

Fourteenth Kerala Legislative Assembly

Bill No. 182

**THE CRIMINAL LAW (KERALA AMENDMENT)
BILL, 2019**

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BILL

further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, in its application to the State of Kerala.

Preamble.—WHEREAS, it is expedient further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, in its application to the State of Kerala, for the purposes hereinafter appearing;

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

1. *Short title and commencement.*— (1) This Act may be called the Criminal Law (Kerala Amendment) Act, 2019.

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

(3) It shall come into force at once.

2. *Amendment of Act 45 of 1860.*—In the Indian Penal Code, 1860 (Central Act 45 of 1860),—

(a) after section 21, the following section shall be inserted, namely:—

“21A. *Family member of public servant.*—The words “family member of public servant” denotes spouse, son, daughter and parents of the public servant.”;

(b) after section 332, the following section shall be inserted, namely:—

“332A. Voluntarily causing hurt to a family member of public servant.— Whoever voluntarily causes hurt to any family member of public servant in retaliation to any act done or caused to be done by that public servant, individually or collectively in discharge of his official duty as public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”;

(c) after section 333, the following section shall be inserted, namely:—

“333A. Voluntarily causing grievous hurt to a family member of public servant.— Whoever voluntarily causes grievous hurt to any family member of public servant in retaliation to any act done or caused to be done by that public servant individually or collectively in the lawful discharge of his official duty as a public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”;

(d) after section 427, the following sections shall be inserted, namely:—

“427A. Mischief causing damage to the property other than public property.— Whoever commits mischief by doing any act and thereby causes loss or damage to a property of any recognized political party registered under the Representation of Peoples Act, 1951 (Central Act 43 of 1951); or any voluntary organisation registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) or under any other similar enactment shall be punished with imprisonment for a term which may extend to five years and with fine.

427B. Mischief causing damage to the property of public servant or family member of public servant.— Whoever commits mischief by doing any act and thereby causes loss or damage to the property whether movable or immovable (including installations) of a public servant or family member of a public servant in retaliation to any act done or caused to be done by that public servant individually or collectively as a class of public servants in the lawful discharge of his official duty as public servant, shall be punished with imprisonment for a term which may extend to five years and with fine.”.

3. *Amendment of Act 2 of 1974.*— In the Code of Criminal Procedure, 1973 (Central Act 2 of 1974),—

(a) after section 357C, the following section shall be inserted, namely:—

“357D. *Adjustment of fine against compensation.*—When a Court imposes a sentence of fine or a sentence of which fine forms a part of punishment under sections 332A, 333A, 427A and 427B of the Indian Penal Code, 1860 (Central Act 45 of 1860) the Court may, when passing the judgment, order whole or any part of the fine imposed to be applied for the payment of compensation to any person for the loss of property or injury caused by the offence or the court may adjust the fine, if any, deposited under clause(d) of sub-section(3) of section 437.”;

(b) after clause (c) of sub-section (3) of section 437, the following clause shall be inserted, namely:—

“(d) that such person shall deposit a sum equivalent to the loss caused to the public property or the property other than public property damaged or destroyed in connection with the commission of crime as the Court may deem fit.”;

(c) in the FIRST SCHEDULE, under the heading “1. OFFENCES UNDER THE INDIAN PENAL CODE”,—

(I) under the sub-heading “CHAPTER XVI-OFFENCES AFFECTING THE HUMAN BODY”,—

(a) after the entries relating to section 332 in column 1, and the entries against it in columns 2 to 6, the following entries shall, respectively, be inserted, namely:—

“332 A	Voluntarily causes hurt to any family member of public servant in retaliation to any act done or	Imprisonment for three years or with fine or with both	Cognizable	Non-bailable	Magistrate of the First Class”;
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caused to be
done by that
public servant,
individually or
collectively in
the lawful
discharge of his
official duty as
public servant

(b) after the entries relating to section 333 in column 1, and the entries against it in columns 2 to 6, the following entries shall, respectively, be inserted, namely:—

"333 A	Voluntarily causes grievous hurt to any family member of public servant in retaliation to any act done or caused to be done by that public servant individually or collectively in the lawful discharge of his official duty as public servant	Imprisonment for ten years and fine	Cognizable	Non-bailable	Court of Sessions".
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(ii) under the sub-heading "CHAPTER XVII-OFFENCES AGAINST PROPERTY", after the entries relating to section 427 in column 1, and the entries against it in columns 2 to 6, the following entries shall, respectively, be inserted, namely:—

"427A	Mischief and thereby causes loss or damage to property other than public property	Imprisonment for five years and with fine.	Cognizable	Non-bailable	Magistrate of the First Class
427B	Mischief and thereby causes loss or damage to the property of public servant or family member of public servant	Imprisonment for five years and with fine.	Cognizable	Non-bailable	Magistrate of the First Class."

STATEMENT OF OBJECTS AND REASONS

In view of the growing menace of attack on public servants and their family members, destruction of their property and it is felt that the provisions of the Indian Penal Code, 1860 (Central Act 45 of 1860) and the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) have to be amended suitably to incorporate provisions for curbing such acts of vandalism and for making such acts punishable.

The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation, would not involve any expenditure out of the Consolidated Fund of the State.

PINARAYI VIJAYAN

EXTRACT OF THE RELEVANT PORTIONS FROM THE
INDIAN PENAL CODE, 1860
(CENTRAL ACT 45 OF 1860)

21. "*Public Servant*".—The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:—

Second.—Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.—Every officer of a Court of Justice including a liquidator, receiver or commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Explanation 1:—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2:—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3:—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

332. *Voluntarily causing hurt to deter public servant from his duty.*—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. *Voluntarily causing grievous hurt to deter public servant from his duty.*—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

427. *Mischief causing damage to the amount of fifty rupees.*—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

EXTRACT OF THE RELEVANT PORTIONS FROM THE CODE
OF CRIMINAL PROCEDURE, 1973

(CENTRAL ACT 2 OF 1974)

357A. *Victim compensation scheme.*—(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not raised or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

357B. *Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.*—The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code (45 of 1860).

357C. *Treatment of Victims.*—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.

437. *When bail may be taken in case of non-bailable offence.*—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

(2)

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more of an offence under Chapter VI, Chapter XVI, Chapter XVII of the Indian Penal Code (45 of 1860), or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And may also impose, in the interests of justice, such other conditions as it considers necessary.

THE FIRST SCHEDULE
CLASSIFICATION OF OFFENCES

1- OFFENCES UNDER THE INDIAN PENAL CODE

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
1	2	3	4	5	6
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CHAPTER XVI - OFFENCES AFFECTING THE HUMAN BODY

332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the First Class.
333	Voluntarily causing grievous hurt to deter public servant from his duty	Imprisonment for 10 years, and fine	Cognizable	Non-Bailable	Court of Session
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CHAPTER XVII - OFFENCES AGAINST PROPERTY

427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Imprisonment for 2 years, or fine, or both.	Non-Cognizable	Bailable	Any Magistrate
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