

Fourteenth Kerala Legislative Assembly

Bill No. 212

**THE KERALA ADVOCATES' WELFARE FUND
(AMENDMENT) BILL, 2019**

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further to amend the Kerala Advocates' Welfare Fund Act, 1980.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Advocates' Welfare Fund Act, 1980 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 Kerala Advocates' Welfare Fund (Amendment) Act, 2019.

(2) It shall come into force at once.

2. *Amendment of section 4.*—In the Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980) (hereinafter referred to as the principal Act), in sub-section (3) of section 4,—

(i) for clause (c), the following clause shall be substituted, namely:—

“(c) an officer of the Law Department not below the rank of a Joint Secretary nominated by the Government as member;”;

(ii) after clause (d) the following proviso shall be inserted, namely:—

“Provided that in the absence of an elected State Bar Council in office, the State Government shall nominate three advocates, having not less than fifteen years of practice at bar and such members shall hold office for a term of four years or till the members nominated by the elected State Bar Council assume charge, whichever is earlier.”.

3. *Amendment of section 10.*—In section 10 of the principal Act,—

(i) sub-sections (4) and (5) shall be omitted;

(ii) for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) The Trustee Committee shall comply with the directions, if any, issued by the Government based on the audit report.

(7) The Trustee Committee shall prepare its annual report giving a full account of its activities during the preceding financial year and the activities which are likely to be undertaken by it in the succeeding financial year and submit copies thereof to the Government on or before the 30th day of April of the succeeding year and on receipt of the same, the Government shall immediately cause such report to be laid on the table of the Legislative Assembly.”.

4. *Insertion of new section 10A.*—After section 10 of the principal Act, the following section shall be inserted, namely:—

“10A. *Audit of accounts of the fund by the State Audit Department.*—The accounts of the Fund shall be audited annually by the Kerala State Audit Department and the audit report shall be submitted to the Trustee Committee or the Government as provided in the Kerala Local Fund Audit Act, 1994 (Act 14 of 1994) and the Government shall after the receipt of the same cause it to be laid before the Legislative Assembly.”.

5. *Amendment of section 22.*—In section 22 of the principal Act,—

(i) for sub-sections (1) to (3), the following sub-sections shall respectively be substituted, namely:—

“(1) The Government, at the request of the Bar Council, shall cause to print welfare fund stamps of the value of fifty rupees and twenty five rupees with Bar Council Emblem and its value inscribed thereon and supply the same through the Trustee Committee to the Bar Council for distribution.

(2) The stamps shall be of such size and colour as may be determined by the Government from time to time.

(3) The custody of the stamps supplied by the Government shall be with the Trustee Committee and the Trustee Committee shall supply the same to the Bar Council on demand, for distribution.”;

(ii) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The Bar Council and the Bar Associations shall keep proper accounts of the stamp in such form and in such manner as may be prescribed and the accounts relating to the stamps shall be subject to periodical inspection by an officer not below the rank of a Joint Secretary to Government, in the Finance Department.”;

(iii) after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) All the expenses for printing welfare fund stamps shall be borne from the Fund.”

6. *Amendment of section 27.*—For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. *Power to make rules.*—(1) The Government may, by notification in the official Gazette, make rules for the purpose of carrying out all or any of the provisions of this Act.

(2) 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 rule should not be made, the rules 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.”.

STATEMENT OF OBJECTS AND REASONS

1. In order to increase the representation of Government in the Welfare Fund, the Government have decided to nominate an officer of the Law Department not below the rank of a Joint Secretary to the Kerala Advocates' Welfare Fund Trustee Committee by amending clause (c) of sub-section (3) of section 4 of the Kerala Advocates' Welfare Fund Act, 1980 (Act 21 of 1980).

2. As per section 4 of the said Act the Government may, by notification in the Gazette establish a Committee to be called the Kerala Advocates' Welfare Fund Trustee Committee. Sub-section (3) of section 4 of the said Act provides for the structure of the Committee. As per clause (d) of sub-section (3) of section 4 of the said Act, the Committee shall consist of three members of the Bar Council nominated by it. But there is no provision in the Act regarding nomination of such members in the Committee in the absence of an elected State Bar Council. In the above circumstance the Government have decided to amend clause (d) of sub-section (3) of section 4 of the said Act by incorporating provisions for nominating three advocates, who have not less than fifteen years of practice at bar and they shall hold office for a term of four years or till the members nominated by the elected State Bar Council assume charge, whichever is earlier.

3. The Committee on Papers Laid on the Table in its 10th Report has recommended to take steps for laying before the Legislative Assembly the annual audit report of charitable/self governing/co-operative institutions which are getting one time grant of more than rupees 50 lakhs and recurring grants of more than rupees 25 lakhs from the Government. In view of the above recommendation of the Committee on Papers Laid on the Table, the Government have decided to amend section 10 of the said Act since the Kerala Advocates' Welfare Fund Trustee Committee is an institution established as per the provisions of the said Act.

4. By inserting a new section 10A, the Government have decided to audit the accounts of the Fund by the State Audit Department.

5. As per section 22 of the Act, the printing and distribution of welfare fund stamps is entrusted to the Bar Council. For getting more transparency and to bring under the control of the Government and to avoid any possible falsification of accounts, the Government have decided to supervise the printing and the distribution of stamps. The Government have also decided to amend section 27 of the said Act, to take over the power of rule making from the Bar Council.

6. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

The proviso to clause (d) of sub-section (3) of section 4 of the Kerala Advocates' Welfare Fund Act, 1980, proposed to be inserted by clause 2 of the Bill seeks to empower the Government to nominate three Advocates having not less than fifteen years of practice at bar, to the Trustee Committee, in the absence of elected State Bar Council.

2. Sub-section (2) of section 22, proposed to be substituted in the principal Act by clause 5 of the Bill seeks to empower the Government to determine the size and colour of the stamps from time to time.

3. Sub-section (5) of section 22, proposed to be substituted in the principal Act by clause 5 of the Bill seeks to empower the Government to prescribe the form and the manner of keeping proper accounts of the stamp by the Bar Council and the Bar Associations.

4. Sub-section (1) of section 27, proposed to be substituted in the principal Act by clause 6 of the Bill seeks to empower the Government to make rules for the purpose of carrying out all or any of the provisions of the Act by notification in the official Gazette.

5. The matters in respect of which rules may be made or notifications may be issued are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

A. K. BALAN.

EXTRACT FROM THE RELEVANT PORTIONS OF THE
KERALA ADVOCATES' WELFARE FUND ACT, 1980
(ACT 21 OF 1980)

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4. *Establishment of Trustee Committee.*—(1) The Government may, by notification in the Gazette, establish, with effect from such date as may be specified therein, a Committee to be called the Kerala Advocates' Welfare Fund Trustee Committee.

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(3) The Trustee Committee shall consist of,—

(a) the Advocate General of Kerala, who shall be the Chairman of the Trustee Committee, *ex-officio*;

(b) the Law Secretary to Government, *ex-officio*;

(c) a member nominated by the Government;

(d) three members of the Bar Council, nominated by it;

(e) the treasurer of the Bar Council, who shall be the treasurer of the Trustee Committee, *ex-officio*;

(f) the Secretary of the Bar Council, who shall be the Secretary of the Trustee Committee, *ex-officio*;

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10. *Funds borrowing and investment.*—(1):

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(4) The accounts of the Trustee Committee shall be audited annually by a Chartered Accountant appointed by the Bar Council.

(5) The accounts of the Trustee Committee, as certified by the auditor, together with the audit report thereon, shall be forwarded to the Bar Council by the Trustee Committee and the Bar Council may issue such directions as it deems fit to the Trustee Committee in respect thereof.

(6) The Trustee Committee shall comply with the directions issued by the Bar Council under sub-section (5).

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22. *Printing and distribution of stamps by Bar Council.*—(1) The Bar Council shall cause to be printed and distributed welfare fund stamps of the value of fifteen rupees and twenty five rupees with the Bar Council Emblem and its value inscribed thereon,

(2) The stamps shall be of the size 1" X 2" and be sold only to members of the Fund.

(3) The custody of the stamps shall be with the Bar Council.

(4) The Bar Council shall control the distribution and sale of the stamps through Bar Associations or through the outlets set up by the Bar Council for the purpose.

(5) The Bar Council and the Bar Associations shall keep proper accounts of the stamps in such form and in such manner as may be prescribed.

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(7) Every stamp affixed on vakalaths fixed before any court, Tribunal or other authority shall be cancelled in the manner provided in the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960).

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27. *Power to make rules.*—The Bar Council may, with the previous approval of the Government, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.