.- (1) The Commission shall hold sittings ordinarily at Thiruvananthapuram, to enquire into any unfair practice but it may hold sittings at any other place in the State.

(2) The Commission shall with the previous approval of the Government make regulations for regulating its procedure and the disposal of its business and which regulations shall, after they are made, be published in the Gazette,

(3) The Chairperson may, with the approval of the Commission, assign any function of the Chairperson or of the Commission to any other member or members of the Commission.

21. Authentication of orders, etc. of the Commission.- All orders and decisions of, and all other proceedings or instruments, if any, issued by, the Commission shall be authenticated by the '[signature of the secretaty] or of such other officer as may be authorised by the Commission in this behalf.

22. Donations, contributions etc., to the Commission.- The Commission may, with the previous sanction of the Government and subject to such terms and conditions as may be specified in this behalf by the Government, receive money from any organisation, or person by way of donation, contribution, or by whatever name called, for the purposes of this Act.

23. Government to consult the Commission.- The Government shall consult the Commission on all major policy matters affecting women.

24. Members, officers and employees of the Commission to be public servants.- All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

25. Protection of acts done in good faith.- No suit, prosecution or other legal proceedings shall lie against any member of the Commission or any officer of the Commission for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

26. Courts not to grant injunctions.- Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), or any other law for the time being in force, no court shall grant any injunction restraining any proceeding which is being or about to be taken under the provisions of this Act.

27. Removal of difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything not inconsistent with such provisions to remove such difficulty.

1. The words, "signature of the Director" substituted by Act 27 of 2007 (w.e.f. 24-01-2007)

(2) No order under sub-section (1) shall be made after the expiration of a period of two years from the commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made before the Legislative Assembly.

28. Power to make rules.- (1) The Government may by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,-

¹[(a) the honorarium, allowances and other conditions of service of the members; the salary, allowances and other ²[conditions of service of the Secretary, the Director] and other staff of the Commission;]

(b) procedure for removal of the members of the Commission under section 11;

(c) the procedure for registration under section 14 of the Act;

(d) procedure for inquiries under section 17 of the Act;

(e) investigations by the Director;

(f) Procedure for inspection of prisons, police stations, lock ups, sub-jails, rescue homes or other places of custody where women are kept as prisoners or otherwise or shelters for women or other places run by the Government or any of its agencies including agencies receiving aid from the Government for the purpose of offering rescue or shelter to women or hostels intended for women or girls run by any person and such other places wherein unfair practice to women or girls is complained of or for holding of enquiries about the treatment that women or girls are subjected to at such places;

(g) maintaining a Data Bank;

(h) the formulation of comprehensive and affirmative scheme for securing equal opportunity to women and for the improvement and uplift of women and programme for its implementation;

1. Clause (a) substituted by the Kerala Woman's Commission (Amendment) Act, 2002 (w.e.f. 20-4-2002). The former clause ran as follows:—“(a) the salary, allowances and other conditions of service of the members, the Director and the other staff of the Commission”.

2. The words “conditions of service of the Director” substituted by Act 27 of 2007 (w.e.f. 24.1.2007)

(i) procedure for recommending prosecution in respect of offences committed against women under any statute;

(j) any other matter which has to be, or may be, prescribed.

(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 makes any modification in the rule or decides that the rules 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.

NOTIFICATION

S.R.O. No. 1411/95.— In exercise of the powers conferred by sub-section (3) of section 1 of the Kerala Women's Commission Act, 1990 (17 of 1990) the Government of Kerala hereby appoint the 1st day of December, 1995 as the date on which the said Act shall come into force.