

**SUPPLEMENT TO THE  
ACTS AND PROCLAMATIONS  
OF  
COCHIN**

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ACTS AND PROCLAMATIONS  
OF COCHIN**



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## PREFACE

The Acts and Proclamations of Cochin were consolidated and published in 1113 in five volumes. The enactments issued in subsequent years have also been published in separate volumes for each year. Many of the enactments contained in the original and annual publications have since been amended. Steps are therefore being taken to consolidate and publish the enactments in force afresh. This would, however, take some time. To meet the demand for copies of enactments which have been amended from time to time, it is proposed to issue a supplement. This publication which contains almost all the enactments with up-to-date amendments seeks to meet this immediate demand. However a few enactments such as the Criminal Procedure Code, the Cochin Municipal Act, etc., which have also been amended have been left out of this volume. This is on the ground that these enactments are too voluminous and the amendments made are comparatively slight. In the case of such enactments which have been left out, the pages in the original publications affected by the amendments are being re-printed incorporating the amendments and made available to the public.

Ernakulam, }  
26th August 1948. }

N. S. RADHAKRISHNA SARMA  
*Secretary, Law Department*

**Supplement to  
The Acts and Proclamations of Cochin**

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# THE COCHIN POLICE ACT

(I OF 1058)

(As amended up to 1st Kumbham 1122)

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## 1 THE COCHIN POLICE 2 [ACT]

(I OF 1058)

## HISTORY OF LEGISLATION

Year	Number	Short title	Repeal and amendments
1058	I	The Cochin Police Act	Partly repealed by Acts III of 1075 and LIV of 1112 and amended by Acts XII 1097, VI of 1098, I of 1109, Proclamation V of 1112, Act XVI of 1115, Proclamation XIX of 1117 and Act IV of 1122

<sup>1</sup> Sections 2 and 3 of the Nuisances Act, IV of 1098, is to be read with and form part of this Act by virtue of Section 10 of the Nuisances Act.

<sup>2</sup> Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.

FOR THE BETTER REGULATION OF THE  
POLICE IN COCHIN

*Passed by His Highness the <sup>1</sup>[Maharaja] on the 16th day of Kumbhom 1058 M. E., corresponding with the 26th day of February 1883 A. D.*

Whereas it is expedient to make the Police Force <sup>Preamble.</sup> throughout the State of Cochin a more efficient instrument at the disposal of the Magistrate for the prevention and detection of crime, and to re-organize it: It is enacted as follows.—

1. The following words and expressions in this <sup>Interpreta-</sup> Act shall have the meanings hereby assigned to them, <sup>tion.</sup> unless there be something in the subject or context repugnant to such construction—(that is to say):—

The word “Magistrate” shall include all persons <sup>“Magistrate”.</sup> exercising all or any of the powers of a Magistrate within their respective jurisdictions;

The word “Police” shall include all persons, by <sup>“Police”.</sup> whatever name known, who exercise any police functions throughout the Cochin territory;

The expression “General Police District” shall <sup>“General Po-  
lice District.”</sup> embrace all parts of Cochin to which the operation of this Act shall be extended;

The word “Property” shall include any chattel, <sup>“Property”.</sup> money or valuable security;

Words importing the singular number shall include <sup>Number.</sup> the plural number, and words importing the plural number shall include the singular number;

Words importing the masculine gender shall include <sup>Gender.</sup> females;

The word “person” shall include a company or <sup>“Person”</sup> corporation;

The word “month” shall mean the Malayalam <sup>“Month”.</sup> month;

The word “cattle” shall, besides horned cattle, include <sup>“Cattle”.</sup> elephants, camels, horses, asses, mules, sheep, goats and swine.

<sup>1</sup> Substituted for ‘Raja’ by Section 2 of Act I of 1109.



Superintendence vested in Government

2. The superintendence of Police throughout the General Police District shall vest in and be exercised by His Highness' Government, and, except as authorised by them under the provisions of this Act, no person, Officer or Court shall be empowered to appoint, supersede or control any Police functionary, any Act or usage to the contrary notwithstanding.

Commissioner of Police, etc.

3. The administration of the Police throughout the General Police District shall be vested in an officer to be styled <sup>1</sup>[Commissioner] of Police for Cochin and in such subordinates as to His Highness' Government shall seem fit, who shall from time to time be appointed by His Highness' Government, and may be removed by the same authority, and who shall receive such salary as His Highness' Government shall allow.

Powers of Police, etc.

4. All powers not inconsistent with the provisions of this Act which up to the date of its coming into operation belong by law to the existing Police authorities shall be vested in the Police authorities appointed under this Act. Provided always that no Police functionary so appointed shall possess or exercise any judicial or revenue authority.

Constitution of Force.

5. The entire Police establishment of the State shall for the purposes of this Act be deemed to be one Police Force and shall be formally enrolled, and shall consist of such number of officers and men and shall be otherwise constituted in such manner, as shall be from time to time ordered by His Highness' Government.

Commissioner to control Force and make Rules.

6. The <sup>1</sup>[Commissioner] may from time to time, subject to the approval of His Highness' Government, frame such orders and rules as he shall deem expedient, relative to the general government and distribution of the Force, the places of residence, the classification, rank and particular service of the members thereof; their inspection; the description of arms, accoutrements and other necessaries to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and rules relative to the said Police Force as the said <sup>1</sup>[Commissioner] shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such force efficient in the discharge of all its duties.

<sup>1</sup> Substituted for 'Superintendent' by Section 2 of Act XII of 1097.

7. The appointment of all Police officers shall, under such rules as His Highness' Government shall from time to time sanction, rest with the <sup>1</sup>[Commissioner] of Police who may under such rules as aforesaid at any time dismiss, suspend or fine to any amount not exceeding one month's pay any Police officer whom he shall think remiss or negligent in the discharge of his duty or otherwise unfit for the same.

Appointment and dismissal of Police Officers.

8. Every person so appointed shall receive on his enrolment a certificate (A) under the seal of the <sup>1</sup>[Commissioner], by virtue of which he shall be vested with the powers, functions and privileges of a Police officer. Such certificates shall cease to have effect whenever the person named in its suspended or dismissed or otherwise removed from employment in the Police Force, and shall together with all clothing, accoutrements, appointments and other necessaries which may have been supplied to him for the execution of his duty be immediately surrendered to his superior officer or other person empowered to receive it.

Police Officers to receive certificates of office.

9. It shall be lawful for the <sup>1</sup>[Commissioner] of Police if he shall think fit, on the application of any person showing the necessity thereof, to depute any additional number of Police officers to keep the peace at any place within the General Police District, at the charge of the person making the application, but subject to the orders of the said <sup>1</sup>[Commissioner] and for such time as he shall think fit; provided always that it shall be lawful for the person on whose application such deputation shall have been made, on giving 30 days' notice in writing to the <sup>1</sup>[Commissioner] to require that officers so appointed shall be discontinued; such person shall be relieved from the charge of such additional force from the expiration of such notice.

Additional Police Officers employed at cost of individuals.

10. Whenever any railway, canal or other public work or any mining operation other than those undertaken directly by His Highness' Government shall be carried on or be in operation in any part of the country, and it shall appear to the <sup>1</sup>[Commissioner] that the appointment of an Additional Police Force in such neighbourhood is rendered necessary by the behaviour or the reasonable apprehension

Additional Force in neighbourhood of Railway and other works.

<sup>1</sup> Substituted for 'Superintendent' by Section 2 of Act XII of 1097.

of the behaviour of the persons employed upon such work, it shall be lawful for the [Commissioner], with consent of the Government, to direct the employment of such additional Force, and to maintain the same so long as such necessity shall continue; and to make orders from time to time upon the Treasurer or other officer having the control or custody of the funds of any company carrying on such works for the payment of the extra Force so rendered necessary as aforesaid.

11. (*Quartering of additional police in disturbed area*). Repealed by section 2 of Act III of 1075.

Payment for support of additional Police Force.

12. All monies paid in respect of such additional Force as is mentioned in the three last preceding Sections, shall be paid into a Fund to be called "The General Police Fund" and shall be applied for the maintenance of the Police Force under such orders as the Government may pass; and all sums of money payable under those Sections shall be recoverable by suit in any competent Court, or by distress and sale of the goods of the defaulter under the warrant of a Magistrate.

Special Police Officers.

13. When it shall appear that any tumult, riot or outrage has taken place, or may be reasonably apprehended in any place and that the ordinary officers appointed for preserving the peace are not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in such place, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the Public Servants or other residents of the neighbourhood, as such Police Officer may require, to act as Special Police Officers for such time and in such manner as he shall deem necessary, and it shall be the duty of such Magistrate, should he consider such application to be reasonable, at once to comply therewith.

Powers of Special Police Officers.

14. Every Special Police Officer so appointed shall have the same powers, privileges and protection, and be liable to all such duties and penalties and be subordinate to the same authorities as the ordinary Officers of Police.

<sup>1</sup> Substituted for 'Superintendent' by Section 2 of Act XII of 1097.

15. If any person being appointed a Special Police Officer as aforesaid, shall without sufficient excuse, neglect or refuse to serve as such or to obey such lawful order or direction as may be given him for the performance of his duties, he shall be liable upon conviction before a Magistrate to a fine not exceeding fifty rupees for such neglect, refusal or disobedience.

Punishment  
for refusal to  
serve

16. <sup>1</sup>[No Police Officer shall be at liberty to resign his office, or withdraw himself from the duties thereof unless expressly allowed to do so in writing by the Commissioner. Nor shall any such Police Officer engage in any employment or office whatever other than the duties under this Act unless expressly permitted to do so in writing under the seal of the <sup>2</sup>(Commissioner)].

17. From and after the passing of this Act every person not being, or having ceased to be, a duly enrolled Police Officer who shall unlawfully assume any function or power belonging to the Police and who shall not forthwith deliver up his certificate and all the clothing, accoutrements and appointments, and other necessaries which may have been supplied to him for the execution of his duty, or who shall have in his possession any distinctive article of the dress or appointment directed to be worn exclusively by the Police Force, without being able to account satisfactorily for the possession thereof; or who shall put on the dress of any Police Officer or any dress designed to represent it or to be taken for it; or who shall otherwise personate the character or act the part of any Police Officer for any purpose whatever, shall in addition to any other punishment to which he may be liable for offence committed under the assumed character, be liable on conviction before a Magistrate to a penalty not exceed-

Unlaw  
assumption of  
Police  
functions,  
personation of  
Police &c.

<sup>1</sup>This section has been substituted by section 2 of Proclamation XIX of 1117 and will remain in force only so long as the said Proclamation is in force. The original is as follows. "No Police Officer shall be at liberty to resign his office or withdraw himself from the duties thereof unless expressly allowed to do so in writing by the <sup>2</sup>[Commissioner] or unless he shall have given to his superior officer two months' notice in writing of his intention to do so. Nor shall any such Police Officer engage in any employment or office whatever other than his duties under this Act unless expressly permitted to do so in writing under the seal of the [Commissioner]"

<sup>2</sup> Substituted for 'Superintendent' by Section 2 of Act XII of 1097.

ing two hundred Rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months or both.

Duties of  
Police Officers.

18. Every Police Officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a Police Officer in every part of the General Police District. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

Penalties for  
neglect of  
duty &c.

19. Every Police Officer who shall be guilty of any violation of duty or wilful breach of any lawful orders and regulation not punishable under Section 7 of this Act or who shall cease to perform the duties of his office without leave, <sup>1</sup>[.....] or engage without authority in any employment other than his Police duty, or who shall maliciously and without probable cause prefer any false, vexatious, or frivolous charge or information against any individual, or who shall knowingly and wilfully and with evil intent exceed his powers; or shall be guilty of any wilful and culpable neglect of duty in not bringing any person who shall be in his custody without a warrant before a Magistrate within twenty-four hours or without unnecessary delay; or who shall offer any unwarrantable personal violence to any person in his custody shall be liable on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour not exceeding three months or both.

Penalty for  
receiving  
unauthorised  
fees &c.

20. Any Police Officer who shall on any pretext, or under any circumstances, directly or indirectly collect or receive any fee, gratuity, diet money, allowance or recompense, other than he may be duly authorised by the <sup>2</sup>[Commissioner] or other officer acting under his order

<sup>1</sup>The words "or without having given two months' notice as provided by this enactment" have for the period during which Proclamation XIX of 1117 is in force been deleted by Section 3 of the said Proclamation.

<sup>2</sup>Substituted for "Superintendent" by Section 2 of Act XII of 1097.

to collect or receive, shall on conviction before a Magistrate be liable to a penalty not exceeding six months' pay, or to imprisonment with or without hard labour not exceeding six months.

21. Any Police Officer who shall directly or indirectly extort, exact, seek or obtain any bribe, perquisite or unauthorised reward or consideration by any illegal threat or pretence for doing or omitting or delaying to do any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate; or who shall attempt to commit any of the offences abovesaid; or shall be guilty or cowardice, shall be liable upon conviction before a Magistrate, to a fine not exceeding twelve months' pay or to imprisonment with or without hard labour, not exceeding twelve months or both. Provided always that nothing in the two last preceding Sections shall be deemed to preclude the Magistrate from committing for trial any cases of this nature too serious for his cognizance.

Penalty for extortion.

Committal by Magistrate of serious cases.

22. If any person shall assault or resist any Police Officer in the execution of his duty, or shall aid or incite any other person so to do, or shall maliciously and without probable cause prefer any false or frivolous charge against any Police Officer, such person shall on conviction of such offence before any Magistrate be liable to a fine not exceeding fifty rupees, or to imprisonment with or without hard labour not exceeding three months or both.

Penalty for offences against Police Officers.

23. (1) Sub-section (2) of this section and section 23-A shall apply only to such areas as may be notified by Government in the Cochin Government Gazette from time to time.

Penalty for being found armed between sunset and sunrise intending to commit an offence, etc.

(2) Whoever is found between sunset and sunrise.—

(a) armed with any dangerous instrument with intent to commit an offence, or

(b) having his face covered or otherwise disguised with intent to commit an offence, or

<sup>1</sup> Section 23 of Act I of 1058 was deleted by Section 2 of Act LIV of 1112. Present Sections 23, 23A, 23B, 23C and 23D have been inserted by Section 2 of Act IV of 1122.

(c) in any dwelling-house or other building, or on board any vessel or boat, without being able satisfactorily to account for his presence there, or

(d) lying or loitering in any bazaar, street, road, yard, thoroughfare or other place, being a reputed thief and without being able to give a satisfactory account of himself, or

(e) having in his possession, without lawful excuse, any implement of house-breaking, may be arrested by any Police Officer without a warrant, and shall be liable on conviction to imprisonment for any term not exceeding three months.

Penalty for possession of property believed to have been stolen.

23-A. Whoever is found in possession or is proved to have been in possession of anything which there is reason to believe to be stolen property or property fraudulently obtained and for the possession of which he fails satisfactorily to account, shall be liable on conviction to fine not exceeding one hundred rupees or to imprisonment not exceeding three months.

Powers of Police on the occasion of fire.

23-B. (1) On the occasion of a fire, the Commissioner of Police, or the officer in charge of the Cochin State Fire Brigade or of any other Fire Brigade notified by Government in the Cochin Government Gazette or any member of the Police Force above the rank of a constable may—

(a) remove or order the removal of any persons who by their presence interfere with or impede the operations for extinguishing the fire or for saving life or property, and may close any street or passage in or near which any fire is burning;

(b) by himself or those acting under his orders enter, break into or through, or pull down, or use for the passage of hoses or other appliances any premises for the purpose of extinguishing the fire, doing as little damage as possible;

(c) cause the mains and pipes of any area to be shut off so as to give greater pressure of water in the place where the fire has occurred;

(d) call on the persons in charge of any fire-engine, water lorry or other appliance useful for extinguishing fire to render such assistance as may be possible;

(e) by himself or those acting under his orders enter any private land and take from any tank, well or other reservoir therein water for the purpose of extinguishing the fire; and

(f) generally, take such measures as may appear necessary for the preservation of life and property.

(2) Any damage done on the occasion of fires by members of a Fire Brigade or by Police Officers or their assistants in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance against fire. But nothing in this section shall exempt any officer of Police or any member of a Fire Brigade from liability to damages on account of any acts done by him without reasonable cause.

23-C. The expenses incurred by the Police or Fire Brigade in the execution of their duty on the occasion of any fire within the Municipal limits of Ernakulam, Mattancheri and Trichur may be recovered by Government from the respective Municipal Councils in whole or in part as Government may deem fit.

Cost of establishment, etc. for extinguishing fire to be defrayed by Government and Municipalities.

23-D. Government may by rules—

(a) provide for the constitution and maintenance, training, discipline and control of the Cochin State Fire Brigade; and

Power of Government to make rules for the constitution, maintenance, etc. of a Fire-Brigade.

(b) specify the officer or person who should be in command when more than one service is operating to extinguish the fire.

24. The [Commissioner] and superior officers of Police may, as occasion requires, direct the conduct of all assemblies and processions in the public roads, streets or thoroughfares; prescribe the routes by which, and the times at which, such processions may pass; keep order in the public roads, streets, thoroughfares, ghauts and landing places and all other places of public resort, and prevent obstructions on the occasion of such assemblies and procession and in the neighbourhood of places of worship during the time of public worship, and in any case when the roads, streets, thoroughfares, ghauts or landing places may be thronged or may be liable to be obstructed; they may also regulate the use of music in the streets, on the occasion of festivals and ceremonies; and may direct all crowds of twelve or more persons to

Regulation of Public procession &c., and of carriages and persons at public places of resort.

Regulation of use of music in streets.

<sup>1</sup> Substituted for "Superintendent" by Section 2 of XII of 1097.



disperse, when they have reason to apprehend any breach of the peace; and every person opposing or not obeying the orders so issued as aforesaid, or violating the conditions of such license shall be liable to a fine not exceeding one hundred rupees. Provided always that nothing in this section contained shall be deemed to interfere with the general control of the Magistrate over such matters.

Power to make rules for regulation of traffic and for preservation of order in public places, etc.

<sup>1</sup>[24 A. (a) In any local area in which he thinks fit, the District Magistrate, with the previous sanction of Government and subject to such orders as may have been made by a Municipal or other local authority empowered in this respect, may from time to time make rules not inconsistent with this Act,—

(1) for licensing and controlling persons offering themselves for employment at quays, wharves and landing places and outside railway stations, for the carriage of passengers' baggage, and fixing and providing for the enforcement of a scale of charges for the labour of such persons so employed;

<sup>2</sup>[(2) for regulating the use of any public place which expression shall in this and the next succeeding clause mean, a road, street, way or other place, whether a thoroughfare or not, to which public are granted access or over which they have a right to pass and includes a public street as defined in the Cochin Municipal Act, XVIII of 1113;

(2a) for regulating traffic in any public place reserving it for particular kinds of traffic.]

(3) regulating the conditions under which vehicles may remain standing in streets and public places and the use of streets as halting places for vehicles or cattle;

(4) prescribing the number and position of lights to be used on vehicles in streets and public places, and regulating and controlling the manner and mode of conveying timber, scaffold poles, ladders, iron girders, beams or bars, boilers or other unwieldy articles through the streets, and the route and hours for such conveyance;

<sup>1</sup>Inserted by Section 2 of Act VI of 1098.

<sup>2</sup>Substituted by Section 3 of Act IV of 1122.

(5) prescribing the roads along which, the hours during which, and, in times of epidemic, the manner in which, corpses may, or may not, be carried;

(6) regulating the hours during which and the manner in which any place for the disposal of the dead or any place of public resort may be used so as to secure the equal and appropriate application of its advantages and accommodation, and to maintain orderly conduct among those who resort thereto;

(7) in cases of existing or apprehended epidemic or infectious disease of men or animals, with respect to cleanliness and disinfection of premises by the occupier thereof and residents therein, and as to the segregation and management of the persons or animals diseased or supposed to be diseased, as may have been directed or approved by Government with a view to prevent the disease or to check the spreading thereof;

(8) for licensing, controlling, or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or injury to the residents or passengers in the vicinity, prohibiting—

(i) the keeping of places of public amusement or entertainment;

(ii) the playing of music in streets and public places;

(iii) the illumination of streets and public places and the exteriors of buildings abutting thereon by persons other than Government or Municipal Officers duly authorised in that behalf;

(iv) the carrying in the streets and public places of gunpowder or any other explosive substance; and

(v) the blasting of rocks;

(9) regulating the means of entrance and exit at places of public amusement, entertainment and assembly and providing for the maintenance of public safety and the prevention of disturbance therein; and

(10) prescribing the procedure in accordance with which any license or permission sought to be obtained or required under this Act should be applied for and fixing fees to be charged for any such license or permission:

Provided, firstly, that nothing in this section and no license granted under any rule made thereunder shall authorise any person to import, export, transport, manufacture, sell or possess any liquor or intoxicating drug, in respect of which a license, permit or pass is required under the Abkari Act I of 1077 or under any other law for the time being in force relating to the abkari or opium revenue or shall affect the liability of any person under any such law or shall in any way affect the provisions of the Arms Act II of 1084 or of any rules made thereunder or the liability of any person thereunder :

Provided, secondly, that no rule under clause (8) shall contain any regulation requiring a license for any place of public entertainment unless spirituous liquor, toddy or any intoxicating drug, as defined in the Abkari Act I of 1077 or opium, as defined in the Opium Act VIII of 1076, is sold in such place or unless such place is kept open for customers between the hours of nine at night and five in the morning :

Provided, thirdly, that every rule made under clause (6) with respect to the use of a place for the disposal of the dead shall be framed with due regard to established religious and social usages and the necessities of prompt disposal of the dead in certain cases.

(b) Any rules made under this section may with the like sanction be altered or rescinded after previous publication of the alteration or rescission.

(c) Every rule and alteration of a rule made under this section and every rescission of any such rule shall be published in the Gochin Government Gazette.]

Penalty for  
violation of  
rule.

<sup>1</sup>[24-B. Any person who acts in contravention of any rule made under section 24-A shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees or to imprisonment not exceeding eight days and it shall be lawful for any Police Officer to take into custody without warrant any person who within view commits breach of any such rule.]

Jurisdiction.

25. In all cases of convictions under this Act, the Magistrate trying the case shall be restrained within the limits of his ordinary jurisdiction as the amount of fine or imprisonment he may inflict.

<sup>1</sup> Added by Section II of Act XVI of 1115.

26. Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act; or to prevent any person from being liable under any other law or Act to any other or higher penalty or punishment than is provided for such offence by this Act. Provided always that no person shall be punished twice for the same offence.

Power to prosecute not affected.

27. All fines and penalties imposed and all sums of money recoverable under this Act may in case of non-payment thereof be levied by distress and sale of the moveable property of the offender by warrant of the Magistrate who made the order.

Levy of fines.

Such warrant may be executed within the jurisdiction of the Magistrate who issued it; and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Magistrate, when endorsed by the Magistrate, within whose jurisdiction such property is situated.

28. All actions and prosecutions against any person which may be lawfully brought for anything done, or intended to be done, under the provisions of this Act or under the general Police powers hereby given, shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant or to the <sup>1</sup>[Commissioner] or other superior officer of the district in which the act was committed one month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action is brought or if a sufficient sum of money shall have been paid into Court after such action is brought by or on behalf of the defendant and though a decree shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action: provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for same act.

Limitation of action.

Notice.

Costs.

Proviso.

<sup>1</sup> Substituted for 'Superintendent' by section 2 of Act XII of 1097.

Plea that act  
was done  
under a  
warrant-

29. When any action, prosecution or proceeding shall be brought against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate; and such plea shall be proved by the production of the warrant directing the act and purporting to be signed by a Magistrate. And the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. And no proof of the signature of such official shall be necessary unless the Court shall see reason to doubt its being genuine: provided always that any remedy which the party may have against the authority issuing such warrant shall remain entire.

Extent.

30. This Act shall take effect in any and every such district of Cochin as His Highness' Government shall appoint by notification published in the Sirkar Gazette.

#### FORM A

A. B. has been appointed a member of the Police Force under Act I of 1058 and is vested with the powers, functions and privileges of a Police Officer.

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# THE CATTLE TRESPASS ACT

(III OF 1071)

(As amended up to 1st Kumbham 1122)

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## THE CATTLE TRESPASS [ACT]

(III OF 1071)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments.
1071	III	The Cattle Trespass Act.	Amended by Acts 1 of 1101, VI of 1107 and I of 1109; Proclamation V of 1112 and Act IX of 1119.

*Passed by His Highness the <sup>2</sup> [Maharaja] of Cochin on the 15th day of Karkadagam 1071, corresponding with the 29th day of July 1896.*

Whereas loss and injury are suffered by cultivators and occupiers of land from damage done to crops and other produce of land by the trespass of cattle, and whereas damage is done to the sides and slopes of public roads and embankments by cattle trespassing thereon; and whereas it is expedient to authorize the seizure and detention of cattle doing damage as aforesaid, and also to make provision for the disposal of cattle found straying in any public place; It is enacted as follows:—

Preamble.

## CHAPTER I

*Preliminary*

1. This Act may be called "The Cattle Trespass Act". Short title.

<sup>3</sup>This Act shall take effect in such parts of the Cochin State and from such date as the Government may from time to time direct by notification published in the Gazette. Local extent, Commencement of Act.

<sup>1</sup> Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for 'Raja' by Section 2 of Act I of 1109.

<sup>3</sup> Extended by notification No. 9 dated 6-2-1110 to those parts of the State to which it has not already been extended.



Repeal of  
Act &c.

2. Section 26 of Act III of 1010 and all rules and orders issued thereunder shall not be applicable to those parts of Cochin where this Act is brought into force.

3. In this Act—

Interpreta-  
tion-clause.

“Cattle” includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

<sup>1</sup>[Provided the Government may, by notification published in the Cochin Government Gazette, extend the provisions of this Act to ducks and drakes and may authorise the persons mentioned in section 10 to seize or cause to be seized such ducks and drakes as commit the trespass specified in section 10 and impound such ducks and drakes. The Government may also by notification published in the Cochin Government Gazette, frame rules for the impounding of ducks and drakes and the rules when so published shall be deemed to form part of this Act.]

<sup>2</sup>[“Tahsildars” includes a Deputy Tahsildar.]

## CHAPTER II

### *Pounds and Pound-Keepers*

Establishment  
of pounds,

4. Pounds shall be established at such places as the <sup>3</sup>[Diwan Peishkar], subject to the general control of the Government, from time to time, directs.

The village by which every pound is to be used shall be determined by the <sup>3</sup>[Diwan Peishkar].

Control of  
pounds.  
Rates of  
charge for  
feeding  
impounded  
cattle.

5. The pounds shall be under the control of the <sup>3</sup>[Diwan Peishkar], and he shall fix, and may from time to time alter, the rate of charge for feeding and watering impounded cattle.

Appointment  
of pound-  
keepers.  
Suspension or  
removal of  
pound  
keepers.

6. The <sup>4</sup>[Diwan Peishkar] shall also appoint for each pound a pound-keeper.

Every pound-keeper appointed by the <sup>4</sup>[Diwan Peishkar] may be suspended or removed by the <sup>4</sup>[Diwan Peishkar].

<sup>1</sup> Added by Section 2 of Act VI of 1107.

<sup>2</sup> Added by Section 2 of Act IX of 1119.

<sup>3</sup> Substituted by Section 3 of Act IX of 1119.

<sup>4</sup> Substituted by Section 4 *ibid*

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers may hold other offices.

Every pound-keeper shall be deemed a public servant within the meaning of the Cochin Penal Code.

Pound-keepers to be public servants.

### *Duties of Pound-Keepers*

7. Every pound-keeper shall keep such registers and furnish such returns as the Government, from time to time, directs.

To keep registers and furnish returns.

8. When cattle are brought to a pound the pound-keeper shall enter in his register—

To register seizures.

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known and shall give seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as herein-after directed.

To take charge of and feed cattle.

## CHAPTER III

### *Impounding Cattle*

10. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce or any part thereof,

Cattle damaging land.

may seize or cause to be seized any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty-four hours, to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures and (b) rescues from persons making such seizures.

Police to aid seizures.

Cattle damaging public roads, canals and embankments.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon, and shall send them or cause them to be sent within 24 hours to the nearest pound.

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale:—

Elephant .. .. .	Two Rupees
Camel or buffalo .. .. .	Eight annas
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer ..	Four ..
Calf, ass or pig .. .. .	Two annas.
Ram, ewe, sheep, lamb, goat or kid	One anna.

Provided that when it appears to the Government from the report of <sup>1</sup>[the Diwan Peishkar] that in any local area <sup>2</sup>[\* \* \*] cattle are habitually allowed to trespass on land and damage crops, or produce thereon, the Government may, by notification in the Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.

All fines so levied shall be sent to the <sup>3</sup>[Diwan Peishkar] through such officer as the Government from time to time, directs.

List of fines and charges for feeding.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound. The Government may at any time, by notification in the Gazette, cancel or vary a notification under the proviso to the first paragraph of this Section.

<sup>1</sup> Substituted by Section 5 (1) (a) of Act IX of 1119.

<sup>2</sup> Deleted by Section 5 (1) (b) *ibid.*

<sup>3</sup> Substituted by Section 5 (2) *ibid.*

## CHAPTER IV

*Delivery or sale of Cattle*

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

Procedure when owner claims the cattle and pays fines and charges.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to <sup>1</sup>[the Tahsildar], or to such other officer as the <sup>2</sup>[Diwan Peishkar] appoints in this behalf.

Procedure if cattle be not claimed within a week

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as <sup>2</sup>[the Diwan Peishkar] by general or special order from time to time directs:

Provided that if any such cattle are, in the opinion of the <sup>2</sup>[Diwan Peishkar], not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Delivery to owner disputing legality of seizure but making deposit.

<sup>1</sup> Substituted by Section 6 (1) of Act IX of 1119.

<sup>2</sup> Substituted by Section 6 (2) of *ibid.*

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions as are referred to in section fourteen.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

Receipt

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the <sup>1</sup>[Diwan Peishkar] the fines so deducted.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charge under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the <sup>1</sup>[Diwan Peishkar], who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sale.

18. Out of the sums received on account of fines and the unclaimed proceeds of sale of cattle, shall be paid—

- (a) the salaries allowed to pound-keepers under the orders of the Government;

<sup>1</sup> Substituted by Section 7 of the Act IX of 1119.

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act; and the surplus (if any) shall be applied, under orders of the Government, to the construction and repair of roads and bridges and to other purposes of public utility.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall directly or indirectly, purchase any cattle at a sale under this Act.

Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a [Tahsildar] or Civil Court.

Pound-keepers not to release impounded cattle.

<sup>2</sup>[19.A. The powers and duties vested in the <sup>3</sup>[Diwan Peishkar] under Chapters II, III and IV of this Act shall, so far as areas within Municipal limits are concerned, vest in the respective Municipal Councils.]

Powers to Municipal Councils.

## CHAPTER V

### *Complaints of Illegal Seizure or Detention*

20. Any person whose cattle have been seized under this Act or having been so seized, have been detained in contravention of this Act may, at any time within ten days from the date of the seizure, make a complaint to the District Magistrate, or any Magistrate authorised to receive and try charges without reference by the District Magistrate.

Power to make complaints.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against and make an enquiry into the case.

<sup>1</sup> Substituted by Section 8 of Act IX of 1119.

<sup>2</sup> Inserted by Section 2 of Act I of 1101.

<sup>3</sup> Substituted by Section 9 of Act IX of 1119.

Compensation  
for illegal  
seizure or  
detention.

22. If the seizure or detention be adjudged illegal the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation not exceeding one hundred rupees, to be paid by the person who made the seizure, or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Release of  
cattle.

and if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Recovery of  
compensation.

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate.

## CHAPTER VI

### *Penalties*

Penalty for  
forcibly op-  
posing the  
seizure of  
cattle or  
rescuing the  
same:

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act; and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months or with a fine not exceeding five hundred rupees, or with both.

Recovery for  
penalty for  
mischief com-  
mitted by  
causing cattle  
to trespass.

25. Any fine imposed under the next following section or for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for  
damage caused  
to land or  
crops or public  
roads by pigs.

26. Any owner or keeper of pigs, who through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

The Government, by notification in the Gazette, may, from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only or as if the words "fifty rupees" were substituted for the words "ten rupees" or as if there were both such reference and such substitution.

The Government may at any time by notification in the Gazette, cancel or vary a notification under this section.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section twenty-five, section twenty-six, or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

Application of fines recovered under section 25, 26 or 27.

29. The provisions of section 61 of the Cochin Penal Code shall apply to all fines imposed under this Act.

Recovery of fines.

## CHAPTER VII

### *Suits for Compensation*

30. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

Saving of right to sue for compensation.

31. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

Set-off:



**THE COCHIN PRISONS ACT**  
**(VI OF 1076)**  
**(As amended up to 1st Kumbham 1122)**

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THE COCHIN PRISONS <sup>1</sup>[ACT]

(VI OF 1076)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1076	VI	The Cochin Prisons Act	Amended by Acts I of 1109, and XLVII of 1112, Proclamation V of 1112, and Act XIX of 1115.

*Passed by His Highness the <sup>2</sup>[Maharaja] on the 29th day of Mithunam 1076, corresponding to the 12th day of July 1901*

## AN ACT TO PROVIDE FOR THE MANAGEMENT OF PRISONS

Whereas it is expedient to regulate the management of prisons in the Cochin State, it is hereby enacted as follows:—

## CHAPTER I

*Preliminary*

1. (1) This Act may be called “The Cochin Prisons Act, VI of 1076”.

Title, extent and commencement.

(2) It shall extend to the whole of Cochin State and it shall come into force on the 1st day of Chingam 1077.

2. All rules and appointments made, directions given, and orders issued, which are in force on the day that this Act comes into force, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given and issued under this Act.

Continuance of rules and orders issued.

3. In this Act—

Definitions.

(1) “Prison” means any jail or place used, permanently or temporarily under the general or special orders

<sup>1</sup> Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for “Raja” by section 2 of Act I of 1109.

of <sup>1</sup>[Government] for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

- (a) any place for the confinement of prisoners who are exclusively in the custody of the police,
- (b) any place specially appointed by <sup>2</sup>[Government] under section <sup>2</sup>[438] of the Code of Criminal Procedure Act, II of [1086].
- (c) any place which has been declared by <sup>1</sup>[Government], by general or special order, to be a subsidiary jail.

(2) “Criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction.

(3) “Convicted criminal prisoner” means any criminal prisoner under sentence of a Court, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure Act, II of <sup>2</sup>[1086], <sup>3</sup>[or under the Cochin Prisoners’ Act].

(4) “Civil prisoner” means any prisoner who is not a criminal prisoner.

(5) “Remission system” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of prisoners in jails.

(6) “History-ticket” means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder.

(7) “Inspector-General” means the Inspector-General of Prisons.

(8) “Medical subordinate” means an Assistant Surgeon, Apothecary or qualified Hospital Assistant.

(9) “Prohibited article” means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

(10) <sup>4</sup>[\*\*\*]

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<sup>1</sup> Substituted by section 2 of Act XIX of 1115.

<sup>2</sup> Substituted by section 3 of Act XIX of 1115.

<sup>3</sup> Added by section 2 of Act XLVII of 1112.

<sup>4</sup> Deleted by section of Act XIX of 1115.

## CHAPTER II

*Maintenance and Officers of prisons*

4. <sup>1</sup>[Government] shall provide, for the prisoners in the Cochin State, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners. Accommodation for prisoners.

5. <sup>2</sup>[The District Magistrate or any other Officer appointed by Government shall be Inspector-General for Cochin State who shall exercise, subject to the orders of Government, the general control and superintendence of all prisons situated in Cochin State.] Inspector-General of Prisons.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer, and such other officers as <sup>1</sup>[Government] thinks necessary. Officers of prisons.

7. Whenever it appears to the Inspector-General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, Temporary accommodation for prisoners.

or whenever, from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer, and in such manner <sup>3</sup>[as Government may direct] for the shelter and safe custody, in temporary prisons, of so many of the prisoners as cannot be conveniently or safely kept in the prison.

## CHAPTER III

## DUTIES OF OFFICERS

*Generally*

8. All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by Control and duties of officers of prisons.

<sup>1</sup> Substituted by section 2 of Act XIX of 1115.

<sup>2</sup> Substituted by section 4 of Act XIX of 1115.

<sup>3</sup> Substituted by section 5 *ibid.*

the Jailer with the sanction of the Superintendent, or be prescribed by rules under section <sup>1</sup>[fifty-nine.]

Officers not to have business dealings with prisoners.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner, or have any money or other business dealings directly or indirectly with any prisoner.

Officers not to be interested in prison-contracts.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

### *Superintendent*

Superintendent.

11. Subject to the order of the Inspector-General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

Records to be kept by the Superintendent.

12. The Superintendent shall keep, or cause to be kept, the following records.—

- (1) a register of prisoners admitted,
- (2) a book showing when each prisoner is to be released,
- (3) a punishment book for the entry of the punishments inflicted on prisoners for prison offences.
- (4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison,
- (5) a record of the money and other articles taken from prisoners,

and all such other records as may be prescribed by rules under section fifty-nine. <sup>2</sup> [.....]

### *Medical Officer*

Duties of Medical Officer.

13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may

<sup>1</sup> Substituted by section 6 of Act XIX of 1115.

<sup>2</sup> Deleted by section 7 of Act XIX of 1115.

be prescribed by rules made by <sup>1</sup>[Government] under section <sup>2</sup> [fifty-nine].

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observation as he may think proper. Medical Officer to report in certain cases.

This report, with the orders of the Superintendent thereon shall forthwith be sent to the Inspector-General for information.

15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:— Report on death of prisoner.

(1) the day on which the deceased first complained of illness or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,

(3) the scale of his diet on that day,

(4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness,

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a post-mortem examination is made) an account of the appearances after death, together with any special remarks that appear to the Medical Officer to be required.

### *Jailer*

16. (1) The Jailer shall reside in the prison, unless the Inspector-General permits him in writing to reside elsewhere. Jailer.

(2) The Jailer shall not, without the Inspector-General's sanction in writing, be concerned in any other employment.

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<sup>1</sup> Substituted by section 2 of Act XIX of 1115.

<sup>2</sup> Substituted by section 6 *ibid.*



Jailer to give notice of death of prisoner.

17. Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

Responsibility of Jailer.

18. The Jailer shall be responsible for the safe custody of the records to be kept under section twelve, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

Jailer to be present at night.

19. The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent, but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Power of Deputy and Assistant Jailers.

20. Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities of a Jailer under this Act or any rule thereunder.

#### *Subordinate Officers*

Duties of gate-keeper.

21. The officer acting as a gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Subordinate officers not to be absent without leave.

22. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

Convict officers.

23. Prisoners who have been appointed as officers of prison shall be deemed to be public servants within the meaning of the Cochin Penal Code.

### CHAPTER IV

#### *Admission, Removal and Discharge of Prisoners*

Prisoners to be examined on admission.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners, the search and examination shall be carried out by the Matron under the general or special orders of the Medical Officer.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer. Effects of prisoners.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer. Removal and discharge of prisoners.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

## CHAPTER V

### *Discipline of Prisoners*

27. The requisitions of this Act with respect to the separation of prisoners are as follows:— Separation of prisoners.

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with the male prisoners;

(2) in a prison where male prisoners under the age of '[twenty-one] are confined, means shall be pro-

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<sup>1</sup>Substituted for "eighteen" by section 3 of Act XLVII of 1112.

vided for separating them altogether from the other prisoners, and for separating those of them who have arrived at the age of puberty from those who have not ;

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and

(4) civil prisoners shall be kept apart from criminal prisoners.

Association  
and segregation  
of  
prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells, or partly in one way and partly in the other.

Solitary confinement.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical subordinate.

Prisoners  
under  
sentence of  
death.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by or by order of the Jailer, and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

## CHAPTER VI

### *Food, Clothing and Bedding of Civil and unconvicted Criminal Prisoners*

Maintenance  
of certain  
prisoners from  
private  
sources.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase or receive from private sources, at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by <sup>1</sup>[Government]

<sup>1</sup>Substituted by section 2 of Act XIX of 1115.

32. No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Restriction on transfer of food and between certain prisoners.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

## CHAPTER VII

### *Employment of Prisoners*

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

Employment of civil prisoners.

(2) Civil prisoners finding their own implements and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the expense of the prison, shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. (1) No criminal prisoner sentenced to labour, or employed on labour at his own desire, shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

Employment of criminal prisoners.

(2) The Medical Officer shall, from time to time, examine the labouring prisoners while they are employed and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour, but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

Employment  
of criminal  
prisoners  
sentenced  
to simple  
imprisonment.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

## CHAPTER VIII

### *Health of Prisoners*

Sick prisoners

37. (1) The names of prisoners desiring to see the Medical Subordinate, or appearing out of health in mind or body, shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention; and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

Record of  
directions of  
Medical  
Officers.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket, or in such other record as [Government] may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

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<sup>1</sup> Substituted by section 2 of Act XIX of 1115.

39. In every prison, a hospital or proper place for Hospital the reception of sick prisoners shall be provided.

<sup>1</sup>[39-A. The Superintendent may, if in his opinion a prisoner requires special treatment in a hospital outside the prison or in an asylum as defined in the Cochin Lunacy Act, VII of 1096, send him to such hospital or asylum, subject to the prisoner or any relative or a friend of the prisoner executing such bond and abiding by such other conditions, if any, as Government may, by rule, or order prescribe. Any period during which the prisoner is undergoing treatment in such hospital or asylum or spent by him in going thereto or returning therefrom shall be deemed to be part of the period of his detention in the prison.

Power of Superintendent to send a prisoner to hospital or asylum for special treatment.

*Explanation.*—Nothing contained in this section shall be deemed to affect the operation of section 9 of the Prisoners Act, XLVI of 1112, in cases to which that section applies.]

## CHAPTER IX

### *Visits to Prisoners*

40. Due provision shall be made for the admission at proper times and under proper restrictions into every prison, of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Visits to civil and unconvicted criminal prisoners.

41. (1) The Jailer may demand the name and address of any visitor to a prisoner and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

Search of visitors.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as <sup>2</sup> [Government] may direct.

<sup>1</sup>Inserted by section 8 of Act XIX of 1115

<sup>2</sup>Substituted by section 2 *ibid.*

## CHAPTER X

*Offences in relation to Prisons*

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

42. Whoever, contrary to any rule under section <sup>1</sup>[fifty-nine] introduces or removes, or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison, who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Powers to arrest for offence under section forty-two.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest such person, and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence has been committed in his presence.

Publication of penalties.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section forty-two, and the penalties incurred by their commission.

## CHAPTER XI

*Prison-offences*

Prison-offences.

45. The following acts are declared to be prison-offences when committed by a prisoner:—

<sup>1</sup> Substituted by section 6 of Act XIX of 1115

- (1) such wilful disobedience to any regulation of the prison as shall have been declared by rule made under section fifty-nine to be a prison-offence,
- (2) any assault or use of criminal force,
- (3) the use of insulting or threatening language,
- (4) immoral or indecent or disorderly behaviour,
- (5) wilfully disabling himself from labour,
- (6) contumaciously refusing to work,
- (7) filing, cutting, altering, or removing handcuffs, fetters or bars without due authority,
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment,
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment,
- (10) wilful damage to prison-property,
- (11) tampering with or defacing history-tickets, records or documents,
- (12) receiving, possessing or transferring any prohibited article,
- (13) feigning illness,
- (14) wilfully bringing a false accusation against any officer or prisoner,
- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official, and
- (16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

46. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by Punishment of such offences.

- (1) a formal warning,

*Explanation.*— A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent, and recorded in the punishment book and on the prisoner's history-ticket.



(2) change of labour to some more irksome or severe form <sup>1</sup>[for such period as may be prescribed by rules made by] <sup>2</sup>[Government,]

(3) hard labour, for a period not exceeding seven days, in the case of convicted criminal prisoners not sentenced to rigorous imprisonment,

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by <sup>2</sup>[Government,]

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months,

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by <sup>2</sup>[Government,]

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by <sup>2</sup>[Government,]

(8) separate confinement for any period not exceeding <sup>3</sup>[three] months,

*Explanation.*— Separate confinement means such confinement, with or without labour, as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners.

(9) penal diet, that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by <sup>2</sup>[Government,]

provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence, nor until after an interval of one week,

(10) cellular confinement for any period not exceeding fourteen days,

provided that, after each period of cellular confinement, an interval of not less duration than such period

<sup>1</sup> Added by section 4 (a) of Act XLVII of 1112.

<sup>2</sup> Substituted by section 2 of Act XIX of 1115.

<sup>3</sup> Substituted for "six" by section 4 (b) of Act XLVII of 1112.

must elapse before the prisoner is again sentenced to cellular or solitary confinement,

*Explanation.*— [Cellular confinement means such confinement, with or without labour, as entirely secludes a prisoner from communication with, but not from sight of other prisoners.]

1[ \* \* \* \* ]

2[(11)] penal diet as defined in clause (9) combined with 3[cellular] confinement 4[ \* \* \* ]

5[(12)] whipping, provided that the number of stripes shall not exceed thirty,

provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

47. 6[(i)] Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

Plurality of punishments under section forty-six.

- (1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section ;
- (2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with 7[cellular] confinement ;
- (3) 8[cellular] confinement shall not be combined with separate confinement so as to prolong the

<sup>1</sup> Original clause (11) deleted by section 4 (c) of Act XLVII of 1112.

<sup>2</sup> Clause (12) was re-numbered as (11) by section 4 (e) *ibid.*

<sup>3</sup> Substituted for 'solitary' by section 4 (d) *ibid.*

<sup>4</sup> The words 'as defined in clause (11)' were deleted by *ibid.*

<sup>5</sup> Clause (13) was re-numbered as (12) by section 4 (e) *ibid.*

<sup>6</sup> The original section 47 was re-numbered as sub-section (1) by section 5 (1) *ibid.*

<sup>7</sup> Substituted for 'solitary' by section 5 (2) (a) *ibid.*

<sup>8</sup> Substituted for the original Exception (3) by section 5 (2) (b) *ibid.*

total period of seclusion to which the prisoner shall be liable;]

(4) whipping shall not be combined with any other form of punishment except cellular <sup>1</sup>[and] separate confinement and loss of privileges admissible under the remission system.

<sup>2</sup>[(5) no punishment shall be combined with any other punishment in contravention of rules made by <sup>3</sup>[Government.]

<sup>4</sup>[(ii) No punishment shall be awarded for any such offence as to combine, with the punishment awarded for any other such offence, two of the punishments which may not be awarded in combination for any such offence.]

Award of punishments under sections forty-six & forty-seven.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

Punishments to be in accordance with foregoing sections.

49. Except by order of a Court of Justice, no punishment, other than the punishments specified in the foregoing sections, shall be inflicted on any prisoner and punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Medical Officer to certify to fitness of prisoner for punishment.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section forty-six, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment book prescribed by section twelve;

<sup>1</sup> Substituted for 'or' by section 5 (2) (c) of Act XLVII of 1112.

<sup>2</sup> Added by section 5 (2) (d) *ibid*.

<sup>3</sup> Substituted by section 2 of Act XIX of 1115.

<sup>4</sup> Added by section 5 (3) of Act XLVII of 1112.

(2) if he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing, and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary;

(3) in the latter case, he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. (1) In the punishment book prescribed in section twelve, there shall be recorded in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison offence of which he was guilty, the date on which such prison offence was committed, the number of previous prison offences recorded against the prisoner and the date of his last prison offence, the punishment awarded, and the date of infliction. Entries in punishment book.

(2) In the case of every serious prison offence, the name of the witnesses proving the offence shall be recorded, and in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment, the Jailer and the Superintendent shall affix their initials as evidence of the correctness of the entries.

52. If any prisoner is guilty of any offence against prison-discipline, which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate <sup>1</sup>[.....] together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he Procedure on committal of heinous offence.

<sup>1</sup> Deleted by section 9 of Act XIX of 1115.

committed such offence or may sentence him to any of the punishments enumerated in section forty-six:

provided that no person shall be punished twice for the same offence.

Whipping.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter, on the buttocks; and in case of prisoners under the age of sixteen, it shall be inflicted in the way of school discipline, with a lighter ratan.

Offence by  
prison  
subordinate.

54. (1) Every Jailer or officer of a prison subordinate to him, who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months or to both.

(2) No person shall under this section be punished twice for the same offence.

## CHAPTER XII

### *Miscellaneous*

Extramural  
custody,  
control and  
employment  
of prisoners.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison-officer belonging to such prison, shall be deemed to be in prison, and shall be subject to all the same incidents as if he were actually in prison.

Confinement  
in irons.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison

or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by <sup>1</sup>[Government], so confine them.

57. (1) Prisoners sentenced to imprisonment for life or for imprisonment for a period not less than ten years may subject to any rules made under section <sup>2</sup>[fifty-nine], be confined in fetters for the first three months after admission to prison. Confinement in fetters.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself, or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector-General may sanction such retention accordingly.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent. Prisoners not to be ironed by Jailer except under necessity.

59. <sup>1</sup>[Government] may make rules consistent with this Act— Power to make rules.

(1) defining the Acts which shall constitute prison-offences,

(2) determining the classification of prison offences into serious and minor offences,

(3) fixing the punishments admissible under this Act, which shall be awardable for commission of prison-offences or classes thereof,

(4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Cochin Penal Code may or may not be dealt with as a prison-offence,

(5) for the award of marks and the shortening of sentences,

<sup>1</sup>Substituted by section 2 of Act XIX of 1115.

<sup>2</sup>Substituted by section 6 *ibid.*

- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape,
- (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released,
- (8) regulating the transfer from one prison to another of prisoners whose term of imprisonment is about to expire, and

<sup>1</sup>[\* \* \* \*]

<sup>2</sup>[\* \* \* \* \*]

- <sup>3</sup>[(9)] for the classification of prisoners, and description and construction of wards, cells and other places of detention,
- <sup>3</sup>[(10)] for the regulation by numbers, length or character of sentences or otherwise, of the prisoners to be confined in each class of prisons,
- <sup>3</sup>[(11)] for the government of prisons, and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act,
- <sup>3</sup>[(12)] as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost,
- <sup>3</sup>[(13)] for the employment, instruction and control of convicts within or without prisons,
- <sup>3</sup>[(14)] for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited.

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<sup>1</sup>Deleted by section 6 of Act XLVII of 1112.

<sup>2</sup>The figure and words "60. The Diwan may make rules consistent with this Regulation" of the original section 60 were deleted by section 7 (a) *ibid*.

<sup>3</sup>Clauses (a) to (s) of the original section 60 were numbered as clauses (9) to (27) of section 59 by section 7 (b) *ibid*.

- <sup>1</sup>[(15)] for classifying and prescribing the forms of labour and regulating the periods of rest from labour,
- <sup>1</sup>[(16)] for regulating the disposal of the proceeds of the employment of prisoners,
- <sup>1</sup>[(17)] for regulating the confinement in fetters of prisoners sentenced to imprisonment for life or for imprisonment for a period not less than ten years,
- <sup>1</sup>[(18)] for the classification and separation of prisoners,
- <sup>1</sup>[(19)] for regulating the confinement of convicted criminal prisoners under section 28,
- <sup>1</sup>[(20)] for the preparation and maintenance of history tickets,
- <sup>1</sup>[(21)] for the selection and appointment of prisoners as officers of prisons,
- <sup>1</sup>[(22)] for rewards for good conduct,
- <sup>1</sup>[(23)] for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons,
- <sup>1</sup>[(24)] for regulating the transmission of appeals and petitions from prisoners and their communications with their friends,
- <sup>1</sup>[(25)] for the appointment and guidance of visitors of prisons,
- <sup>1</sup>[(26)] for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement

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<sup>1</sup> Clauses (a) to (s) of the original section 60 were numbered as clauses (9) to (27) of section 59 by section 7 (b) of Act XLVII of 1112.



appointed under section 1[438] of the Code of Criminal Procedure, and to the officers employed and the prisoners confined therein, and

<sup>2</sup>[(27)] generally, in regard to the admission, custody, employment, dieting, treatment and release of prisoners, and for other purposes consistent with this Act.

Exhibition of  
copies of  
rules.

<sup>3</sup>[(60)] Copies of rules under section <sup>4</sup>[59] so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

Exercise of  
powers of  
Superinten-  
dent and  
Medical  
Officer.

<sup>5</sup>[61] All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may, in his absence, be exercised and performed by such other officer as <sup>6</sup>[Government] may appoint in this behalf either by name or by his official designation.

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<sup>1</sup> Substituted by section 10 of Act XIX of 1115.

<sup>2</sup> Clauses (a) to (s) of the original section 60 were numbered as clauses (9) to (27) of section 59 by section 7 (b) of Act XLVII of 1112.

<sup>3</sup> The original sections 61 and 62 were numbered as 60 and 61 respectively by section 8 *ibid*.

<sup>4</sup> Substituted by section 11 of Act XIX of 1115.

<sup>5</sup> The original section 60 was numbered as clauses (9) to (27) of section 59 by section 7 (b) of Act XLVII of 1112.

<sup>6</sup> Substituted by section 2 of Act XIX of 1115.

# THE COCHIN COURT-FEES ACT

(II OF 1080)

(As amended up to 1st Kumbham 1122)

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## THE COCHIN COURT-FEES [ACT.]

(II OF 1080)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1080	II	The Cochin Court Fees Act.	Amended by Acts I and XVI of 1109 and Proclamation V, Acts, LXVIII of 1112, X of 1115, XIV of 1118 and XIX of 1120

*Passed by His Highness the <sup>2</sup>[Maharaja] of Cochin on the 24th day of Vrischigam 1080 corresponding with the 9th day of December 1904.*

## CHAPTER I.

*Preliminary*

Whereas it is expedient to amend the law relating to Court-fees, it is hereby enacted as follows:—

Short title.

This Act may be called “The Cochin Court-fees Act, II of 1080.”

Extent and Commencement.

It extends to the whole of the Cochin State, and it shall come into force on the 1st day of Makaram 1080.

Repeal.

2. Act I of 1055 is hereby repealed.

Interpretation clause.

<sup>3</sup>[2A. In this Act, unless there is anything repugnant in the subject or context, “memorandum of appeal” shall include memorandum of cross objection.]

## CHAPTER II

*Fees in Courts and in Public Offices*

Fees on documents filed &amp;c., in Courts of Justice or in public offices.

3. No document of any of the kinds, specified in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public servant, unless in

<sup>1</sup> Substituted for “Regulation” throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for “Raja” by section 2 of Act I of 1109.

<sup>3</sup> Inserted by section 2 of Act LXVIII of 1112.

respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

4. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

Computation of fees payable in certain suits.

(i) in suits for money (including suits for damages or compensation or for arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed.

For money.

(ii) in suits for maintenance or annuities or other sums payable periodically—according to the value of the subject-matter of the suit: and such value shall be deemed to be ten times the amount claimed to be payable for one year.

For maintenance and annuities.

(iii) in suits for movable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint:

For other movable property having a market value.

(iv) in suits—

(a) for movable property where the subject-matter has no market value, as for instance, documents relating to title, or

For movable property of no market value.

(b) to enforce the right to share in any property on the ground that it is joint family property, or

To enforce a right to share in joint-family property.

(c) to obtain a declaratory decree or order, where consequential relief is prayed for, or

For a declaratory decree and consequential relief.

(d) to obtain an injunction, or

For an injunction.

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, or

For easements.

(f) for accounts—

For accounts.

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits, the plaintiff shall state the amount at which he values the relief sought.

For possession  
of land,  
gardens and  
houses.

(v) in suits for the possession of lands (*nilams*), gardens (*parambas*), houses—according to the value of the subject-matter, and such value shall be deemed to be:—

(a) where the subject-matter is land or garden—fifteen times the annual rent (*pattom*) of such land or garden;

<sup>1</sup>[Provided that in suits for the recovery of land, house or garden based on a lease, or a *kanam*, *adima* or *anubhogam* demise or any other demise of a cognate nature, the value shall be deemed to be the annual rent.]

Provided that in suits for the recovery of land, house or garden based on leases granted to those who have no right of permanent occupancy, the value shall be deemed to be five times the annual rent:

To enforce a  
right of  
pre-emption.

(vi) in suits to enforce a right of pre-emption—according to the value (computed in accordance with clause (v) of this section) of the land, house or garden in respect of which the right is claimed:

For interest  
of assignee of  
land revenue.

(vii) in suits for the interest of an assignee of land-revenue—twenty times his net profits as such for the year next before the date of presenting the plaint:

To set aside  
an attachment.

(viii) in suits to set aside an attachment of land, or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

To redeem.

(ix) in suits against a mortgagee for the recovery of the property mortgaged,

To foreclose.

and in suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage.

*Explanation.*—A *Kanom* is not a mortgage within the meaning of this sub-section.

For specific  
performances.

(x) in suits for specific performance—

<sup>1</sup>Substituted by section 2 of Act XIX of 1120.

- (a) of a contract of sale—according to the amount of the consideration:
- (b) of a contract of mortgage—according to the amount agreed to be secured:
- (c) of a contract for a Kanom demise or a perpetual lease—according to the value of the subject-matter of the suit as fixed in clause (v) of this section:
- (d) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:
- (e) of an award—according to the amount or value of the property in the suit.

5. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Fee on memorandum of appeal against order relating to compensation.

6. If the Court sees reason to think that the annual net profits mentioned in section 4 clause (vii) or the value of such land, house or garden as is mentioned in section 4, clauses (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Power to ascertain net profits or market value.

7. (i) If, in the result of any investigation, the Court finds that the net profits or the market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said value or net profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.



Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

8. In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are, or is, in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed, until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

<sup>1</sup>[Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.]

Procedure in case of difference as to necessity or amount of fee.

9. When any difference arises in the <sup>2</sup>[High Court], between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or pleader, as to the necessity of paying a fee or the amount thereof, the question shall be referred to the taxing officer whose decision thereon shall be final:

Provided that, when the question is in the opinion of a Judge of the High Court one of general importance, he may revise the taxing officer's decision himself or refer it to a Bench of all the Judges for final disposal.

<sup>3</sup>[The High Court shall declare who shall be the taxing officer within the meaning of this section.]

<sup>1</sup> Substituted for the original second paragraph by section 3 of Act LXVIII of 1112.

<sup>2</sup> Substituted for 'Chief Court' throughout the enactment by section 32 Act XX of 1113.

<sup>3</sup> Inserted by section 2 of Act XVI of 1109.

10. (i) Every question relating to valuation, for the purpose of determining the amount of any fee chargeable under this chapter, on a plaint or memorandum of appeal, presented to a Court other than the High Court, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed; and such decision shall be final as between the parties to the suit.

Decision of questions as to valuation.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 7, clause (ii), shall apply.

11. If an appeal or plaint, which has been rejected by the Lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in section 546 of the same Code, for a second decision by the Lower Court the Appellate Court shall grant to the appellant a certificate authorising him to receive back from the District Treasury Officer the full amount of fee paid on the memorandum of appeal:

Refund of fee paid on memorandum of appeal.

Provided that, if, in the case of a remand in appeal, the order of remand do not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable, on the part or parts of such subject-matter in respect whereof the suit has been remanded.

12. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court may, in its discretion, unless the delay was caused by the applicant's laches, grant him a certificate authorising him to receive back from the District Treasury Officer so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund of fee on application for review of Judgment.

<sup>1</sup> Now Order XLI, Rule 23 of the new Code of Civil Procedure, Act XXIX of 1111.

Refund where Court reverses or modifies its former decision on ground of mistake.

13. Where an application for a review of Judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the District Treasury Officer so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (c).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly, or in part, to fresh evidence which might have been produced at the original hearing.

14. (*Additional fee where respondent takes objection to unappealed part of decree.*) Repealed by section 4 of Act LXVIII of 1112.

Multifarious suits.

15. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal, in suits embracing separately each of such subjects, would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, <sup>1</sup> section 42, paragraph 2.

Fee in case of alternative relief with regard to the same subject matter.

16. When several reliefs are sought for in the alternative, in respect of one and the same subject-matter, the plaint or memorandum of appeal shall be chargeable with the highest amount of fee payable in respect of any one of the reliefs.

Written examination of complainants.

17. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which Police Officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal

<sup>1</sup> Now Order II, Rule 6 of the new Code of Civil Procedure Act XXIX of 1111.

Procedure, the complainant shall pay a fee of eight annas unless the Court thinks fit to remit such payment.

Exemption  
of certain  
documents.

18. Nothing contained in this Act shall render the following documents chargeable with any fee.

(i) Written statements called for by the Court after the first hearing of a suit.

(ii) Application or petition to a Peishkar or other officer making a settlement of land-revenue or to the Diwan relating to matters connected with the assessment of land or the ascertainment of right thereto or interests therein, if presented previous to the final confirmation of such settlement.

(iii) Application relating to a supply for irrigation purposes of water belonging to the Sirkar.

(iv) Application for leave to extend cultivation or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with the Sirkar, land of which the revenue is settled, but not permanently.

(v) First application (other than a petition containing a criminal charge or information) to summon a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(vi) Bail-bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise.

(vii) Petition, application, charge or information respecting any offence, when presented, made or laid to or before a Police Officer.

(viii) Petition by a prisoner or other person in duress or under restraint of any court or its officers.

(ix) Complaint of a public servant (as defined in the Cochin Penal Code), a Municipal Officer, or an officer or servant of a Railway Company.

(x) Application for permission to cut timber in Sirkar forests or otherwise relating to such forests.

(xi) Application for payment of money due by the Sirkar to the applicant.

(xii) Petition of appeal against any municipal tax.

(xiii) Application for compensation under any law, for the time being in force, relating to the acquisition of property for public purposes.

(xiv) Applications presented to Munsiffs in non-appealable cases.

## CHAPTER II A

### *Probates, Letters of Administration and Certificates of Administration*

Relief where too high a court-fee has been paid.

18A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Diwan Peishkar,

and delivers to him a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if the Diwan Peishkar is satisfied that a greater fee was paid on the probate or letters than the law required, he may—

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

18B. Whenever it is proved to the satisfaction of the Diwan Peishkar that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole

<sup>1</sup>Inserted by section 5 of Act LXVIII of 1112.

gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act, he may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the Diwan Peishkar may allow such further time for making the claim as may appear to be reasonable under the circumstances.

18C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grants.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

18D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probates declared valid as to trust-property though not covered by court-fee.

Provision for case where too low a court-fee has been paid on probates, etc.

18E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Diwan Peishkar may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the Diwan Peishkar is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, he may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 18 E.

18F. In case of letters of administration on which too low a court-fee has been paid at first, the Diwan Peishkar shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.

18G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after

the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the Diwan Peishkar and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent, on the amount of the sum wanting to make up the proper court fee.

18H. (1) Where an application for probate or letters of administration is made to any Court, the Court shall cause notice of the application to be given to the Diwan Peishkar.

Notice of applications for probate or letters of administration to be given to Diwan Peishkar, and procedure thereon.

(2) The Diwan Peishkar may, at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Diwan Peishkar may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(3) If the petitioner does not amend the valuation to the satisfaction of the Diwan Peishkar, the Diwan Peishkar may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 100 of the Cochin Probate and Administration Act, 1096.

(4) The Court, when so moved as aforesaid, shall hold or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been



estimated. The Diwan Peishkar shall be deemed to be a party to the inquiry.

(5) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(6) The finding of the Court recorded under sub-section (4) shall be final, but shall not bar the entertainment and disposal by the Diwan Peishkar of any application under section 18E.

(7) Government may make rules for the guidance of the Diwan Peishkar in the exercise of the powers conferred by sub-section (2).

Payment of  
Court-fees  
in respect of  
probates and  
letters of ad-  
ministration.

18-I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 9 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Diwan Peishkar under section 18H, sub-section (3).

Recovery of  
penalties, etc.

18J. (1) Any excess fee found to be payable on an inquiry held under section 18H, sub-section (5) and any penalty or forfeiture under section 18G, may, on the certificate of the Diwan Peishkar, be recovered from the executor or administrator as if it were an arrear of land revenue by the Diwan Peishkar.

(2) The Diwan Peishkar may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 18E or

of any court-fee under section 18E in excess of the full court-fee which ought to have been paid.

18K. Nothing in section 3 or section 26 shall apply to probates or letters of administration.]

Sections 3 and 26 not to apply to probates or letters of administration.

## CHAPTER III.

### *Process-Fees.*

19. The High Court shall, as soon as may be, make rules as to the following matters:—

Rules as to costs of processes.

(i) The fees chargeable for serving and executing processes issued by such Court and the District and Munsiff's Courts established within the local limits of its jurisdiction,

(ii) The fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which Police officers may arrest without a warrant, and

(iii) the remuneration of the peons and all other persons employed by leave of Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by His Highness the '[Maharaja], be published in the Cochin Sirkar Gazette and shall thereupon have the force of law. Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied and shall be deemed to be fees leviable under this Act.

Confirmation and publication of rules.

20. A table in the English and Malayalam languages showing the fees chargeable for such service and execution shall be exposed to view in a conspicuous part of each Court.

Table of process fees.

<sup>1</sup>Substituted for 'Raja' by section 2 of Act I of 1109.

Number of  
peons in  
District and  
Subordinate  
Courts.

21. Subject to rules to be made by the High Court, and approved by His Highness the '[Maharaja], every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto.

Number of  
peons in  
revenue  
Courts.

22. Subject to rules to be framed by the Diwan and approved by His Highness the '[Maharaja], every officer performing functions of a Peishkar of a Division shall fix and may, from time to time, alter the number of peons necessary to be employed for the service and execution of processes issued out of his office or the offices subordinate to him.

## CHAPTER IV

### *Of the Mode of Levying Fees*

Collection of  
fees by  
Stamps.

23. All fees chargeable under this Act shall be collected by stamps.

Stamps to be  
impressed or  
adhesive.

24. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Diwan may, by notification in the Cochin Sirkar Gazette, from time to time direct.

Rules for  
supply,  
number,  
renewal, and  
keeping  
accounts, of  
stamps.

25. The Diwan, with the sanction of His Highness, may, from time to time, make rules for regulating:—

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any fee-chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping of accounts of all stamps used under this Act.

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'Substituted for 'Raja' by section 2 of Act I of 1109.

26. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped. Stamping documents inadvertently received.

But, if any such document is, through mistake or inadvertence, received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or in the case of the High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

27. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp. Amended documents.

28. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled. Cancellation of stamps.

Such officer as the Court or the head of the office may, from time to time, appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

## 1 [CHAPTER IV A

### *Suits relating to Land*

28 A. (1) Government may make rules for determining the value of lands for purposes of jurisdiction in the suits mentioned in section 4, paragraphs (v) and (vi) and paragraph (x), clause (e). Power to Government to make rules determining value of land for purposes of jurisdiction.

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.

<sup>1</sup>Inserted by section 2 of Act X of 1115.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

28 B. Where a suit mentioned in section 4, paragraph (iv), or article 7 of Schedule II, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Making and enforcement of rules.

28 C. (1) Government shall, before making rules under section 28 A, consult the High Court with respect thereto.

(2) Rules under section 28 A shall not take effect till the expiration of one month after they have been published in the Cochin Government Gazette.

Repeal of section 15 of the Cochin Civil Courts Act.

28 D. On and from the date on which rules under section 28 A take effect, section 15 of the Cochin Civil Courts Act, III of 1076, shall stand repealed.

#### Other Suits

Court-fee value and jurisdictional value to be the same in certain suits.

28 E. Where in suits other than those referred to in section 4, paragraphs (v), (vi) and (ix), and clause (e) of paragraph (x), court-fees are payable *ad valorem* under this Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

Determination of value of certain suits by High Court.

28 F. When the subject-matter of suits of any class other than suits mentioned in section 4, paragraphs (v) and (vi) and clause (e) of paragraph (x), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of Government, direct that suits of that class shall, for the purposes of jurisdiction, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

Repeal of the first proviso to section 10 of the Cochin Civil Courts Act, III of 1076.

28 G. On and from the date on which the High Court directs under the last preceding section that particular classes of suits shall, for the purposes of this Act, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in that behalf, the first proviso to section 10 of the Cochin Civil Courts Act, III of 1076, as amended up-to-date, will stand repealed so far as it

relates to the class of suits in connection with which the High Court has specified the value.

### Supplemental Provision

28 H. (1) Notwithstanding anything in section 84 of the Cochin Code of Civil Procedure, Act XXIX of 1111, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 95 of the Cochin Code of Civil Procedure, Act XXIX of 1111, or other enactment for the time being in force.

Pending Proceedings.

28 I. Nothing in sections 28A, 28B, 28C and 28D shall be construed to affect the jurisdiction of any Court—

(a) with respect to any suit instituted before the rules under sections 28A, 28B, 28C and 28D applicable to the valuation of the suit take effect, or

(b) with respect to any appeal arising out of any such suit.]

## CHAPTER V

### Miscellaneous

29. (*Repayment of fees paid on applications to Criminal Courts.*) Repealed by section 4 of Act LXVIII of 1112.

Admission in criminal cases of documents for which proper fee has not been paid.

30. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of Justice, nothing contained in section 3 shall be deemed to prohibit such filing or exhibition.

Sale of stamps.

31. (1) The Diwan, with the sanction of His Highness, may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Penalty for disobedience of rules.

(2) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Offences by whom triable.

(3) No Magistrate whose powers are less than those of a Magistrate of the second class shall try any offence under this Act.

Power to reduce or remit fines.

32. The Diwan, with the sanction of His Highness, may, from time to time, by notification in the Cochin Sirkar Gazette, reduce or remit, in the whole or in any part of Cochin, all or any of the fees, mentioned in the first and second Schedules to this Act annexed.

Schedule I has been substituted by Act, XXIV of 1122, published on pages 164 to 177 of Volume XV of Acts and Proclamations.

Number		Proper Fee
	When the amount or value of the subject-matter in dispute does not exceed five rupees ..	5 annas
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees ..	5 annas
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees ..	10 annas
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees ..	4 rupees 8 annas
1. Plaint <sup>1</sup> [or written statement pleading a set-off or counter-claim] or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil Court	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ..	8 rupees 12 annas
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees up to twenty thousand rupees ..	12 rupees 8 annas

<sup>1</sup> Inserted by section 6 of Act LXVIII of 1112.



## SCHEDULE I—(cont.)

*Ad valorem fees*

Number		Proper Fee
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees ..	20 rupees
	When such amount or value exceeds thirty thousand rupees for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees ..	20 rupees
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees ..	25 rupees
	Provided that the maximum fee leviable on a plaint or memorandum of appeal be three thousand rupees ..	
	1[A. Plaint in a suit for possession under the Cochin Specific Relief Act, 1097, section 9 ..	An amount of one half the scale of fee prescribed in article 1 above
	2. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree ..	The fee leviable on the plaint or memorandum of appeal
	3. Application for review of judgment, if presented before the ninetieth day from the date of the decree ..	One-half of the fee leviable on the plaint or memorandum of appeal

<sup>1</sup> Inserted by section 7 (a) of Act LXVIII of 1112.

## SCHEDULE I—(cont.)

*Ad valorem fees*

Number		Proper Fee
4. Copy or translation of a judgment, or of an order not being or having the force of a decree ..	When such judgment or order is passed by any Civil Court other than the High Court—	Four annas
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees	Eight annas
	(b) If such amount or value exceeds fifty rupees	One rupee
	When such judgment or order is passed by the High Court	Eight annas
5. Copy of a decree or of an order having the force of a decree ..	When such decree or order is made by any Civil Court other than the High Court	One rupee
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Two rupees
	(b) If such amount or value exceeds fifty rupees.	Eight annas
	When such decree or order is made by the High Court.	One rupee
6. Copy of any document liable to stamp-duty under the 'Cochin Stamp Act, I of 1071, when left by any party to a suit or proceeding in place of the original withdrawn ..	(a) When the stamp duty chargeable on the original does not exceed eight annas	The amount of the duty chargeable on the original
	(b) In any other case	Eight annas

'Now Act VI of 1083, which is the Stamp Act in force.

## SCHEDULE I—(cont.)

*Ad valorem fees*

Number		Proper Fee
7. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or the like taken out of any Civil or Criminal or Revenue Court or Office, or from the Office of the Diwan or of a Peishkar ..	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas
8. Application to the High Court for the exercise of its revisional jurisdiction under section 1583 of the Code of Civil Procedure ..	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees. When such amount or value exceeds twenty-five rupees	Two rupees  The fee leviable on a memorandum of appeal
2[9. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees Provided that when, after the grant of a certificate under the Cochin Succession Certificate Act, 1095, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant	One per centum on such amount or value.

<sup>1</sup>Now section 95 of the Code of Civil Procedure, Act XXIX of 1111.

<sup>2</sup>Added by section 7 (b) of Act LXVIII of 1112.

## SCHEDULE I.—(cont.)

Number		Proper Fee
<p>10. Certificate under the Cochin Succession Certificate Act, 1095</p>	<p>..</p>	<p>One per centum on the amount or value of any debt or security specified in the certificate under section 7 of the Act, and one per centum on the amount or value of any debt or security to which the certificate if extended under section 9 of the Act.</p> <p><i>Note.</i>— (1) The amount of a debt is its amount including interest, on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.]</p>

## SCHEDULE I.—(cont.)

*Table of rates of ad valorem fees leviable on the  
institution of suits*

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
5	5	0	5	0
10	10	0	10	0
15	15	0	15	0
20	20	1	4	0
25	25	1	9	0
30	30	1	14	0
35	35	2	3	0
40	40	2	8	0
45	45	2	13	0
50	50	3	2	0
55	55	3	7	0
60	60	3	12	0
65	65	4	1	0
70	70	4	6	0
75	75	4	11	0
80	80	5	0	0
85	85	5	5	0
90	90	5	10	0
95	95	5	15	0
100	100	6	4	0
110	110	6	14	0
120	120	7	8	0
130	130	8	2	0
140	140	8	12	0
150	150	9	6	0
160	160	10	0	0
170	170	10	10	0
180	180	11	4	0
190	190	11	14	0
200	200	12	8	0
210	210	13	2	0
220	220	13	12	0
230	230	14	6	0
240	240	15	0	0
250	250	15	10	0
260	260	16	4	0
270	270	16	14	0
280	280	17	8	0

## SCHEDULE I.—(cont.)

Table of rates of ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fees		
		Rs.	A.	P.
280	290	18	2	0
290	300	18	12	0
300	310	19	6	0
310	320	20	0	0
320	330	20	10	0
330	340	21	4	0
340	350	21	14	0
350	360	22	8	0
360	370	23	2	0
370	380	23	12	0
380	390	24	6	0
390	400	25	0	0
400	410	25	10	0
410	420	26	4	0
420	430	26	14	0
430	440	27	8	0
440	450	28	2	0
450	460	28	12	0
460	470	29	6	0
470	480	30	0	0
480	490	30	10	0
490	500	31	4	0
500	510	31	14	0
510	520	32	8	0
520	530	33	2	0
530	540	33	12	0
540	550	34	6	0
550	560	35	0	0
560	570	35	10	0
570	580	36	4	0
580	590	36	14	0
590	600	37	8	0
600	610	38	2	0
610	620	38	12	0
620	630	39	6	0
630	640	40	0	0
640	650	40	10	0
650	660	41	4	0
660	670	41	14	0
670	680	42	8	0

## SCHEDULE I.—(cont.)

Table of rates of ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
680	690	43	2	0
690	700	43	12	0
700	710	44	6	0
710	720	45	0	0
720	730	45	10	0
730	740	46	4	0
740	750	46	14	0
750	760	47	8	0
760	770	48	2	0
770	780	48	12	0
780	790	49	6	0
790	800	50	0	0
800	810	50	10	0
810	820	51	4	0
820	830	51	14	0
830	840	52	8	0
840	850	53	2	0
850	860	53	12	0
860	870	54	6	0
870	880	55	0	0
880	890	55	10	0
890	900	56	4	0
900	910	56	14	0
910	920	57	8	0
920	930	58	2	0
930	940	58	12	0
940	950	59	6	0
950	960	60	0	0
960	970	60	10	0
970	980	61	4	0
980	990	61	14	0
990	1,000	62	8	0
1,000	1,100	67	0	0
1,100	1,200	71	8	0
1,200	1,300	76	0	0
1,300	1,400	80	8	0
1,400	1,500	85	0	0
1,500	1,600	89	8	0
1,600	1,700	94	0	0
1,700	1,800	98	8	0

## SCHEDULE I.—(cont.)

Table of rates of ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
1,800	1,900	103	0	0
1,900	2,000	107	8	0
2,000	2,100	112	0	0
2,100	2,200	116	8	0
2,200	2,300	121	0	0
2,300	2,400	125	8	0
2,400	2,500	130	0	0
2,500	2,600	134	8	0
2,600	2,700	139	0	0
2,700	2,800	143	8	0
2,800	2,900	148	0	0
2,900	3,000	152	8	0
3,000	3,100	157	0	0
3,100	3,200	161	8	0
3,200	3,300	166	0	0
3,300	3,400	170	8	0
3,400	3,500	175	0	0
3,500	3,600	179	8	0
3,600	3,700	184	0	0
3,700	3,800	188	8	0
3,800	3,900	193	0	0
3,900	4,000	197	8	0
4,000	4,100	202	0	0
4,100	4,200	206	8	0
4,200	4,300	211	0	0
4,300	4,400	215	8	0
4,400	4,500	220	0	0
4,500	4,600	224	8	0
4,600	4,700	229	0	0
4,700	4,800	233	8	0
4,800	4,900	238	0	0
4,900	5,000	242	8	0
5,000	5,250	251	4	0
5,250	5,500	260	0	0
5,500	5,750	268	12	0
5,750	6,000	277	8	0
6,000	6,250	286	4	0
6,250	6,500	295	0	0
6,500	6,750	303	12	0
6,750	7,000	312	8	0



## SCHEDULE I—(cont.)

## Table of rates of ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds; Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
7,000	7,250	321	4	0
7,250	7,500	330	0	0
7,500	7,750	338	12	0
7,750	8,000	347	8	0
8,000	8,250	356	4	0
8,250	8,500	365	0	0
8,500	8,750	373	12	0
8,750	9,000	382	8	0
9,000	9,250	391	4	0
9,250	9,500	400	0	0
9,500	9,750	408	12	0
9,750	10,000	417	8	0
10,000	10,500	430	0	0
10,500	11,000	442	8	0
11,000	11,500	455	0	0
11,500	12,000	467	8	0
12,000	12,500	480	0	0
12,500	13,000	492	8	0
13,000	13,500	505	0	0
13,500	14,000	517	8	0
14,000	14,500	530	0	0
14,500	15,000	542	8	0
15,000	15,500	555	0	0
15,500	16,000	567	8	0
16,000	16,500	580	0	0
16,500	17,000	592	8	0
17,000	17,500	605	0	0
17,500	18,000	617	8	0
18,000	18,500	630	0	0
18,500	19,000	642	8	0
19,000	19,500	655	0	0
19,500	20,000	667	8	0
20,000	21,000	687	8	0
21,000	22,000	707	8	0
22,000	23,000	727	8	0
23,000	24,000	747	8	0
24,000	25,000	767	8	0
25,000	26,000	787	8	0
26,000	27,000	807	8	0
27,000	28,000	827	8	0

## SCHEDULE I—(cont.)

Table of rates ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
28,000	29,000	847	8	0
29,000	30,000	867	8	0
30,000	32,000	887	8	0
32,000	34,000	907	8	0
34,000	36,000	927	8	0
36,000	38,000	947	8	0
38,000	40,000	967	8	0
40,000	42,000	987	8	0
42,000	44,000	1,007	8	0
44,000	46,000	1,027	8	0
46,000	48,000	1,047	8	0
48,000	50,000	1,067	8	0
50,000	55,000	1,092	8	0
55,000	60,000	1,117	8	0
60,000	65,000	1,142	8	0
65,000	70,000	1,167	8	0
70,000	75,000	1,192	8	0
75,000	80,000	1,217	8	0
80,000	85,000	1,242	8	0
85,000	90,000	1,267	8	0
90,000	95,000	1,292	8	0
95,000	1,00,000	1,317	8	0
1,00,000	1,05,000	1,342	8	0
1,05,000	1,10,000	1,367	8	0
1,10,000	1,15,000	1,392	8	0
1,15,000	1,20,000	1,417	8	0
1,20,000	1,25,000	1,442	8	0
1,25,000	1,30,000	1,467	8	0
1,30,000	1,35,000	1,492	8	0
1,35,000	1,40,000	1,517	8	0
1,40,000	1,45,000	1,542	8	0
1,45,000	1,50,000	1,567	8	0
1,50,000	1,55,000	1,592	8	0
1,55,000	1,60,000	1,617	8	0
1,60,000	1,65,000	1,642	8	0
1,65,000	1,70,000	1,667	8	0
1,70,000	1,75,000	1,692	8	0
1,75,000	1,80,000	1,717	8	0
1,80,000	1,85,000	1,742	8	0
1,85,000	1,90,000	1,767	8	0

## SCHEDULE I—(cont.)

Table of rates of ad valorem fees, &amp;c.—(cont.)

When the amount or value of the subject- matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
1,90,000	1,95,000	1,792	8	0
1,95,000	2,00,000	1,817	8	0
2,00,000	2,05,000	1,842	8	0
2,05,000	2,10,000	1,867	8	0
2,10,000	2,15,000	1,892	8	0
2,15,000	2,20,000	1,917	8	0
2,20,000	2,25,000	1,942	8	0
2,25,000	2,30,000	1,967	8	0
2,30,000	2,35,000	1,992	8	0
2,35,000	2,40,000	2,017	8	0
2,40,000	2,45,000	2,042	8	0
2,45,000	2,50,000	2,067	8	0
2,50,000	2,55,000	2,092	8	0
2,55,000	2,60,000	2,117	8	0
2,60,000	2,65,000	2,142	8	0
2,65,000	2,70,000	2,167	8	0
2,70,000	2,75,000	2,192	8	0
2,75,000	2,80,000	2,217	8	0
2,80,000	2,85,000	2,242	8	0
2,85,000	2,90,000	2,267	8	0
2,90,000	2,95,000	2,292	8	0
2,95,000	3,00,000	2,317	8	0
3,00,000	3,05,000	2,342	8	0
3,05,000	3,10,000	2,367	8	0
3,10,000	3,15,000	2,392	8	0
3,15,000	3,20,000	2,417	8	0
3,20,000	3,25,000	2,442	8	0
3,25,000	3,30,000	2,467	8	0
3,30,000	3,35,000	2,492	8	0
3,35,000	3,40,000	2,517	8	0
3,40,000	3,45,000	2,542	8	0
3,45,000	3,50,000	2,567	8	0
3,50,000	3,55,000	2,592	8	0
3,55,000	3,60,000	2,617	8	0
3,60,000	3,65,000	2,642	8	0
3,65,000	3,70,000	2,667	8	0
3,70,000	3,75,000	2,692	8	0
3,75,000	3,80,000	2,717	8	0
3,80,000	3,85,000	2,742	8	0
3,85,000	3,90,000	2,767	8	0

## SCHEDULE I.—(cont).

## Table of rates of ad valorem fees, &amp;c.— (cont.)

When the amount or value of the subject-matter exceeds Rs.	But does not exceed Rs.	Proper Fee		
		Rs.	A.	P.
3,90,000	3,95,000	2,792	8	0
3,95,000	4,00,000	2,817	8	0
4,00,000	4,05,000	2,842	8	0
4,05,000	4,10,000	2,867	8	0
4,10,000	4,15,000	2,892	8	0
4,15,000	4,20,000	2,917	8	0
4,20,000	4,25,000	2,942	8	0
4,25,000	4,30,000	2,967	8	0
4,30,000	4,35,000	2,992	8	0
4,35,000	4,40,000	3,000	0	0

## SCHEDULE II

## Fixed fees

Number		Proper Fee
1. Application or petition	<p>(a) When presented to the Diwan or to the High Court,</p> <p>(b) When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Code of Criminal Procedure, arrest without warrant, and presented to any Criminal Court; or, when presented to a Civil, Criminal or Revenue Court, or to a</p>	<p>One rupee</p> <p>} Eight annas</p>

## SCHEDULE II—(cont.)

## Fixed Fees

Number		Proper Fee
1. Application or petition (cont.)	<p>Peishkar or any Revenue or Executive officer having jurisdiction equal to a Peishkar, or to any Tahsildar or to any Magistrate not otherwise provided for by this Act,</p> <p>(c) When presented to any Sirkar officer or public servant not referred to in (a) &amp; (b), by any person having dealings with such Sirkar officer or public servant, and when the subject-matter of such application relates exclusively to those dealings;</p> <p>or when presented to any Civil Criminal or Revenue Court, or to any Revenue or Executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court or officer, or of any other document on record in such Court or Office.</p>	<p>Eight annas</p> <p>One anna</p>
2. Application for leave to sue as a pauper		Eight annas
3. Application for leave to appeal as a pauper	When presented to a District Court or the High Court.	One rupee

## SCHEDULE II—(cont.)

## Fixed Fees

Number		Proper Fee
4. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure or of the Code of Civil Procedure [and not otherwise provided for in this Act].		Eight annas
5. Mukthiarnama or Valatnama.	When presented for the conduct of any one case— (a)—to any Civil or Criminal Court other than the High Court, or to any Revenue Court, or to any Magistrate, or any executive officer, except such as are mentioned in clause (b); (b)—to the Diwan or to the High Court	Eight annas One rupee
6. Memorandum of appeal when the appeal is not <sup>2</sup> [ * * * ] from a decree or an order having the force of a decree, <sup>3</sup> and is presented—	(a)—to any Civil Court other than the High Court (b)—to the High Court	One rupee Two rupees
<sup>3</sup> [6 A. Caveat.	..	Five rupees]

<sup>1</sup>Added by section 8 (a) of Act LXVIII of 1122.<sup>2</sup>The words "from an order rejecting a plaint" omitted by section 8 (b) of Act LXVIII of 1112.<sup>3</sup>Inserted by section 8 (c) of Act LXVIII of 1112.

## SCHEDULE II—(Cont.)

## Fixed fees

Number		Proper Fee
<p>7. <b>Plaint or memorandum of appeal in each of the following suits:—</b></p> <p><b>i.</b> to alter or set aside a summary decision or order of any Civil Court or of any Revenue Court:</p> <p><b>ii.</b> to obtain a declaratory decree where no consequential relief is prayed for:</p> <p><b>iii.</b> to set aside an award:</p> <p><b>iv.</b> to set aside an adoption:</p> <p><b>v.</b> every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.</p> <p>8. <sup>1</sup>[Application under rule 17 or rule 20 of Order XL of the Cochin Code of Civil Procedure, 1111.]</p> <p>9. <sup>2</sup>[Agreement in writing stating a question for the opinion of the Court under the Cochin Code of Civil Procedure, 1111]</p> <p><sup>3</sup>[(10) Application under section 15-A and appeals under section 15-C of the Registration of Literary, Scientific and Charitable Societies Act, II of 1088.]</p>		<p>Ten rupees</p>

<sup>1</sup> Substituted by section 8 (d) of Act LXVIII of 1112.

<sup>2</sup> Substituted by section 8 (e) *ibid.*

<sup>3</sup> Added by section 7, Act XIV of 1118.

[SCHEDULE III

(See section 18-1)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS,  
IF ANY, AS MAY BE NECESSARY)

IN THE COURT OF

*Re Probate of the Will of..... (or administration of  
the property and credits of.....,) deceased.*

I

{ Solemnly affirm }  
{ make oath }

and say that I am the executor (or one of the executors or one of the next-of-kin) of....., deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

**ANNEXURE A**

VALUATION OF THE MOVABLE AND IMMOVABLE  
PROPERTY OF....., DECEASED

	Rs.	A.	P.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc. .. .. . (State estimated value according to best of Executor's or administrator's belief)			
Property in Government securities .. .. . (State description and value at the price of the day; also the interest separately, calculating it to the time of making the application)			
Immovable property consisting of .. .. . (State description, giving, in the case of houses, the assessed value, if any, and the number of year's assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued)			

<sup>1</sup> Added by section 10 of Act LXVIII of 1112.



ANNEXURE A—(contd.)

	Rs.	A.	P.
Leasehold property ... <i>(If deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)</i>			
Property in public companies ... <i>(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)</i>			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money. <i>(State the amount of the whole; also the interest separately calculating it to the time of making the application.)</i>			
Book debts ... <i>(Other than bad.)</i>			
Stock in trade ... <i>(State the estimated value, if any.)</i>			
Other property not comprised under the foregoing heads ... <i>(State the estimated value, if any.)</i>			
Total ...			
Deduct amount shown in Annexure B not subject to duty ...			
Net total ...			

ANNEXURE B

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate ...			
Amount of funeral expenses ...			
Amount of mortgage encumbrances ...			
Property held in trust not beneficially or with general power to confer a beneficial interest ...			
Other property not subject to duty ...			
Total ...			

# THE COCHIN FOREST ACT

(III OF 1080)

(As amended up to 1st Kumbham 1122)

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## THE COCHIN FOREST [ACT]

(III OF 1080)

## HISTORY OF LEGISLATION

Year	Number	Short title	Repeal and Amendments
1080	III	The Cochin Forest Act	Partly repealed by Proclamation dated 15th Dhanu 1104 and amended by Acts VII of 1093, IV of 1095, I of 1100 and I of 1109, Proclamation V of 1112 and Act XXIV of 1115.

<sup>1</sup>Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.

AN ACT TO MAKE BETTER PROVISION FOR  
THE PROTECTION AND MANAGEMENT  
OF THE FORESTS IN THE  
COCHIN STATE

*Passed by His Highness the <sup>1</sup>[Maharaja] on the 29th  
day of Kumbham 1080, corresponding to the  
12th day of March 1905*

Preamble.

Whereas it is expedient to make better provision for the protection and management of the forests in the Cochin State; it is hereby enacted as follows.—

\*CHAPTER I

*Preliminary*

Title.

1. (i) This Act may be called "The Cochin Forest Act".

Local extent and commencement.

(ii) It shall extend to the whole of the Cochin State, provided that the Diwan may, by notification in the <sup>2</sup>[Government] Gazette, exempt any place from the operation of the whole or any portion of this Act, but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced in such place before such exemption, and may in like manner vary or cancel such notification, and <sup>3</sup> it shall come into force from such date as the Diwan may, by notification in the Government Gazette, direct.

Repeal of Acts, etc.

(iii) On and from the date on which this Act comes into force, all Acts, Proclamations, rules, and notifications, relating to the forests, shall, so far as they are inconsistent with this Act, be deemed to be repealed.

Interpretation clause.

2. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context.—

Puravaka land.

(a) "Puravaka land" means any land, or portion thereof, the jenm right in which does not vest in the Government.

Pandaravaka land.

(b) "Pandaravaka land" means any land, or portion thereof, the jenm right in which vests in the Government.

<sup>1</sup> Substituted for "Raja" by section 2 of Act I of 1109.

<sup>2</sup> The Minister in charge will exercise the powers of the Diwan.

<sup>2</sup> Substituted for "Sirkar" throughout the enactment by section 2, Act XXIV of 1115.

<sup>3</sup> Brought into force from 15th Karkadagam 1080 by notification dated 24th Mithunam 1080.

(c) "Land at the disposal of the Government" means Land at the disposal of the government. and includes any Pandaravaka land which has not been assigned by the Government on verumpattam, kanom, adima, anubhokam, karaima, karozhivu, or any other tenure.

(d) "Tree" includes palms, bamboos, stumps, Tree. brushwood and canes.

(e) "Timber" includes trees when they have fallen, Timber. or when they have been felled, and all wood whether cut up, or fashioned, or hollowed out for any purpose or not.

(f) "Forest produce" includes— Forest produce.

Firstly the following, whether found in or brought from a forest or not, that is to say:—timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, cardamoms, myrabolams, wild animals and their skins, tusks, teeth, horns, and bones, and

Secondly the following when found in or brought from any reserved forest or from any land at the disposal of the Government, that is to say:—

(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds, and moss), and all parts or produce of such plants,

(iii) silk, cocoons, honey and wax, and all other parts or produce of animals, not hereinbefore mentioned, and

(iv) peat, surface soil, rock and minerals (including limestone, sand, laterite, mineral oils, and all produce of mines or quarries).

(g) "Forest offence" means an offence punishable under this Act, or any rule made hereunder. Forest Offence.

(h) "Cattle" includes elephants, camels, buffaloes, horses, mares, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, Cattle. [goats, kids, cows, bulls, calves and heifers.]

(i) "River" includes streams, canals, creeks, back- River. waters and other channels, natural or artificial.

<sup>1</sup>Substituted by section 3 (1), Act XXIV of 1115.

- Diwan. (j) "Diwan" includes an acting or officiating Diwan.
- Forest Officer. (k) "Forest officer" means any person appointed by name, or as holding an office, to be—a Conservator, Assistant Conservator <sup>1</sup>[Range Officer, Deputy Ranger, Forester, Forest Guard, Watcher or Tanadhar] or to discharge any function in connection with the management of Government forests and also any officer whom the Diwan, either by name or by virtue of office, shall declare to be a Forest officer.
- Conservator. <sup>2</sup>(l) "Conservator" means the Conservator of Forests, and includes an acting or officiating Conservator, <sup>3</sup>[or] any officer placed by the Diwan in charge of of the Forest Department of the State<sup>4</sup> [....]
- Magistrate. (m) "Magistrate" means an officer invested with the powers of a Magistrate of the first, or second class under the Code of Criminal Procedure, and also includes Magistrates of third class whom the Diwan may specially authorise to try forest offences.
- Police Officer. (n) "Police Officer" means any member of the <sup>5</sup>[Cochin] Police force.
- Imprisonment. (o) "Imprisonment" means imprisonment of either description as defined in the Cochin Penal Code.

## CHAPTER II

### *Monopoly Trees*

*Repealed by Proclamation dated 15-5-1104*

## CHAPTER III

### *Reserved Forests*

Power to  
reserve  
forests.

7. The Diwan may constitute any area a reserved forest in the manner hereinafter provided.

<sup>1</sup>Substituted by section 3 (2), Act XXIV of 1115.

<sup>2</sup>Substituted by section 2 of Act I of 1100.

<sup>3</sup>Inserted by section 3 (3) *Ibid.*

<sup>4</sup>Deleted by *Ibid.*

<sup>5</sup>Substituted by section 3 (4) *Ibid.*

8. Whenever it is proposed to constitute any area a reserved forest, the Diwan shall publish a notification in the Government Gazette.—

Notification  
by the Diwan.

(a) specifying as nearly as possible, the situation and limits of such area;

(b) declaring that it is proposed to constitute such area a reserved forest;

(c) and appointing an officer (hereinafter called the Forest Settlement Officer) to <sup>1</sup> [enquire into and determine the existence, nature and extent, of any rights claimed by, or alleged to exist, in favour of, any person in or over any land comprised within such limits or to any forest produce of any such land, and to] acquire such of the lands, comprised within such limits, as are not at the disposal of the Government. <sup>2</sup> [The Officer to be appointed under this clause shall ordinarily be a person other than a Forest officer.]

9. No Civil Court shall, between the date of the publication of the notification under section eight and the date fixed by the notification under section twelve, entertain any suit to establish any right in or over any <sup>3</sup> [land or to the forest produce of any] land included in the notification published under section eight.

Suits barred.

10. During the interval between the date of the publication of the notification under section eight and the date fixed by the notification under section twelve, no fresh clearing for cultivation or for any other purpose shall be made on any land included in the notification published under section eight.

Prohibition  
of clearings.

11. When a notification has been published under section eight, the Forest Settlement Officer shall make an inspection of the land or lands proposed to be reserved and in regard to the land or lands not at the disposal of the Government which may be required to be included in the proposed reserved forest, the Forest Settlement Officer shall proceed to acquire the same under the Land Acquisition Act, II of 1070; <sup>4</sup> [.....]. Provided however that, in regard to any land proposed to be so

Inspection  
and acquisition  
of lands  
by the Forest  
Settlement  
Officer.

<sup>1</sup> Inserted by section 4(1) of Act XXIV of 1115.

<sup>2</sup> Added by section 4(2) *Ibid.*

<sup>3</sup> Inserted by section 5 *Ibid.*

<sup>4</sup> Deleted by section 6(1) of Act XXIV of 1115.



acquired it shall be open to the Forest Settlement Officer, with the sanction of the Diwan, to drop all proceedings in regard to its acquisition at any time before the award is passed: <sup>1</sup>[Provided further that, before taking any action under this section, the Forest Settlement Officer, shall publicly invite claims to any of the following rights in and over any land included in the notification published under section 8, namely.—]

(1) a right of way,

(2) a right to a water course or to the use of water,

(3) a right of pasture;

(4) a right to forest produce, and shall investigate and adjudicate upon such claims subject to an appeal to the Diwan in cases of rejection, whose orders thereon shall be final.

When a claim to any such right is admitted by the Forest Settlement Officer, he shall record clearly in his order the particulars of such right and the Diwan may prescribe such rules as he deems necessary to regulate the exercise of such rights.

Notification  
declaring  
forests  
reserved.

12. When all proceedings prescribed by section eleven have been taken, and all lands (if any) to be included in the proposed forest which the Forest Settlement Officer has elected to acquire under the Land Acquisition Act have become vested in the Government under section fifteen of that Act and all rights of way, or rights to water, pasture or forest produce have been adjudicated upon as provided in section eleven;

the Diwan may publish a notification in the Government Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date to be fixed by such notification. From the date so fixed, such forest shall be deemed to be a reserved forest.

Property over  
reserved  
forest vests  
in govern-  
ment

13. When any area is constituted a reserved forest under section twelve, all property in or over such area shall vest absolutely in the Government subject to any right of way, right to water, pasture or forest produce that may have been admitted under section eleven; and the

<sup>1</sup>Substituted by section 6(2) of Act XXIV of 1115.

management of such area shall vest in the Conservator, subject to the control of the Diwan. No right of any description shall be acquired in or over a reserved forest except under a grant or contract in writing made by the Diwan on behalf of the Government.

14. Subject to such rules as the Diwan may prescribe from time to time in this behalf, it will be the duty of the Conservator, in all reserved forests,

Power to regulate or prohibit certain acts in reserved forests.

(a) to regulate or prohibit the felling and removal of timber or other forest produce,

(b) to regulate or prohibit the egress or ingress of people,

(c) to regulate or prohibit the use of water,

(d) to regulate or prohibit pasturage,

(e) to regulate or prohibit hunting, shooting, fishing, poisoning water and setting snares or traps, <sup>1</sup>[.....]

(f) <sup>2</sup>[ to regulate or prohibit the exercise of rights when fire is caused and to compel right-holders and others to assist any Forest or Police Officer, in extinguishing such fire and preventing the commission of or detecting any forest offence, and ]

<sup>3</sup>[ (g) ] to regulate or prohibit all similar matters.

15. No person shall clear for cultivation, <sup>4</sup>[ or for any other purpose ] or cultivate any portion of a reserved forest.

Prohibition of cultivation of reserved forests.

16. Any person who—

Penalties.

(a) makes any clearing, or cultivates, contrary to the provisions of section 15; or

(b) acts in contravention of any rule or order made by the Diwan or by the Conservator under section 14; or

(c) sets fire to any reserved forest, or kindles, or leaves burning <sup>5</sup>[ \* \* \* \* ]

<sup>1</sup>Deleted by section 7(1), Act XXIV of 1115.

<sup>2</sup>Inserted by section 7(2) *ibid.*

<sup>3</sup>Original clause (f) re-lettered by section 7(2) *ibid.*

<sup>4</sup>Inserted by section 8 *ibid.*

<sup>5</sup>The words "in any reserved forest" were deleted by Act IV of 1095.

any fire in such manner as to endanger the same; or

(d) trespasses or permits cattle to trespass, into any reserved forest; or

(e) fells, girdles, marks, lops, taps, uproots, or burns any tree, or strips off the bark or leaves from, or otherwise damages trees in any reserved forest; or

(f) quarries stones, burns lime or charcoal, or collects, or removes any forest produce from any reserved forest; or

(g) hunts, shoots, or fishes in any reserved forest; or

(h) damages, alters or removes any wall, ditch, embankment, fence, hedge, or railing, of or in any reserved forest;

shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Magistrate may direct to be paid to the Government.

[ In cases where the offence is committed after sunset and before sunrise or after making preparation for resistance to the execution of any law or any legal process or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.]

Nothing under this section shall be deemed to prohibit any act done in accordance with any rule made by the Diwan or with the permission in writing of the Diwan or of the Conservator, or of any officer authorised by the Diwan or by the Conservator to grant such permission.

17. The Diwan may, by a notification in the Government Gazette, direct that, from a date to be fixed by such notification, any forest, or any portion thereof, reserved under this Act, shall cease to be reserved.

From the date so fixed, such forest or portion thereof shall cease to be reserved.

Power to  
declare  
forest as no  
longer  
reserved.

## CHAPTER IV

*Protection of land at the disposal of the Government  
but not included in a reserved forest*

18. Subject to all rights now legally vested in individuals and communities, the Diwan may, for any Taluk or any portion of a Taluk, make rules to regulate the use of the pasturage or of the natural produce of land at the disposal of the Government but not included in a reserved forest. Such rules may, with respect to such land—

Power to  
make rules.

- (a) regulate or prohibit the clearing or breaking up of land for cultivation or any other purpose;
- (b) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;
- (c) regulate or prohibit the cutting, sawing, conversion, and removal of trees and timber and the collection and removal of forest produce;
- (d) regulate or prohibit the quarrying of stone, the boiling of catechu, or the burning of lime or charcoal;
- (e) regulate or prohibit the cutting of grass and the pasturing of cattle, and regulate the payments (if any) to be made for such cutting or pasturing;
- (f) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares;
- (g) regulate the sale or free grant of timber or other forest produce;
- (h) and prescribe the fees, royalties, or other payments to be made for such timber or other natural produce, and the manner in which such fees, royalties, or other payments shall be levied;

Provided that the Diwan may exempt any person or class of persons from the operation of all or any of such rules.

Any person who acts in contravention of any rule or order made by the Diwan under this section, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or

<sup>1</sup>[with both in addition to such compensation for damage done to the land at the disposal of Government but not included in a reserved forest as the convicting Magistrate may direct to be paid to Government.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence].

## 2 [CHAPTER IV-A]

### *Control over Forests and Lands not at the disposal of Government or in which Government has a limited interest*

Power to  
make rules.

18-A (1) The Diwan may make rules to regulate or prohibit in any forest or waste land not at the disposal of Government or in which or over the forest produce in which Government has joint-interest with any person or persons ;

(a) the breaking up or clearing of land for cultivation or for any other purpose ;

(b) the pasturing of cattle ;

(c) the firing or clearing of the vegetation when such regulation or prohibition appears to be necessary for any of the following purposes.—

(i) protection against storms, winds, rolling stones, floods and avalanches ;

(ii) preservation of the soil, prevention of landslips and of the formation of ravines and torrents, and protection of land against erosion, or the deposit thereon of sand, stones or gravel ;

(iii) maintenance of water supply in springs, rivers and tanks ;

(iv) protection of roads, bridges, railways and other lines of communication ;

(v) preservation of the public health ;

(vi) securing public money ;

(vii) formation or conservation of forest :

<sup>1</sup> Substituted by section 10 of Act XXIV of 1115.

<sup>2</sup> Substituted by section 2 of Act XIX of 1115.

Provided that the Diwan may exempt any person or class of persons from the operation of all or any of such rules.

(2) Any person who acts in contravention of any rule or order made by the Diwan under sub-section (1) shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month or fine which may extend to two hundred rupees or with both in addition to such compensation for damage done to the land or forest produce as the convicting Magistrate may direct to be paid.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.

## CHAPTER V

### <sup>1</sup>[*Transport of Timber and other Forest produce*]

19. The Diwan may make rules to regulate the transit of <sup>2</sup>[timber and other forest produce], within such local limits as may appear to be necessary. Such rules may (among other matters)—

Power to make rules to regulate the transit of <sup>2</sup>[timber and other forest produce].

- (a) prescribe the routes by which alone <sup>2</sup>[timber and other forest produce] may be imported into or exported from the Cochin State;
- (b) prohibit the import into or export from the Cochin State, or moving within defined local limits, of <sup>2</sup>[timber and other forest produce] without a pass from the land-holder from whose land it was brought, or from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such a pass;
- (c) prescribe the form of such passes, and provide for their issue, production, and return;

<sup>1</sup> Substituted by section 12 of Act XXIV of 1115.

<sup>2</sup> Substituted by section 13 (1) *ibid.*

- (d) provide for the stoppage, reporting, examination, and marking of <sup>1</sup>[timber and other forest produce] in transit, within defined local limits, or at stations established as hereinafter provided;
- (e) establish, or authorise the Conservator to establish, stations to which such <sup>1</sup>[timber and other forest produce] shall be taken by those in charge of it for examination, or marking, and the conditions under which <sup>1</sup>[timber and other forest produce] shall be brought to, stored at, and removed from, such stations;
- (f) provide for the management and control of such stations, and for regulating the appointment and duties of persons employed thereat;
- (g) <sup>2</sup>[authorise the transport of timber and other forest produce across any land and provide for the payment of compensation for any damage done by such transport.]
- (h) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of <sup>1</sup>[timber and other forest produce], and the throwing of grass, brushwood, branches or leaves, into any such river, or any act which may cause such river to be closed or obstructed;
- (i) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person, or by the sale of any <sup>1</sup>[timber and other forest produce], causing such obstruction;
- (j) provided for the protection of bridges, locks or other public works, by regulating the floating of <sup>1</sup>[timber and other forest produce], and the storing of <sup>1</sup>[timber and other forest produce] on river banks, and by authorising the seizure of <sup>1</sup>[timber and other forest produce] floated or stored in contravention of such rules, or by which any damage to such works may have been caused, and the detention and disposal of such <sup>1</sup>[timber and other forest produce] until compensation has been paid for the damage done;

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<sup>1</sup> Substituted by section 13 (1), Act XXIV of 1115.

<sup>2</sup> Substituted by section 13 (2) *ibid.*

(k) and regulate the use of property-marks for <sup>1</sup>[timber and other forest produce], and the registration of such marks, declare the circumstances under which the registration of any property-marks, may be refused or cancelled; prescribe the time for which registration shall hold good; limit the number of such marks that may be registered by any one person; and provide for the levy of fees for such registration.

<sup>2</sup>[Note: - The following are exempt from the operation of this section:—

“Caoutchouc, catechu, wood-oil, natural varnish, mahua flowers, cocoons, peat, surface soil, mineral oils and all produce of mines.]

20. Any person who acts in contravention of any rule or order made by the Diwan under section nineteen shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both. In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where offender has been previously convicted of a like offence, the convicting Magistrate may inflict double <sup>3</sup>[the] penalty prescribed for such offence <sup>4</sup>[in addition to such compensation as he may direct to be paid to Government for the loss caused to it].

Penalty for breach of rules made under section 19.

## CHAPTER VI

### *Wild Elephants*

21. No wild elephant shall be killed, wounded or captured in any place within the Cochin State, except with the sanction of His Highness the <sup>5</sup>[Maharaja]:

Shooting, etc. of wild elephants prohibited

22. Whoever, without such sanction, kills, wounds or captures, any wild elephant, shall, on conviction before, a Magistrate, be punished with imprisonment for a term which may extend to six months or with fine which may

Penalty for shooting etc., of wild elephants without sanction.

<sup>1</sup> Substituted by section 13 (1), Act XXIV of 1115.

<sup>2</sup> Added by section 4, Act VII of 1093.

<sup>3</sup> Inserted by section 14(1), Act XXIV of 1115.

<sup>4</sup> Added by section 14(2) *ibid.*

<sup>5</sup> Substituted for “Raja” by section 2 of Act I of 1109.



extend to two thousand rupees, or with both, in addition to such compensation as the convicting Magistrate may, direct to be paid to the Government for the loss caused to it, and the tusks and teeth of the animals shall be confiscated by the convicting Magistrate, and handed over to the Conservator. <sup>1</sup>[In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or legal process or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence].

Property over tusks and teeth of wild elephant in Government.

23. The tusks and teeth of wild elephants shall be Government property, wherever they may be found.

Saving clause in regard to shooting wild elephant in self-defence.

24. Nothing in this Chapter shall be deemed to prohibit any person from shooting at, or wounding or killing any wild elephant in self-defence.

Power to make rules for regulating and catching, etc., of wild elephants by the Forest Department.

25. Nothing in this Chapter shall be deemed to affect the operations of the Government Forest Department in regard to the catching of wild elephants.

The Diwan may make rules to regulate the catching, training, and disposal of wild elephants and may by such rules authorise the transport of such elephants across any land and provide for the payment of compensation for any damage done by such transport.

## CHAPTER VII

### *Penalties and Procedure*

Seizure of property liable to confiscation.

26. Where there is reason to believe that a forest offence has been committed in respect of any timber, or other forest produce, such timber or produce, together with all tools, ropes, chains, boats. <sup>2</sup>[carts, cattle and other things] used in committing such offence, may be seized by any Forest Officer or Police Officer.

Report to Conservator.

Every officer seizing any property under this section shall place on such property, or the receptacle (if any) in which it is contained, a mark indicating that the same has

<sup>1</sup> Added by section 15, Act XXIV of 1115.

<sup>2</sup> Substituted by section 16, *ibid.*

been seized, and shall, as soon as may be, make a report of such seizure to the Conservator.

27. <sup>1</sup> [Upon receipt of a report regarding the Commission of any forest offence, a forest officer not below the rank of an Assistant Conservator shall hold an enquiry or cause an enquiry to be made and if he be satisfied that an offence has been committed he shall move the Magistrate having jurisdiction to try the offence to take such measures as may be necessary for the trial of the accused and the disposal of the property seized, if any, according to law].

Procedure on receipt of report.

28. When any person is convicted of a forest offence all timber or other forest produce in respect of which such offence has been committed, and all tools, ropes, chains, boats, <sup>2</sup>[carts, cattle and other things] used in committing such offence, shall be liable by order of the convicting Magistrate, to confiscation.

Timber and other forest products when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

When in any case, the Magistrate does not order confiscation, he shall place on record his reasons for not ordering confiscation.

29. When the trial of any forest offence is concluded, any timber or <sup>3</sup>(other) forest produce in respect of which such offence has been committed, shall, if it be the property of the Government or has been confiscated, be taken possession of by or under the authority <sup>4</sup>[of a forest officer not below the rank of an Assistant Conservator]; and in any other case it may be disposed of in such manner as the Court may order.

Disposal of forest produce in respect of which offence was committed.

30. When the offender is not known or cannot be found, <sup>5</sup>[a forest officer not below the rank of an Assistant Conservator], if he be of opinion that a forest offence has been committed, may order the property in respect of which the offence is believed to have been committed to be confiscated to the Government and sold for its benefit, or to be made over to any person <sup>6</sup>[whom such forest officer considers to be entitled to the same].

Procedure when offender is not known or cannot be found.

- 
- 1 Substituted by section 17, Act XXIV of 1115.  
 2 Substituted by section 18        ibid.  
 3 Inserted by section 19(1)        ibid.  
 4 Substituted by section 19 (2)    ibid.  
 5 Substituted by section 20 (1)    ibid.  
 6 Substituted by section 20 (2)    ibid.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure in regard to perishable property.

31. <sup>1</sup>[A forest officer not below the rank of an Assistant Conservator] may, notwithstanding any thing hereinbefore contained, direct the sale of any property seized under section twenty-six and subject to speedy and natural decay; and <sup>2</sup>[such forest officer] in cases under section thirty and the Magistrate in cases under section twenty-eight, or twenty-nine may deal with the proceeds of such property, as they would have dealt with such property if it had not been sold.

Order sections 28, 29 and 30.

32. Any person claiming to be interested in property seized under section twenty-six may, within one month from the date of any order passed under section twenty-eight or twenty-nine, present an appeal therefrom, which shall be dealt with in the manner provided by section <sup>3</sup>[330] of the Code of Criminal Procedure. Similarly, an appeal within one month from the date of an order by <sup>4</sup>[a forest officer not below the rank of an Assistant Conservator] passed under section thirty may be presented to the Diwan, whose orders thereon shall not be questioned by any Court of Law.

Property to vest when in Sirkar.

33. When an order for the confiscation of any property has been passed under section twenty-eight, twenty-nine, or thirty, and the period fixed by section thirty-two for presenting an appeal from such order has elapsed, and no such appeal has been presented, or when such appeal being presented the appellate authority has confirmed such order in respect of the whole or a portion of such property, such property, or portion as the case may be, shall vest in the Government free of all encumbrances.

Conservator to have power to release property seized.

34. Nothing hereinbefore contained shall be deemed to prevent <sup>5</sup>[a forest officer not below the rank of an Assistant Conservator] from directing at any time

- 
- <sup>1</sup> Substituted by section 21 (1), Act XXIV of 1115.  
<sup>2</sup> Substituted by section 21 (2)            *ibid.*  
<sup>3</sup> Substituted by section 22 (2)            *ibid.*  
<sup>4</sup> Substituted by section 22 (2)            *ibid.*  
<sup>5</sup> Substituted by section 23,                *ibid.*

the immediate release of any property seized under section twenty-six, and the withdrawal of any charge made in respect of any such property.

35. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain or wrongful loss as defined in the Cochin Penal Code:—

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest Officers, to indicate such timber or tree as the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or
- (b) knowingly affixes to any timber or standing tree a mark used by Forest Officers; or
- (c) alters, defaces, or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest Officer; or
- (d) alters, moves, destroys, or defaces, any boundary mark of any forest or of any land to which any provisions of this Act apply;

shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both <sup>1</sup>[in addition to such compensation as the convicting Magistrate may direct to be paid to Government for the loss caused to it. In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.]

36. Any Forest Officer or Police Officer may without orders from a Magistrate and without a warrant, arrest any person reasonably suspected by such officer of having been concerned in any forest offence punishable

Power to arrest without warrant.

<sup>1</sup> Added by section 24, Act XXIV of 1115.

with imprisonment for one month or upwards, if such person refuses to give his name and residence or gives a name and residence which there is reason to believe to be false, or if there be reason to believe that he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested to the nearest Police Station, and the officer in charge of such station shall thereupon act according to law.

Punishment for wrongful seizure or arrest.

37. Any Forest Officer or Police Officer who maliciously seizes any property on pretence of seizing property liable to confiscation under this Act or who illegally arrests any person, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Power to prevent commission of offence.

38. Every Forest Officer and Police Officer shall prevent, and may interfere for the purpose of preventing, the commission of any Forest offence.

Operation of other laws not barred.

39. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law, for any act or omission which constitutes a forest offence, or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made thereunder provided that no person shall be punished twice for the same offence.

Power to compound offence.

40. <sup>1</sup>[A forest officer not below the rank of an Assistant Conservator] may accept from any person suspected by him of having committed any forest offence, other than an offence under section twenty-two, thirty-five, or thirty-seven, a sum of money by way of compensation for the offence which may have been committed; and where any property has been seized as liable to confiscation, he may release the same on payment of the value thereof as estimated by him <sup>2</sup>[or confiscate such property to Government.]

<sup>1</sup> Substituted by section 25 (1), Act XXIV of 1115.

<sup>2</sup> Added by section 25 (2) *ibid*

On payment of such sum of money, or such value, or both as the case may be, to <sup>1</sup>[such officer], or to any officer authorised by him to receive such money or value the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

41. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that forest produce belongs to Government

## CHAPTER VIII

### *Cattle Trespass*

42. Cattle trespassing into a reserved forest, or on lands on which grazing of cattle has been prohibited by rules made under section eighteen, shall be deemed to be cattle doing damage to a public plantation within the meaning of section eleven of the Cattle Trespass Act, III of 1071, and may be seized and impounded as such by any Forest Officer or Police Officer.

Cattle Trespass Act of 1071 to apply

43. The Diwan may, by notification in the Government Gazette, direct that, in lieu of the fines fixed by section twelve of the Act last aforesaid there shall be levied, in all or any of the areas to which this Act applies, for each head of cattle impounded under section forty-two of this Act, such fines as he thinks fit, but not exceeding the following, *i.e.*

Power to alter fines fixed by the Cattle Trespass Act.

For each elephant	Rs. 10
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For each buffalo or camel	Rs. 2
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For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, calf or heifer	Re. 1
--------------------------------------------------------------------------------------------------	-------

For each ass, pig, ram, ewe, sheep, lamb, goat or kid	annas 8
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<sup>1</sup> Substituted by section 25 (3) of Act XXIV of 1115.

## CHAPTER IX.

*Miscellaneous.*

**Powers of the Conservator.** 44. The Conservator shall have the following powers:—

- (a) The powers of a Peishkar under Chapter III of the Survey Act, II of 1074 <sup>1</sup>[and under the Land Conservancy Act, IV of 1096].
- (b) the powers of the Civil Court to compel the attendance of witnesses and the production of documents, and
- (c) the power to hold enquiries into forest offences and in the course of such enquiries to receive and record evidence, and to issue search warrants which may be executed in the manner provided by the Code of Criminal Procedure.

Any evidence recorded under (c) of this section shall be admissible in any subsequent trial before a Magistrate of the alleged offender; provided that it has been taken in the presence of the accused person.

**Officers to exercise powers of the Conservator.**

<sup>2</sup>[44-A The Diwan may, by notification in the Cochin Government Gazette, authorise any officer by name or by virtue of his office to exercise all or any of the powers conferred on the Conservator under this Act and may withdraw the same].

**Forest Officers deemed public servants.**

45. All Forest Officers shall be deemed to be public servants within the meaning of the Cochin Penal Code.

**Indemnity for acts done in good faith.**

46. No suit or other legal proceedings shall lie against any public servant for anything done or purporting to be done, or omitted, in good faith, under this Act.

**Forest Officers not to trade.**

47. No Forest Officer shall, as principal or agent trade in timber or other forest produce, or be or become interested in any lease or mortgage of any forest or in any contract for working any forest whether in Cochin or in foreign territory.

<sup>1</sup> Added by section 26, Act XXIV of 1115.

<sup>2</sup> Added by section 27 *ibid*

48. The Diwan may make rules consistent with this Act:— Power of Diwan to make rules.

- (a) for the preservation, reproduction, felling, removal, and disposal of monopoly trees under Chapter II,
- (b) to regulate the conduct and procedure of all Forest Officers,
- (c) to regulate the conduct and procedure of Forest Settlement Officers,
- (d) for the management of reserved forests under section fourteen,
- (e) for the management of other lands at the disposal of the Government under section eighteen <sup>1</sup> [and of forests and lands not at the disposal of Government or in which Government has limited interest under section 18A],
- (f) for the control of <sup>2</sup> [timber and other forest produce] under sections nineteen and twenty,
- (g) to regulate the catching; training, transport and disposal of wild elephants under section twenty-five,
- (h) and generally to carry out the provisions of this Act.

49. All rules made by the Diwan under this Act shall be published in the Government Gazette, and shall thereupon have the force of law. Such rules may be cancelled or varied by like notification. Rules issued under this Act to have force of law.

50. All money (other than fines imposed or compensation awarded by a Magistrate) payable to the Government under this Act, or any rule made hereunder, or on account of timber or other forest produce, or of expenses incurred in the execution of this Act in respect of timber or other forest produce, and all compensation offered to and accepted by the Conservator under section forty, may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue. Recovery of money due to Government.

<sup>1</sup> Added by section 28 (1), Act XXIV of 1115.

<sup>2</sup> Substituted by section 28 (2), *ibid*



Money due to the Government to be the first charge on forest produce and power of Conservator to sell such produce.

51. When any such money is payable for, or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce; and if such be not paid when due, such produce may be taken possession of by or under the authority of the Conservator, and may be retained until such amount has been paid, or the Conservator may sell or direct to be sold such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any) if not claimed within two months from the date of the sale, by the person entitled thereto, shall be forfeited to the Government.

Land required under this Act deemed to be needed for a public purpose under the Land Acquisition Act.

52. Whenever the Diwan considers that any land is required for enlarging a reserved forest, or for any other purpose under this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, II of 1070, section three.

Recovery of fines.

53. The provisions of sections 55 to 61 (both inclusive) of the Cochin Penal Code and of sections 1[300 to 302] (both inclusive) of the Code of Criminal Procedure, shall apply to all fines imposed under this Act.

All compensation, of which Magistrate has ordered payment under the provisions of this Act, shall be recoverable as if it were a fine.

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<sup>1</sup> Substituted by section 29, Act XXIV of 1115.

# THE COCHIN REVENUE ENQUIRIES ACT

(I OF 1084)

(As amended up to 1st Kumbham 1122)

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### PREAMBLE

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## THE COCHIN REVENUE ENQUIRIES <sup>1</sup> [ACT]

(I OF 1084)

AN ACT TO FACILITATE ENQUIRIES INTO MATTERS CONNECTED WITH THE ADMINISTRATION OF REVENUE AND INTO THE CONDUCT OF PUBLIC SERVANTS.

### HISTORY OF LEGISLATION

Year	Number	Short title	Ammendments
1084.	I	Revenue Enquiries Act	Ammended by XVI of 1120.

*Passed by His Highness the <sup>2</sup>[Maharaja] of Cochin on the 27th day of Thulam 1084, corresponding with the 12th day of November 1908.*

Whereas it is expedient to make provision to facilitate enquiries into matters connected with the admini- Preamble.

<sup>1</sup> Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.  
Substituted for "Raja" by section 2 of Act I of 1109.

stration of revenue and into the conduct of public servants, it is hereby enacted as follows:—

Revenue Officers empowered to summon persons to appear or to produce any document before them.

1. The Diwan Peishkar, Tahsildars and Deputy Tahsildars, or such other officers as may be deputed by the Diwan to make enquiries into matters connected with the administration of revenue or into the conduct of any public servant, shall have power to summon all persons resident within the State whose evidence may appear to them to be necessary for the investigation of any matter in which they are holding an enquiry, and also to require the production of any document relevant to the matter under enquiry, which may be in the possession or under the control of such person.

Terms of summons.

2. Such summons shall be in writing and authenticated by the signature and seal of the officer by whom it is issued. It shall require the person summoned to appear before the said officer at a stated time and place, and shall specify whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both purposes; and any particular document, the production of which is required, shall be described in the summons with convenient certainty.

Mode of service of summons.

3. The summons shall be served personally on the person summoned, or, if he cannot be found, it may be left for him with some adult member of his family residing with him, or with the head of the village in which he lives.

Persons summoned to produce documents may send them by third party.

4. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the

summons if he cause such document to be produced, instead of attending personally to produce the same.

5. When the person whose evidence may be required is unable, from sickness or infirmity to attend before the officer issuing the summons, or is a person whom by reason of rank or sex it may not be proper to summon, the officer issuing the summons may, or his own motion, or on the application of the party whose evidence is desired, dispense with the appearance of such person, and order him to be examined by a subordinate deputed by such officer for the purpose.

When personal attendance of witnesses may be dispensed with, and procedure in such cases.

6. Any Officer making an enquiry under this Act may examine orally any person supposed to be acquainted with the matter under enquiry or any fact relevant thereto, and may reduce into writing any statement by the person so examined.

Examination of witnesses.

Such person shall be bound to answer truly all questions relating to such matter put to him by such officer, other than questions the answers to which would have a tendency to expose him to criminal charge or to a penalty or forfeiture.

No such statement, when taken in the absence of a public servant whose conduct is under enquiry, shall be used as evidence against such public servant in any judicial proceedings.]

Statements of witnesses not to be used as evidence in certain cases.

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<sup>1</sup> Substituted by section 2, Act XVI of 1120.

**THE COCHIN TOBACCO ACT**  
**(VII OF 1084)**  
**(As amended up to 1st Kumbham 1122)**

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THE COCHIN TOBACCO <sup>1</sup> [ACT]

(VII OF 1084)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1084	VII	The Cochin Tobacco Act	Amended by Acts I of 1096, and I of 1109, Proclamation V of 1112 and Acts III of 1117 and XII of 1119

AN ACT TO CONSOLIDATE AND AMEND THE LAW  
RELATING TO TOBACCO

*Passed by His Highness the <sup>2</sup> [Maharaja] of Cochin on the twenty-first day of Medam 1084, corresponding with the third day of May 1909*

Whereas it is expedient to consolidate and amend the law relating to tobacco; it is hereby enacted as follows:—

1. This Act may be called "The Cochin Tobacco Act, VII of 1084", and it shall come into force on the first day of Chingam 1085.

Short title, commencement and extent.

It extends to the whole of Cochin.

2. (1) On and from the first day of Chingam 1085, the Acts and Proclamations mentioned in the schedule shall be repealed to the extent shown in the last column thereof:

Repeal.

Provided that all licences granted under any of the said enactments or Proclamations in force on the date on which this Act comes into force shall continue in force for the period for which the same have been respectively granted, subject to the conditions mentioned in the licences and to the provisions of the laws under which the licences were granted.

(2) The provisions of this Act shall apply to all proceedings instituted after the commencement of this Act and, so far as may be, to all cases pending in any Criminal Court when this Act comes into force.

<sup>1</sup> Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for "Raja" by section 2 of Act I of 1109.

- Definitions. 3. In this Act, unless there be something repugnant in the subject or context—
- 1[(a)] “Commissioner” means the Commissioner of Excise, Cochin State.
- (b) “Cultivation” includes the tending or protecting of a plant during growth, and does not necessarily imply raising from seed. ]
- Export. 2[(c)] “Export” means to take out of the Cochin State to sea or any territory outside the Cochin State.
- Import. 3[(d)] “Import” means to bring into the Cochin State from sea or from any territory outside the Cochin State.
- Sale. 3[(e)] “Sale or selling” includes any transfer otherwise than by way of gift.
- Tobacco. 3[(f)] “Tobacco” includes snuff, cigars and preparations of which tobacco forms a part.
- Transport. 3[(g)] “Transport” means to move from one place to another within the Cochin State.
- Prohibition of possession, etc., of tobacco. 4. Except as permitted by this Act or by rules framed hereunder, no one shall—
- (a) possess tobacco for the purpose of sale,
- (b) transport tobacco,
- (c) import or export tobacco, 4[ \* \* \* ]
- (d) sell tobacco, 5[or
- 5[(e) cultivate tobacco.]
- Power to make rules to permit such matters. 5. The Diwan may, from time to time, 6[.....] make rules consistent with this Act, to permit absolutely or subject to any conditions, and regulate all or any of the following matters.—
- (a) the possession of tobacco for the purpose of sale,
- (b) the transport of tobacco,
- (c) the import or export of tobacco, 7[ \* \* \* ]

<sup>1</sup> Inserted by section 2, Act III of 1117.

<sup>2</sup> Original clauses (a) to (e) relattered as (c) to (g) by *ibid.*

<sup>3</sup> Relattered by section 2, Act III of 1117.

<sup>4</sup> Deleted by section 2, Act I of 1096.

<sup>5</sup> Added by section 2, *ibid.*

<sup>6</sup> Deleted by section 3, Act III of 1117.

<sup>7</sup> Deleted by section 3, Act I of 1096.

(d) the sale of tobacco and the form of duty leviable on the sale of tobacco by retail, <sup>1</sup>[\* \*]

<sup>2</sup>[(e) cultivation of tobacco.] <sup>3</sup>[and]

<sup>4</sup>[(f) the forfeiture, notwithstanding provisions to the contrary contained in the Cochin Contract Act, XXIII of 1112, or in any other law, of the whole or any portion of the kists deposited by persons who purchase the right to sell tobacco, in addition to the damages recoverable by Government on account of the breach of the conditions of sale laid down by the Diwan from time to time.]

All such rules shall be published in the Cochin Government Gazette and shall then have the force of law.

6. Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any licence or permit obtained under this Act, Penalty for illegal import, etc.

(a) possesses tobacco for the purpose of sale, or

(b) transport tobacco, or

(c) imports or exports tobacco, or

(d) sells tobacco, <sup>5</sup>[or]

<sup>6</sup>[(e) cultivates tobacco.]

shall, on conviction before a Magistrate, be punished for each such offence with fine which may extend to five hundred rupees.

7. When an offence under this Act has been committed in respect of any tobacco, Confiscation of tobacco.

(a) the tobacco in respect of which the offence has been committed,

(b) the vessels, packages and coverings in which such tobacco is found and the other contents (if any) of the vessel or package in which such tobacco may be concealed and the animals and conveyances used in carrying it, shall be liable to confiscation.

8. (1) When the offender is convicted, or when the person charged with an offence in respect of any tobacco is acquitted or discharged but the Magistrate decides that Order of confiscation when and by whom to be made.

<sup>1</sup> Deleted by section 2(a), Act XII of 1119.

<sup>2</sup> Added by section 3 of Act I of 1096.

Added by section 2(b), Act XII of 1119.

Added by section 2(c) *ibid*.

and <sup>6</sup> Added by section 4 of Act I of 1096.



<sup>1</sup>[anything] is liable to confiscation, such confiscation may be ordered by the Magistrate.

(2) When an offence against this Act has been committed, but the offender is not known or cannot be found, or when tobacco not in the possession of any person cannot be satisfactorily accounted for, the Magistrate will treat it as unclaimed property and dispose of it according to the provisions of the Code of Criminal Procedure for the time being in force.

Power to make rules regarding disposal of things confiscated and rewards.

9. The Diwan may, from time to time, by notification in the Cochin Government Gazette, make rules consistent with this Act to regulate—

(a) the disposal of all things confiscated under this Act, and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Issue of warrants by Magistrates.

10. Any Magistrate may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to tobacco, or for the search, whether by day or night, of any building, vessel or place in which he has reason to believe tobacco liable to confiscation to be kept or concealed.

When officer of Excise or other department may search without warrant and the procedure to be observed.

11. Whenever any officer of the <sup>2</sup>[Excise, Police, Land Revenue or Customs Department,] superior in rank to a peon or constable, empowered by the Diwan in this behalf, has reason to believe that contraband tobacco is being sold or kept in any place, and that the delay in obtaining a search warrant will prevent the discovery thereof, such officer shall first record in writing (so far as may be practicable)—

(a) the name, residence and calling of the informant (if any);

(b) the locality and description of the place in which, and the name of the person for or by whom, the contraband tobacco is sold or kept; and

(c) the supposed quantity and description of the contraband tobacco, with the grounds for believing the same to be contraband;

<sup>1</sup> Substituted by section 4, Act III of 1117

<sup>2</sup> Substituted by section 5(1), Act III of 1117.

and may then between sunrise and sunset enter and search any such place and may seize and carry away all contraband tobacco and all things liable to confiscation under this Act which he may find, and may also arrest any person concerned in the sale or keeping of such contraband tobacco or in dealing therewith; provided that any officer of the <sup>1</sup>[Excise, Police, Land Revenue or Customs Department,] not inferior in rank to a Police Inspector or <sup>2</sup>[Sub-Inspector of Excise] shall be competent to make searches and arrests also by night at his discretion.

Any person arrested under this section shall be admitted to bail by the officer conducting the search if sufficient bail be tendered for the appearance of such person before the nearest Magistrate.

12. Any officer of the <sup>3</sup>[Excise, Police, Land Revenue, or Customs Department,] and any other person duly empowered by the Diwan in this behalf, may arrest without warrant in any public thoroughfare or open place other than a dwelling house any person found committing an offence punishable under this Act; and in any such thoroughfare or place may seize and detain any tobacco or other article which he has reason to believe to be liable to confiscation under this Act or any other such law; and may search any person, vessel, vehicle, animal, package, receptacle or covering, upon whom, or in or upon which, he may have reasonable cause to suspect any such tobacco or other such article to be, or to be concealed.

Offenders may be arrested, and contraband tobacco and articles seized, without warrant.

<sup>4</sup>[Provided that, if the officer or person making the arrest under this section be not empowered under section 16-B to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered and it shall be the duty of such officer empowered as aforesaid to admit such person to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction to try the case.]

13. The provisions of the Criminal Procedure Code for the time being in force shall be applicable to all searches, arrests and trials made under this Act and to all

Criminal Procedure Code to apply to searches and arrests.

<sup>1</sup> Substituted by section 5(1), Act III of 1117.

<sup>2</sup> Substituted by section 5(2), *ibid.*

<sup>3</sup> Substituted by section 6(1), *ibid.*

<sup>4</sup> Added by section 6(2), *ibid.*

other matters of procedure which are not specially provided for in this Act.

Officers to assist each other.

14. The officers of the several departments mentioned in section 11 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

15. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place, or vexatiously or unnecessarily seizes the property of any person on the pretence of seizing or searching for any tobacco or other thing liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches or arrest any person shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Disposal of persons arrested and things seized.

<sup>1</sup>[16. (1) Every person arrested and all things seized under section 11 or 12 shall, unless bail shall have been accepted, be forthwith produced before the Magistrate having jurisdiction to try the case, and every person arrested and all things seized under section 10 shall without delay be produced before the Magistrate who issued the warrant. Every such officer before whom any person or thing is produced under this section shall, with all convenient speed, take such measures as may be necessary for the disposal, according to law, of such person or thing.

(2) When a report of occurrence of an offence under this Act is received by an officer empowered under section 16-A to investigate the case, such officer shall, after such investigation as he may think necessary, lay a charge before the Magistrate having jurisdiction to try the case. But, if in the circumstances of the case the investigating officer thinks it undesirable to institute proceedings before a Magistrate, he shall forward the records of investigation to the Commissioner with a brief report, for the disposal of the case.

(3) On receipt of the records of investigation with the report of the investigating officer, as aforesaid, the Commissioner may, at his discretion, order the release of the accused and the return of the articles seized, or if he thinks that the case is fit to be charged before a Magistrate,

<sup>1</sup> Substituted by section 7, Act III of 1117.

may order accordingly. The Commissioner may also return the records of investigation to the investigating officer for collecting further evidence as may be found necessary and after consideration of the whole evidence he may dispose of the case himself or direct that a charge be laid before the Magistrate.

(4) The Commissioner may also, at his discretion, stay proceedings in any case pending investigation, and may either conduct the investigation himself or order that the case be investigated by another competent officer.

16-A (1) Officers of the Excise Department not below the rank of Sub-Inspectors shall have power to investigate all offences under this Act. Powers of investigation.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Cochin Code of Criminal Procedure, upon an officer in charge of a Police Station, for the investigation of cognizable offences.

16-B. (1) All offences under this Act shall be bail-able. Offences to be bailable.

(2) All officers of the Excise Department of and above the rank of Sub-Inspectors and all Police Officers of and above the rank of Officers in charge of Police Stations shall have power to grant bail in accordance with the Cochin Code of Criminal Procedure to any person arrested without warrant for an offence under this Act.

17. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. Report of arrests or seizures.

[17-A. The Commissioner or any Officer empowered in this behalf by the Diwan may accept from any person who has committed, or has been suspected of having committed, an offence under this Act, a sum of money not exceeding two hundred rupees by way of composition of each such offence, and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer or confiscate such property to Government. Composition of offences.

<sup>1</sup> Inserted by section 8, Act III. of 1117.

On payment of such sum of money or such value, or both as the case may be, to such officer or to any officer authorised by him to receive such money or value, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.]

Bar of action.

18. No action shall lie against the <sup>1</sup>[Government] or against any officer of the Excise, <sup>2</sup>[Police, Land Revenue or Customs] Department for damages in any Civil Court for any act *bona fide* done or ordered to be done in pursuance of this Act, or of any law for the time being in force relating to tobacco revenue ;

and all prosecutions of any officer of the Excise, <sup>2</sup>[Police, Land Revenue or Customs] Department and all actions which may be lawfully brought against the <sup>1</sup>[Government] or against any officer of the Excise Department in respect of anything done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards.

Presumptions  
in prosecutions under  
section 6

19. In prosecutions under section 6, it shall be presumed, until the contrary is proved, that all tobacco for which the accused person is unable to account satisfactorily is tobacco in respect of which he has committed an offence under this Act.

#### SCHEDULE

No. and year	Title	Extent of repeal
Act III of 1010	An Act for giving greater efficiency to the system of Police established in Cochin	Section 38, so far as it relates to tobacco
Act I of 1053	An Act for prescribing rules for the confiscation of animals, conveyances, etc., used in contraband trade and for legalizing all previous confiscations	So far as it relates to tobacco
Proclamation, dated 26th Kar-kadagam 1040	A Proclamation relating to illicit dealings in tobacco, as amended by the Proclamation of 27th Medam 1082	The whole
Proclamations, dated 2nd Viris-chigam 1074, 27th Medam 1082 and 3rd Mithunam 1083	Proclamations amending a portion of the Proclamation of 1040, regarding tobacco	The whole

<sup>1</sup> Substituted by section 9, Act III of 1117.

<sup>2</sup> Inserted by *ibid*.

# PROCLAMATION

BY

HIS HIGHNESS SIR RAMA VARMAH, G. C. S. I.,  
[MAHARAJA] OF COCHIN

*Issued under date the 29th Makaram 1085 corresponding  
to 11th February 1910*

*(As amended by Proclamation dated 21st Chingam 1092  
and Proclamation XXIII of 1118 dated 10th  
Karkadagam 1118)*

Whereas it has been brought to OUR notice that the present system of administration of Sirkar Devaswoms under existing circumstances and conditions is inefficient and is detrimental to their interests: Whereas at present all the Sirkar Devaswoms fall under one or the other of the two descriptions, *viz.*, Incorporated and Unincorporated Devaswoms for administrative purposes, all Devaswoms the income from and the endowments attached to which are absorbed in the general revenues of the State and the expenditure necessary for the maintenance and upkeep of which is met out of the State revenues being denominated Incorporated Devaswoms, and all other Devaswoms, the income and endowments of which are not absorbed in the general revenues of the State and the expenditure for the maintenance and upkeep of which is met out of such income being denominated Unincorporated Devaswoms: Whereas there are a large number of Devaswoms of both the above descriptions scattered throughout the State with different systems of management and considerable difficulty and inconvenience is felt in exercising effective control over their management for want of a uniform system of

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<sup>1</sup>Substituted by section 2, Act I of 1109.

administration: and whereas it is deemed expedient and desirable to provide for the better and more efficient administration of all Sirkar Devaswoms and their endowments by placing them, whether Incorporated or Unincorporated, under the direct control and supervision of a responsible officer with a uniform system of management, WE are pleased to provide as follows:—

1. The Sirkar being the owner and proprietor and solely responsible for the proper administration of all Devaswoms of both the above descriptions, WE hereby resolve, from the date of this Proclamation, to treat and administer their affairs alike in a scheme of management, as laid down in the following sections:—

2. The endowments attached to and the income derived from the Devaswoms, whether Incorporated or Unincorporated, shall hereafter be constituted into a Common Trust for all administrative purposes. This fusion of the Devaswoms into Common Trust and the amalgamation of their funds shall not however affect the interests which each Devaswom has over its endowments, except to the extent specified in and provided for by the following sections.

3. *(Grouping of Devaswoms) Deleted by section 1 of Proclamation dated 21-1-1092.*

<sup>1</sup>[3.] The constitution of the endowments attached to the various Devaswoms into Common Trust Fund necessitates that the properties and endowments attached to the Incorporated Devaswoms, hitherto annexed by the Sirkar should be restored to them so that their income and expenditure may be kept separate and independent of the General State revenue accounts. An account shall therefore be prepared of all properties which form the

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<sup>1</sup> Original section "4" re-numbered as section 3 by section of Proclamation dated 21-1-1092.

endowments and properties of each of the Incorporated Devaswoms, and they should be restored to the respective Devaswoms so that in future they may be under the control and management of the Devaswom department for all administrative purposes.

<sup>1</sup>[4. All Institutions and Devaswoms dealt with under this Proclamation shall have a common account for their income and expenditure and the surplus, if any, after meeting the annual expenditure in respect of the various Institutions and Devaswoms shall stand to the credit of the common trust fund,]

<sup>2</sup>[5. The surplus standing to the credit of the said Devaswoms and Institutions on the 1st Chingam 1085 and invested or proposed to be invested thereafter shall remain individually to the credit of such Devaswoms or Institutions as the case may be, as separate endowments without being merged in the common trust fund. But the surplus now standing to the credit of the several groups shall merge in the common trust fund and shall hereafter be treated as surplus standing to the credit of such common fund.]

<sup>3</sup>[6.] The provisions contained in this Proclamation shall not apply to the Devaswoms, the management of which has been, or may, in future, be assumed by the Sirkar under the provisions of the Cochin Hindu Religious Institutions <sup>4</sup>[Act].

<sup>5</sup>[7. In case the Sirkar acquires ownership over any Devaswoms or other religious Institutions, by right of

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<sup>1</sup> Original section "5" was substituted and re-numbered by section 2 of Proclamation dated 21st Chingam 1092.

<sup>2</sup> Original section "6" was substituted and re-numbered by section 3, *ibid.*

<sup>3</sup> Re-numbered by section 4 *ibid.*

<sup>4</sup> Substituted for 'Regulation' by Proclamation V of 1112.

<sup>5</sup> Original section 8 substituted and re-numbered by section 5 of Proclamation dated 21st Chingam 1092.



escheat, by voluntary surrender by the owner or owners or by any other means, the provisions of the Proclamation shall apply to such Devaswoms or Institutions as well.]

<sup>1</sup>[8. OUR Diwan shall, if it be found necessary for purposes of exercising more effective control over the management of the said Devaswoms and Institutions, have power to distribute them from time to time into groups for administrative purposes, with OUR sanction previously obtained.]

9. OUR Diwan may with OUR sanction previously obtained from time to time, frame such rules as he may deem necessary for carrying out the main object and scheme of this Proclamation. All such rules when published in the Sirkar Gazette shall have the same force and validity as this Proclamation. Such rules may, amongst other things, regulate the renewals, prescribe the mode of collection of rents as well as rates of rents to be payable by tenants <sup>2</sup>[in respect of lands owned or held by Devaswoms and the procedure] to be followed in the fixing of such rates and the settlement of rents, and also provide for such other matters as may be necessary for securing efficiency and uniformity in the administration of the landed properties belonging to <sup>3</sup>[or held by] all Devawoms.

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<sup>1</sup> Inserted by section 6 of Proclamation dated 21st Chingam 1092.

<sup>2</sup> Substituted by section 10(1) of Proclamation XXIII of 1118.

<sup>3</sup> Inserted by section 10(2), *ibid.*

**THE COCHIN REGISTRATION OF LITERARY,  
SCIENTIFIC AND CHRITABLE  
SOCIETIES ACT**

**(II OF 1088)**

**(As amended up to 1st Kumbham 1122)**

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**THE COCHIN REGISTRATION OF LITERARY,  
SCIENTIFIC AND CHARITABLE  
SOCIETIES I[ACT]**

(II OF 1088)

HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1088	II	The Cochin Registration of Literary, Scientific and Charitable Societies Act	Amended by Act XIV of 1118.

**AN ACT FOR THE REGISTRATION OF LITERARY,  
SCIENTIFIC AND CHARITABLE SOCIETIES  
IN COCHIN**

*Passed by His Highness the <sup>2</sup> [Maharaja] on the 29th  
day of Thulam 1088, corresponding to the  
14th day of November 1912*

Preamble.

Whereas it is expedient that provision should be made for improving the legal condition of societies, established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge or for charitable purposes <sup>3</sup>[and for bringing such societies under the control and supervision of Government]: It is enacted as follows.—

Title, extent  
and com-  
mencement.

1. This Act may be called “The Act for the Registration of Literary, Scientific and Charitable Societies in Cochin”.

<sup>1</sup> Substituted for “Regulation” throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for “Raja” by section 2 of Act I of 1109.

<sup>3</sup> Added by section 2, Act XIV of 1118.

It extends to the whole of the Cochin State and shall come into force on the 15th day of Vrischigam 1088.

2. <sup>1</sup>[(1)] Any seven or more persons associated for any Literary, Scientific or Charitable purpose, or for any such purpose as is described in section 21 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-Stock Companies, form themselves into a society under this Act. Societies formed by memorandum of association and registration.

<sup>2</sup>[1. Provided that associations having such number of members or a minimum starting fund as may be prescribed by Government, shall be bound to register as aforesaid].

<sup>3</sup>[(2) If an association does not register under the proviso to sub-section (1) the association and every member thereof who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for every day during which the default continues].

3. The memorandum of association shall contain the following things (that is to say)— Memorandum of association.

the name of the society;

the objects of the society;

the names, addresses and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

4. Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of twenty-five rupees, or such smaller fee as the Diwan may, from time to time, direct; and all fees so paid shall be accounted for to Government. Registration.  
Fees.

<sup>1</sup> Original section 2 renumbered as sub-section (1) by section 3(a) Act XIV of 1118.

<sup>2</sup> Added by section 3(a), *ibid*

<sup>3</sup> Added by section 3(b), *ibid*.

Annual list  
of managing  
body to be  
filed.

5. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society, is held, or if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint Stock Companies of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Property of  
society how  
vested.

6. The property, movable and immovable, belonging to a society, registered under this Act if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Suits by and  
against  
societies.

7. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion: Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

Suits not to  
abate.

8. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued, or been sued but the same suit or proceeding shall be continued in the name of or against the successors of such person.

Enforcement  
of judgment  
against  
society.

9. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have

been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

10. Whenever by any by-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of by-laws by any by-law made at a general meeting of the members of the society convened for the purpose for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or by-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

Recovery of  
penalty  
accruing  
under by-law.

11. Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of, or detain, any property of the society, in a manner, or for a time, contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear, or for the damage accruing from such detention, injury or destruction of property, in the manner hereinbefore provided.

Members  
liable to be  
sued as  
strangers.

But, if the defendant shall be successful in any suit or other proceeding, brought against him at the instance of the society, and shall be adjudged to recover his cost, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

Recovery by  
successful  
defendant  
of costs  
adjudged.

12. Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

Members  
guilty of  
offences  
punishable as  
strangers.

Societies  
enabled to  
alter, extend,  
or abridge  
their pur-  
poses.

13. Whenever it shall appear to the governing body of any society, registered under this Act, which has been established for any particular purpose, or purposes that it is advisable to alter, extend or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially, with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society.

But no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Power to call  
for accounts  
and inspection  
of books, etc.

<sup>1</sup>[13-A. (1) Government may at any time call upon the governing body of any society registered under this Act, to submit periodically accounts of income and expenditure and of the assets and liabilities of the society. The Superintendent of Registration or any other officer authorised by Government shall periodically examine the accounts and other books of the society and submit to Government a report on the result of such inspection. The Inspecting Officer may enter the premises of the society and the governing body and the servants of the society shall furnish him with all information he may call for and shall also render him all the assistance necessary to enable him to conduct the examination and make the report. It shall be the duty of the governing body and of all persons who are or have been servants of the society to produce before the officer so deputed all books and documents in their custody or power relating to the society and to answer any question relating to the affairs of the society.

(2) Whenever the Inspecting Officer has reason to believe that the accounts or other books or documents of

<sup>1</sup>Added by section 4 of Act XIV of 1118.

the society are withheld without sufficient excuse, he may after recording the reasons and the grounds of his belief enter and search or cause to be searched any place or may seize any such accounts, books or documents.

(3) Government may for the efficient and better management of the society review the reports submitted under sub-section (1) and pass such orders as they deem fit other than those referred to in clauses (a) to (c) of section 15-A.

13-B. (1) Government may fine any member of the governing body or servant of the society who wilfully or contumaciously disobeys any order passed by them under section 13-A in an amount not exceeding fifty rupees for each act of disobedience. If the said member or servant fails to carry out the said order within one week from the date of receipt by him of the order imposing the fine, Government may dismiss him. The governing body of the society shall be bound to give effect to the order passed by Government under this section in respect of any servant of the society and any failure on their part to give effect to such order shall be deemed disobedience within the meaning of this section.

Power to fine any member of the governing body or servant of the society and dismiss him for disobedience.

(2) A person dismissed under sub-section (1) shall be disqualified to be elected or nominated as a member of the governing body for a period of 5 years from the date of such removal unless the disqualification is removed by Government.

13-C. In cases in which a member of the governing body is removed or dismissed under section 13-B, the vacancy shall be filled up in accordance with the rules and regulations of the society:

Government to fill up any vacancy in accordance with the rules and regulations of the society.

Provided that Government may fill up such vacancy otherwise than in accordance with the rules and regulations of the society if in their opinion such a deviation is necessary in the interests of the society.]

14. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according

Provision for dissolution of societies and adjustment of their affairs.



to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society the adjustments of its affairs shall be referred to the principal Court of Original Civil-jurisdiction of the District in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Assent  
required..

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution, by their votes delivered in person, or by proxy, at a general meeting convened for the purpose: Provided that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government:

Government  
consent.

Upon a  
dissolution  
no member  
to receive  
profit.

15. If, upon the dissolution of any society, registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to, or distributed among the members of the said society, or any of them, but shall be given <sup>1</sup>[to Government upon such terms and conditions as may be mutually agreed upon or to some other society registered under this Act which has for its object the furtherance of aims similar as near as may be, to the objects of the dissolved society] to be determined by the votes, not less than three-fifths of the members present, personally, or by proxy, at the time of the dissolution, or, in default thereof, by such Court as aforesaid; provided however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-Stock Company.

Clause not  
to apply to  
Joint-Stock  
Companies.

Application  
to court for  
dissolution,  
framing a  
scheme, etc.

<sup>2</sup>[15-A. (1) When an application is made by Government or 10 per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the Court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders.—

<sup>1</sup> Substituted and always deemed to have been substituted by section 5, Act XIV of 1118.

<sup>2</sup> Added by section 6, *ibid.*

(a) removing the existing governing body and appointing a fresh governing body; or

(b) framing a scheme for the better and efficient management of the society; or

(c) dissolving the society.

(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in Court along with the application the sum of rupees one hundred in cash as security for costs.

15-B. When a society is dissolved under section 15-A, the Court may if Government are willing to accept the management of the society, order that such management shall be handed over to Government or that any surplus assets remaining after the satisfaction of the debts and liabilities of the society may be given to some other society registered under this Act, which has for its object, the furtherance of aims similar, as near as may be, to the objects of the dissolved society.

Handing over  
of surplus  
assets by  
Court.

15-C. Appeals shall lie to the High Court from orders passed under section 15-A as if they were decrees in suits and shall be presented within the time prescribed therefor.]

Appeals  
against  
orders under  
section 15-A.

16. For the purposes of this Act, a member of a society shall be a person who, having been admitted therein, according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member, whose subscription at the time shall have been in arrear for a period exceeding three months.

Member  
defined.

17. The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom, by the rules and regulations of the society, the management of its affairs is entrusted.

Governing  
Body defined.

18. Any company or society established for a literary, scientific or charitable purpose, previously to the passing of this Act may, at any time, hereafter, be registered as a society under this Act, subject to the proviso that no such company or society shall be registered under

Registration  
of societies  
formed before  
this Act.

Assent  
required.

this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of such a society, if no governing body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

Such society  
to file memo-  
randum, etc.  
with Registrar  
of Joint-Stock  
Companies.

19. In order to any such society, as is mentioned in the last preceding section, obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-Stock Companies a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body, together with a copy of the rules and regulations of the society, certified as provided in section 3, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

Inspection of  
documents.

20. Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection, and any person may require a copy or extract of any document or any part of any document to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

Certified  
copies.

21. The following societies may be registered under this Act:—

To what  
societies the  
Act applies.

charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums, and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

**THE COCHIN AGRICULTURAL IMPROVEMENT LOANS  
ACT (IV OF 1093)**

(As amended up to 1s Kumbham 1122)

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**THE COCHIN AGRICULTURAL IMPROVEMENT LOANS  
[ACT] (IV OF 1093)**

**HISTORY OF LEGISLATION**

Year	Number	Short Title	Amendments
1093	IV	The Cochin Agricultural Improvement Loans Act	Amended by Act V of 1122

'Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

AN ACT TO PROVIDE FOR THE GRANT OF LOANS  
FOR AGRICULTURAL IMPROVEMENTS  
IN THE COCHIN STATE

*Passed by His Highness the <sup>1</sup>[Maharaja] on the 4th  
day of Kumbham 1093 corresponding to the 15th  
day of February 1918.*

Preamble.

Whereas it is deemed expedient to make provision for the grant of loans of money by the Government for agricultural improvements; it is hereby enacted as follows.—

Short title.

1. (1) This Act may be called “The Cochin Agricultural Improvement Loans Act, IV of 1093”.

Commence-  
ment and  
extent.

(2) It shall extend to the whole of the Cochin State; and it shall come into force at once.

Diwan  
Peishkar.

2. In this Act ‘Diwan Peishkar’ means the Chief Officer in charge of the revenue administration of the State and includes an acting or officiating Diwan Peishkar, and also any officer appointed by the Government to exercise the functions of the Diwan Peishkar under this Act.

Purposes for  
which loans  
may be  
granted

3. (1) Subject to such rules as may be made by the Diwan under section 9, loans may be granted under this Act by the officer empowered by the Diwan in this behalf, (a) for the purpose of making any improvement, to any person having a right to make that improvement, or with the consent of that person to any other person and, (b) for the relief of distress, the purchase of seed or cattle and other purposes connected with agricultural objects, to owners and occupiers of arable land.

(2) ‘Improvement’ means any work which adds to the letting value of land, and includes the following, namely.—

(a) The construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture.

(b) The preparation of land for irrigation;

(c) The drainage, reclamation from rivers or other waters, or protection from floods or from erosion or

<sup>1</sup> Substituted for ‘Raja’ by section 2 of Act I of 1109.

other damage by water, of land used for agricultural purposes or waste land which is culturable.

(d) The reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) The renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

(f) Such other works as the Diwan may, from time to time, by notification in the Cochin Government Gazette, declare to be improvements for the purposes of this Act.

4. (1) When an application for a loan is made under this Act, the officer empowered by the Diwan in this behalf may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice in the Cochin Government Gazette calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

Mode of dealing with applications for loans.

(2) Such officer shall consider every objection submitted under sub-section (1) and make an order in writing either admitting or over-ruling it;

Provided that when the question raised by an objection is, in the opinion of such officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

5. Every loan granted under this Act shall be made repayable by instalments within such periods from the date of the actual advance of the loan, or, when the loan is advanced in instalments (from the date of the advance of the last instalment actually paid) as may, from time to time, be fixed by the rules made under this Act.

Period of repayment of loans.

<sup>1</sup>[5-A. All loans granted under this Act, all interest (if any) chargeable thereon and the costs (if any) incurred in making or recovering the same shall be the paramount charge on the land for the benefit of which the loan has been granted;

Loans to be paramount charge on the land.

Provided that the charge hereby created shall always be subject to the charge for arrears of land revenue in

<sup>1</sup>Added by section 2, Act V of 1122.

respect of that land under section 3 of the Cochin Revenue Recovery Act, IV of 1083.]

Recovery of  
loans.

6. (1) Subject to such rules as may be made under section 9, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Diwan Peishkar in all or any of the following modes, namely.—

(a) from the borrower—as if they were arrears of land revenue due from him;

(b) from his surety (if any)—as if they were arrears of land revenue due by him;

(c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land revenue due in respect of that, <sup>1</sup>[ x ]

(d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land revenue by the sale of immovable property other than the land on which that revenue is due <sup>2</sup>[and]

<sup>3</sup>[x x x x x]

<sup>4</sup>[(e) out of the interest of the person with whose consent the loan has been granted under sub-section (1) of section 3 and of mortgagees of or persons having charges on that interest by the sale of or by the placing on *nadupattam* of that interest];

<sup>5</sup>(2) All sales of land under clauses (c) and (e) of sub-section (1) shall be free of all encumbrances.]

<sup>1</sup> Deleted by section 3, Act V of 1122.

<sup>2</sup> Added by section 3, *ibid.*

<sup>3</sup> Deleted by section 3, *ibid.*

<sup>4</sup> Inserted by section 3, *ibid.*

<sup>5</sup> Inserted by section 3, *ibid.*

<sup>1</sup>[(3)] When any sum due on account of any such loan, interest or costs is paid to the Diwan Peishkar by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Diwan Peishkar from a surety or out of any such property, the Diwan Peishkar shall, on application of the surety or the owner of that property (as the case may be) recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

<sup>1</sup>[(4)] It shall be in the discretion of the Diwan Peishkar to determine the order in which he will resort to the various modes of recovery permitted by it.

7. A written order under the hand of the officer empowered by the Diwan to make loans under this Act granting a loan to or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act be conclusive evidence—

Order granting loan conclusive on certain points.

(a) that the work described is an improvement within the meaning of this Act.

(b) that the person mentioned had at the date of the order a right to make such an improvement; and,

(c) that the improvement is one benefiting the land specified.

8. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which, as among themselves each

Liability of joint borrowers as among themselves.

<sup>1</sup>Renumbered by section 3, Act V of 1122.



is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Power to make rules.

9. The Diwan may with the sanction of His Highness the '[Maharaja] from time to time, by notification in the Gazette make rules consistent with this Act to provide for the following matters, namely:—

(a) the manner of making applications for loans ;

(b) the officers by whom loans may be granted ;

(c) the manner of conducting enquiries relative to applications for loans and the powers to be exercised by officers conducting those enquiries ;

(d) the nature of the security to be taken for the due application and the repayment of the money, the rate of interest at which and the conditions under which, loans may be granted, and the manner and time of granting loans ;

(e) the inspection of works for which loans have been granted ;

(f) the instalments by which and the mode in which loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ;

(g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same ; and

(h) all other matters pertaining to the working of this Act.

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! Substituted for 'Raja' by section 2 of Act I of 1109,

## PROCLAMATION

BY HIS HIGHNESS SIR RAMA VARMA, G. C. I. E.,  
[MAHARAJA] OF COCHIN

*Issued under date the 13th Edavam 1094,  
corresponding to the 27th May 1919*

*(As amended by Proclamation VII of 1120)*

Whereas certain services in <sup>2</sup>[incorporated and unincorporated Devaswams under the management of our Government] such as *Thanthram, Santhi, Kazhakam*, etc., had been formerly granted to and are being enjoyed as *Karaima* by certain families; and whereas the holders of said *Karaima* services had also been granted landed property or other emoluments, as remuneration for the due performances of the services; and whereas it has now been represented to us that the holders of the said *Karaima* services, owing to incompetency, negligence, or other cause, do not generally perform such services properly and regularly, and also that some families holding the said *Karaima* have alienated the services or properties or other emoluments attached thereto for pecuniary consideration or otherwise; and whereas We consider it essential that, in the interests of <sup>3</sup>[the said Devaswams] the said services should all be duly performed; and whereas, for an efficient administration of <sup>3</sup>[the said Devaswams], it is necessary to declare that our Government have absolute control over the holders of all *Karaima* services and also over all the properties, and other emoluments attached thereto;

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<sup>1</sup> Substituted by section 2, Act I of 1109.

<sup>2</sup> Inserted by Proclamation VII of 1120, dated 27th Thulam 1120.

<sup>3</sup> Substituted by *ibid.*

<sup>1</sup>[and whereas We deem it necessary that *Avakasams*, *Adithoons* and certain other emoluments payable by the said Devaswams shall not be liable to attachment or sale by courts of law] We are hereby pleased to command that, whenever it is reported to Our Diwan that, owing to incompetency, negligence or other cause, any *Karaima* service is not being properly and regularly performed, or that an alienation of a *Karaima* service or of the property, or other emolument attached thereto, has been effected by the *Karaima* holder or by any member or members of the *Karaima* family, Our Diwan shall give due notice of the charge to the head of the family and the next senior member, and also to the alienor or defaulter if he is neither the head nor the next senior member, and also to such other members of the *Karaima* family as Our Diwan may deem necessary, and if, after hearing their objections, if any, Our Diwan is satisfied that there has been an alienation of the *Karaima* service or of the property or of the other emolument attached thereto, or that, owing to incompetency, negligence or other cause, there has been a failure to perform the service properly or regularly, Our Diwan shall suspend, remove, determine, cancel or deal with in any other manner, the *Karaima* right of the family to the service; and <sup>2</sup>[\*\*\*\*\*] that the decision of Our Diwan that any service or property or other emolument attached thereto has been alienated or that, owing to incompetency, negligence, or other cause, any service has not been properly or regularly performed shall be final, and that, no action shall lie in any court against Our Government for any act done or ordered to be done in pursuance of this Proclamation.

<sup>3</sup>[We are further pleased to command that notwithstanding any law for the time being in force, the *Avakasams*, *Adithoons* and other emoluments which Government may from time to time by notification in the Cochin Government Gazette specify in this behalf, shall not be liable to attachment by courts of law].

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<sup>1</sup> Inserted by Proclamation VII of 1120, dated 27th Thulam 1120.

<sup>2</sup> Deleted by *ibid*.

<sup>3</sup> Added by *ibid*.

**THE COCHIN VAKILS' ACT**  
**(VI OF 1095)**  
**(As amended up to 1st Kumbham 1122)**

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## THE COCHIN VAKILS' [ACT] (VI OF 1095)

### HISTORY OF LEGISLATION

Year	Number	Short Title	Amendments
1095	VI	The Cochin Vakils' Act	Amended by Schedule to Act XXI of 1113

### AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO VAKILS

*Passed by His Highness the <sup>2</sup>[Maharaja] on the 31st  
day of January 1920 corresponding to the  
18th day of Makaram 1095*

### Preamble.

Whereas it is expedient to consolidate and amend the law relating to Vakils in Cochin; It is hereby enacted as follows:—

<sup>1</sup> Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for "Raja" by section 2 of Act I of 1109.

## CHAPTER I PRELIMINARY

1. This Act may be called "The Cochin Vakils' Act, VI of 1095," and it shall come into force at once.

Short title and commencement.

It shall extend to the whole of Cochin State.

Extent.

2. The Acts mentioned in the first schedule herein after annexed shall be repealed to the extent therein specified.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, sannads granted, sanctions given, and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, granted, given and passed under this Act.

Saving of rules, etc.

All references made to enactments hereby repealed in any Act passed, or notifications published shall be read as if made to the corresponding provisions of this Act.

References to repealed enactments.

3. In this Act unless there be something repugnant in the subject or context:

Interpretation clause.

"Judge" means the presiding judicial officer in every civil and criminal court by whatever title he is designated.

"Subordinate court" means all courts subordinate to the [High Court] exercising either civil or criminal jurisdiction.

"Vakil" means any vakil admitted as such under the provisions of this Act.

"Tout" means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.

## CHAPTER II OF VAKILS

4. The High Court may, from time to time, with the previous approval of the Government make rules consistent with the provisions of this Act as to the following matters:—

Power of High Court to make rules as to qualifications, etc.

<sup>1</sup> Substituted by section 32, Act XX of 1113, for Chief Court throughout this Enactment.

(a) the qualifications, admission, and sannad of proper persons to be vakils of 2[ \* \* \* ] the subordinate courts;

(b) the fees to be paid for the examination of such persons; and

(c) the suspension, degradation and dismissal of vakils.

All such rules shall be published in the Government Gazette and shall thereupon have the force of law.

Granting of sannads to Vakils.

5. On the admission under section 4, of any person as a vakil, the High Court shall cause a sannad, signed by such officer as the Court, from time to time, appoints in this behalf, to be granted to such person authorising him to practise in the Courts specified therein.

6. 1[ \* \* \* ].

Enrolment in other Courts.

7. Every person 1[ \* \* \* ] who holds a sannad granted under section 5 may apply to be enrolled in any Court mentioned therein, and subject to such rules consistent with this Act as the High Court may, from time to time, make in this behalf, the presiding judge shall enrol him accordingly, and thereupon, he may appear, plead and act in such Court and in any Court subordinate thereto.

Vakils not to practise without a Sannad and enrolment.

8. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a vakil unless he holds a sannad granted under section 5 and has been enrolled in such Court or in some Court to which it is subordinate.

Sannad to be in writing on Stamp paper.

9. Every sannad granted under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed.

### CHAPTER III

#### OF THE REMUNERATION OF VAKILS

Power of High Court to regulate Vakils' fees.

10. The High Court, with the previous sanction of the Government, shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's vakil upon all proceedings [\*] in the subordinate Courts.

<sup>1</sup> Deleted by schedule to Act XXI of 1113.

Tables of fees so fixed shall be published in the Government Gazette.

11. No agreement entered into by any vakil with any person retaining or employing him respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such vakil, shall be valid unless it is made in writing signed by such person.

Agreements between Vakils and Client not valid unless made in writing, etc.

12. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done, to be ascertained in the same manner as if no such agreement had been made.

Suits relating to such agreements.

13. Such an agreement shall exclude any further claim of the vakil beyond the terms of the agreement with respect to any services, fees, charges or disbursements, in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

Such agreement to exclude all claims save those expressly excepted.

14. A provision in any such agreement that the vakil shall not be liable for negligence or that he shall be relieved from any responsibility to which he would otherwise be subject as such vakil or that the payment of fee shall depend upon the result of any suit, or proceeding shall be wholly void.

Provision in agreement negating liability for negligence etc., void.

## CHAPTER IV

### OF PENALTIES

15. Any person, who practises in any court in contravention of the provisions of section 5, shall be liable, by order of such Court, to a fine not exceeding ten times the amount of the stamp required by this Act for a sannad authorising him to practise in such Court and, in default of payment, to imprisonment in the Civil Jail for a term which may extend to six months. He shall also be incapable of maintaining any suit for or enforcing a lien with respect to any fee or reward for, or with

Penalty for contravention of section 5.



respect to anything done or any disbursement made by him as vakil whilst he has been contravening the provisions of such section.

Penalty for practising during suspension or after dismissal.

16. Any vakil who under the provisions of this Act has been suspended or dismissed, and who during such suspension or after such dismissal, practises as a vakil in any court, shall be liable by order of such Court, to a fine not exceeding five hundred rupees, and in default of payment, to imprisonment in the Civil Jail for a term which may extend to six months.

Appeals.

17. Every order under section 15 or 16 shall be subject to appeal to the High Court where the order has been passed by a subordinate Court.

Publication of lists of touts.

18. (i) The High Court, every District Judge, Sessions Judge and District Magistrate, each as regards their or his Court, and the Courts, if any, subordinate thereto, may frame and publish the lists of persons proved to their or his satisfaction by evidence of general repute or otherwise, habitually to act as touts and may from time to time alter and amend such lists.

(ii) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(iii) A copy of every such list shall be kept hung up in every Court to which the same relates.

(iv) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

## CHAPTER V

### MISCELLANEOUS

Vakalaths.

19. Any party to a suit or proceeding desirous of engaging a vakil should do so, by executing a vakalath in the form and manner, if any, prescribed by the High Court from time to time in this behalf.

Vakil to be heard before punishment.

20. Notwithstanding anything hereinbefore contained, no vakil shall be suspended, degraded, dismissed, or otherwise punished under this Act, unless he has been allowed an opportunity to defend himself before the

authority suspending, degrading, dismissing or otherwise punishing him.

[21. Nothing in this Act shall be deemed to apply to advocates within the meaning of the Cochin Bar Council Act, 1113.] Provisions of the Act not to apply to advocate.

## THE FIRST SCHEDULE

### ACTS REPEALED

Number and year	Subject or title	Extent of repeal
I of 1010	Extending the powers of jurisdiction of Zillah Judges ..	Section 5, clause (1)
II of 1010	For the future guidance of the Appeal Court ..	Section 3
I of 1041	Appointment of duly qualified vakils to plead in Courts ..	Whole
III of 1043	To provide for the admission of counsels in criminal cases ..	Sections 8, 9 and 10
II of 1076	Chief Court ..	Section 8
VI of 1083	Stamp Act ..	Article 29 of Schedule 1

## THE SECOND SCHEDULE

1	[.....]	
2	For enrolment as a vakil of the District Court..	Rs. 100
3	Do. do. of the Munsiff's Court ..	.. 50

1Added by Schedule to Act XXI of 1113.

2Wholly repealed by section 2 and Schedule of Repealing Act II of 1097.

3Deleted by Schedule to Act XXI of 1113.

# THE COCHIN LAND CONSERVANCY ACT

(IV OF 1896)

(As amended up to 1st Kumbham 1122)

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5. Lands which are the property of Government not to be occupied without permission.
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- 6A. Penalty for digging, etc., on lands adjoining public roads without permission.
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- 8A. Penalty for continued unauthorised occupation after notice to vacate.
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12. Officers to exercise powers of Diwan Peishkar.
13. Appeal and revision.
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16. Saving of operation of other laws in force.
17. Conclusiveness of decision as to amount of assessment.
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## THE COCHIN LAND CONSERVANCY [ACT]

(IV OF 1096)

## HISTORY OF LEGISLATION

Year	No.	Short title	Amendments
1096	IV	The Cochin Land Conservancy Act	Amended by Acts XXIV of 1113 and X of 1120

*Passed by His Highness the <sup>2</sup>[Maharaja] on the 31st day of Kanni 1096 corresponding to the 16th day of October 1920.*

Whereas it is expedient to consolidate and amend the law checking the unauthorised occupation of <sup>3</sup>[and interference with] Government lands; It is hereby enacted as follows.—

1. (1) This Act may be called “The Land Conservancy Act, IV of 1096.”

(2) It extends to the whole of Cochin.

(3) It shall come into force at once.

2. Chapter IV of Revenue Recovery Act IV of 1083 is hereby repealed.

3. (1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same; the bed of the sea and of harbours and creeks below high water-mark; the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and watercourses; all standing and flowing water; and all lands wheresoever situated; save in so far as the same are the property of —

(a) registered pattadars or holders of lands subject to the payment of land revenue to the Sirkar,

(b) holders of inam lands,

(c) any person holding lands under special grants or leases from the Sirkar,

<sup>1</sup> Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for ‘Raja’ by Section 2 of Act I of 1109.

<sup>3</sup> Inserted by section 2 of Act XXIV of 1113.

Short title, extent and commencement.

Right of property in public roads etc., water and lands.

Repeal.

Preamble.

(d) any person claiming through or holding under any of the persons referred to in clauses (a), (b) or (c), are and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land-owners and to all customary rights legally subsisting.

*Explanation I.*—Lands once registered in the name of a person but subsequently abandoned or relinquished and all lands held by the Government, by right of escheat, purchase, resumption, reversion or acquisition under Act II of 1070 are the property of Government within the meaning of the section.

*Explanation II.*—In this section the expression 'high water mark' means the highest point reached by the ordinary spring tides at any season of the year.

*Explanation III.*—Land in excess of the registered measurement or extent, but lying within the specified boundaries of a registered land does not fall within this definition.

*Explanation IV.*—Where in regard to roads, lanes and canals, survey stones had been, in the original demarcation under the Survey Act, planted for the sake of convenience and safety inside compound walls and gates of compounds, in house verandahs, door-steps, porticoes, masonry drains, and similar structures of a permanent nature, such walls, gates, verandahs, etc., shall not be deemed to be the property of Government within the meaning of this section.

(2) All public roads and streets vested in any local authority and all lands belonging to Government Devaswams not leased or assigned to any tenant shall for the purposes of this Act be deemed to be the property of Government.

4. (1) 'Poramboke' shall mean and include un-assessed lands which are the property of Government under section 3 (1) or (2) used or reserved for public purposes or for the communal use of villagers such as—

(a) all public roads, streets, lanes, pathways, the bridges, ditches, dykes, and fences on or beside the same;

Poramboke  
defined.

(b) the beds and banks of rivers, irrigation and drainage channels, traffic canals, tanks, lake, backwaters and water-courses;

(c) markets, burial grounds, landing ghauts; and

(d) all other property which the Government may, for the purpose of this Act, from time to time, declare to be poramboke.

(2) 'Occupant' shall mean a person actually in possession of a land which is the property of Government. Occupant defined.

5. From and after the commencement of this Act it shall not be lawful for any person to occupy a land which is the property of Government whether poramboke or not without permission from the Government or such officer of Government as may be empowered in this behalf. Lands which are the property of Government not to be occupied without permission.

6. (1) Any person unauthorisedly occupying a land which is the property of Government other than a poramboke shall be liable to pay by way of assessment for the whole period of his occupation such amount as may be fixed by the Diwan Peishkar, in accordance with the rate that may be prescribed by the Government from time to time in this behalf. Levy of assessment on lands which are the property of Government unauthorisedly occupied.

(2) Any person unauthorisedly occupying a poramboke shall be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Diwan Peishkar in accordance with the rules that may be prescribed by the Government from time to time in this behalf. Levy of prohibitory assessment on poramboke unauthorisedly occupied.

Payment of assessment under sub-section (1) or prohibitory assessment under sub-section (2) shall not confer any right of occupancy, and the liability to pay such assessment shall cease from the date on which the land concerned is relinquished.

[6A. (1) Any person who, without the permission of the Diwan Peishkar previously obtained, and without such precautions as the Diwan Peishkar might direct him to take in that behalf, digs, deepens or does any other similar act upon any property belonging to him or in his possession and within one Dhannu (9·24 feet)<sup>2</sup> [on either side Penalty for digging, etc., on lands adjoining public roads without permission.

<sup>1</sup> Inserted by section 3, Act XXIV of 1113.

<sup>2</sup> Substituted by section 2, Act X of 1120.

of the public roads] which causes damage or threatens to cause damage to such public roads, or, diminishes or threatens to diminish or in any other manner impairs or threatens to impair their utility, shall be guilty of unauthorisedly and illegally using such property and shall be liable to pay a fine, not exceeding Rs. 50 as may be fixed by the Diwan Peishkar. Such fine shall be imposed only in the event of such person failing to comply with the requisition lawfully made by the Diwan Peishkar or any person authorised by him to discontinue such act and to restore such damaged road to its original condition.

(2) The Chief Engineer or the Director of Public Health and Panchayats or any person authorised by any one of them shall have the power to enter upon any land which belongs to, or in the possession of, the offenders and do such acts as are necessary to protect the public road or to restore it to its original condition.

(3) An appeal shall lie to the Diwan from an order passed by the Diwan Peishkar under clause (1).]

Liability of unauthorised occupant for trees destroyed or appropriated.

7. Any person unauthorisedly occupying any land which is the property of Government, whether a poramboke or not, shall, in addition to the assessment or prohibitory assessment to which he may be liable under section 6, be liable for the value, as adjudged by the Diwan Peishkar, of any useful tree or other improvements destroyed or appropriated by him.

Liability of unauthorised occupant to summary eviction, forfeiture of crops, etc.

8. Any person unauthorisedly occupying any land for which he is liable to pay assessment or prohibitory assessment under section 6 may be summarily evicted by the Diwan Peishkar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Diwan Peishkar may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Diwan Peishkar and any property so forfeited shall be disposed of as the Diwan Peishkar may direct.

*Explanation.*—A tenant holding over after due notice in writing to quit shall be deemed to be a person unauthorisedly occupying within the meaning of this Act.

Mode of eviction.

An eviction under this section shall be made in the following manner namely:—By serving a notice on a

person reputed to be in occupation or his agent requiring him within such time as the Diwan Peishkar may deem reasonable after receipt of the said notice to vacate the land and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same and, if the officer removing any such person shall be resisted or obstructed by any person, the Diwan Peishkar shall hold a summary enquiry into the facts of the case, and if satisfied that the resistance or obstruction still continues, may issue a warrant for the arrest of the said person, and on his appearance may send him with a warrant in the form of the schedule for imprisonment in the Central Jail for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 169, 172 and 174 of the Cochin Penal Code, in respect of the same facts.

<sup>1</sup> [8A. (1) Any person who is or continues to be in unauthorised occupation of any land which is the property of Government, after the expiry of the period mentioned in the notice issued under section 8 and whether before or after an order of forfeiture passed under that section shall be liable to pay a daily fine not exceeding ten rupees as the Diwan Peishkar may direct, until the land is vacated.

Penalty for continued unauthorised occupation after notice to vacate.

(2) When an order of eviction is in force it shall be lawful for the Diwan Peishkar or other officer authorised by him in that behalf to cause such works to be executed, such measures taken or such things done as may, in the opinion of the Diwan Peishkar or such other officer as aforesaid, be deemed necessary to remove the encroachment and to restore the land to its original condition.

(3) In all cases in which an order of forfeiture has been passed under section 8, the whole or such part of any structure erected, any building constructed or any other improvement made on the adjoining land as it may be found necessary to pull down, cut away, remove or otherwise interfere with, shall, for the purpose of this section and

<sup>1</sup> Inserted by section 4, Act XXIV of 1113.



of section 8, be deemed to have been erected, constructed or made on the land unauthorisedly occupied.

(4) All expenses incurred and all fines imposed under this section shall be recoverable in the manner prescribed in section 11 from all or any of the persons who may have been in unauthorised occupation of the land.

(5) No suit for damages or otherwise shall lie against any officer or any person acting under his orders for anything lawfully and in good faith done under this section].

Prior notice to occupant etc.

9. The Diwan Peishkar shall, before passing an order under this Act, give notice to the occupant or other person likely to be affected by the order, and record any statement which such occupant or person may make and any evidence which he may adduce within a reasonable time; and all orders passed by the Diwan Peishkar under this Act shall be in writing and under his hand.

The Diwan Peishkar may require any subordinate officer not below the rank of a Tahsildar or Deputy Tahsildar to hold the enquiry as prescribed in this section and submit the record to him. On such record the Diwan Peishkar may pass orders.

For the purpose of section 185 of the Penal Code, the proceedings taken by the Diwan Peishkar under this section shall be deemed to be judicial proceedings.

Power to make rules.

10. The Government may make rules or orders consistently with the provisions of this Act either generally or in any particular instance—

(a) regulating the rate of assessment under section 6 (1);

(b) regulating the imposition of prohibitory assessment under section 6 (2);

(c) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation;

(d) regulating the service of notices under this Act; and

(e) generally to carry out the provisions of this Act.

Such general rules or orders shall be made only after previous publication in the Government Gazette.

11. All assessments and prohibitory assessment, damages for trees destroyed or appropriated, and all costs of eviction and removal of encroachment <sup>1</sup>[and all fines imposed under section 6A (1)] shall be recovered as arrears of Land Revenue under the provisions of the Revenue Recovery Act for the time being in force.

Recovery of assessment, etc., as arrears of land revenue.

<sup>2</sup>[*Explanation.* Removal of encroachment includes restoration of the land to its original condition].

12. Government may, by notification in the Government Gazette, authorise any officer by name or by virtue of his office to exercise all or any of the powers conferred on the Diwan Peishkar under this Act.

Officers to exercise powers of Diwan Peishkar.

13. (1) An appeal shall lie to the Diwan from any decision or order passed under this Act by the Diwan Peishkar or any officers authorised under section 12 of this Act.

Appeal and revision.

(2) Pending disposal of any appeal under this Act, the Diwan may suspend the execution of the order appealed against.

(3) No order shall be passed in appeal or revision without previous notice to the party to be affected by such order.

14. No appeal shall be brought after the expiration of 60 days from the date of the decision or order complained of, provided that, in computing the period of 60 days, the time required to obtain a copy of the decision or order appealed against shall be excluded, but the appeal may be admitted after the period hereby prescribed when the appellant satisfies the Diwan that he had sufficient cause for not preferring the appeal within the period prescribed.

Limitation of appeal.

15. Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Petition of appeal to be accompanied by the order appealed against.

16. Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any other law for the time being in force;

Saving of operation of other laws in force.

Provided that, if any penalty has been levied under section 6 of this Act, no similar penalty shall be levied

<sup>1</sup> Inserted by section 5, Act XXIV of 1113.

<sup>2</sup> Added by *ibid.*

from him under any other law in respect of such occupation.

Conclusiveness of decision as to amount of assessment. Saving of suits by persons aggrieved by proceedings under the Act.

17. The decision as to the rate or amount of assessment payable under section 6 shall be recorded in writing and shall not be questioned in any civil court.

18. Nothing contained in this Act shall be held to prevent persons deeming themselves aggrieved by any proceedings under this Act except as hereinbefore provided, from applying to the civil courts for redress. Provided that the civil courts shall not take cognizance of any suit instituted by such persons for any such cause of action unless such suit shall be instituted within six months from the time at which the cause of action arose.

Explanation.—The cause of action shall be deemed to have arisen—

(a) in respect of any assessment or penalty, on the date on which such assessment or penalty was levied;

(b) in respect of eviction or forfeiture, on the date of eviction or forfeiture.

Provided also that the whole time occupied by the Diwan in revising the proceedings under section 13 shall be excluded from the computation of the period of limitation of the said six months.

Saving of lands claimed by right of escheat reversion.

19. Nothing in this Act shall apply to any lands claimed by right of escheat, resumption or reversion until such lands have been reduced into possession by Government.

SCHEDULE

FORM OF WARRANT TO BE ISSUED BY THE DIWAN PEISHKAR UNDER SECTION 8

(Seal)

To

The Officer-in-charge of the Central Jail at Trichur.

Whereas A. B. of.....has resisted or obstructed C. D. in removing E. F. (or himself, that is, said A. B.) from certain land in the village of.....in the.....Taluk, and whereas it is necessary, in order to prevent the continuance of such obstruction or resistance, to commit the said A. B. to close custody; you are hereby required under the provisions of section 8 of the Cochin Land Conservancy Act,.....to receive the said A. B. into the Jail under your charge and thereto keep him in safe custody for.....days.

Dated this.....day of.....

Signature of Diwan Peishkar

**THE COCHIN TELEPHONE ACT**  
**(V OF 1996)**  
**( As amended up to 1st Kumbham 1122 )**

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5. Power to make rules for the conduct of telephones.
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**THE COCHIN TELEPHONE ACT]**  
(V OF 1095)

HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1096	V	The Cochin Telephone Act	Amended by Acts I of 1106, I of 1109 and XXII of 1111, Proclamation V of 1112 and Act XXI of 1115

*Passed by His Highness the <sup>2</sup>[Maharaja] on the 17th day of Vrischigam 1096 corresponding to the 2nd day of December 1920.*

Whereas it is deemed expedient to provide for the protection of the Telephone Lines in Cochin, it is hereby enacted as follows:—

1. (1) This Act may be called “The Cochin Telephone Act, V of 1096.”

(2) It extends to the whole of Cochin, and

(3) It shall come into force at once.

2. In this Act unless there be something repugnant in the subject or context,—

(1) <sup>3</sup>[“Telephone” means an electric, galvanic or magnetic telephone and includes appliances and apparatus for <sup>4</sup>[making or transmitting] telephone messages or other communications by means of electricity, galvanism or magnetism.]

(2) “Message” means any communication sent by telephone or given to a telephone officer to be sent by telephone or to be delivered;

(3) “Telephone line” means a wire or wires used for the purpose of a telephone, with any casing,

<sup>1</sup> Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for ‘Raja’ by section 2 of Act I of 1109.

<sup>3</sup> Substituted by section 2 of Act I of 1106.

<sup>4</sup> Substituted by section 10, Act XXI of 1115.

Short title,  
extent and  
commence-  
ment.

Definitions.

coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;

(4) "Post" means a post, pole, standard, stay, struct or other above-ground contrivance for carrying, suspending or supporting a telephone line;

(5) "Telephone Authority" means the officer in-charge of the telephone line and includes any officer empowered by him to perform all or any of the functions of the telephone authority under this Act.

## PART II

<sup>1</sup>[3. No telephone shall be established, maintained or worked by a private person <sup>2</sup>[ \* \* \* ] without a licence in writing from the Government. Such licence may be granted on such terms as the Government may fix.]

Telephone not to be established, maintained, worked or sold without licence.

4. (1) On the occurrence of any public emergency or in the interest of public safety, the Government or any officer authorised by the Government in this behalf, may take temporary possession of any telephone established, maintained or worked by any person licensed under this Act.

Power for Government to take possession of licensed telephones.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under subsection (1) was in the interest of public safety a certificate signed by the Diwan shall be conclusive proof on the point.

5. (1) The Government may, from time to time, by notification in the Cochin Government Gazette, make rules consistent with this Act for the conduct of all or any telephones established, maintained, or worked by the Government or by persons licensed under this Act.

Power to make rules for the conduct of telephones.

(2) When making any rules for the conduct of any telephone established, maintained or worked by any person licensed under this Act, the Government may by the rules prescribe fines for any breach of the same;

Provided that the fines so prescribed shall not exceed the following limits, namely:—

<sup>1</sup> Substituted for the original section by section 2 of Act XXII of 1111.

<sup>2</sup> Deleted by section 10, Act XXI of 1115.

(a) when the person licensed under this Act is punishable for the breach, one thousand rupees, or in the case of continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

(b) when a servant of the person so licensed or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (a).

(3) All rules made under this section shall be published in the Cochin Government Gazette, and on such publication shall have the force of law.

Revocation  
of licences.

6. The Government may, at any time, revoke any licence granted under section 3, on the breach of any of the conditions or in default of payment of any consideration payable thereunder.

### PART III

Power of  
telephone  
authority to  
place and  
maintain  
telephone  
lines and  
posts.

7. The telephone authority may, from time to time, place or maintain a telephone line under, over, along, across, and posts, in or upon any immovable property.

Provided that—

(a) the telephone authority shall not exercise the powers conferred by this section except for the purpose of a telephone established or maintained by the Government, or to be so established or maintained;

(b) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telephone authority places any telephone line or post; and

(c) in the exercise of the powers conferred by this section, the telephone authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property, shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to  
enter on  
property in  
order to  
repair or  
remove  
telephone  
lines or posts.

8. The telephone authority may, at any time for the purpose of examining, repairing, altering or removing any telephone line or posts, enter on the property under, over, along, across, in or upon which the line or post has been placed.

9. (1) If the exercise of the powers mentioned in section 7, in respect of property referred to in clause (c) is resisted or obstructed, the District Magistrate may, in his discretion, order that the telephone authority shall be permitted to exercise them.

Exercise of powers conferred by section 7, and disputes as to compensation.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers or having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 174 of the Cochin Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 7, clause (c), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telephone authority may pay into the Court of the District Judge such amount as they deem sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section 3, that amount, and the District Judge after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final.

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telephone authority from the person who has received the same.

10. (1) When, under the foregoing provisions of this Act, a telephone line or post has been placed by the telephone authority under, over, along, across, in or upon any property and any person entitled to do so, desires to deal with that property in such a manner as to render it

Removal or alteration of telephone line or post.



necessary or convenient that this telephone line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telephone authority to remove or alter the line or post accordingly.

Provided that, if compensation has been paid under section 7, clause (c), he shall, when making the requisition, tender to the telephone authority the amount requisite to defray the expenses of the removal or alteration or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telephone authority omits to comply with the requisition, the person making it may apply to the District Magistrate to order the removal or alteration.

(3) The District Magistrate, when receiving an application under sub-section (2), may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telephone line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

Removal of trees interrupting telephone communication.

11. (1) If any tree standing or lying near a telephone line interrupts, or is likely to interrupt, telephone communications, the District Magistrate or a Magistrate of the Second Class may, on the application of the telephone authority, cause the trees to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telephone line was placed, award to the persons interested in the tree such compensation as he thinks reasonable and the award shall be final.

Telephone lines and posts placed before the passing of this Act.

12. Every telephone line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purpose of a telephone established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after the observance of all the requirements of, this Act.

PART IV  
PENALTIES

13. If any person establishes, maintains or works a telephone, within Cochin otherwise than as permitted by a licence granted under section 3, or breaks any condition contained in such a licence, he shall be punished with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every week during which the line is maintained or worked or the breach of the condition continues.

Establishing, maintaining or working unlicensed telephone or breaking condition of licence.

14. If any person, knowing or having reason to believe that a telephone has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telephone or performs any service incidental thereto or delivers any message for transmission by such telephone or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Using such telephones.

15. If any person intending—

(a) to prevent or obstruct the transmission or delivery of any message, or (b) to intercept or to acquaint himself with the contents of any message, or (c) to commit mischief, damages, removes, tampers with or touches any battery, machinery, telephone line, post or other thing whatever, being part of or used in or about any telephone or in the working thereof,

Intentionally damaging or tampering with telephone.

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

# THE COCHIN PRESS AND REGISTRATION OF BOOKS ACT

(VII OF 1097)

(As amended up to 1st Kumbham 1122)

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**THE COCHIN PRESS AND REGISTRATION  
OF BOOKS [ACT]**

(VII OF 1097)

HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1097	VII	The Cochin Press and Registration of Books Act	Amended by Acts XIV of 1110, XXI of 1111 and IV of 1112, Proclamation V of 1112 and Act VI of 1121.

*Passed by His Highness the Maharaja of Cochin on  
the 28th day of Kumbham 1097 corresponding to  
the 11th day of March 1922.*

Preamble.

Whereas it is expedient to consolidate and amend the law relating to printing presses and newspapers and to provide for the preservation of copies of every book printed or lithographed in Cochin, and for the registration of such books; It is hereby enacted as follows.—

PART I

PRELIMINARY

Short title,  
extent and  
commence-  
ment.

1. This Act may be called “The Cochin Press and Registration of Books Act, VII of 1097;”

it shall extend throughout Cochin; and it shall come into force on 1st Meenam 1097.

Interpreta-  
tion clause.

2. In this Act, unless there shall be something repugnant in the subject or context,—

“Book.”

“book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed:

“Magis-  
trate.”

“Magistrate” means a District Magistrate or any person exercising the powers of a First Class Magistrate:

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<sup>1</sup> Substituted for “Regulation” throughout the enactment by Proclamation V of 1112.

“Newspaper” means any periodical work containing public news, or comments on public news, printed in any language: “Newspaper.”

“Printing Press” includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing. “Printing Press.”

## PART II

### OF PRINTING PRESSES AND NEWSPAPERS

3. Every book or <sup>1</sup>[paper] printed within Cochin shall have printed legibly on it the name of the printer and the place of printing, and (if the book or <sup>1</sup>[paper] be published) the name of the publisher and the place of publication. Particulars to be printed on books and papers:

4. No person shall, within Cochin, keep in his possession any press for the printing of books or newspapers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be: Keeper of printing press to make declaration.

“I, A, B, declare that I have a press for printing at.....”

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

5. No <sup>2</sup>[.....] newspaper shall be published in Cochin, except in conformity with the rules hereinafter laid down. Rules as to publication of printed newspapers.

<sup>3</sup>[(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper.]

<sup>4</sup>[(2)] The printer and the publisher of every such newspaper shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe in duplicate, the following declaration:—

<sup>1</sup> Substituted by section 2 of Act VI of 1121.

<sup>2</sup> Deleted by section 3 *ibid*.

<sup>3</sup> Inserted by section 2 (1), Act XIV of 1110.

<sup>4</sup> Renumbered by section 2 (2) of Act XIV of 1110.

“I, A, B, declare that I am the printer (or publisher, or printer and publisher) of the newspaper entitled . . . and printed (or published, or printed and published, as the case may be) at . . . . .”

And the last blank in this form of declaration shall be filled up with a true and a precise account of the premises where the printing or publication is conducted:

<sup>1</sup>[(3)] As often as the place of printing or publication is changed, a new declaration shall be necessary:

<sup>1</sup>[(4)] As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave Cochin, a new declaration from a printer or publisher resident within the said territories shall be necessary.

<sup>2</sup>[Provided that no person who has not completed the age of eighteen shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.]

Authentica-  
tion of  
declaration.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposits.

One of the said originals shall be deposited among the records of the Office of the Magistrate, and the other shall be deposited among the records of the principal Civil Court of original jurisdiction for the place where the said declaration shall have been made.

Inspection  
and supply  
of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said declaration, attested by the seal of the Court, which has the custody of the original, on payment of a fee of two rupees.

Office copy of  
declaration to  
be *prima*  
*facie*  
evidence.

<sup>3</sup>[7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, or in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held

<sup>1</sup> Re-numbered by section 2(2) of Act XIV of 1110.

<sup>2</sup> Added by section 2(2) *ibid.*

<sup>3</sup> Section 7 was substituted for the original section by section 3 of Act XIV of 1110.

(unless the contrary be proved) to be sufficient evidence, as against the person whose names shall be subscribed to such declaration, or printed on such newspaper, as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, or the editor of every portion of that issue of the newspapers of which a copy is produced.]

8. Provided always that any person who may have subscribed any such declaration as is aforesaid. and who may subsequently cease to be the printer or publisher of the newspaper mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:—

New declaration by persons who have signed declaration and subsequently ceased to be printer or publishers.

“I, A, B, declare that I have ceased to be the printer (or publisher, or printer and publisher) of the newspaper entitled.....”.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Authentication and filing.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Inspection and supply of copies.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the newspaper therein mentioned.

Putting copy in evidence



Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

<sup>1</sup> [8A. If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate, after making such inquiry or causing such inquiry to be made as he may consider necessary, is satisfied that such declaration is true, he shall certify accordingly and on that certificate being given the provision of section 7 shall not apply to that person in respect of that issue of the newspaper.

The Magistrate may extend the period allowed by the section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.]

### PART III

#### DELIVERY OF BOOKS AND NEWSPAPERS

Copies of books and newspapers printed after commencement of Act to be delivered gratis to Government.

9. (1) Printed or lithographed copies of the whole of every book which shall be printed or lithographed in Cochin after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Government shall, by notification in the Cochin Government Gazette, from time to time direct, and free of expense to Government, as follows, that is to say:—

(a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and

(b) if within one calendar year from such day the Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the

<sup>1</sup> Inserted by section 4 of Act XIV of 1110.

Government on the printer, another such copy or two other such copies, as the Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book-prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act.

(2) The printer or publisher, or printer and publisher of every newspaper in the Cochin State shall deliver, at such place and to such officer as the Government shall by notification in the Cochin Government Gazette, from time to time, direct, and free from all expenses to the Government, <sup>1</sup>[three] copies of each issue of such newspaper as soon as it is published.

10. The officer to whom a copy of a book or newspaper is delivered under the last foregoing section shall give to the printer or publisher, or printer and publisher as the case may be, a receipt in writing therefor.

Receipt for copies delivered under section 9.

11. The copies delivered pursuant to section 9 of the Act shall be disposed of as the Government shall, from time to time determine.

Disposal of copies delivered under section 9.

## PART IV PENALTIES

12. Whoever shall print or publish any book or <sup>2</sup>[paper] otherwise than in conformity with the rule contained in section 3 of this Act, shall on conviction before a Magistrate, be punished by fine not exceeding one

Penalty for printing contrary to rule in section 3.

<sup>1</sup> Substituted for the word "two" by section 2 of Act IV of 1112.

<sup>2</sup> Substituted by section 4, Act VI of 1121.

thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both.

Penalty for keeping press without making declaration required by section 4.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding one thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both.

Punishment for making false statement.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding one thousand rupees, and imprisonment for a term not exceeding six months.

Penalty for editing, printing or publishing newspapers without conforming to rules.

15. Whoever shall <sup>1</sup>[edit,] print or publish any such newspaper as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall <sup>1</sup>[edit,] print or publish or shall cause to be <sup>1</sup>[edited,] printed or published, any such newspaper, knowing that the said rules have not been observed with respect to that newspaper, shall, on conviction before a Magistrate, be punished with fine not exceeding one thousand rupees, or imprisonment for a term not exceeding six months, or both.

Penalties for certain offences.

<sup>2</sup>[15-A. Any person who does or omits to do anything and thus violates any of the provisions of this Act or of any rule made thereunder, for which no penalty is provided by this Act, shall, on conviction before a Magistrate, be punished with fine not exceeding one hundred rupees or with simple imprisonment for a term not exceeding three months or with both:

Provided that the Magistrate before whom a prosecution under this section is pending may let off the offender complained against, in cases that he considers suitable, with a warning:

Provided further that before launching prosecutions under this section a written warning shall be given to the offender who violates the law, as aforesaid, for the first time.]

<sup>1</sup> Inserted by section 5 of Act XIV of 1110.

<sup>2</sup> This section was inserted by section 2 of Act XXI of 111 .

16. If any printer of any such book or printer or publisher, or printer and publisher, of any such newspaper as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book or newspaper was printed or published may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer or publisher, or printer and publisher ought to have delivered.

Penalty for not delivering books or newspapers or not supplying printer with maps.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of sub-section (1) of section 9 of this Act with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

17. Any sum forfeited to the Government under the last foregoing section may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Cochin Penal Code, for the levy of a fine.

Recovery of forfeitures and disposal thereof and of fines.

All fines or forfeitures under this part of this Act shall, when recovered, be disposed of as the Government shall, from time to time, direct.

## PART V

## REGISTRATION OF BOOKS

Registration of  
memoranda of  
books.

18. There shall be kept at such office, and by such officer as the Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in Cochin, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to clause (a) of the first paragraph of section 9 of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say).—

(1) the title of the book and the contents of the title page, with a translation into English of such title and contents, when the same are not in the English language;

(2) the language in which the book is written;

(3) the name of the author, translator or editor of the book or any part thereof;

(4) the subject;

(5) the place of printing and the place of publication;

(6) the name or firm of the printer and the name or firm of the publisher;

(7) the date of issue from the press or of the publication;

(8) the number of sheets, leaves or pages;

(9) the size;

(10) the first, second or other number of the edition;

(11) the number of copies of which the edition consists;

(12) whether the book is printed or lithographed;

(13) the price at which the book is sold to the public; and,

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copy thereof pursuant to clause (a) of the first paragraph of sub-section (1) of section 9.

## PART VI

## MISCELLANEOUS

19. The Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act and from time to time to repeal, alter and add to such rules.

Power to  
make rules.

All such rules, and all repeals and alterations thereof and additions thereto, shall be published in the Cochin Government Gazette.

Publication.

20. The Government may, by notification in the Cochin Government Gazette, exclude any class of <sup>1</sup>[book, paper or newspapers] from the operation of the whole or any part or parts of this Act.

Power to  
exclude any  
class of  
books or  
newspapers  
from  
operation  
of Act.

<sup>2</sup>[21. No person shall send by Anchal or circulate in any other manner or deliver for circulation to any agency or person whatsoever any <sup>3</sup>[book, paper or newspaper] wherever printed and published, which contains, or which has on its cover, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character. Any <sup>3</sup>[book, paper or newspaper] sent, delivered or circulated in contravention of the above prohibition and after a warning has been given to the party so sending, delivering or circulating or who intends to send, deliver or circulate may, under the authority of the Government, be detained or captured and retained and disposed of as the Government think proper.

Prohibition of  
transmission  
by Anchal of  
certain  
books or  
newspapers.

*Explanation (1).*—The warning referred to in this section may be given by the District Magistrate or by any other officer who is generally or specially empowered by the Government to do so and the warning shall be given

<sup>1</sup> Substituted by section 4 of Act VI of 1121.

<sup>2</sup> Section 21 was added by section 6 of Act XIV of 1110.

<sup>3</sup> Substituted by section 5 of Act VI of 1121.

in writing and any record kept by the person, so authorised to give warning, to the effect that any person has been given such warning will be conclusive evidence of the fact that such warning has been duly given.

*Explanation (2).*—The Government may authorise the Anchal Masters or such other Government servants or class of Government servants as they choose to effect the detention or capture and retention of <sup>1</sup>[books, papers or newspapers] mentioned in this section.

Penalty for  
contravention  
of section 21.

<sup>2</sup> [22. Whoever, in contravention of section 21 of this Act and after being warned as contemplated by section 21, sends or tenders or makes over in order to be sent by Anchal or circulates or delivers for circulation in any manner whatsoever any <sup>3</sup>[book, paper or newspaper,] shall, on conviction before a District Magistrate or a Magistrate of the First Class be punishable with fine not exceeding Rs. 500, or simple imprisonment for a term not exceeding 6 months, or with both.]

Notice of  
detention of  
article sent  
by Anchal.

<sup>2</sup> [23. (1) Any officer detaining any article sent by Anchal under the provisions of section 21 shall forthwith send by Anchal or Post to the Addressee of such article notice of the fact of such detention.

(2) The Government shall cause the contents of any article detained under sub-section (1) to be examined and if it appears to Government that the article contained any <sup>4</sup>[books, papers or newspapers] of the nature described in section 21, the Government may pass such orders as to the disposal of the article and its contents as it may deem proper and, if it does not so appear shall release the article and its contents unless the same be otherwise liable to seizure under any law for the time being in force.

<sup>1</sup> Substituted by section 5 of Act VI of 1121.

<sup>2</sup> Sections 22 and 23 were added by sections 7 and 8 of Act XIV of 1110.

<sup>3</sup> Substituted by section 6 of Act VI of 1121.

<sup>4</sup> Substituted by section 7 *ibid.*

*Proviso (1)*—Provided that any person interested in any article detained under the provisions of section 21 may, within two months from the date of such detention, apply to the Government for release of the same and the Government shall consider such application and pass such orders thereon as they may deem to be proper.

*Proviso (2)*—Provided also that if such application is rejected, the applicant may, within 2 months from the date of the order rejecting the application, apply to the <sup>1</sup>[High Court] for release of the article and its contents on the ground that the article did not contain any <sup>1</sup>[book, paper or newspaper] containing any matter referred to in section 21.

(3) Every application made under the second proviso to this section shall be heard and determined in the manner provided by sections 84D to 84F of the Cochin Code of Criminal Procedure by a Full Bench of the <sup>1</sup>[High Court] constituted in the manner provided by section 84 of that Code.

(4) No order passed or action taken under section 21 shall be called in question in any Court otherwise than in accordance with the proviso (2) to clause (2) of this section.]

<sup>2</sup>[24.] The “Cochin Newspaper Act, I of 1087,” and the ‘Cochin Press and Printers Registration Act, VI of 1088,’ shall be repealed on and from the day on which this Act comes into force. Repeal of enactments.

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<sup>1</sup> Substituted by section 7, Act VI of 1121.

<sup>2</sup> The original section 21 was re-numbered as section 24 by section 9 of Act XIV of 1110.



## PROCLAMATION

BY HIS HIGHNESS SIR SRI RAMA VARMA, G.C.I.E.,  
MAHARAJA OF COCHIN

*Issued under date the 12th day of Makaram 1104  
corresponding to the 25th day of January 1929*

**(As amended by Proclamation XV of 1118)**

Whereas it is deemed necessary for the proper and efficient management of the estate of Her Highness the Valia Amma Thampuran Kovilagom that Our Government should assume the management of the said estate, We are pleased to command as follows:—

1. That the management of Her Highness the Valia Amma Thampuran Kovilagom estate shall be assumed by Our Government.

2. Our Government may, by notification published in the Cochin Government Gazette, appoint a person to manage the affairs of the Kovilagom estate.

3. Our Government shall frame such rules, as may, from time to time, be deemed necessary for managing the affairs of the Kovilagom estate. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other ground.

4. All suits on behalf of or against the Kovilagom shall be brought in the name of Our Diwan for the time being, or in the name of such other officer or person, as Our Government may, generally or specially, by rules framed under this Proclamation, appoint.

5. The provisions of the Revenue Recovery <sup>1</sup>[Act], IV of 1083 as amended by Acts I of 1091, I of 1095 and IV of 1096 shall apply for the recovery of dues due to the estate.

<sup>2</sup>[6. Every officer or servant employed by Our Government in relation to the management of the Estate shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code].

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<sup>1</sup> Substituted by Proclamation V of 1112.

<sup>2</sup> Added by Proclamation XV of 1118.

**THE COCHIN PREVENTION OF FOOD  
ADULTERATION ACT**

**(XIV OF 1109)**

**(As amended up to 1st Kumbham 1122)**

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**THE COCHIN PREVENTION OF FOOD  
ADULTERATION [ACT]  
(XIV OF 1109)**

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1109	XIV	The Cochin Prevention of Food Adulteration Act	Amended by Act VIII of 1120

*Passed by His Highness the Maharaja on the  
29th day of Karkadagam 1109 corresponding  
to the 13th day of August 1934*

Whereas it is expedient in the interests of public health to prevent the adulteration of food, it is hereby enacted as follows:—

1. (1) This Act may be called the Cochin Prevention of Food Adulteration Act, XIV of 1109.

Short title  
and local  
extent.

(2) This section extends to the whole of Cochin. The Government may, by notification in the Cochin Government Gazette, <sup>2</sup>extend all or any of the other provisions of this Act to any local area, municipal or non-municipal and in respect either of all food or such as the Government may specify in the notification; and, if the Government so direct, only for the duration of any market, fair or festival or other large assembly of people:

Provided that such notification shall be made only after the local authority or authorities concerned, if any, have had an opportunity of expressing an opinion as to the necessity for such extension.

<sup>1</sup> Substituted for "Act" throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Extended by notification No. 624, dated 11th Mithunam 1111 to the following areas and festivals:—

(a) All Municipalities, Trippunittura, Cranganur, Chalakkudy, Irinjalakkuda, Vadakkancheri, Kunnamkulam and Nemmara.

(b) Trichur and Arattupuzha Purams, Ulsavams at Trippunittura, Ernakulam, Mattancheri, Irinjalakkuda and Thiruvanchikulam, Bharani at Cranganur and Ekadesis at Triprayar and Thiruvilwamala.

Interpretation  
clause.

2. In this Act unless there is something repugnant in the subject or context.—

‘food’ includes every article (other than drugs or water) used by man for <sup>1</sup>[food, drink or chewing and all materials ordinarily used or admixed in the composition or preparation of such articles and includes also flavouring matter and condiments;

‘milk’ means the normal clean secretion drawn from the udder of a healthy cow or sheep or buffalo either completely, or after the first portion of such secretion has been drawn off, to completion;

‘cream’ means that portion of milk rich in milk-fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force;

‘butter’ means butter made exclusively from milk or cream or both or from curds with or without the addition of salt or other innocuous preservative, or of innocuous colouring matter;

‘curds’ mean boiled and fermented milk holding in suspension fat and other solids contained in milk;

‘buttermilk’ is fermented milk and is the residue left after removal of butter from curds by churning;

‘ghee’ means ghee prepared exclusively from butter made from cow’s or buffalo’s milk or cream or both;

‘prescribed’ means prescribed by rules made under this Act;

‘Public Analyst’ means any person appointed by the Government or under rules made by the Government to exercise the functions of a Public Analyst under this Act:

Provided that no person shall be appointed Public Analyst unless he is a Chemistry Graduate of a University and has undergone a course of training in food analysis in any public health laboratory for a period of not less than six months;

‘local Food Inspector’ means, in any Municipality the Chairman of the Council and for other areas such officer

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<sup>1</sup>Substituted by section 2, Act VIII of 1120. .

as the Government may appoint to exercise the functions of a local Food Inspector under this Act;

'local authority' means—

(1) in the case of any Municipality, the Municipal Council; and

(2) in the case of any other local area, such authority or officer, if any, as the Government may appoint in this behalf.

3. (1) The local Food Inspector may delegate his powers and duties under this Act to such persons and in such manner as may be prescribed. Delegation of powers of local Food Inspector.

(2) Every local Food Inspector and every person to whom powers have been delegated under this section shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code.

4. (1) Every person who, directly or indirectly, himself or by any other person on his behalf— Punishment for sale, etc., of food not of the proper prescribed quality.

(a) sells any food which is not of the nature, substance or quality of the article demanded by the purchaser; or

(b) manufactures or stores for sale or offers or exposes for sale or hawks about or sells any food which is not of the nature, substance or quality which it purports or is represented to be; or

(c) abstracts from any food any part of it so as to affect injuriously the nature, substance or quality thereof with intent that it should be sold in its altered state without notice of the alteration, or sells any articles so altered without making disclosure of the alteration; or

(d) manufactures or stores for sale or offers or exposes for sale or hawks about or sells milk, cream, butter, curds, buttermilk, ghee, tea or coffee or any other food which is not up to the standard of purity, if any, prescribed by the Government or any article similar to any article, in respect of which a standard of purity has been so prescribed, under a name which in any way resembles the name of such article shall be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with fine which may extend to five hundred rupees:

Provided that in the following cases no offence under this section shall be deemed to have been committed —

(i) where any innocuous material has been used or admixed in the composition or preparation of the food to render the same fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or to conceal or debase the quality thereof; or

(ii) where in the process of production, collection, preparation or conveyance of the food some extraneous material has unavoidably been admixed therewith; or

(iii) where any innocuous material has been added or admixed or the article of food sold is not up to the standard of purity prescribed by the Government and before the sale the vendor has clearly brought the fact to the notice of the purchaser either by means of label on or with the food or in such other manner as the Government may, by rule framed under section 19 of this Act prescribe; or

(iv) where the food is the subject of a patent in force and is supplied in the state required by the specification thereof.

(2) In every prosecution for an offence against this section, the court may presume that any food found in the possession of a person who is in the habit of manufacturing or storing like articles for sale, has been manufactured or stored by such person for sale.

5. (1) In any prosecution for an offence under the last preceding section it shall be no defence to allege merely that the accused person was ignorant of the nature, substance or quality of the food sold, manufactured, stored, offered or exposed for sale or hawked about by him or that the purchaser has bought the food only for analysis :

Provided that the vendor shall not be deemed to have committed an offence under section 4, if he proves that the food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality, that he had no reason to believe at the time when he sold the same that the food was not of such nature, substance or quality and

What defences not available.

that he sold it in the same state as that in which he purchased it.

(2) Where an employer is charged with an offence under this Act, he shall be entitled on application duly made by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he used due diligence to enforce the execution of this Act and that the said other person committed the offence without his knowledge, consent or connivance, the said other person shall be convicted and the employer shall be acquitted.

6. (1) The local Food Inspector may without notice enter any place where articles of food are being manufactured or exposed for sale at any time by day or night when the exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.

Powers of local Food Inspector for purposes of inspection.

(2) No claim shall lie against any person or authority for any damage or inconvenience necessarily caused by the exercise of powers under this section or by the use of any force necessary for effecting an inspection, examination or entry.

(3) In any legal proceedings in respect of powers exercised under this section in which it is alleged that any food was not kept, exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale, or was not intended for human food, the burden of proof shall lie on the party so alleging.

7. Every person who shall in any manner whatsoever offer resistance to or obstruct the local Food Inspector or any person duly authorised by him exercising powers under the last preceding section shall be punished, where his act does not amount to an offence under the Cochin Penal Code with a fine which may extend to fifty rupees.

Penalty for preventing inspection.

8. If any food or article intended for food appears to the local Food Inspector or any person duly authorised by him and acting under section 6 to be adulterated or other than what it purports or is represented to be, or if any vessel or utensil used in manufacturing, preparing or

Power to seize adulterate food, etc.



containing such article appears to violate any rule made under section 19, he may seize or carry away or secure such article, utensil or vessel, in order that the same may be dealt with as hereinafter provided.

Penalty for removing or interfering with articles seized.

9. Every person who shall remove or in any way interfere with an article secured under the last preceding section shall on conviction be punished with fine which may extend to five hundred rupees.

Sample of articles seized to be sent to the Public Analyst.

10. When any article of food seized under section 8 appears to the local Food Inspector to be adulterated or other than what it purports or is represented to be, he shall forthwith send a sample of such article to the Public Analyst.

Production of articles, etc., seized before Magistrate and power of Magistrate to deal with them.

11: (1) Articles of food or samples thereof, utensils or vessels seized under section 8, shall, as soon as possible be produced before a Magistrate:

Provided that where a sample or an article has been sent to the Public Analyst the article or sample thereof may be produced before the Magistrate after receipt of the Public Analyst's certificate.

(2) Whether or not complaint is laid before the Magistrate of any offence under the Cochin Penal Code or under this Act, if it appears to the Magistrate on taking such evidence as he thinks necessary that any such article is adulterated or other than what it purports or is represented to be or any such utensil or vessel is of such kind or in such state as is described in section 8, he may order the same—

(a) to be forfeited to the Government, or

(b) to be destroyed at the charge of the owner or person in whose possession it was at the time of seizure in such manner as to prevent the same being again exposed or hawked about for sale or used for human food or for the manufacture or preparation of or for containing any such article as aforesaid, or

(c) otherwise disposed of.

Purchaser may have food analysed.

12. (1) Any purchaser of any article of food shall be entitled, if a Public Analyst has been appointed for the local area within which such article is purchased, on payment of such fees, if any, as may be prescribed, to

have such article analysed by such Public Analyst and to receive from him a certificate of the result of his analysis.

(2) Before sending such article to be analysed as beforesaid the purchaser shall notify to the seller his intention to have it so analysed, and the Public Analyst on receiving such article for analysis shall divide it into three parts, of which one is to be analysed, another to be retained by him in order to be returned with his certificate and the third to be delivered on demand to the seller: Provided that each part other than the part analysed shall be marked and sealed or fastened up in such manner as its nature permits.

13. (1) The local Food Inspector may purchase a sample of any article of food from any person exposing such article for sale or from any person who is in the course of delivering or preparing to deliver it to a purchaser or consignee, and may submit it to be analysed by the Public Analyst appointed for the area within which such sample has been procured.

Power of local Food Inspector to purchase samples for analysis.

(2) Every such person who refuses to sell such sample to the local Food Inspector or any person duly authorised by him at the price at which he usually sells the articles shall be punished with fine which may extend to Rs. 100.

14. (1) When the local Food Inspector or any other person purchases a sample of food with the intention of submitting it to be analysed by the Public Analyst, he shall notify to the person from whom he has purchased the article his intention to have it analysed and shall divide it in three parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature permits and shall deliver one of the said parts to the seller and retain another of the parts for the production in case proceedings are taken and submit the third part, if he deems it right to have the articles analysed, to the Public Analyst.

Procedure for analysis of food.

(2) If the seller declines to accept one of the parts, the Public Analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of these parts and shall cause it, either upon receipt of

the sample or when he delivers his certificate, to be delivered to the purchaser or to the local Food Inspector who shall retain it for production in case proceedings are taken.

Public  
Analyst's  
certificate

15. (1) Every Public Analyst to whom a sample has been sent under this Act shall deliver to the person so sending it a certificate in the form prescribed in the schedule to this Act, or to the like effect specifying the result of this analysis.

(2) Any document purporting to be such certificate signed by a Public Analyst may be used as evidence of the facts stated therein in any proceedings under this Act or under sections 248 and 249 of the Cochin Penal Code:

Provided that any court before which a case under this Act may be pending, whether exercising original, appellate or revisional jurisdiction may, in its discretion, at the request either of the accused or of the complainant, cause any article of food to be sent for analysis to any expert Analyst in food stuffs who may thereupon analyse the same and report the result of such analysis to the said court, and the expense of such analysis shall be paid by the accused or complainant as the court may by order direct.

Jurisdiction  
of Magi-  
strates.

16. Third Class Magistrates shall not try any offence under this Act unless they have been generally or specially empowered in this behalf by the Government.

Condition of  
institution  
of prose-  
cutions.

17. No prosecution under this Act shall be instituted except on the complaint of the purchaser or of the local Food Inspector or under the sanction of the Government.

Limitation  
period for  
prosecution.

18. No prosecution under this Act shall be commenced after the expiry of three months after the commission of the offence.

Power to  
make rules.

19. The Government may, after previous publication make rules consistent with this Act for the whole or any part of the area to which this Act may have been extended.

(a) prescribing the classes or qualifications of persons to whom and the conditions on which the local Food Inspector may, under section 3, delegate his powers;

(b) determining the limits within which the local Food Inspector may exercise his powers whether such limits are within or without the local area in respect of which he holds any public office;

(c) prescribing in the interests of public health the state in which utensils and vessels used for manufacturing, preparing or containing any food intended for sale shall be kept, and prohibiting the use of utensils and vessels made, in whole or in part, of materials likely to injure such food;

(d) prescribing the manner in which notice of any addition, admixture or deficiency shall be given to the purchaser of any article of food;

(e) prescribing standards of purity for milk, cream, butter, ghee, cheese and any food and determining what deficiency in any of the normal constituents of these articles or what addition of any extraneous matter or proportion of water in any of the same or any preparation of the same shall, for the purposes of this Act, raise a presumption until the contrary is proved that the milk, cream, butter, ghee, cheese or any food is not genuine, or is injurious to health;

(f) prohibiting or regulating in the interests of public health—

(i) the addition of water or other diluent or adulterant to any food,

(ii) the abstraction of any ingredient from any food, and

(iii) the sale of any food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated;

(g) providing for the manner in which any receptacle containing dried, condensed, skimmed or separated milk is to be labelled or marked;

(h) authorising the persons taking samples of any food for the purpose of analysis under this Act to add preservatives to such sample for the purpose of maintaining it in a suitable condition for analysis and regulating the nature of such preservatives and the method of adding them.

And providing for fines not exceeding rupees one hundred in the case of a first offence and rupees five

hundred for every subsequent offence by way of penalty for breach of rules made under clauses (c), (d), (f) and (g).

Power of local authorities to make bye-laws.

20. Every local authority exercising control over any local area to which this Act has been extended may, under the provisions respecting the making of bye-laws of the Act, if any, under which such local authority is established, make bye-laws not inconsistent with this Act or the rules made thereunder for all the purposes of this Act and in particular, without prejudice to the generality of the power hereby given, for the prevention of the manufacture or preparation for sale, the exposure for sale, or hawking about, or the sale, of articles of food which are adulterated or other than what they purport or are represented to be and the inspection and regulation of places in which such articles are kept, stored, packed, cleansed, manufactured, prepared or exposed for sale, hawked about or sold.

This Act supplemental to the Law of local authorities.

21. The provisions of sections 2 to 20 of this Act shall be read, as supplemental to the Act, if any, under which the local authority concerned is constituted.

#### SCHEDULE

To

I, the undersigned, Public Analyst for the \_\_\_\_\_, do hereby certify that I received on the \_\_\_\_\_ day of \_\_\_\_\_ 11 from \_\_\_\_\_ a sample of \_\_\_\_\_ for analysis (which then weighed \_\_\_\_\_) and have analysed the same and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine \_\_\_\_\_ or \_\_\_\_\_

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 11  
A. B. at \_\_\_\_\_

In the case of a certificate regarding milk, butter, ghee or any article liable to decomposition, the Analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

# THE COCHIN TEA CULTIVATION RESTRICTION ACT

(V OF 1110)

(As amended up to 1st Kumbham 1122)

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## THE COCHIN TEA CULTIVATION RESTRICTION [ACT],

(V OF 1110)

## HISTORY OF LEGISLATION

Year	No.	Short title	Amendments
1110	V	The Cochin Tea Cultivation Restriction Act	Amended by Acts XVIII of 1115 and VII of 1119

*Passed by His Highness the Maharaja on the 24th day of Thulam 1110 corresponding to the 9th day of November 1934*

## Preamble.

Whereas it is considered expedient, in co-operation with the Government of India in the tea restriction scheme—adopted by them, to restrict the cultivation of tea in Cochin; It is hereby enacted as follows:—

Short title  
extent and  
commencement.

1. (i) This Act may be called “The Cochin Tea Cultivation Restriction Act, V of 1110.”

(ii) It extends to the whole of Cochin.

(iii) It shall come into force at once.

## Definitions.

2. In this Act unless there is anything repugnant in the subject or context,—

(i) “Tea” means the plant *Camellia Thea* (Linn.)

(ii) “Licensing authority” means the person or body of persons appointed as such by the Government for the purposes of this Act, by a notification in the Cochin Government Gazette.

(iii) “Prescribed” means prescribed by rules made by the Government under this Act.

Method of  
control of  
extension of  
tea cultivation.

<sup>2</sup>[3. So long as this Act remains in force, no one shall plant tea in any land which was not planted with tea on the 31st day of March <sup>3</sup>[1943] save in pursuance of a written permission granted by or on behalf of Government or the Licensing Authority:

<sup>1</sup> Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted [by section 2, Act XVIII of 1115.

<sup>3</sup> Substituted by Section 2, Act VII of 1119.

Provided that this section shall apply to replacing of tea areas by planting new areas, but nothing in this section shall prohibit the infilling of or supplying of vacancies on land planted with tea at the 31st day of March <sup>1</sup>[1938] or the replanting of tea upon—

(i) land planted with tea at the 31st day of March <sup>1</sup>[1938] from which the original bushes have been uprooted, or

(ii) land planted with tea at the 31st day of March <sup>1</sup>[1936] from which the original bushes have been uprooted.

3A. (1) Subject to the provisions of section 3C Limitations to the extension of tea cultivation. and section 3D the total area of land in Cochin in respect of which the permissions referred to in section 3 may be granted shall not exceed <sup>2</sup>[such area as will bring the total area of the land planted with tea in Cochin up to one-half of one per cent over the total area of the land which would have been planted with tea in Cochin on the 31st day of March 1943, had the extensions of plantation made in the two periods of five years subsequent to the 31st day of March 1933, each increased the area in Cochin planted with tea at the beginning of each such period by one-half of one per cent];

(2) The Government or the Licensing Authority shall determine the total area of land in Cochin in respect of which such permissions may be granted and shall publish the same by a notification in the Cochin Government Gazette as soon as may be <sup>3</sup>[before the last day of June 1944 and shall in like manner publish any subsequent variation of such total areas.]

(3) <sup>4</sup>[.....]

3B. (1) Applications for permission to plant tea on any land not planted with tea on the 31st day of March <sup>5</sup>[1943] shall be made to the Government or the Licensing Authority not later than the last day of June <sup>5</sup>[1944] and shall contain a clear statement of all special circumstances justifying the application. Grant of permission to plant tea.

<sup>1</sup> Substituted by section 2, Act VII of 1119.

<sup>2</sup> Substituted by section 3, *ibid.*

<sup>3</sup> Substituted by section 3, *ibid.*

<sup>4</sup> Deleted by section 3, Act VII of 1119

<sup>5</sup> Substituted by section 4, *ibid.*



<sup>1</sup>[(1-A) The Government or the licensing authority may require an applicant to supply such information as they think necessary to enable them to deal with the application;]

(2) Subject to the limits laid down in section 3A 2[and to any rules made in this behalf by Government,] Government or the Licensing Authority may grant or refuse the permission applied for or may grant it in part only or may call for further information from the applicant.

<sup>3</sup>[Provided that permission shall not be granted in the case of any tea estate owned by a limited liability company if the area planted with tea in the estate exceeds three hundred acres, or in the case of any tea estate owned by an individual proprietor or proprietors if the area planted with tea in the estate exceeds one hundred and fifty acres].

3C. <sup>4</sup>[Where any land which was on the 31st day of March 1933, planted with tea (including land planted with tea at the 31st day of March 1931, from which the original bushes had been uprooted and which had not been replanted with tea at the said 31st day of March 1933), or where any land planted with tea after the 31st day of March 1933—]

(a) has since become wholly incapable of carrying tea through <sup>5</sup>[circumstances due to existing war conditions or through] subsidence, flood, erosion, earthquake or other irresistible super-human cause, or

(b) has since been compulsorily acquired under the provisions of the Land Acquisition Act, II of 1970, or of any other law for the time being in force, and no longer carries tea, the owner of the tea estate in which such land was situated may apply to the Government or the Licensing Authority for permission to plant tea on land not planted with tea.

<sup>6</sup>[*Explanation.*—Land taken for purposes connected with the prosecution of war on which tea bushes have

<sup>1</sup> Inserted by section 4, Act VII of 1119

<sup>2</sup> Inserted by section 4, *ibid.*

<sup>3</sup> Added by section 4, *ibid.*

<sup>4</sup> Substituted by section 5, *ibid.*

<sup>5</sup> Inserted by section 5, *ibid.*

<sup>6</sup> Added by section 5 *ibid.*

been allowed to remain for protective purposes though no longer cultivated shall be deemed for the purposes of this sub-section to be incapable of carrying or no longer to carry tea.]

(2) Upon such application being made and upon proof to the satisfaction of the Government or the Licensing Authority that the applicant is entitled to the benefit of sub-section 1, the Government or the Licensing Authority may grant permission to plant tea on land not planted with tea:

Provided that the area of land in respect of which such permission is granted shall be within the area of <sup>1</sup>[the same or an adjacent tea estate] and shall not exceed in extent the area of the land incapable of carrying tea or compulsorily acquired, as the case may be.

(3) All areas of land in respect of which permission to plant tea is granted under this section shall be excluded when computing for the purpose of section 3A the total area of land in respect of which the permissions referred to in section 3 may be granted.

<sup>2</sup>[(4) If any land falling within the explanation to sub-section (1) is subsequently restored to the tea estate from which it was subtracted, the owner of the estate shall either uproot the tea planted thereon, or uproot any tea planted by him in pursuance of a permission granted under sub-section (2)].

3D. (1) Subject to the provisions of sub-section (4) the owner of a tea estate may establish nurseries on land <sup>Tea Nurseries.</sup> not previously planted with tea for the growing of plants intended for infilling or supplying vacancies or for replanting land planted with tea within the area of the estate or for any other purpose approved by the Government or the Licensing Authority:

Provided that the total area utilised for nurseries in Cochin shall not <sup>3</sup>[.....] exceed the area so utilised in Cochin on the 31st day of March 1933:

(2) All areas of land utilised for nurseries in accordance with this section shall be excluded when computing for the purpose of section 3A the total area of land in respect

<sup>1</sup> Inserted by section 5, Act VII of 1119.

<sup>2</sup> Added by section, *ibid.*

<sup>3</sup> Deleted by section 6 *ibid.*

of which the permissions referred to in section 3 may be granted.

(3) The Government or the Licensing Authority may at any time serve by Anchal or Post a notice upon the owner of any tea estate or upon its manager requiring him to furnish within such period not been less than 30 days as may be specified in the notice such returns relating to the area of the land utilised for nurseries as it may deem necessary.

(4) If any return required under sub-section (3) is not furnished to the Government or the Licensing Authority, as the case may be within the period specified in the notice or if in the opinion of Government or the Licensing Authority the total area of the land utilised for nurseries is excessive, Government or the Licensing Authority may make such restrictive or other order as it deems necessary and in particular may order the uprooting of any bushes planted on any such land.

Powers of  
Licensing  
authorities.

4. The Licensing Authority, if any appointed, shall exercise such powers as may be prescribed and the powers shall be exercised in such manner as may be prescribed and subject to the order of the Government who may revise any decision of the Licensing Authority.

Application  
for licence.

5. Applications for licence to plant tea shall be in such form as may be prescribed and shall contain such particulars as may be prescribed.

Grant of  
licences.

6. The Government or the Licensing Authority, as the case may be, may grant or refuse the licence or may grant it only subject to such restrictions as may be considered necessary.

Orders under  
this Act  
final.

7. No order of the Government or of the Licensing authority made under this Act shall be called in question in any court of law.

Tea Estates to  
furnish re-  
turns.

8. (1) The Government or the Licensing authority, as the case may be, may serve, by Post or Anchal, a notice upon the owner of any tea estate or upon his agent or manager requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, such returns relating to the cultivation of tea on the estate as may be deemed necessary to enable the Govern-

ment or the Licensing Authority, as the case may be, to discharge their functions under this Act.

(2) Any person, authorised in that behalf by the Government or the Licensing Authority may, at any reasonable time, enter upon and inspect the lands of any tea estate and may require the owner of the estate or his agent or manager to produce for inspection, any records of the estate in his control or custody relating to the cultivation of tea on the estate. Tea Estates may be inspected.

9. Any owner of a tea estate or his agent or manager who on being required under the provisions of <sup>1</sup>[sub-section (3) of section 3D or sub-section (1) of section 8] furnishes any return containing any particular which is false and which he knew to be false or did not believe to be true, shall be punishable with fine which may extend to one thousand rupees. Penalty for failure to furnish returns.

10. Whoever obstructs any person while such person is entering upon or inspecting the lands of any tea estate under the provisions of section 8, sub-section (2), and whoever having control over, or custody of, any records of a tea estate relating to the cultivation of tea on that estate refuses or fails to produce such records when required by the person under the provisions of that sub-section shall be punishable with fine which may extend to one thousand rupees. Penalty for obstructing inspection.

11. <sup>1</sup>[Whoever knowingly plants tea or causes tea to be planted] in any land in contravention of the provisions of section 3 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence. Penalty for cultivating tea without licenses.

<sup>2</sup>[11 A. Whoever uses any land in contravention of any order made by Government or by the Licensing Authority under section 3D or fails to comply with any order made by Government or by the Licensing Authority under sub-section (4) of section 3D shall be punishable with fine which may extend to one thousand rupees.]

<sup>1</sup> Substituted by section 4, Act XVIII of 1115.

<sup>2</sup> Inserted by section 5, *ibid.*

Illicit tea cultivation may be removed.

12. Where any person has been convicted of an offence under section 11 the convicting Court may direct that the tea in respect of which the offence was committed shall be removed from the land within a prescribed time, and in the event of the order not being duly complied with, may cause the tea to be removed and recover the cost from the person convicted as if it were arrears of land revenue due on the tea estate on which the offence was committed.

Jurisdiction of Magistrates.

13. No Magistrate other than the District Magistrate, or a Special First Class Magistrate to whom the District Magistrate may transfer complaints filed before him of any offence under this Act, shall take cognisance of such offence and such Magistrate may take cognisance of such an offence only upon complaint made by any person authorised by the Government or by the Licensing Authority in that behalf or with the previous sanction of the Government.

Powers of Government to frame forms and rules.

14. The Government may frame forms for any proceedings under this Act and may make rules with respect to any matter that may be prescribed under this Act and generally to carry out the purposes of this Act.

15. (1) If Government are satisfied that an emergency has arisen rendering it necessary for the security of India that certain of the restrictions imposed by this Act should cease to be imposed, Government may, by notification in the Cochin Government Gazette suspend or relax to a specified extent either indefinitely or for such period as may be specified in the notification the operation of all or any of the provisions of this Act.

(2) Where the operation of certain provisions of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may at any time while this Act remains in force be removed by Government by notification in the Cochin Government Gazette.]

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<sup>1</sup>Added by section 7, Act VII of 1119.

## PROCLAMATION

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,  
MAHARAJA OF COCHIN

*Issued under date the 15th day of Thulam 1111  
corresponding to the 1st day of November 1935  
(As amended by Proclamation XV of 1118)*

WHEREAS a deed of surrender (Document No. 47 of 1111 of the Kodungalloor Registry Office) has been executed to Our Diwan for and on behalf of Our Government by all the members of the Paliam family and WHEREAS, in view of the financial and other difficulties that have beset the Paliam Estate for some time past, it is deemed necessary for the proper and efficient management of that Estate that Our Government should assume the management of the said Estate, WE are pleased to command as follows:—

1. That the management of the aforesaid Paliam Estate, the Devaswams appertaining to it and the Amma Vaka and Thavazhi Swakaryams now being managed by the Karnavan (all of which together being hereinafter referred to as the Paliam Estate) shall be assumed forthwith by Our Government and that such management by Our Government shall be continued for a period of twelve years or for such shorter period as Our Government may determine.

2. That during the period of management of the Paliam Estate by Our Government, Our Government shall have plenary powers with regard to alienation of properties belonging to that Estate, with regard to composition with tenants in respect of arrears of rent, michavarom and kindred dues that have already accrued and which may accrue due in future, with regard to the rights of management in general and to do all that Our Government consider necessary for the efficient administration and management of the Estate.

3. Our Government may, by notification published in the Cochin Government Gazette, appoint a person to manage the affairs of the aforesaid Paliam Estate and Our Government may delegate, by notification published in the Cochin Government Gazette, to the person so appointed or to such other person as they may nominate in this

behalf all or any of the powers conferred upon them by clauses 1 and 2 above.

4. Our Government shall frame such rules, as may, from time to time, be deemed necessary for managing the affairs of the aforesaid Paliam Estate. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other grounds.

5. All suits on behalf of or against the aforesaid Paliam Estate shall, during the period of management of the Estate by Our Government, be brought in the name of Our Diwan for the time being or in the name of such other officer or person as Our Government may, generally or specially, by rules framed under this Proclamation, appoint.

6. The Paliam Tarwad <sup>1</sup>[Act], VIII of 1097, shall be in abeyance during the period of management of the aforesaid Paliam Estate by Our Government and shall not have any legal force or effect during that period.

7. All acts done by Our Government or by their nominee or nominees in pursuance of the powers conferred by this Proclamation and during the period of management by Our Government and all and every other act of management in general shall be accepted without question by the members of the aforesaid Paliam family and all accounts of management maintained by Our Government or their nominees and all items of expenditure incurred by them for and on behalf of the aforesaid Paliam Estate during such period shall also be accepted without question by the members of the aforesaid Paliam family.

8. The provisions of the Revenue Recovery Act IV of 1083, with all its amendments, shall, during the period of management of the Paliam Estate by Our Government, apply for the recovery of dues, due to that Estate, whether now in existence or accruing due in future.

<sup>2</sup>[9. Every officer or Servant employed by Our Government in relation to the management of the Estate shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code].

<sup>1</sup>Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

<sup>2</sup>Added by Proclamation XV of 1118.

# THE WORKMEN'S COMPENSATION ACT

(V OF 1111)

(As amended up to 1st Kumbham 1122)

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## THE WORKMEN'S COMPENSATION ACT

## (V OF 1111)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1111	V	The Workmen's Compensation Act	Amended by Proclamation V of 1112 and <sup>2</sup> Act III of 1113 and Act XV of 1120

*Passed by His Highness the Maharaja on the 29th day of Thulam 1111 corresponding to the 15th day of November 1935*

Whereas it is expedient to provide for the payment by Preamble. certain classes of employers to their workmen of compensation for injury by accident; it is hereby enacted as follows.—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Workmen's Compensation Act, V of 1111. Short title, extent and commencement.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once.

2. (1) In this Act unless there is anything repugnant in the subject or context,— Definition.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years;

(b) "Commissioner" means the Commissioner for Workmen's Compensation appointed under section 22;

(c) "compensation" means compensation as provided for by this Act;

<sup>1</sup> Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Notified to come into force on 1st Makaram 1113 by Notification No. 21, dated 11th Kanni 1113.

1[(d) "dependant" means any of the following relatives of a deceased workman, namely.—

(i) A widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother, and

(ii) if wholly or in part dependant on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, a minor child of a deceased daughter where no parent of the child is alive, or, where no parent of the workman is alive, a paternal grandparent;]

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;

(h) "prescribed" means prescribed by rules made under this Act;

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<sup>1</sup> Substituted by section 2, Act XV of 1120.

(i) "qualified medical practitioner" means any person declared by the Government by notification in the Government Gazette to be a qualified medical practitioner for the purposes of this Act;

<sup>1</sup> [(ii) "Seaman" means any person forming part of the crew of any ship but does not include the master of the ship.]

(j) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent;

(k) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

<sup>2</sup> [(l) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business:) who is—

(i) a railway servant as defined in section 2 of the Cochin Railways Act, XI of 1111, not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule IV, or

(ii) employed on monthly wages not exceeding three hundred rupees in any such capacity as is specified in Schedule IV, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing <sup>3</sup>[but does not include any person

<sup>1</sup> Inserted by section 2 (a) (ii) of Act III of 1113.

<sup>2</sup> Substituted by section 2 (a) (iii) *ibid.*

<sup>3</sup> Inserted by section 2, Act XV of 1120.

working in the capacity of a member of the Military Forces of this Government or of His Majesty's Naval, Military or Air Forces] and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them;]

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

<sup>1</sup>[ (3) Government, after giving, by notification in the Cochin Government Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule IV any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply to such classes of persons:

Provided that in making such addition Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.]

## CHAPTER II

### WORKMEN'S COMPENSATION

Employer's  
liability for  
compensation

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter:

Provided that the employer shall not be so liable:—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding <sup>2</sup>[seven] days;

(b) in respect of any <sup>3</sup>[injury, not resulting in death, caused by] an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

<sup>1</sup> Substituted by section 2 (b) of Act III of 1113.

<sup>2</sup> Substituted for 'ten' by section 3 (a) (i) of Act III of 1113

<sup>3</sup> Substituted for 'injury to a workman resulting from' by section 3 (a) (ii), *ibid.*

(ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or

(c) 1[\* \* \*]

<sup>2</sup>[ (2) If a workman employed in any employment specified in Part A of Schedule II contracts any disease specified therein as an occupational disease peculiar to that employment,

or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Part B of Schedule II, contracts any disease specified therein as an occupational disease peculiar to that employment,

the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

*Explanation.*—For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer, in the same kind of employment.]

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule II and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of

<sup>1</sup> Deleted by section 3, (a) iii Act III of 1113

<sup>2</sup> Substituted by section 3, Act XV of 1120.

any disease unless the disease is <sup>1</sup>[ \* \* \* ] directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury —

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Amount of  
compensation

4. <sup>2</sup>[ (I) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely.—

A. Where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees;

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III the amount shown against such limits in the third column thereof, and

(ii) in the case of minor—twelve hundred rupees;

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement

<sup>1</sup> The words 'solely and' deleted by section 3 (c) of Act III of 1113.

<sup>2</sup> Substituted by section 4 of Act III of 1113.

as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ;

*Explanation.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries ;

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of seven days from the date of the disablement, and thereafter half monthly during the disablement or during a period of five years, whichever period is shorter,—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor—of one-half of his monthly wages, subject to a maximum of thirty rupees :

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be ; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident ] .

2. On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum



proportionate to the duration of the disablement in that half-month.

Method of  
calculating  
wages

<sup>1</sup>[In this Act and for the purposes thereof the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely ]

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

<sup>2</sup>[(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be <sup>3</sup>[ \* \* \* ] the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality; ]

<sup>4</sup>[(c) ] in other cases the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period;

<sup>5</sup> [ \* \* \* \* \* ]

*Explanation:*—A period of service shall, for the purposes of this <sup>6</sup>[section] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

<sup>1</sup>Substituted by section 4, Act XV of 1120.

<sup>2</sup>Inserted by section 5 (ii) *ibid.*

<sup>3</sup>Deleted by section 4, *ibid.*

<sup>4</sup>Original clause (b) re-lettered as (c) by section 5 (iii), of Act III of 1113.

<sup>5</sup>Proviso deleted by section 5 (iv), *ibid.*

<sup>6</sup>Substituted by section 4, Act XV of 1120.

6. (1) Any half monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate. Review.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be. C  
tal. ....  
half monthly  
payments.

8. [(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation: Distribution  
of Compen-  
sation.

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer-]

(2) Any other compensation payable under this Act may be deposited with the Commissioner and, when so deposited, shall be paid by the Commissioner to the person entitled thereto.

<sup>1</sup>Substituted by section 6 of Act III of 1113.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount deposited with him under sub-section (2).

(4) On the deposit of any money under sub-section (1) <sup>1</sup> [as compensation in respect of a <sup>2</sup> [deceased workman,] the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any enquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

<sup>3</sup> [(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability and may in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the

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<sup>1</sup> Inserted by section 6 (b) of Act III of 1113.

<sup>2</sup> Substituted by section 5, Act XV of 1120.

<sup>3</sup> Substituted for sub-section (5) by section 6 (c), Act III of 1113.

Commissioner may, of his own motion or on application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman].

<sup>1</sup> [(8)] Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of a Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

<sup>2</sup> [(9)] Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 34.]

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operations of law, nor shall any claim be set off against the same. Compensation not to be assigned, attached or charged.

<sup>3</sup>["10. (1) No claim for compensation shall be entered by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as Notice and claim.

<sup>1</sup> Original sub-section (6) re-numbered as (8) by section 6 (d) of Act III of 1113.

<sup>2</sup> Added by section 6 (d), *ibid.*

<sup>3</sup> Substituted by section 6, Act, XV of 1120.

practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death, within one year from the date of death :

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided, further, that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred :

Provided, further, that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of the several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed, a notice book in the prescribed form which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.]

11. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer he is or is not liable to deposit compensation on account of the death.

Power to require from the employers statements regarding fatal accidents.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

12. (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death:

Reports on fatal accidents.

Provided that where the Government has so prescribed the person required to give the notice may, instead of sending such report to the Commissioner, send it to the authority to whom he is required to give the notice.

(2) The Government may, by notification in the Government Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

Medical  
Examination.

13. (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical

examination as required by either of those sub-sections, the Commissioner may if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect to the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, <sup>1</sup>[if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable] in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner <sup>2</sup> [whose instruction he had followed] and compensation, if any, shall be payable accordingly.

14. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed. Contracting.

<sup>1</sup>Substituted by Section 7, Act XV of 1120.

<sup>2</sup>Inserted by section 7, *ibid.*



(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor (or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation) and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of  
employer  
against  
stranger.

15. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Insolvency  
of employer.

16. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under

any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation:

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the [debts] which under the Insolvency Act or under the Companies Act are in the distribution of the property of an insolvent or in the distribution of the assets of a Company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability whereof accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Special provisions relating to masters and seamen.

<sup>1</sup>[16 A. This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modifications, namely:—

(1) The notice of the accident and the claim for the compensation may, except where the person injured is the master of the ship be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was or is deemed to have been so lost.

(3) Where an injured master or seaman, is discharged or left behind in any part of His Majesty's Dominions or in British India or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate Consular Officer before whom it is made ;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness ; and

<sup>1</sup> Inserted by section 7 of Act III of 1113.

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused; and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

<sup>1</sup> (4) [ \* \* \* ]

<sup>2</sup> [(4)] No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Cochin State relating to Merchant Shipping, liable to defray the expenses of maintenance of the injured master or seaman.]

17. The Government may, by notification in the Government Gazette, direct that every person employing workmen, or any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Government may direct.

Returns as to compensation.

18. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Contracting out.

19. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory <sup>1</sup>[a valid certificate

Proof of age

<sup>1</sup> Deleted by Section 9, Act XV of 1120.

<sup>2</sup> Renumbered by Section 9, *ibid.*

granted in respect of such person under section 12 or section 52 of the Cochin Factories Act, II of 1113, before the occurrence of the injury shall be conclusive proof of the age of such person].

## Penalties.

20. (1) Whoever.—

(a) fails to maintain a notice book which he is required to maintain under sub-section (3) of section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 11, or

(c) fails to send a report which he is required to make under section 12, or

(d) fails to make a return which he is required to make under section 17,

shall be punishable with fine which may extend to one hundred rupees:

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

## CHAPTER III

## COMMISSIONER

Reference to  
Commis-  
sioner.

21. (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Commissioner or to enforce any liability incurred under this Act.

<sup>1</sup> Substituted by Section 10, Act XV of 1120.

22. [(1) The Government may, by notification in the Cochin Government Gazette, appoint any person to be a Commissioner for workmen's compensation for such local area as may be specified in the notification.] Appointment of Commissioner.

(2) The Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry.

(3) The Commissioner shall be deemed to be a public servant within the meaning of the Cochin Penal Code.

23. (1) No application for the settlement of any matter by the Commissioner other than an application by a dependant or dependants for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement. Forms of application

(2) An application to the Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and if such notice has not been served or has not been served in due time, the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Power of the Commissioner to require further deposit in cases of fatal accident.

24. (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Powers and procedure of the Commissioner.

25. The Commissioner shall have the powers of a Civil Court under the Code of Civil Procedure, for the purpose of taking evidence on oath (which the Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 172 and of Chapter XXXV of the Code of Criminal Procedure, 1086.]

Appearance of parties.

26. Any appearance, application or act required to be made or done by any person before or to the Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or other person authorised in writing by such person.

Method of recording evidence.

27. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the records:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same and such memorandum shall form part of the record:

Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

28. All costs incidental to any proceedings before the Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner. <sup>Costs.</sup>

29. The Commissioner may, if he thinks fit, submit any question of law for the decision of the <sup>Power to</sup> [High Court] <sup>submit cases.</sup> and, if he does so, shall decide the question in conformity with such decision.

30. (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half monthly payment or otherwise, or where any compensation has been so settled as being payable <sup>Registration</sup> <sup>of agreements.</sup> <sup>2</sup>[to a woman or a person under a legal disability] a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that:—(a) No such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) The Commissioner may at any time rectify the register;

(c) Where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half monthly payment or otherwise or an agreement as to the amount of compensation payable <sup>3</sup>[to a woman or a person under a legal disability], ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement <sup>4</sup>[and]

<sup>1</sup>Substituted by section 12, Act XV of 1120.

<sup>2</sup>Substituted for 'to a person under a legal disability or to a dependant' by section 9, (a) of Act III of 1113.

<sup>3</sup>Substituted for 'to a person under any legal disability or to any dependant' by section 9 (b) (1), *ibid.*

<sup>4</sup>Substituted for 'or' by section 9 (b) (ii), *ibid.*



may make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act, notwithstanding anything contained in <sup>1</sup>[the Cochin Contract Act, XXIII of 1112] or in any other law for the time being in force.

Effect of failure  
to register  
agreement.

31. Where a memorandum of any agreement, the registration of which is required by section 30 is not sent to the Commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act and notwithstanding anything contained in the provision to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Appeals

32. (1) An appeal shall lie to the <sup>2</sup>[High Court] from the following orders of a Commissioner, namely:—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant.

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the

<sup>1</sup> Substituted by section 13, Act of XV of 1120.

<sup>2</sup> Substituted by section 14 *ibid.*

appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute <sup>1</sup> [in the appeal] is not less than two hundred rupees.

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner. or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided, further, that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of the Cochin Limitation Act, Section 5 shall be applicable to appeals under this section.

33. Where an employer makes an appeal under clause (a) of sub-section (1) of section 32 the Commissioner may and if so directed by the <sup>2</sup> [High Court] shall, pending the decision of the appeal, without payment of any sum in deposit with him. Withholding of certain payments pending decision of the appeal.

34. Any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, may be recovered as an arrear of land revenue. Recovery.

## CHAPTER IV

### RULES

35. (1) The Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

Power of the Government to make rules.

<sup>1</sup> Insertted by Section 14, Act XV of 1120.

<sup>2</sup> Substituted by Section 15, *ibid*,

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6, when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) section 13;

(c) for prescribing the procedure to be followed by the Commissioner in the disposal of cases under this Act and by the parties in such cases;

(d) for the representation in proceedings before the Commissioner of parties who are minors or are unable to make an appearance;

(e) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;

(f) for the withholding by the Commissioner, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same;

(g) for regulating the scales of costs which may be allowed in proceedings under this Act;

(h) for prescribing and determining the amount of the fees payable in respect of any proceedings before the Commissioner under this Act;

(i) for the maintenance by the Commissioner of registers and records of proceedings before him;

(j) for prescribing the classes of employers who shall maintain notice books under sub-section (3) of section 10, and the form of such notice books;

(k) for prescribing the form of statement to be submitted by employers under section 11, and

(l) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the Commissioner.

Publication  
of rules.

36. (1) The power to make rules conferred by section 35 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified after which a draft of rules proposed to be made under section 35 will be taken

into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Government Gazette, and on such publication shall have effect as if enacted in this Act.

<sup>1</sup>[37. (1) The Government may, by notification in the Cochin Government Gazette, make rules for the transfer to any other country of money deposited with a Commissioner under this Act, which has been awarded to or may be due to any person residing or about to reside in such country and for the receipt, distribution and administration in Cochin State of any money deposited under the law relating to workmen's compensation in any other country which has been awarded to or may be due to any person residing or about to reside in Cochin State:

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.]

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<sup>1</sup>Added by section 10 of Act III of 1113.

## SCHEDULE I

[See sections <sup>1</sup>[ 2(j) and 4 ]

List of injuries deemed to result in Permanent Partial Disablement.

Injury	Percentage of loss of earning capacity
Loss of right arm above or at the elbow ..	70
Loss of left arm above or at the elbow ..	60
Loss of right arm below the elbow ..	60
Loss of leg at or above the knee ..	60
Loss of left arm below the elbow ..	50
Loss of leg below the knee ..	50
Permanent total loss of hearing ..	50
Loss of one eye ..	30
Loss of thumb ..	25
Loss of all toes of one foot ..	20
Loss of one phalanx of thumb ..	10
Loss of index finger ..	10
Loss of great toe ..	10
Loss of any finger other than index finger ..	5

*Note.*—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

<sup>2</sup> [SCHEDULE II

(See section 3)

## List of Occupational Diseases

Occupational disease	Employment
<b>Part A</b>	
Anthrax	Any employment—
	(a) involving the handling of wool, hair, bristles or animal carcasses, or parts of such carcasses including hides, hoofs and horns; or
	(b) in connection with animals infected with anthrax; or
	(c) involving the loading, unloading or transport of any merchandise.

<sup>1</sup>Substituted by section 16, Act XV of 1120,<sup>2</sup>Substituted by section 17, *ib.*

Occupational disease	Employment
Compressed air illness or its sequelae Poisoning by lead tetraethyl	Any process carried on in compressed air Any process involving the use of lead tetraethyl
Poisoning by nitrous fumes	Any process involving exposure to nitrous fumes
<b>Part B</b>	
Lead poisoning or its sequelae (excluding poisoning by lead tetraethyl)	Any process involving the use of lead (or any of its preparations or compounds except lead tetraethyl)
Phosphorous poisoning or its sequelae	Any process involving the use of phosphorous or its preparations or compounds
Mercury poisoning or its sequelae	Any process involving the use of mercury or its preparations or compound
Poisoning by benzene and its homologues, or the sequelae of such poisoning	Handling benzene or any of its homologues; and any process in the manufacture or involving the use of benzene or any of its homologues
Chrome ulceration or its sequelae	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium or other preparations
Arsenical poisoning or its sequelae	Any process involving the production, liberation or utilisation of arsenic or its compounds
Pathological manifestations due to (a) radium and other radio-active substances; (b) X-rays	Any process involving exposure to the action of radium, radio-active substances, or X-rays
Primary epitheliomatous cancer of the skin	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin or the compounds, products or residues of these substances]

## [SCHEDULE III

(See section 4)

## Compensation payable in certain cases

Monthly wages of the workman injured		Amount of compensation for—		Half-monthly payment as compensation for Temporary Disablement of Adult
		Death of Adult	Permanent total Disablement of Adult	
1		2	3	4
More than	But not more than—			
Rs.	Rs.	Rs.	Rs.	Rs. A.
0	10	500	700	Half his monthly wages
10	15	550	770	5 0
15	18	600	840	6 0
18	21	630	882	7 0
21	24	720	1,008	8 0
24	27	810	1,134	8 8
27	30	900	1,260	9 0
30	35	1,050	1,470	9 8
35	40	1,200	1,680	10 0
40	45	1,350	1,890	11 4
45	50	1,500	2,100	12 8
50	60	1,800	2,520	15 0
60	70	2,100	2,940	17 8
70	80	2,400	3,360	20 0
80	100	3,000	4,200	25 0
100	200	3,500	4,900	30 0
200	..	4,000	5,600	30 0]

<sup>1</sup> Substituted by section 12 of Act III of 1113.

## ISCHEDULE IV

[See section 2(1)(l)]

*List of persons who, subject to the provisions of section 2(1)(l), are included in the definition of workmen*

The following persons are workmen within the meaning of section 2 (1) (l) and subject to the provisions of that section, that is to say, any person who is—

(i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of <sup>2</sup>[a lift or a vehicle propelled by steam or other mechanical power or by electricity].

(ii) employed, otherwise than in a clerical capacity in any premises wherein or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (g) of section 2 of the Cochin Factories Act, 1113 or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months fifty or more persons have been so employed; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

(v) employed as the master or as a seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) any ship not included in sub-clause (a) of fifty tons net tonnage or over; or

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1 Added by section 13 of Act III of 1113.

2 Substituted by section 18, Act XV of 1120.



(vi) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Cochin Ports Act of goods which have been discharged from or are to be loaded into any vessel; or

(vii) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one story in height above the ground or twenty feet or more from the ground level to the apex of the roof, or

(b) any dam or embankment which is twenty feet or more in height from its lowest to its highest point, or

(c) any road, bridge or tunnel, or

(d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or

(viii) employed in setting up, repairing, maintaining or taking down any telegraph or telephone line or post or any over-head electric line or cable or post or standard for the same; or

(ix) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipe-line, or sewer; or

(x) employed in the service of any fire brigade; or

(xi) employed upon a railway as defined in clause (4) of section 2 and sub-section (1) of section 97 of the Cochin Railways Act, 1111, either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or

(xii) employed as an Inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs or the Cochin Anchal Departments;

(xiii) employed, otherwise than in a clerical capacity in connection with operations for winning natural petroleum or natural gas; or

(xiv) employed in any occupation involving blasting operations, or

(xv) employed in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet; or

(xvi) employed in the operation of any ferry boat capable of carrying more than ten persons; or

(xvii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

(xviii) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating, or supplying of electrical energy or in the generating or supplying of gas; or

(xix) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

(xx) employed in the training, keeping or working of elephants or wild animals; or

<sup>1</sup>[(xxi) employed in the tapping of cocoanut palm or trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; or

(xxii) employed in operations for the catching or hunting of elephants or other wild animals; or]

<sup>2</sup>[(xxiii)] employed as a diver.

*Explanation.*—In this Schedule, 'the preceding twelve months' relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.]

or

<sup>3</sup>[(xxiv) employed in the handling or transport of goods in, or within the precincts of,—

<sup>1</sup> Inserted by section 18, Act XV of 1120.

<sup>2</sup> Renumbered by section 18, *ibid.*

<sup>3</sup> Added by section 18, *ibid.*

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed, or

(b) any markets in which on any one day of the preceding twelve months one hundred or more persons have been so employed; or

(xxv) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radio-active substances.]

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# **THE COCHIN STATE AID TO INDUSTRIES ACT**

**(X OF 1111)**

**(As amended up to 1st Kumbham 1122)**

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## THE COCHIN STATE AID TO INDUSTRIES 'ACT]

(X OF 1111)

## HISTORY OF LEGISLATION

Year	Number	Short Title	Amendments
1111	X	The Cochin State Aid to Industries Act	Amended by Act VII of 1114

*Passed by His Highness the Maharaja on the 23rd day of Vrischigam 1111 corresponding to the 9th day of December 1935.*

Preamble.

Whereas it is expedient and regulate State aid to assist in the establishment and development of industries in the State, it is hereby enacted as follows:—

Short title and extent.

1. (i) This Act may be called the Cochin State Aid to Industries Act, X of 1111.

(ii) It extends to the whole of Cochin State.

Definitions.

2[1-A. In this Act—

(i) 'Cottage Industry' means any industry carried on by a worker in his own home; and

(ii) 'Village industry' means any industry which forms the normal occupation, whether whole time or part time, of any class of the rural population of the Cochin State.]

Director of Industries.

2. The Government may appoint any officer or other person to perform all or any of the functions of the Director of Industries under this Act.

No aid except in accordance with the provisions of the Act

3. No aid shall be given by the Government to any industrial business or enterprise except in accordance with the provisions of this Act.

Industries to be aided.

4. (i) The industries to which aid may be given under this Act shall be such as have an important bearing on the economic development of the country and shall be:

(a) new or nascent industries, or

<sup>1</sup>Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

<sup>2</sup>Inserted by section 2, Act VII of 1114.

(b) industries to be newly introduced into areas where such industries are undeveloped, or

(c) cottage industries.

(ii) No such aid shall be given to any joint-stock company unless:

(a) the same is registered in the Cochin State on a rupee capital, and

(b) the company conforms to such rules as may be made by the Government from time to time requiring that a minimum number or a proportion of the members of its board of management and not less than 40 per cent share-holders shall be Cochinitas:

Provided further that every recipient of aid under this Act shall make such provision for the training of apprentices as the Government may, from time to time, prescribe.

(iii) The decision of the Government as to whether the conditions of this section are fulfilled shall be final.

5. Subject to the provisions of this Act and of the rules framed thereunder, the Government shall have power <sup>Mei</sup> <sup>givi</sup> <sup>aid.</sup> to give aid to an industrial business or enterprise in one or more of the following ways:—

(a) by granting a loan,

(b) by guaranteeing a cash credit, overdraft or fixed advance with a bank;

<sup>1</sup>[(c) by paying a subsidy, in the case of a cottage industry for any purpose, and in the case of any other industry for the conduct of research or the purchase of machinery.]

(d) by subscribing for shares or debentures;

(e) by guaranteeing a minimum return on part of the capital of a joint-stock company;

(f) by making a grant on favourable terms of land, raw material, fire-wood or water, the property of the Government.

<sup>2</sup>[(g) By supplying at concessional rates electric energy from a source belonging to Government.]

<sup>1</sup>Substituted by section 3; Act VII of 1114.

<sup>2</sup>Added by section 3, *ibid.*

Delegation of the power given by section 5.

6. The Government may delegate the power to grant State aid under section 5, provided that no authority to whom such power is delegated shall be empowered to grant aid to any one industrial business or enterprise of an amount or of value exceeding Rs. 1,000.

Application for State aid and procedure in dealing with application.

7. (i) Any person desiring to obtain a loan or other aid for any industrial business or enterprise shall make his application to the Director of Industries in such form and shall furnish such information concerning his business as may be prescribed.

(ii) If the extent of the aid applied for exceeds Rs. 5,000 and in any other case in which he considers this procedure necessary, the Director of Industries shall publish a notice in the prescribed manner calling upon any person who objects to the grant of the aid applied for, to state his objections at a time and place to be specified, and shall hear such objection and make such inquiry as may be necessary.

(iii) The Government may constitute taluk committees for the purpose of advising on applications for aid.

Grant of loans.

8. No loan shall be granted of an amount exceeding 50 per cent of the net value of the assets of the industrial business or enterprise <sup>1</sup>[.....] after deducting existing encumbrances, such value to be ascertained by such person as may be appointed by the Government and in accordance with such rules as may be prescribed; for the purpose of this valuation the additional assets which may be created by the expenditure of the sums granted may be taken into account to such extent as may be prescribed.

<sup>2</sup> [Provided, however, that a loan of an amount not exceeding Rs. 10,000 may be granted even if it exceeds 50 per cent of the value of the assets as above ascertained.]

Loans how secured.

9. Every loan granted under this Act shall be secured by a mortgage or floating charge upon the whole of the assets of the business or enterprise, subject to any encumbrances existing at the time of the grant, and by such collateral security, if any, as may be required by the Government, and shall bear interest payable on such dates and at such rates as the Government may determine.

<sup>1</sup> Deleted by section 4, Act VII of 1114.

<sup>2</sup> Added by section 4, *ibid.*

10. In any case in which a loan has been applied for under this Act the applicant, and at any time during the currency of a loan that has been granted under it, the grantee shall be bound—

Inspection  
and returns.

(a) to comply with any general or special order of the Government relative to the inspection of the premises, buildings or plant or stock in hand of the industrial business or enterprise;

(b) to permit the inspection of all accounts relative to the industrial business or enterprise;

(c) to furnish full returns of all products manufactured or sold both as regards description and quantity;

(d) to maintain such special accounts or to furnish such statements as the Government may, from time to time, require;

(e) to submit the accounts of the industrial business or enterprise to such audit as the Government may prescribe.

11. In any case in which a loan or loans is or are granted under this Act amounting to ten thousand rupees or upwards, the Government shall, and in any other case may, by the appointment of Government Directors or otherwise take power to ensure such control over the conduct of the business or enterprise as shall suffice in their opinion to safeguard their interests.

Control of  
business  
assisted.

12. (i) Every loan granted under this Act shall be made repayable by instalments within such period from the date of the actual advance of the loan, or when the loan is advanced in instalments from the date of payment of the last instalment as may be fixed by the order granting the loan.

Repayment  
of loans.

(ii) The period fixed as aforesaid shall not exceed twelve years unless the Government shall, by general or by special order, extend the same.

13. No guarantee of a cash credit, overdraft or fixed advance with a bank shall be given except under the conditions prescribed in sections 8 to 11 in respect of loans.

Guaranteeing  
of loans by  
banks.



Exemption of small and cottage industries.

<sup>1</sup>[13-A. Save as otherwise may be prescribed by rules made under this Act, nothing in sections 8, 9, 10 and 13 shall apply to any industrial business or enterprise with a capital outlay not exceeding five hundred rupees or to cottage industries.]

Subscriptions for shares or debentures or guarantee of a minimum return on capital.

14. The condition of subscription for shares and debentures by the Government or the guarantee of a minimum return on the capital of any industrial business or enterprise shall be that the business or enterprise shall be subject to the conditions of section 10 in respect of inspection and returns as well as of the provisions of section 11 in respect of Government control:

Provided (a) that for all shares subscribed by the Government there must be taken up and fully paid for not less than an equal number of shares;

(b) that for all capital on which a return is guaranteed by Government there shall be paid up not less than an equal amount of capital which carries no guarantee.

Subsidy by Government.

15. The condition of a grant of subsidy or of any payment under guarantee of a minimum return on the paid-up capital or of the grant of Government land, raw material, firewood or water on favourable terms, shall ordinarily be that an amount equal to the sum paid or to the value of the grant as fixed at the time when it is made shall be repaid to the Government at the close of a fixed term of years if within that term the industrial business or enterprise shall be shown to be paying interest or a dividend upon the capital invested in excess of such rate as the Government may fix.

No subsidy <sup>2</sup>[to an industry other than cottage industry] shall exceed 40 per cent of the cost of the research or of the cost of the machinery as the case may be.

Disposal of profits when condition of State aid is not fulfilled.

16. No recipient of State aid shall pay any dividend or distribute or take any profits in excess of such percentage rate upon the amount of the capital of the industrial business or enterprise as the Government may fix from time to time until the conditions on which the State aid has been granted are fulfilled. The balance of the profits, after setting aside proper amounts for depreciation or obsolescence of plant and buildings, and for the

<sup>1</sup> Inserted by section 5, Act VII of 1114.

<sup>2</sup> Inserted by section 6, *ibid.*

payment of interest on debentures of loans, shall be carried to a reserve fund to be utilised in such manner as the Government may approve.

17. (i) All moneys payable under this Act, including any interest chargeable thereon and cost, if any, incurred, if not paid when due, may be recovered from the person aided and his surety, if any, under the law for the time being in force as if they were arrears of land revenue. Method of recovery of money due.

(ii) When any sum due as aforesaid is paid by the surety or is recovered from him or out of his property under sub-section (i) the Diwan Peishkar shall, on the application of the surety, so far as possible, recover the same from the person aided and pay the same to the surety.

18. (a) The Government may make rules to carry out all or any of the purposes of this Act not inconsistent herewith. Power to make rules.

(b) In particular and without prejudice to the generality of the foregoing power, they may make rules regulating all or any of the following matters:—

(1) the classes of industrial businesses or enterprises to which and the purposes for which aid may be given;

(2) the constitution and functions of taluk committees;

(3) the delegation of the power to grant State aid under section 6;

(4) the manner of making applications for State aid and the information to be given in such applications, provided that no such rules shall require any applicant or grantee of aid to divulge any information relating to the technical details of any process or any patent owned by him;

(5) the manner of conducting inquiries and the matters to be specially inquired into in dealing with applications for State aid and the powers to be exercised by the Director of Industries conducting such inquiries;

(6) the mode of ascertaining the value of the assets of an industrial business or enterprise;

(7) the nature of the security to be taken for the due application of loans and grants and the rates of interest

at which and the conditions under which loans or grants may be given, and the creation of a mortgage, floating charge or collateral security under section 9;

(8) the inspection of the premises, buildings, plant and stock on hand and the accounts of any industrial business or enterprise for which State aid has been granted;

(9) the mode of keeping and auditing the accounts and of furnishing returns of any industrial business or enterprise in respect of which State aid has been granted;

(10) the appointment and functions of Government Directors or the prescribing of other methods of control of industrial businesses or enterprises in respect of which State aid has been granted;

(11) the application of profits in cases in which the conditions under which loans or grants have been made have not been fulfilled;

(12) the guaranteeing by the Government of cash credits, overdraft or fixed advances by banks and the recognition of banks for this purpose;

(13) the fixing of the period for the re-payment of loans and the conditions and dates of the re-payment of subsidies and grants;

(14) the recovery of any monies due under this Act;  
and

(15) the conditions under which and the security on which loans shall be granted or guarantee of a cash credit, overdraft or fixed advance with a bank given to the industries <sup>1</sup>[referred to in section 13-A].

Provided that such rules are laid on the table of the Legislative Council and notified in the Cochin Government Gazette one month after which they shall have the force of law unless amended by the Legislative Council within that period, or, if the Council is not sitting during that period, at its next meeting.

19. Nothing in this Act shall debar Government

(a) from starting or conducting industrial enterprises for experimental purposes or with a view to stimulate industrial development;

Powers reserved with the Government.

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(<sup>1</sup>) Substituted by section 7, Act VII of 1114.

(b) from assisting an industrial business or enterprise by agreements to purchase on business terms the whole or a portion of the products of the same;

(c) from assisting an industrial business or enterprise by giving gratis or on favourable terms, the services of Government officials or experts either in the capacity of advisers or for a limited period not exceeding one year for starting or conducting such business or enterprise;

(d) from assisting an industrial business or enterprise in connection with industrial education or the training of apprentices.

<sup>1</sup>[(e) from assisting a village industry in any manner which may be determined by Government.]

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(<sup>1</sup>) Added by section 8, Act VII of 1114.

**THE COCHIN PROVIDENT FUNDS ACT,  
(XXIII OF 1111)**

**(As amended up to 1st Kumbham 1122)**

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3. Protection of Compulsory Deposits.
4. Provisions regarding repayments.
5. Rights of nominees.
6. Power of Government to make deductions.
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**THE COCHIN PROVIDENT FUNDS [ACT]  
(XXIII OF 1111)**

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1111	XXIII	Cochin Provident Funds Act	Amended by Act V of 1114

*Passed by His Highness the Maharaja on the  
18th day of Medam 1111 corresponding to  
the 30th day of April 1936*

**Preamble.**

Whereas it is expedient to amend and consolidate the law relating to Government and other Provident Funds, it is hereby enacted as follows:—

**Short title,  
extent and  
commence-  
ment.**

1. (i) This Act may be called “The Cochin Provident Funds Act, XXIII of 1111”.

(ii) It extends to the whole of Cochin; and

1. Substituted for “Regulation” throughout the enactment by Proclamation V of 1112.

(iii) <sup>1</sup> It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, appoint.

2. In this Act unless there is anything repugnant Definitions in the subject or context,—

(a) "Compulsory Deposit" means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund is not until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance, or as a temporary withdrawal recoverable subsequently as provided for in the rules for the working of the Fund and includes any contribution and any interest or increment which has accrued under the rules of the Fund on any such subscription, deposit or contribution and also any such subscription, deposit, contribution, interest or increment remaining to the credit of the subscriber or depositor, after the happening of any such contingency;

(b) "Contribution" means any amount credited in a Provident Fund, by any authority administering the Fund by way of addition to, a subscription to, or deposit or balance at the credit of an individual account in the Fund; and "Contributory Provident Fund" means a Provident Fund the rules of which provide for the crediting of contributions;

[(c) "Dependent" means any of the following relatives of a deceased subscriber to or a depositor in a Provident Fund, namely, a wife, husband, parent, child, brother, sister, sister's child, and a deceased son's widow and child, and where no parent of the subscriber or depositor is alive, a grand parent.]

(d) "Government Provident Fund" means a Provident Fund, constituted by the authority of the Government for any class or classes of its employees; and

(e) "Provident Fund" means a Fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions and any interest or

<sup>1</sup> Brought into force from 1st Chingam 1112 by Notification No. 139, dated 31st Edavam 1111.

<sup>2</sup> Substituted by section 2. Act V of 144,

increment accruing on such subscriptions, deposits or contributions under the rules of the Fund.

Protection of  
Compulsory  
Deposits.

3. (1) A compulsory deposit in a Government Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and no Official Receiver appointed under the Insolvency Act, VII of 1098, shall be entitled to or have any claim on, any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor in any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor or to such person as may be authorised by law to receive payment on his behalf, shall subject to any deduction authorised by this Act and save where the dependant is the widow or child of the subscriber or depositor, subject also to the right of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

Provisions  
regarding  
repayments

4. (1) When under the rules of a Government Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after the making of any deduction authorised by this Act, has become payable, the officer, whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber or depositor or if he is dead, shall—

(a) if the sum or balance, or any part thereof, vests in a dependant under the provisions of section 3, pay the same to the dependant or to such person as may be authorised by law to receive payment on his behalf; or

(b) if the whole sum or balance as the case may be, does not exceed five thousand rupees, pay the same or pay part thereof which is not payable under clause (a) to any person nominated to receive it under the rules of the Fund, or, if no person is so nominated, to any person appearing to him to be otherwise entitled to receive it; or

(c) in the case of any sum or balance, or any part thereof, which is not payable to any person under clause (a) or clause (b), pay the same—

(i) to any person nominated to receive it under the rules of the Fund, on production by such person of probate or letters of administration evidencing the grant to him of administration to the estate of the deceased or a certificate granted under the Successions Certificate Act, VII of 1095, entitling the holder thereof to receive payment of such sum, balance or part, or

(ii) where no person is so nominated, to any person who produces such probate, letters or certificate:

Provided that, where the whole or any part of any sum standing to the credit of the subscriber or depositor has been assigned to any other person before the commencement of this Act, and notice in writing of the assignment has been received by the officer from the assignee, the officer shall, after making any deduction authorised by this Act and any payment due under clause (a) to or on behalf of the widow or children of the subscriber or depositor—

(i) if the subscriber or depositor, or, if he is dead, the person to whom in the absence of any valid assignment the sum or a balance would be payable under this sub-section gives his consent in writing, pay the sum or part or the balance thereof, as the case may be, to the assignee, or

(ii) if such consent is not forthcoming, withhold payment of the sum, part or balance, as the case may be, pending a decision of a competent Civil Court as to the person entitled to receive it.

(2) The making of any payment authorised by sub-section (1) shall be a full discharge to the Government from all liability in respect of so much of the sum standing to the credit of the subscriber or depositor as is equivalent to the amount so paid.

5. (1) Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition whether testamentary or otherwise, by a subscriber to, or depositor in, a Government Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, any

Rights of  
nominees.



nomination, duly made in accordance with the rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules.

(2) Notwithstanding anything contained in the Succession Certificate Act, VII of 1095, any such person shall, on the death of the subscriber or depositor, be entitled to the grant of a certificate under that Act entitling him to receive payment of such sum or part, and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of probate or letters of administration to the estate of the deceased.

Power of Government to make deductions.

6. Any amount due under a liability incurred by the subscriber or the depositor in a Government Provident Fund to the Government may, at any time, be deducted by the Government from the sum standing to the credit of the subscriber or depositor.

Protections for acts done in good faith.

7. No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

Power to apply the act to the Provident Funds.

8. (1) The Government may, by notification in the Cochin Government Gazette, declare that the provisions of this Act shall apply to any Provident Fund established for the benefit of its employees by any Municipal Council, within the meaning of Act XI of 1096, and, on the making of such declaration, this Act shall apply accordingly, as if such Provident Fund were a Government Provident Fund and such Municipal Council were the Government.

(2) The Government may also, by notification in the Cochin Government Gazette, direct that the provisions of this Act shall apply to any Provident Fund established for the benefit of the employees of any of the institutions, specified in the Schedule, or of any group of such institutions, and on the making of such declaration, this Act shall apply accordingly, as if such Provident Fund were a Government Provident Fund and the authority having custody of the Fund were the Government.

(3) The Government may, by notification in the Cochin Government Gazette, add to the Schedule the name of any public institution it may deem fit and any such addition shall take effect as if it had been made by this Act.

### THE SCHEDULE

[ See sub-section (2) of section (8) ]

1. The Cochin Aided School Provident Fund.
2. The Tramway Contributory Provident Fund.
3. The Valia Amma Thampurani Kovilagam Estate Provident Fund.
4. The Cochin Thirumala Devaswam Provident Fund.
5. The Palace Provident Fund.
6. <sup>1</sup>[The Forest Contributory Provident Fund.]
7. <sup>1</sup>[The Central Farm Contributory Provident Fund.]
8. <sup>2</sup>[The Cochin Central Co-operative Bank Ltd., Provident Fund.]
9. <sup>3</sup>[The Paliyam Estate Provident Fund.]
10. <sup>4</sup>[Wadakke Madhom Brahmaswam, Arikaniyur }  
Devaswam, Thayankavu Devaswam, Chow-  
wannur Sabha Mutt., Perumpilly Deva-  
swam, Nettisseri Devaswam, Anthikkad }  
Devaswam, Chittur Veda Sastra Pata Sala } Provident Fund.
11. <sup>5</sup>[Cheranellur Devaswam, Southern Chittur, }  
Krishnaswamy Devaswam } Provident Fund.

<sup>1</sup>Added by Notification No. 9, dated 28th Chingam 1112.

<sup>2</sup>Added by Notification No. 55, dated 22nd Meenam 1113.

<sup>3</sup>Added by Notification No. 25, dated 2nd November 1943.

<sup>4</sup>Added by Notification No. 35, dated 2<sup>th</sup> December 1943.

<sup>5</sup>Added by Notification No. 70, dated 27th Dhanu 1121.

**THE COCHIN CO-OPERATIVE LAND MORTGAGE ACT  
(XXV OF 1111)**

**(As amended up to 1st Kumbham 1122)**

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**THE COCHIN CO-OPERATIVE LAND  
MORTGAGE BANK [ACT]**

(XXV OF 1111)

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1111	XXV	The Cochin Co-operative Land Mortgage Bank Act	Amended by Act XLVIII & Proclamation V of 1112, and Act VIII of 1118

*Passed by His Highness the Maharaja on the 30th day of Medam 1111 corresponding to the 12th day of May 1936*

Preamble.

Whereas it is expedient to supplement the provisions of the Cochin Co-operative Societies Act, IV of 1088, in order to facilitate the working of a Co-operative Land Mortgage Bank in the State, with a view to provide for the grant of long-term loans to owners of land or other immovable property in the State, to enable them to discharge their debts, to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like purposes and thereby to promote thrift and self-help among them;

It is hereby enacted as follows:—

**CHAPTER I**

**PRELIMINARY**

Short title.

1. This Act may be called "The Cochin Co-operative Land Mortgage Bank Act, XXV of 1111."

Extent and commencement.

2. It extends to the whole of the Cochin State and it shall come into force at once.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context:—

(a) 'Board' means the Board of Directors of the Cochin Co-operative Land Mortgage Bank, Ltd.,

<sup>1</sup>Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

(b) 'the Bank' means the Cochin Co-operative Land Mortgage Bank Ltd., Trichur, and includes any of its branches that come into existence according to the provisions of this Act;

(c) 'by-laws' means the by-laws of the Cochin Co-operative Land Mortgage Bank Ltd., registered under the Cochin Co-operative Societies Act, IV of 1088, or any other Act in force in this behalf and includes any registered amendment of the by-laws;

(d) 'prescribed' means prescribed by rules made by Government under this Act;

(e) 'Registrar' means the person appointed by Government to be the Registrar of Co-operative Societies in Cochin;

(f) 'Trustee' means the trustee referred to in section 5;

(g) 'Local Advisory Committee' means a committee of not more than five persons nominated by Government in each centre where a branch bank is established under this Act.

## CHAPTER II

### DEBENTURES

4. (1) (a) With the previous sanction of the Trustee the Board may issue debentures of one or more denominations for such periods as it may deem expedient on the security of the mortgages taken by the Government before the date of this Act and transferred to the Bank, and mortgages taken by the Bank and of its other assets.

Issue of debentures by the Board.

*Explanation:*—A mortgage taken by the Government shall be deemed to have been transferred to the Bank within the meaning of this section as and when the Government notifies to that effect in the Cochin Government Gazette.

(b) Such debentures may contain a term fixing a period not exceeding ten years from the date of issue during which they shall be irredeemable, or reserving to the Board the right to call in at any time any of the debentures in advance of the date fixed for redemption, after giving to the debenture-holders concerned not less than three months' notice in writing.

(2) The total amount due on the debentures issued by the Board and outstanding at any time shall not exceed the total amount due on the mortgages referred to in section 4 (1) (a), the amounts paid thereunder and remaining in the hands of the Board or of the Trustee at such time.

Appoint-  
ment of  
trustee and  
his powers  
and functions.

5. The Registrar, or where the Government appoint any other person in this behalf, such person, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the Bank to the holders of debentures issued by the Board. The mortgages executed in favour of the Bank shall, on execution, vest in the Trustee. The mortgages executed in favour of the Government and transferred by notification in the Cochin Government Gazette to the Bank shall on such notification vest in the Trustee. The holders of the debentures shall have a floating charge on all such mortgages and other assets, if any, on the amount paid under such mortgages and remaining in the hands of the Board or of the Trustee and on the other properties of the Bank. The powers and functions of the Trustee shall be governed by the instrument of trust executed between the Bank and the Trustee as modified from time to time by mutual agreement between the Board and the Trustee and as approved by Government.

Guarantee  
by Govern-  
ment of  
principal of  
and interest  
on debentures  
issued  
under sec-  
tion 4.

6. (1) The principal of, and interest on, the debentures issued under section 4 to such maximum amount as may be fixed by the Government and subject to such conditions as they may think fit to impose shall, subject to the provisions of sub-section (3) carry the guarantee of the Government.

(2) The Government may increase the maximum amount of any guarantee given by them.

(3) The Government may, after consulting the Board and the Trustee—

(a) by notification in the Cochin Government Gazette, and

(b) by notice for not less than fourteen days in such of the principal newspapers in the State, in Travancore and in British India as the Government may select in this behalf,

discontinue any guarantee given by them or restrict the maximum amount thereof or modify the conditions

subject to which it is given with effect from a specified date, not being earlier than six months from the date of publication of such notification in the Cochin Government Gazette.

In cases where the maximum amount of the guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified, the notification and notice aforesaid shall set forth with sufficient clearness the scope and effect of the restriction or modification.

*Explanation.*—The withdrawal, restriction or modification of any guarantee under this sub-section, shall not affect in any way the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect.

7. The Board may, subject to the approval of the Trustee, make rules not inconsistent with the provisions of this Chapter—

(i) for fixing the period of debentures and the rate of interest payable thereon ;

(ii) for calling in debentures after giving notice to debenture-holders ;

(iii) for the issue of new debentures in place of those damaged or destroyed ;

(iv) for converting one class of debentures into another bearing a different rate of interest; and

(v) generally for carrying out the provisions of this Chapter.

### CHAPTER III

#### DISTRAINT AND SALE OF PRODUCE

8. (1) If any instalment payable under a mortgage executed in favour of the Bank or executed in favour of the Government and transferred to it, or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Board may, in addition to any other remedy available to the

*Distrait when to be made.*



Bank, apply to the Registrar or to any person appointed by the Government to assist the Registrar, for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land including the standing crops thereon. On receipt of such application the Registrar or such person may take such action as is necessary to distraint and sell such produce.

(2) The distress shall not be excessive, the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of the sale.

D distraint how  
to be effected.

9. (1) Before or at the time when a distraint is made under section 8, the distrainer shall serve or cause to be served upon the defaulter a written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode or to his authorised agent, or when such service cannot be effected, by affixing a copy of the demand on some conspicuous part of his abode and of his land.

Sale of pro-  
perty dis-  
trained.

10. (1) If, within fifteen days from the date of service of the demand referred to in section 9, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may, in his opinion, be necessary to satisfy the demand together with the expenses of the distraint and the costs of the sale.

(2) From the proceeds of such sale, a deduction shall be made at a rate not exceeding one anna in the rupee on account of the costs of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which the distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given receipt for the amount discharged from the proceeds of the sale.

11. The Government may make rules not inconsistent with the provisions of this Chapter— Power of Government to make rules.

(i) for the manner of effecting distraint;

(ii) for the custody, preservation and sale of the distrained property;

(iii) for the investigation of claims by persons other than the defaulter to any right or interest in the distrained property; and for the postponement of the sale pending such investigation;

(iv) for the immediate sale of perishable articles; and

(v) generally for the purpose of carrying out the provisions of this Chapter.

## CHAPTER IV

### SALE OF IMMOVEABLE PROPERTY

12. (1) Where a power of sale without the intervention of the Court is expressly conferred by the instrument of mortgage on the mortgagee, and in all cases of mortgages in favour of Government and transferred to the Bank, the Board or any person authorised by the Board in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the Bank, to bring the mortgaged property to sale without the intervention of the Court. Power of sale when to be exercised.

*Explanation*—In this Chapter ‘Court’ means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

(2) No such power shall be exercised unless and until—

(a) notice in writing requiring payment of such mortgage money or part has been served upon—

(i) the mortgagor or each of the mortgagors;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(iii) any surety for the payment of the mortgage debt or any part thereof; and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(b) default has been made in payment of such mortgage money or part for three months after such service:

Provided that the obligation to give such notice under clauses (ii) and (iv) of sub-section 2 (a) shall be confined to cases where the Board has notice of such claims.

Provided also that where a mortgage has been executed by the members of Tarawad or Illom, it shall be necessary to send notice under this section only to the six seniormost members thereof.

*Explanation.*—The Government by rules under this Act may provide for the registration of such claims in respect of properties mortgaged to the Bank.

Application  
for sale and  
manner of  
sale.

13. (1) In exercise of the power of sale conferred by section 12, the Board or any person duly authorised by them, may apply to the sale officer appointed in that behalf under section 21 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in section 12 sell such property in the manner prescribed.

(2) The sale shall be by public auction and shall be held in the village where the mortgaged property is situated or at the nearest place of public resort if the sale officer is of opinion that the property is likely to sell to better advantage there.

Application  
to set aside  
sale on deposit  
and confir-  
mation of sale  
in default or  
on dismissal  
of such appli-  
cation.

14. (1) When a mortgaged property has been sold under this chapter, the mortgagor or any person, having a right or interest therein affected by the sale, may at any time within thirty days from the date of sale, apply to the Board to have the sale set aside on his depositing at the office of the Bank—

(a) for payment to the Bank, the amount specified in the Proclamation of sale together with subsequent interest and the costs, if any, incurred by the Bank in bringing the property to sale, and

(b) for payment to the purchaser, a sum equal to five per cent of the purchase money.

(2) If such deposit is made, the Board shall make an order setting aside the sale.

(3) Where no application is made under subsection (1) or where such application is made and disallowed, the Board shall apply to the Registrar to make an order confirming the sale and on such officer confirming the sale, it shall become absolute.

15. (1) The proceeds of every sale under this chapter shall be applied by the sale officer, *First* in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; *Secondly*, in payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; *Thirdly*, in payment of the principal money due on account of the mortgage; and lastly, the residue, if any, shall be paid to the person proving himself interested in the property sold or, if there are more such persons than one, then to such persons according to priorities if they are charge-holders and in other cases according to their respective interests therein or upon their joint receipt, such decision being communicated to the interested person or persons by the sale officer.

Distribution  
of the pro-  
ceeds of sale.

(2) (a) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit in a court to establish the right he claims.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from the communication of his decision to all the persons concerned or, if a suit has been instituted within the said period of thirty days by any such person, and due notice thereof is given to the Bank before payment, until the suit is disposed of or otherwise than in accordance with the decision of the court therein.

(3) Any deficit occurring after the sale of the mortgaged land may also be similarly recovered from any other assets of the mortgagor.

16. Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying

Certificate to  
purchaser.

the property sold and the name of the person who at the time of the sale is declared to be the purchaser. Such certificate shall bear date, the day on which the sale became absolute.

Delivery of property to purchaser.

17. (1) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or of some person claiming under a title other than a lease for a period not exceeding five years created by the mortgagor subsequent to the mortgage in favour of the Bank and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(2) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, and after notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

(3) In regard to the cases dealt with in sub-sections 1 and 2, the provisions of sections 321 to 328 of the Cochin Civil Procedure Code shall *Mutatis Mutandis* and so far as may be, apply.

Right of the Bank to purchase the mortgaged property at sale.

18. It shall be competent to the Bank itself to purchase the mortgaged property sold under this chapter, but the property so purchased shall be disposed of by sale within such period as may be fixed by the Trustee.

Appointment of receiver and his powers.

19. (1) The Board may, of its own motion or on the application of any of the branch banks and under circumstances in which the power of sale conferred by section 12 may be exercised, appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him, his expenses of management including his

remuneration, if any, as fixed by the Board and to apply the balance received by him as follows:—

(i) in discharge of all rents, taxes, land revenue, municipal dues affecting the mortgaged property;

(ii) in keeping down all annual or other recurring payments and the interest on all principal sums, if any, having priority to the mortgage in right whereof he is receiver;

(iii) in payment of his commission and the cost of executing necessary or proper repairs directed in writing by the Board or Trustee as the case may be;

(iv) in payment of the interest falling due on the mortgage;

(v) in or towards the discharge of the mortgage money or part thereof as directed in writing by the Board or Trustee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver or who is otherwise entitled to the mortgaged property.

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint a receiver where the mortgaged property is already in the possession of a receiver appointed by a Civil Court.

(5) But the Board may, through the Secretary, petition to such court to direct the receiver of such court to apply any part or the whole of the surplus remaining in his hands after meeting the expenses of his management to the discharge of the mortgage amount or part as the case may be.

20. When a sale has been made in professed exercise of a power of sale under section 12 and has been confirmed under sub-section (3) of section 14, the title of the purchaser shall not be impeachable on the ground that no case had arisen to

Title of purchaser not to be impeached on the ground of irregularity, etc.

authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Bank.

Appointment  
of sale  
officer.

21. The Board may appoint sale officers subject to the approval of the Registrar for the purpose of conducting sales under this chapter.

22. The Government may make rules not inconsistent with this chapter.

Power of  
Government  
to make rules.

(i) for the due proclamation and conduct of the sale;

(ii) for the recovery of the expenses of proclamation and sale;

(iii) for the deposit of the purchase money;

(iv) for the resale of the property if the purchase money is not deposited; and

(v) generally for carrying out the provisions of this chapter.

## CHAPTER V MISCELLANEOUS

Power of  
the Bank in  
case the  
mortgaged  
property is  
wholly or  
partially  
destroyed or  
the security  
is rendered  
insufficient.

23. Where any property, the subject of a mortgage in favour of the Bank or transferred to it by the Government, is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the Board, of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the Board, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the Board shall be entitled to take action against the mortgagor under section 8, section 12 and section 15 (3) for the recovery thereof.

*Explanation.*—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the by-laws of the Bank.

24. (1) The Trustee may direct the Board to take action against a defaulter under section 8, section 12 or section 23 and if the Board neglects or fails to do so, the Trustee may take such action.

Power of Trustee to direct distraint, the sale of produce and the sale of immoveable property.

(2) Where such action is taken by the Trustee the provisions of this Act and of any rules made thereunder shall apply in respect thereto as if all references to the Bank and the Board in the said provisions were references to the Trustee.

25 <sup>1</sup>[The improvements, if any, made subsequent to the date of the mortgage by a lessee of property mortgaged to the bank shall be treated as accession to the mortgaged property and shall be available to the bank for the realisation of the mortgaged amounts].

Bank's right to improvements effected by lessee.

26. Notwithstanding anything contained in the Cochin Insolvency Act, VII of 1098, a mortgage executed in favour of the Bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Bank a preference over the other creditors of the mortgagor.

Mortgage not to be questioned on insolvency of mortgagor.

27. A mortgage executed in favour of the Bank or transferred to it by the Government after the commencement of this Act shall have priority over any claim of the Government arising from a loan under the Cochin Agricultural Improvement Loans Act, IV of 1093, granted after the execution of the mortgage.

Priority of mortgage over claims arising under Agricultural loans made subsequent.

(2) Notwithstanding any enactment or rule of law a mortgage executed in favour of the Bank shall take precedence over any attachment or oral mortgage over the properties, where after publication of a notice in the prescribed form, such claim or interest has not been notified to it within the time prescribed in the said notice.

The Government may make rules prescribing the form of the notice under this section and the manner of its Publication.

28. Where a mortgage is executed in favour of the Bank for payment of prior debts of the mortgagor, the Bank may, by notice in writing, require any person to whom any such debt is due to receive payment of such

Right of the Bank to pay prior debts of mortgagor.

<sup>1</sup> Substituted by section 18, Act VIII of 1118.



debt or part thereof from the Bank at its office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice except in cases where such person proves to the satisfaction of the Board that the failure to receive notice or payment was due to causes beyond his control:

Provided that where there is dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him in a civil suit.

Registration of documents executed on behalf of the Bank.

29. (1) Notwithstanding anything contained in the Cochin Registration Act, V of 1084, it shall not be necessary for any Director, Secretary or other officer of the Bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 51 of that Act.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such Director, Secretary or officer for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

Money payable at the Bank.

30. All moneys payable may be paid at the Bank itself or any of the branch banks or in any of the Government Treasuries,

Special provision for mortgages executed by Managers of joint Hindu families.

31. (1) Where a mortgage executed in favour of the Bank or transferred to it by Government is called in question on the ground that it was executed by the Manager of a joint Hindu family, or by the Karnavan of a Marumakkathayam tarawad or a Nambudiri illom or the Karnavan, Manager or the members of a Nayar tarawad for a purpose not binding on the members thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.

(2) For the purpose of this section, the following shall not be regarded as purposes not binding on a

member of the joint Hindu family or Marumakkathayam tarawad or Nambudiri illom namely:—

- (a) the improvement of agricultural land or of the methods of cultivation ; and
- (b) the purchase of land.

32. Whenever under the provisions of this Act notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered anchal or post. Service of notices under the Act.

33. (a) Where the person on or to whom any notice or tender is to be served or made under this Act does not reside within Cochin, service or tender on or to an agent holding a general power of attorney for such person or otherwise authorised to accept such service or tender shall be deemed sufficient. Service of notice on or tender to agent.

(b) In the case of persons, entitled to notice or tender being minors or other persons incompetent to contract, it shall be sufficient to send the notice or make the tender to the legal guardian in management of the property, or other person having the care of such person. In case of minors, etc.

Provided that no payment can actually be made unless the person claiming the amount has the necessary legal authority to receive the amount on behalf of the minor or other person.

34. At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to the Bank, no Director, Secretary or other officer of the Bank, except on behalf of the Bank, and no sale officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly, bid for or acquire or attempt to acquire any interest in such property. Officers of the Bank not to bid at sales.

35. The Board may, if it thinks fit, delegate all or any of its powers to an Executive Committee constituted by it and consisting of two or more of its members. Delegation of certain powers by Board.

36. The Board may, from time to time, with the previous sanction of the Registrar start branches of the Bank at such convenient centres as may be decided upon and carry on operations through them. Starting of branch Banks.

Summons  
for produc-  
tion of docu-  
ments, etc.

37. The Registrar or any other officer authorised by him shall have the same powers of summoning persons for production of document or for giving evidence before him *Mutatis Mutandis* as possessed by Civil Courts under <sup>1</sup> Chapter XIV of the Cochin Code of Civil Procedure, Act I of 1079.

Rules to  
have force  
of Act.

38. The rules made by the Board under section 7 and by the Government under sections 11 and 22 shall be published in the Cochin Government Gazette and they shall, on such publication, have effect as if enacted in this Act.

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<sup>1</sup> Now Order XVI of Act XXIX of 1111.

**THE COCHIN PATENTS AND DESIGNS ACT**  
**(XI of 1112)**

**(As amended up to 1st Kumbham 1122)**

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### THE COCHIN PATENTS AND DESIGNS [ACT],

(XI of 1112)

#### HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1112	XI	The Cochin Patents and Designs Act	Amended by Act XIV of 1115

*Passed by His Highness the Maharaja on the 24th day of Thulam 1112 corresponding to the 9th day of November 1936.*

Preamble.

Whereas it is expedient to amend the law relating to the protection of inventions and designs; it is hereby enacted as follows:—

<sup>1</sup> Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

## PRELIMINARY

1. (1) This Act may be called the Cochin Patents and Designs Act, XI of 1112. Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of Cochin; and

(3) It shall come into force on the 1st day of Vrischigam 1112.

2. In this Act, unless there is anything repugnant in the subject or context, Definitions.

(1) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural;

(2) "Controller" means the Controller of Patents and Designs appointed under this Act;

(3) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

(4) "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished articles appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 458, or property mark as defined in section 459, of the Cochin Penal Code, Act I of 1059;

(5) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure;

(6) <sup>1</sup>[.....]

(7) "invention" means any manner of new manufacture, and includes an improvement and an alleged invention;

(8) "legal representative" means a person who in law represents the estate of a deceased person;

(9) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture;

(10) "patent" means a patent granted under the provisions of this Act;

<sup>1</sup> Deleted by section 2, Act XIV of 1115,



(11) "patentee" means the person for the time being entered on the register of patents, kept under this Act as the grantee or proprietor of the patent;

(12) "prescribed" includes prescribed by rules under this Act; and

(13) "proprietor of a new or original design",—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) in any other case, means the author of the design; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

## PART I

### Patents

#### APPLICATION FOR AND GRANT OF PATENT

Application.

3. (1) An application for a patent may be made by any person whether he is a Cochin subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must

show that he is the legal representative or assign of such inventor.

4. (1) The specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed. Specification.

(2) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification.

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed.

(4) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

5. (1) The Controller shall examine every application, and if he considers that— Proceedings upon application.

(a) the nature of the invention is not fairly described, or

(b) the application, specification and drawings have not been prepared in the prescribed manner, or

(c) the title <sup>1</sup>[of the specification] does not sufficiently indicate the subject-matter of the invention, or

(d) the statement of claim does not sufficiently define the invention, or

(e) the invention as described and claimed is *prima facie* not a <sup>2</sup>[manner of] new manufacture or improvement, or

<sup>3</sup>[(f) the specification relates to more than one invention, or

(g) in the case of an application claiming priority under section 84, the specification describes and claims an invention substantially larger than or substantially different from the invention disclosed in the specification filed with

<sup>1</sup> and <sup>2</sup> Inserted by section 3, Act XIV of 1115.

<sup>3</sup> Substituted by section 3, *ibid.*

the application made outside Cochin by virtue of which priority is claimed, or

(h) in the case of an application for a patent of addition under section 15, the invention described and claimed in the specification is not an improvement or modification of that described and claimed in the original specification].

<sup>1</sup>[(1-A). If the Controller considers, at any time before the acceptance of an application, that the invention claimed therein has been wholly or in part claimed in a specification published on or after the date which the patent applied for would bear if granted, appertaining to an application for a patent which if granted will be of prior date to the patent applied for, he may require that the applicant's specification be amended by the insertion of a reference to such other specification, by way of notice to the public] :

Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the Controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act to have been made on the date which it bears in accordance with such direction.

(2) Where the Controller refuses to accept an application or requires an amendment <sup>2</sup>[or the insertion of a reference] the applicant may appeal from his decision to the Government.

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Government or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

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<sup>1</sup> and <sup>2</sup> Inserted by section 3, Act XIV of 1115.

(4) Unless an application is accepted within 12 months from the date of the application, the application shall (except where an appeal has been lodged) <sup>1</sup>[be deemed to have been refused]:

Provided that where, before, or within three months after, the expiration of the said period of 12 months a request is made to the Controller for an extension of time <sup>2</sup>[.....] the application shall, on payment of the prescribed fee, be continued <sup>3</sup>[for any period so requested not exceeding in all three months from the expiration of the said period of twelve months].

6. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance; and the application and specification with the drawings (if any), shall be open to public inspection. Advertisement on acceptance of application.

7. Where an application for a patent in respect of an invention has been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention: Use of invention on acceptance of application.

Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

8. (1) Any person may, on payment of the prescribed fee at any time within four months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely— Opposition to grant of patent.

(a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or

(b) that the invention has been claimed in any specification filed in Cochin which is or will be of prior date to the patent, the grant of which is opposed; or

(c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification; or

<sup>1</sup> Substituted by section 3, Act XIV of 1115.

<sup>2</sup> Deleted by section 3, *ibid*

<sup>3</sup> Substituted by section 3, *ibid*.

(d) that the invention has been publicly used in any part of Cochin; or has been made publicly used in any part of Cochin; but on no other ground.

(2) Where such notice is given the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of those four months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the Government.

Grant and  
selling of  
patent.

9. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted subject to such conditions (if any) as the Government think expedient, to the applicant, or in the case of a joint application to the applicants jointly and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

(2) Notwithstanding anything contained in subsection (1), where—

(a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

(b) disputes arise between joint applicants as to proceeding with an application, the Controller, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be:

Provided that—

(1) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and

(2) an appeal from any such direction shall lie to the Government.

(3) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application:

Provided that—

(a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent;

(b) where the sealing is delayed by an appeal to the Government, or by opposition to the grant of the patent <sup>1</sup>[or by any proceedings for obtaining a direction of the Controller under the provisions of sub-section (2)] the patent may be sealed at such time as the Controller may direct;

(c) whether the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;

(d) where for any reason a patent cannot be sealed within the period allowed by any of the foregoing provisions of this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to the extent applied for but not exceeding three months.

10. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application: Date of patent.

Provided that no proceedings shall be taken in respect of an infringement committed before the advertisement of the acceptance of the application.

11. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout Cochin and of authorising others so to do. Effect, extent and form of patent.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

12. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be Fraudulent applications for patent.

<sup>1</sup> Inserted by Section 4, Act XIV of 1115.

invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

(2) Where a patent has been revoked by the <sup>1</sup>[High Court] on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 8 on the ground stated in clause (a) of sub-section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted:

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

#### TERM OF PATENT

Term of  
Patent.

13. (1) The term limited in every patent for the duration thereof, shall, save as otherwise expressly provided by this Act, be sixteen years from its date.

(2) Any patent the original term of which had not expired on or before the 1st day of Vrischigam 1112, shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any license existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires.

(3) Where any party to a contract with the patentee or any other person entered into before the 1st day of Vrischigam 1112, is subjected to loss or liability by reason of the extension of the term of any patent under this section, any District Court having jurisdiction may <sup>2</sup>[on application made in this behalf] determine in what manner and by which parties such loss or liability shall be borne.

<sup>1</sup> Substituted by section 32, Act XX of 1113.

<sup>2</sup> Substituted by section 5, Act XIV of 1115.

(4) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

Provided that where the patentee, before, or within three months after, the expiration of the time for payment, applies to the Controller for an extension of time <sup>1</sup>[.....], the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be <sup>2</sup>[for any period so applied for not exceeding in all three months from the expiration of the time for payment]

(5) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

14. (1) A patentee may present a petition to the Government praying that his patent may be extended for a further term; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee, and must be advertised by the patentee within the prescribed time and in the prescribed manner. Extension of term of patent.

(2) Any person may, within such time as may be prescribed and on payment of the prescribed fee, give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the Government may, as they think fit dispose of the petition themselves or refer it to the <sup>3</sup>[High Court] for decision.

(4) If the petition be referred to the <sup>3</sup>[High Court] then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

1 Deleted by section 5, Act XIV of 1115.

2 Substituted by section 5, *ibid.*

3 Substituted by section 32, Act XX of 1113,



<sup>1</sup> [“(5) The Government or the High Court when a petition is referred to it shall in considering the petition have regard to the nature and merits of the invention in relation to the public, to the profits made on the patent and to all the circumstances of the case.

(6) If it appears to the Government or to the High Court when the petition is referred, to it, that the patent has not been sufficiently remunerative, the Government or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding five or in exceptional cases ten years or may order the grant of a new patent for such term not exceeding ten years as may be specified in the order and subject to any restriction, conditions and provisions which the Government or the High Court, as the case may be, may think fit].

Provided that any patent so extended or granted shall, notwithstanding anything therein or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

15. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

Patents of  
addition.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal :

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent; and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

<sup>1</sup> Substituted by section 6, Act XIV of 1115.

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

Restoration  
of lapsed  
patent,

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period, the Controller shall hear the case and, subject to an appeal to the Government, issue an order either restoring the patent subject to any conditions and restrictions deemed to be advisable or dismissing the application :

Provided that in every order under this section, restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had ceased.

#### AMENDMENT OF APPLICATION OR SPECIFICATION

17. (1) An applicant or a patentee may at any time by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof by way of disclaimer, correction or explanation, stating the nature of and the reasons for, the proposed amendment.

Amendment  
of application  
or specification  
by Controller.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given, the Controller shall give notice of the opposition to the person making the request and shall hear and decide the case.

(5) Where no notice of opposition is given or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the Government.

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before the amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

Amendment  
of specification  
by the Court.

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent, the Court may by order allow the patentee to amend his specification by way of disclaimer, correction or explanation in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood

before the amendment, and where an application for such an order is made to the Court, notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention before the date of the decision allowing the amendment unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Restriction of  
recovery of  
damages.

### REGISTER OF PATENTS

20. (1) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

Register of  
Patents.

(2) The register of inventions and address-book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office.

21. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Highness the Maharaja as it has against a subject.

Patent to  
bind His  
Highness the  
Maharaja.

(2) The officers or authorities administering any department of the service of His Highness the Maharaja may, by themselves or by such of their agents, contractors or others as may be authorised in writing by

them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of His Highness the Maharaja on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Government, between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of His Highness the Maharaja.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of His Highness the Maharaja (such invention not having been communicated directly or indirectly by the applicant or patentee) such officers or authorities, or such of their agents, contractors or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of His Highness the Maharaja, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid the matter shall be referred to the <sup>1</sup>[High Court] for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct.

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<sup>1</sup>Substituted by section 32, Act XX of 1113.

The Court, referee, or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from His Highness the Maharaja or from such officers or authorities in respect of such patent:

Provided that, if the inventor or patentee is a Government servant and the subject matter of the invention is certified by the Government to be connected with work done in the course of such service, any such dispute shall be settled by the Government after hearing the applicant or patentee and any other person having an interest in the invention or patent:

(5) The right to use an invention for the services of His Highness the Maharaja under the provisions of this section, or any provisions for which this section is substituted, shall include and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of His Highness the Maharaja.

(6) Nothing in this section shall affect the right of His Highness the Maharaja or of any person deriving title directly or indirectly from His Highness the Maharaja to sell or use any articles forfeited under any law for the time being in force relating to customs or excise.

22. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Diwan on behalf of His Highness the Maharaja all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the Diwan may be a party to the assignment.

Assignment  
of patent to  
the Diwan.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Diwan on behalf of His Highness the Maharaja, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any

want of valuable consideration), and may be enforced accordingly by or on behalf of the Diwan.

(3) Where any such assignment has been made, the Government may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Government so certify, the application and specifications, with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the Government.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the Government.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Government to receive it, and shall, if returned to the Controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Government.

(8) Where the Government certify as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Government.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the Government as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as

otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Government may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Diwan or the Government or to any person or persons authorised by the Diwan or the Government to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

#### COMPULSORY LICENSES AND REVOCATION

23. (1) Any person interested may present a petition to the Government, which shall be left at the Patent Office, together with the prescribed fee, alleging that the demand for a patented article in Cochin is not being met to an adequate extent and on reasonable terms, and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent. Compulsory licenses and revocation.

(2) The Government shall consider the petition, and if the parties do not come to an arrangement between themselves, the Government may, as they think fit, either dispose of the petition themselves or refer it to the <sup>1</sup>[High Court] for decision.

(3) The provisions of sub-section (4) of section 14, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Government are of opinion or where a reference has been made under sub-section (2) to the <sup>1</sup>[High Court] that Court finds that the demand for the patented article in Cochin is not being met to an adequate extent and on reasonable terms, the patentee may be ordered to grant licenses on such terms as the Government

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<sup>1</sup> Substituted by section 32, Act XX of 1113.



or the <sup>1</sup>[High Court] as the case may be, may think just, or, if the Government are or the <sup>1</sup>[High Court] is of opinion that the demand will not be adequately met by the grant of licenses, the patent may be revoked by order of the Government or the <sup>1</sup>[High Court] :

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms—

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its sufficient working, or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in Cochin is unfairly prejudiced, or

(b) if any trade or industry in Cochin is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

Revocation  
of patents  
worked out-  
side Cochin.

24. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Government for relief under this section on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside Cochin.

(2) The Government shall consider the application, and, if after inquiry, they are satisfied—

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position to manufacture or carry on the patented article or process in Cochin; and

(c) that the patentee refuses to grant a license on reasonable terms, then, subject to the provisions of this section and unless the patentee proves that the patented

<sup>1</sup> Substituted by section 32, Act XX of 1113.

article or process is manufactured or carried on to an adequate extent in Cochin, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Government may make an order—

(a) revoking the patent either—

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to their satisfaction that the patented article or process is manufactured or carried on within Cochin to an adequate extent; or

(b) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or otherwise as the Government may direct.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with the Paramount Power.

(4) The Government may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as they may specify in a subsequent order or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in their opinion shown by the patentee.

25. An order of the <sup>1</sup>[High Court] under section 23 or of the Government under section 23 or section 24, directing the grant of any license shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties.

Operation of order under section 23 or section 24.

26. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Power of Controller to revoke surrendered patent.

27. A patent shall be deemed to be revoked if the Government declare, by notification in the Cochin Government Gazette, the patent or the mode in which it is exercised

Revocation of patent on public grounds.

<sup>1</sup> Substituted by Section 32, Act XX of 1113.

to be mischievous to the State or generally prejudicial to the public.

### LEGAL PROCEEDINGS

Petition for  
revocation  
of patent.

28. <sup>1</sup>[(1) Revocation of a patent in whole or in part may be obtained on petition to or on a counter claim in a suit for infringement before the High Court on all or any of the following grounds, namely.—

(a) that the invention has been the subject of a valid prior grant of a patent in Cochin;

(b) that the true and first inventor or his legal representative or assign was not the applicant or one of the applicants for the patent;

(c) that the patent was obtained in fraud of the rights of the person applying for the revocation or of any person under or through whom he claims;

(d) that the invention was not, at the date of the patent, a manner of new manufacture or improvement;

(e) that the invention does not involve any inventive step, having regard to what was known or used prior to the date of the patent;

(f) that the invention is of no utility;

(g) that the specification does not sufficiently and fairly describe and ascertain the nature of the invention and the manner in which the invention is to be performed;

(h) that the specification does not sufficiently and clearly ascertain the scope of the invention claimed;

(i) that the patent was obtained on a false suggestion or representation;

(j) that the primary or intended use or exercise of the invention is contrary to law;

(k) that the patentee has contravened, or has not complied with, the conditions contained in the patent;

(l) that the specification does not disclose the best method of performance of the invention known to the applicant for the patent at the time when the specification was left at the Patent Office;

(m) that prior to the date of the patent, the patentee or other persons (not being authorities administering

<sup>1</sup> Substituted by section 7, Act XIV of 1115.

any department of the service of His Highness the Maharaja, or the agents or contractors of, or any other persons authorised in that behalf by the Government, secretly worked the invention on a commercial scale (and not merely by way of reasonable trial or experiment) in Cochin, and thereby made direct or indirect profits in excess of such amount as the Court may in consideration of all the circumstances of the case deem reasonable :

Provided that this sub-section shall have effect in relation to the ground of revocation specified—

(i) in clause (b), subject to the provisions of section 84, or

(ii) in clause (d), subject to the provisions of sub-section (1) of section 12, sub-section (2) of section 21, section 40 and section 42].

(2) A petition for revocation of a patent may be presented—

(a) by the <sup>1</sup>[Advocate-General] or any person authorised by him; or

(b) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims; or

(ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee; or

(iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within Cochin, before the date of the patent, anything claimed by the patentee as his invention.

(3) The <sup>2</sup>[High Court] may, irrespective of any provisions of the Code of Civil Procedure in this behalf, require any person, other than the <sup>3</sup>[Advocate-General] or any person authorised by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

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<sup>1</sup> Substituted by section 11, Act XX of 1113.

<sup>2</sup> Substituted by section 32, *ibid.*

<sup>3</sup> Substituted by section 11, *ibid.*

Notice of proceedings to persons interested.

29. (1) Notice of any petition for revocation of a patent under section 28 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post or anchal in a registered letter directed to the person and place for the time being stated in the register.

Framing issue for trial before other Courts.

30. (1) The <sup>1</sup>[High Court] may, if it thinks fit, direct an issue for the trial before itself or any District Court, of any question arising upon a petition to itself under section 28, and the issue shall be tried accordingly.

(2) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted together with any remarks which he may think fit to make thereon to the <sup>1</sup>[High Court] directing the issue, and the <sup>1</sup>[High Court] may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for infringement of Patents.

31. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person, who during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it.

<sup>2</sup>[Provided that where a counter claim for revocation of the patent is made by the defendant, the suit along with the counter claim, shall be transferred to the High Court for decision.]

(2) Every ground on which a patent may be revoked under <sup>3</sup>[section 28] shall be available by way of defence to a suit for infringement.

Exemption of innocent infringer from liability for damages.

32. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any

<sup>1</sup> Substituted by section 32, Act XX of 1113.

<sup>2</sup> Added by section 8, XIV of 1115.

<sup>3</sup> Substituted by section 8, *ibid.*

defendant who proves that at the date of infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "Patent", "Patented", or any word or words expressing or implying that a patent has been obtained for the article stamped, engraved, impressed on or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

33. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court may see fit.

Order for inspection, etc., in suit.

34. In a suit for infringement of a patent, the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

Certificate of validity questioned and costs thereon.

35. A Court making a decree in a suit under section 31 or an order on a petition under section 28 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto be made in the register of patents.

Transmission of decrees and orders to the Controller.

36. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of all the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

Hearing with assessor.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall, in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

Grant of relief  
in respect of  
particular  
claims.

37. Notwithstanding anything contained in section 19, if the Court in any action for infringement of a patent finds that any one or more of the claims in the specification in respect of which the infringement is alleged are valid it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

Remedy in  
case of  
groundless  
threats of legal  
proceedings.

38. Where, any person claiming to have an interest in a patent by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of the Patent :

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

#### MISCELLANEOUS

Grant of  
patents to  
two or more  
persons.

39. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Public use  
or knowledge  
of invention.

40. The Public use or knowledge of an invention in Cochin before the date of the application for a patent thereon shall not invalidate the patent granted thereon if

<sup>1</sup> Substituted by section 9, Act XIV of 1115.

the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or his legal representative or assign or has been communicated to the public in fraud of such inventor or his legal representative or assign or in breach of confidence:

Provided that such inventor or his legal representative or assign has not acquiesced in the public use of his invention, and that he applies for a patent within six months after the commencement of such use.]

41. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time on payment of the prescribed fee, seal a duplicate thereof. Loss or destruction of patent.

[42. The exhibition of an invention at an industrial or other exhibition to which the provisions of this section have been extended by the Government by notification in the Cochin Government Gazette, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention or the publication of any description thereof, during or after the period of the holding of the exhibition, by any person elsewhere without the privity or consent of the inventor or the reading of a paper by an inventor before a learned society, or the publication of that paper in the society's transactions shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention, or the validity of any patent granted on the application: Provisions as to exhibitions and readings before learned societies.

Provided that—

(a) the exhibitor exhibiting the invention or the inventor reading the paper or authorising the publication thereof, as the case may be, gives to the Controller previous notice in the prescribed form; and

(b) the application for a patent is made before or within six months from the date of first exhibiting the invention or of the reading of the paper, as the case may be, or when it has not been so read, of the said publication.]

43. The Curator of the Cochin State Museum may, at any time require a patentee to furnish him with a model or sample of his invention on payment to the patentee Models to be furnished to Cochin Museum.

<sup>1</sup> Substituted by section 10. Act XIV of 1115.



of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the Government.

Foreign  
vessels in  
Cochin  
waters.

44. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in Cochin, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from Cochin.

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in Cochin vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

## PART II

### DESIGNS

#### REGISTRATION OF DESIGNS

Application  
for registra-  
tion of  
designs.

45. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in Cochin, register the design under this part.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the Government.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

46. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more classes shall not be refused, nor shall the registration thereof be invalidated—

Registration of designs in new classes.

(a) on the ground of the design not being a new or original design by reason only that it was so previously registered, or

(b) on the ground of the design having been previously published in Cochin, by reason only that it has been applied to goods of any class in which it was so previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

47. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

Certificate of Registration.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

48. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

Register of Designs.

(2) The register of designs existing at the commencement of this Act shall be incorporated with, and form part of, the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

#### COPYRIGHT IN REGISTERED DESIGNS

49. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

Copyright on Registration.

(2) If '[.....]' before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed

<sup>1</sup> Deleted by section 11, Act XIV of 1115,

manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If [.....] before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements  
before deli-  
very on sales.

50. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark or with the prescribed words or figures denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Government by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Government may, if they think fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit.

Effect of dis-  
closure on  
copyright

51. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it

<sup>1</sup> Deleted by section 11, Act XIV of 1115.

contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

52. (1) During the existence of copyright in a design or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Inspection of registered designs.

Provided that, where the registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

53. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Information as to existence of copyright.

54. (1) Any person interested may present a petition for the cancellation of the registration of a design—

Cancellation of Registration.

(a) at any time after the registration of the design, to the <sup>1</sup>[High Court] on any of the following grounds, namely:—

(i) that the design has been previously registered in Cochin; or

(ii) that it has been published in Cochin prior to the date of registration; or

(iii) that the design is not a new or original design; or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of clause (a).

(2) An appeal shall lie from any order of the Controller under this section to the <sup>1</sup>[High Court,] and the Controller may at any time refer any such petition to the <sup>1</sup>[High Court] and the <sup>1</sup>[High Court] shall decide any petitions so referred.

Registration of designs to bind His Highness the Maharaja.

55. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.

#### INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

Provsions as to exhibitions.

<sup>2</sup>[56. The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Government by notification in the Cochin Government Gazette, or the publication of a description of the design, during the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor shall not prevent the design from being registered or invalidate the registration thereof:

Provided that—

(a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and

<sup>1</sup> Substituted by section 32, Act XX of 1113.

<sup>2</sup> Substituted by section 12, Act XIV of 1115.

(b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.]

### LEGAL PROCEEDINGS

57. (1) During the existence of copyright in any design it shall not be lawful for any person—

Piracy of registered design.

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied;

<sup>1</sup>[(aa) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or];

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article <sup>2</sup>[in any class of goods in which the design is registered] without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt; or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the

<sup>1</sup> Inserted by section 13, Act XIV of 1115.

<sup>2</sup> Inserted by section 13, *ibid.*

Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to patents and designs.

58. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

### PART III

#### GENERAL

##### PATENT OFFICE AND PROCEEDINGS THEREAT

Patent Office.

59. (1) The Government may provide, for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the Government.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorised by the Government.

Officers and clerks.

60. The Government may appoint the Controller, and so many officers and clerks, with such designations and duties, as they think fit.

#### FEES

Fees.

61. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the Government, so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS  
IN THE PATENT OFFICE

62. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

Notice of trust not to be entered in registers.

63. Every register kept under this Act shall at all convenient times be opened to the inspection of the public, subject to the provisions of this Act; and certified copies sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Inspection of, and extracts from, registers.

<sup>1</sup>[63-A. A person making a request to the Controller in the prescribed manner as respects any patent specified in the request or as respects any application for a patent so specified, for information to be furnished to him by the Controller of any such matters as may be prescribed affecting that patent or application, shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.]

Information relating to patents.

64. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

Privilege of reports of Controller.

65. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time, be open to public inspection or be published by the Controller.

Prohibition of publication of specification drawings, etc., where application abandoned, etc.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

66. The Controller may, on request in writing accompanied by the prescribed fee—

Power for Controller to correct clerical errors.

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification,

<sup>1</sup> Inserted by section 14, Act XIV of 1115.



(b) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of assignments and transmissions in registers.

67. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title, to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing :

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other movable property.

(4) Except in the case of an application made under section 68, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.

68. (1) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly. Rectification  
of register  
by Court.

(2) The Controller may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) An appeal shall lie to the <sup>1</sup>[High Court] from any order of the Controller under this section, and the Controller may refer any application under this section to the <sup>1</sup>[High Court] for decision, and the <sup>1</sup>[High Court] shall dispose of any application so referred.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall, upon the receipt of such notice, rectify the register accordingly.

(5) Nothing in this section shall be deemed to empower the Controller—

(a) to rectify the register of patents or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 54.

#### POWERS AND DUTIES OF CONTROLLER

69. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence <sup>2</sup>[. . .] administering oaths <sup>2</sup>[. . .] enforcing the attendance of witnesses, <sup>2</sup>[. . .] <sup>3</sup>[compelling the discovery and production of documents, issuing commissions for the examining of witnesses and awarding costs and such awards Powers of  
Controller in  
proceedings  
under Act.

<sup>1</sup> Substituted by section 32, Act XX of 1113.

<sup>2</sup> Deleted by section 15, Act XIV of 1115.

<sup>3</sup> Substituted by section 15, *ibid.*

shall be executable in any Court having jurisdiction as if it were a decree of that Court.]

Publication  
of patented  
inventions.

70. The Controller shall issue periodically a publication of patented inventions containing such information as the Government may direct.

Exercise of  
discretionary  
power by  
Controller.

71. Where any discretionary power is by, or under, this Act, given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application, or of a specification or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of  
Controller  
to take  
directions of  
Government.

72. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Government for directions in the matter.

Refusal to  
grant patent,  
etc., in  
certain cases.

73. (1) The Controller may refuse to grant a patent for an invention or to register a design, of which the use would, in his opinion, be contrary to law or morality.

(2) An appeal shall lie to the Government from an order of the Controller under this section.

Appeals to the  
Government.

74. (1) Where an appeal is declared by this Act to lie from the Controller to the Government, the appeal shall be made within three months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of three months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Government may, if they think fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Government shall be final.

#### EVIDENCE, ETC.

Evidence  
before the  
Controller.

<sup>1</sup>[74-A. Subject to any rules made under section 82, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit, in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may

<sup>1</sup> Inserted by section 16, Act XIV of 1115.

take evidence *viva voce* in lieu of or in addition to evidence by affidavit or may allow any party to be cross examined on the contents of his affidavit.

75. A certificate purporting to be under the hand of the Controller as to any entry; matter or thing which he is authorised by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Controller to be evidence.

<sup>1</sup>[75-A. Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the Patent Office of or from patents, specifications and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in Cochin, and in all proceedings, without further proof or production of the originals:

Evidence of documents in Patent Office.

Provided that a Court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.]

<sup>2</sup>[76. Copies of all such specifications, drawings and amendments left at the Patent Office, as become open to public inspection under the provisions of this Act, shall be transmitted, as soon as may be, after the printed copies thereof are available, to such authorities as the Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities and approved by the Government.]

Transmission of copies of specifications, etc., and inspection thereof.

77. Any application, notice or other document authorised or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post or anchal.

Applications and notices by post or anchal.

78. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none,

Declaration by infant, lunatic, etc.

<sup>1</sup> Inserted by section 17, *ibid*

<sup>2</sup> Substituted by section 18, *ibid*

any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement, or a statement as nearly corresponding thereto as circumstances permit and do such thing in the name and on behalf of the person subject to the disability.

(2) Any appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person, subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Security for  
Costs.

79. Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Controller under this Act, neither resides nor carries on business in Cochin, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and in default of such security being given, may disallow the opposition or dismiss the appeal.

#### AGENCY

Subscription  
and verifica-  
tion of  
certain  
documents.

80. The following documents, namely—

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices:

Provided that, if such person is absent from Cochin, they may be signed and verified on his behalf by an agent resident in Cochin authorised by him in writing in that behalf,

Agency.

81. (1) All other applications and communications to the Controller under this Act may be signed by and all attendances upon the Controller may be made by or through a legal practitioner, or by or through an agent authorised to the satisfaction of the Controller.

- (2) The Controller may, if he sees fit require—
- (a) any such agent to be resident in Cochin;
  - (b) any person not residing in Cochin to employ an agent residing in Cochin;
  - (c) the personal signature or presence of any applicant, opponent or other person.

POWERS, ETC., OF THE GOVERNMENT

82. (1) The Government may make such rules, as they think expedient, subject to the provisions of this Act—

Power of the Government to make rules.

- (a) for regulating the practice of registration under this Act;
- (b) for classifying goods for the purposes of designs;
- (c) for making or requiring duplicates of specifications, drawings and other documents;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Government think fit, of specifications, drawings and other documents;
- (e) for securing and regulating the making, printing, publishing and selling of indices to, and abridgements of, specifications, and other documents in the Patent Office; and providing for the inspection of indices and abridgements and other documents;
- (f) for the manner in which fees leviable under this Act may be paid;
- (g) for ensuring secrecy with respect to patents to which section 22 applies;
- (h) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the Government; and
- (i) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(3) Nothing in sub-section (2) shall apply in the case of rules made for the purpose specified in clause (g) of sub-section (1); and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose.

(4) All rules made under this section shall be published in the Cochin Government Gazette, and on such publication, shall have effect as if enacted in this Act.

#### OFFENCES

Wrongful use  
of words  
"Patent  
Office."

83. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office", or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

### RECIPROCITY

#### Reciprocal arrangements with British India and Other States

Reciprocal  
arrangements  
with British  
India and  
other States.

84. (1) If the Government make any arrangement with the United Kingdom or with the Government of British India or any other State for mutual protection of inventions or designs and declare, by a notification in the Cochin Government Gazette, the provisions of this section to be applicable in such cases, then any person who has applied for protection for any invention or design in the United Kingdom, British India or the other State or his legal representative or assignee <sup>1</sup>[shall either alone or jointly with any other person, be entitled to claim that the patent that may be granted to him under this Act, for the said invention or the registration of the said design under this Act, shall be in priority to other applicants and shall have] the same date as the date of the application in the United Kingdom, British India or other State.

Provided that—

(a) the application is made in the case of a patent within twelve months, and, in the case of a design, within six months from the application for protection in the United Kingdom, British India or the other State; and

<sup>1</sup>Substituted by section 19, Act XIV of 1115.

(b) nothing in this section shall entitle the patentee or the proprietor of the design to recover damages for infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in Cochin.

(2) The patent granted for an invention or the registration of a design shall not be invalidated—

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(b) in the case of a design, by reason only of the exhibition or use of or the publication of a description or representation of the design, in Cochin during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act:

Provided that in the case of a patent, if the application is not accepted within twelve months from the date of the application for protection in the United Kingdom, British India or the other State, the specification and the drawings (if any) supplied therewith shall be open to public inspection at the expiration of that period.

(4) Where it is made to appear to the Government that the legislature of any other part of the United Kingdom or of British India or of any other State has made satisfactory provisions for the protection of inventions or designs, patented or registered in Cochin, the Government may, by notification in the Cochin Government Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of the United Kingdom, British India or any other State, as the case may be.

## SAVINGS AND REPEAL

85. Nothing in the Act shall take away, abridge or prejudicially affect the prerogative of His Highness the Maharaja in relation to the granting of any letters patent or to the withholding of a grant thereof. Savings for prerogative.



Repeal.

86. On the commencement of this Act, the Cochin Patents and Designs Act, XII of 1095, shall stand repealed.

## THE SCHEDULE

(See section 61)

## Fees

	Rs.
On application for a patent .. .. .	10
Before sealing a patent .. .. .	30
Before the expiration of the 4th year from the date of the patent .. .. .	50
Before the expiration of the 5th year from the date of the patent .. .. .	50
Before the expiration of the 6th year from the date of the patent .. .. .	50
Before the expiration of the 7th year from the date of the patent .. .. .	50
Before the expiration of the 8th year from the date of the patent .. .. .	100
Before the expiration of the 9th year from the date of the patent .. .. .	100
Before the expiration of the 10th year from the date of the patent .. .. .	100
Before the expiration of the 11th year from the date of the patent .. .. .	100
Before the expiration of the 12th year from the date of the patent .. .. .	150
Before the expiration of the 13th year from the date of the patent .. .. .	150
Before the expiration of the 14th year from the date of the patent .. .. .	150
Before the expiration of the 15th year from the date of the patent .. .. .	150
Provided that the fees for two or more years may be paid in advance	
On application to extend the term of a patent .. .. .	50
<sup>1</sup> [In respect of] each year of the extended term of a patent or of a patent granted under section 14 .. .. .	150
On application for registration of a design .. .. .	3

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<sup>1</sup>Substituted by section 20, Act XIV of 1115.

**THE COCHIN TRADE DISPUTES ACT**  
**(LXVI of 1112)**

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## THE COCHIN TRADE DISPUTES ACT

(LXVI of 1112)

Year	Number	Short title	Amendments
1112	LXVI	The Cochin Trade Disputes Act	Amended by Act, II of 1114

*Passed by His Highness the Maharaja of Cochin on the 9th day of Karkadagam 1112, corresponding to the 24th day of July 1937.*

## Preamble.

Whereas it is expedient to make provision for the investigation and settlement of trade disputes, and for certain other purposes hereinafter appearing ; It is hereby enacted as follows.—

## Short title, extent and commencement.

1. (1) This Act may be called “The Cochin Trade Disputes Act, LXVI of 1112.”

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

(3) It shall come into force on such date as Government may, by notification in the Cochin Government Gazette, appoint.

## Interpretations.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “Board” means a Board of Conciliation constituted under this Act ;

(b) “Court” means a Court of Inquiry constituted under this Act ;

(c) “employer,” in the case of any industry, business or undertaking carried on by any department of the Government, means the authority prescribed in this behalf or, where no authority is prescribed, the head of the department ;

(d) a person shall be deemed to be “independent” for the purpose of his appointment as the chairman or other member of a Court or a Board if he is unconnected with the dispute with reference to which the Court or the Board is appointed and with any trade or industry directly affected by the dispute ;

(e) "lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons, or of aiding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ;

(f) "prescribed" means prescribed by rules made under this Act ;

(g) "public utility service" means—

(i) any railway service which Government may, by notification in the Cochin Government Gazette, declare to be a public utility service for the purposes of this Act ; or

<sup>1</sup>[(ia) any water transport service or tramway service, if Government by notification in the Cochin Government Gazette declare the water transport or tramway service, as the case may be, to be a public utility service for the purposes of this-Act, or] ;

(ii) any postal, telegraph or telephone service ;  
or

(iii) any industry, business or undertaking which supplies <sup>2</sup>[power] light or water to the public ; or

(iv) any system of public conservancy or sanitation ;

(h) "railway company" means a railway company as defined in section 2 of the Cochin Railways Act, 1111 ;

(i) "strike" means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;

(j) "trade dispute" means any dispute or difference <sup>3</sup>[between employers and employees or] between employers and workmen, or between workmen and work-

<sup>1</sup> Inserted by section 2, Act II of 1114.

<sup>2</sup> Inserted by section 2, *ibid.*

<sup>3</sup> Inserted by section 2, *ibid.*

men, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person ; and

(k) "workman" means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward <sup>1</sup>[and includes for the purpose of any proceedings under this Act in relation to a trade dispute a workman discharged during that dispute].

#### REFERENCE OF DISPUTES TO COURTS AND BOARDS

Reference of  
disputes to  
Courts or  
Boards.

3. If any trade dispute exists or is apprehended <sup>2</sup>[ . . . ] Government may, by order in writing,—

(a) refer any matters appearing to be connected with or relevant to the dispute to a Court of Inquiry to be appointed by Government; or

(b) refer the dispute to a Board of Conciliation to be appointed by Government for promoting a settlement thereof:

Provided that, where both parties to the dispute apply, whether separately or conjointly, for a reference to a Court, or where both parties apply, whether separately or conjointly, for a reference to a Board, and the authority having the power to appoint is satisfied that the persons applying represent the majority of each party, a Court or a Board, as the case may be, shall be appointed accordingly.

#### COURTS OF INQUIRY

Constitution of  
Courts.

4. (1) A Court shall consist of an independent chairman and such other independent persons as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person.

<sup>3</sup>[(2) A court, having the prescribed quorum may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appointing authority notifies the court that the services of the chairman have ceased to be available the court shall not act until a new chairman has been appointed.]

Duties of  
Courts.

5. (1) A Court shall, either in public or in private, at its discretion, inquire into the matters referred to it and

<sup>1</sup> Added by section 2, Act II of 1114.

<sup>2</sup> Deleted by section 3, *ibid.*

<sup>3</sup> Substituted by section 4, *ibid.*

report thereon to the authority by which the Court was appointed.

(2) A Court may, if it thinks fit, make interim reports.

#### BOARDS OF CONCILIATION

6. (1) A Board shall consist of a chairman and two or four other members, as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person. Constitution of Boards.

(2) Where the Board consists of more than one person, the chairman shall be an independent person and the other members shall be either independent persons or persons appointed in equal numbers to represent the parties to the dispute; all persons appointed to represent any party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make the necessary recommendation within the prescribed time, the appointing authority shall select and appoint such persons as it thinks fit to represent that party.

[(3) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appointing authority notifies the Board that the services of the chairman or where the Board includes an equal number of persons representing the parties to the dispute the services of any such person have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.]

7. (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same, and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period sufficient in its opinion to allow the parties to agree upon terms of settlement. Duties of Boards.

<sup>1</sup> Substituted by section 5, Act II of 1114.

(2) If a settlement of a dispute is arrived at by the parties thereto after it has been referred to a Board and during the course of the investigation thereof, a memorandum of the settlement shall be drawn up by the Board and signed by the parties, and the Board shall send a report of the settlement, together with the memorandum, to the authority by which the Board was appointed.

(3) If no such settlement is arrived at during the course of the investigation, the Board shall, as soon as possible after the close thereof, send a full report regarding the dispute to the authority by which the Board was appointed, setting forth the proceedings and steps taken by the Board for the purpose of ascertaining the facts and circumstances relating to the dispute and of bringing about a settlement thereof, together with a full statement of such facts and circumstances and its findings thereon and the recommendation of the Board for the determination of the dispute.

(4) The recommendation of the Board shall deal with each item of the dispute, and shall state in plain language what in the opinion of the Board ought and ought not to be done by the respective parties concerned.

#### GENERAL

Finality of orders constituting a Court or Board.

8. No order of Government appointing any person as a member of a Court or a Board shall be called in question in any manner.

Procedure and powers.

9. (1) Courts and Boards shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

(2) Courts and Boards shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1111 when trying a suit in respect of the following matters:—

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects; and

(c) issuing commissions for the examination of witnesses; and shall have such further powers as may be prescribed and every inquiry or investigation by a Court or Board shall be deemed to be a judicial proceeding within

the meaning of sections 179 and 214 of the Cochin Penal Code.

10. (1) If the services of the chairman or of any other independent member of a Court or Board cease to be available at any time for the purposes of the Court or Board, the appointing authority shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy and the proceedings shall be continued before the Court or Board so re-constituted.

Filling of vacancies.

(2) Where the Court or Board consists of one person only and his services cease to be available as aforesaid, the appointing authority shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

[(3) Where a Board includes an equal number of persons representing the parties to the dispute and the services of any such person have ceased to be available as aforesaid, the appointing authority shall appoint in the manner specified in sub-section (2) of section 6 another person to take his place, and the proceedings shall be continued before the Board so reconstituted.]

11. The report of a Court or Board shall be in writing and shall be signed by all the members of the Court or Board:

Form of report.

Provided that nothing in this section shall be deemed to prevent any member of a Court or Board from recording a minute of dissent from a report or from any recommendation made therein.

12. (1) The final and any interim report of a Court or Board, together with any minute of dissent recorded therewith, shall, as soon as possible after its receipt by the authority by which the Court or Board was appointed, be published by that authority in such manner as it thinks fit.

Publication of results of inquiry.

(2) The said authority may publish or cause to be published from time to time, in such manner as such authority thinks fit, any information obtained, or conclusions arrived at, by the Court or Board as the result or in the course of its inquiry or investigation.

<sup>1</sup> Added by section 6, Act II of 1114.



Certain matters  
to be kept  
confidential.

13. (1) Notwithstanding anything contained in section 12, there shall not be included in any report or publication made or authorised by a Court or Board or the authority appointing a Court or Board any information obtained by the Court or Board in the course of its inquiry or investigation as to any Trade Union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through evidence given before the Court or Board, if the Trade Union, person, firm or company in question has preferred a request to the Court or Board that such information shall be treated as confidential; nor shall any individual member of the Court or Board or any person concerned in the proceedings before it disclose any such information without the consent in writing of the Secretary of the Trade Union or the person, firm or company in question, as the case may be.

(2) If any member of a Court or Board or any person present at or concerned in the proceedings before a Court or Board wilfully discloses any information in contravention of the provisions of sub-section (1), he shall, on complaint made by or under the authority of the Trade Union or individual business affected, be punishable with fine which may extend to one thousand rupees:

Provided that nothing in this sub-section shall apply to the disclosure of any such information for the purposes of a prosecution under section 179 of the Cochin Penal Code.

(3) No Criminal Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

(4) No Criminal Court shall take cognizance of any offence under this section except with the previous sanction of the authority appointing such Court or Board; and no Civil Court shall without the like sanction entertain any suit against a member of a Court or Board, or any person present at or concerned in the proceedings before a Court or Board, for any matter arising out of such proceedings.

Representation  
of parties.

14. Subject to such conditions and restrictions as may be prescribed, any party to a dispute under inquiry or investigation by a Court or Board shall be entitled to

be represented before the Court or Board by a legal practitioner.

#### SPECIAL PROVISION REGARDING PUBLIC UTILITY SERVICES

15. (1) Any person who, being employed in a public utility service, goes on strike in breach of contract without having given to his employer, within one month before so striking, not less than fourteen days' previous notice in writing of his intention to go on strike or, having given such notice, goes on strike before the expiry thereof, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Sudden strike and lock-outs in utility services.

(2) Any employer carrying on any public utility service who locks-out <sup>1</sup>[any of his workmen] in breach of contract without having given them, within one month before such lock-out, not less than fourteen days' notice in writing of his intention to lock them out, or, having given such notice, locks them out before the expiry thereof, shall be <sup>2</sup>[punishable with] imprisonment which may extend to one month, or <sup>3</sup>[with fine] which may extend to one thousand rupees, or with both.

<sup>4</sup>[(2 A) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within five days report to Government or such authority as Government may prescribe the number of such notices received or given on that day, and, if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees];

(3) Where the employer committing an offence <sup>5</sup>[under sub-section (2) or sub-section (2 A)] is a corporation, company or other association of persons, any secretary, director or other officer or person concerned with the management thereof shall be punishable as therein provided unless he proves that the offence was committed without his knowledge or without his consent.

(4) No Court shall take cognisance of any offence under this section or of the abetment of any such offence

<sup>1</sup>, <sup>2</sup> and <sup>3</sup> Substituted by section 7, Act II of 1114.

<sup>4</sup> Inserted by section 7, *ibid.*

<sup>5</sup> Substituted by section 7, *ibid.*

save on complaint made by, or under authority from, Government.

(5) No Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

#### SPECIAL PROVISION FOR ILLEGAL STRIKES AND LOCK-OUTS

Illegal strikes  
and lock-outs

16. (1) A strike or a lock-out shall be illegal which—

(a) has any object other than <sup>1</sup>[or in addition to] the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged; and

(b) is designed or calculated to inflict severe, <sup>2</sup>[and general] hardship upon the community and thereby to compel Government to take or abstain from taking any particular course of action.

(2) It shall be illegal to commence or continue, or to apply any sums in direct furtherance or support of any such illegal strike or lock-out.

(3) For the purposes of this section —

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, with the conditions of labour, of persons in that trade or industry;

(b) without prejudice to the generality of the expression “trade or industry”, workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with agreements made with the same employer or group of employers.

(4) A strike or a lock-out shall not be deemed to be calculated to compel Government unless such compulsion might reasonably be expected as a consequence thereof.

Penalty.

17. (1) If any person <sup>3</sup>[commences, continues] instigates, incites others to take part in, or otherwise acts in

<sup>1</sup> Inserted by section 8 of Act II of 1114.

<sup>2</sup> Substituted by section 8, *ibid.*

<sup>3</sup> Substituted by section 9, *ibid.*

furtherance of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both:

Provided that no person shall be deemed to have committed an offence under this section by reason only of his having ceased work or refused to continue to work or to accept employment.

(2) No Court shall take cognizance of any offence under this section save on complaint made by, or under authority from, Government.

(3) No Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

18. (1) No person refusing to take part, or to continue to take part, in any strike or lock-out which is illegal under the provisions of section 16 shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

Protection of persons withholding from illegal strike or lock-out.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

[18-A. (1) Government may, by notification in the Cochin Government Gazette, appoint officers herein referred to as conciliation officers, charged with the duty of mediating in or promoting the settlement of trade disputes.

Appointment of Conciliation Officer.

<sup>1</sup> Inserted by section 10, Act II of 1114.

(2) A conciliation officer may be appointed for a specified area or for specified businesses, industries or undertakings in a specified area or for one or more specified businesses, industries or undertakings, and either permanently or for a limited period.

(3) A conciliation officer may, for the purposes of inquiring into an existing or apprehended trade dispute after giving reasonable notice, enter the premises occupied by any industry, business or undertaking and may call for and inspect any document which he has ground for considering to be relevant to the trade dispute, and for the purposes of any such inquiry shall be deemed to be a public servant within the meaning of the Cochin Penal Code.

1 of 1059.

(4) If any person supplying information or producing a document to a conciliation officer requests in writing that the information or the document or any part thereof shall be treated as confidential the conciliation officer shall not disclose such information or the contents of such document or part thereof except to—

(a) the authority which appointed him to be a conciliation officer; or

(b) the parties concerned in the dispute for the purpose of mediating therein or promoting the settlement thereof.

(5) If the conciliation officer contravenes the provisions of sub-section (4), he shall be punishable with fine which may extend to one hundred rupees.

(6) No Criminal Court shall take cognizance of an offence under this section except with the previous sanction of the authority appointing the conciliation officer; and no Civil Court shall without the like sanction entertain any suit against a conciliation officer in respect of the disclosure of any information or the contents of any document or part thereof of the nature referred to in sub-section (4)].

## RULES

19. (1) Government may, <sup>1</sup>[xxx] make rules for the purpose of giving effect to the provisions of this Act.

Power to  
make rules.

<sup>1</sup> Deleted by section 11, Act II of 1114.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.—

(a) the powers and procedure of Courts and Boards, including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation and the number of members necessary to form a quorum;

(b) the allowances admissible to members of Courts and Boards and to witnesses;

(c) the ministerial establishment which may be allotted to a Court or Board and the salaries and allowances payable to members of such establishments;

(d) the conditions and restrictions subject to which persons may be represented by legal practitioners in proceedings under this Act before a Court or Board;

(e) any other matter which is to be or may be prescribed.

(3) All rules made under this section shall be published in the Cochin Government Gazette and shall, on such publication, have effect as if enacted in this Act.

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**THE COCHIN FACTORIES ACT**  
**(II of 1113)**

*(As amended up to 1st Kumbham 1122 )*

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## THE COCHIN FACTORIES ACT

(II of 1113)

An Act to consolidate and amend the Law  
regulating Labour in Factories

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	11	The Cochin Factories Act	Amended by Acts VIII of 1121 and III of 1122

*Passed by His Highness the Maharaja of Cochin  
on the 2nd day of Kanni 1113, corresponding  
to the 18th day of September 1937*

Whereas it is expedient to consolidate and amend the law regulating labour in factories; It is hereby enacted as follows:—

## CHAPTER I

## Preliminary

1. (1) This Act may be called the Cochin Factories Act, II of 1113.

(2) It extends to the whole of Cochin.

(3) It shall come into force on the 1st day of Dhanu 1113.

Short title,  
extent and  
commence-  
ment.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “adolescent” means a person who has completed his fifteenth but has not completed his seventeenth year;

(b) “adult” means a person who has completed his seventeenth year;

(c) “child” means a person who has not completed his fifteenth year;

(d) “day” means a period of twenty-four hours beginning at midnight;

(e) "week" means a period of seven days beginning at midnight on Saturday night;

(f) "power" means electrical energy, and any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

(g) "manufacturing process" means any process—

(i) for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) for pumping oil, water or sewage, or

(iii) for generating, transforming or transmitting power;

(h) "worker" means a person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on;

(i) "factory" means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on;

(j) "machinery" includes all plant whereby power is generated, transformed, transmitted or applied;

(k) "occupier" of a factory means the person who has ultimate control over the affairs of the factory:

Provided that where the affairs of a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(l) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay", and the period or periods for which it works is called a "shift"; and

(m) "prescribed" means prescribed by rules made by the Government under this Act.

3. References to time of day in this Act are references to Indian Standard Time, which is five and a half hours ahead of Greenwich Mean Time. References to time of day.

4. (1) For the purposes of this Act, a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, the decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea, or any manufacturing process which is incidental to or connected with any of the aforesaid processes, is a seasonal factory: Seasonal factories.

Provided that the Government may, by notification in the Cochin Government Gazette, declare any such factory in which manufacturing processes are ordinarily carried on for more than one hundred and eighty working days in the year, not to be a seasonal factory for the purposes of this Act.

(2) The Government may, by notification in the Cochin Government Gazette, declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act.

5. (1) Notwithstanding, anything contained in clause (i) of section 2, the Government may, by notification in the Cochin Government Gazette, declare any place wherein a manufacturing process is carried on, whether with or without the aid of power, and wherein, on any one day of the twelve months preceding the notification, ten or more workers were employed, to be a factory for all or any of the purposes of this Act. Power to declare places to be factories.

(2) A notification under sub-section (1) may be made in respect of any specified place or class of places.

(3) A notification under sub-section (1) shall cease to have effect in respect of any place after the lapse of twelve months during which not more than nine workers were employed therein on any day.

Power to declare departments to be separate factories.

6. The Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

Power to exempt on a change in the factory.

7. Where the Government are satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty and is not likely to be twenty or more on any day during the ensuing twelve months, they may, by order in writing, exempt such factory from the operation of this Act:

Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory.

Power to exempt during public emergency.

8. In any case of public emergency the Government may by notification in the Cochin Government Gazette, exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

Notice to Inspector before commencement of work.

9. (1) Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season, the occupier shall send to the Inspector a written notice containing.—

- (a) the name of the factory and its situation,
- (b) the address to which communications relating to the factory should be sent,
- (c) the nature of the manufacturing processes to be carried on in the factory,
- (d) the nature and the amount of the power to be used, <sup>1</sup>[....]
- (e) the name of the person who shall be the manager of the factory for the purposes of this Act <sup>2</sup>[and
- (f) such other particulars as may be prescribed for the purpose of this Act].

(2) Whenever another person is appointed as manager, the occupier shall send to the Inspector a written notice of the change, within seven days from the date on which the new manager assumes charge.

<sup>1</sup> Deleted by section 2, Act VIII of 1121.

<sup>2</sup> Added by section 2, *ibid.*

(3) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager or, if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

## CHAPTER II

### The Inspecting Staff

Inspectors.

10. (1) The Government may, by notification in the Cochin Government Gazette, appoint such persons as they think fit to be Inspectors for the purposes of this Act.

(2) The Government may, by notification as aforesaid, appoint any person to be a Chief Inspector, who shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(3) No person shall be appointed to be an Inspector under sub-section (1) or a Chief Inspector under sub-section (2) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) The District Magistrate shall, in virtue of his Office, be an Inspector under this Act.

(5) The Government may also, by notification as aforesaid, appoint such public officers as they think fit to be additional Inspectors for all or any of the purposes of this Act within such local limits as they may be assign to them respectively.

(6) In any area, where there are more Inspectors than one, the Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the

Cochin Penal Code and shall be officially subordinate to such authority as the Government may specify in this behalf.

Powers of  
Inspector.

11. Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed.—

(a) enter, with such assistants (if any), being persons in the employment of Government or of any municipal or other public authority; as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory or capable of being declared to be a factory under the provisions of section 5;

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

Certifying  
surgeons.

12. (1) The Government may appoint such registered medical practitioners as they think fit to be certifying surgeons for the purposes of this Act within such local limits as they may assign to them respectively.

(2) A certifying surgeon may authorise any registered medical practitioner to exercise any of his powers under this Act:

Provided that a certificate of fitness for employment granted by such authorised practitioner shall be valid for a period of three months only, unless it is confirmed by the certifying surgeon himself after examination of the person concerned.

*Explanation.*—In this section a “registered medical practitioner” means any person registered under the British Medical Act, 1858, or any subsequent enactment amending it, or under any Act of any legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such register is maintained, any person declared by the Government, by notification in the Cochin Government Gazette,

to be a registered medical practitioner for the purposes of this section.

## CHAPTER III

### Health and Safety

13. Every factory shall be kept clean and free from Cleanliness. effluvia arising from any drain, privy or other nuisance, and shall be cleansed at such times and by such methods as may be prescribed, and these methods may include lime-washing or colour washing, painting, varnishing, disinfecting and deodorising.

14. (1) Every factory shall be ventilated in accord- Ventilation. ance with such standards and by such methods as may be prescribed.

(2) Where gas, dust or other impurity is generated in the course of work, adequate measures shall be taken to prevent injury to the health of workers.

(3) If it appears to the Inspector that in any factory gas, dust or other impurity generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The Government may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities, which may be injurious to the workers and specifying the nature of such devices.

15. (1) The Government may make rules—

(a) prescribing standards for the cooling properties of the air in factories in which the humidity of the air is artificially increased;

(b) regulating the methods used for artificially increasing the humidity of the air; and

Artificial  
humidification



(c) directing prescribed tests or determining the humidity and cooling properties of the air to be carried out and recorded.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to the Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

**Cooling.**

16. If it appears to the Chief Inspector or to an Inspector specially authorised in this behalf by the Government that the cooling properties of the air in any factory are at times insufficient to secure workers against injury to health or against serious discomfort, and that they can be to a great extent increased by measures which will not involve an amount of expense which is unreasonable in the circumstances, the Chief Inspector may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

**Overcrowding.**

17. In order that no room in a factory shall be crowded during working hours to a dangerous extent or to an extent which may be injurious to the health of the workers, the proportion which the number of cubic feet of space in a room and the number of superficial feet of its floor area bears to the number of workers working at any time therein shall not be less than such standards as may be prescribed either generally or for the particular class of work carried on in the room.

**Lighting.**

18. (1) A factory shall be sufficiently lighted during all working hours.

(2) If it appears to the Inspector that any factory is not sufficiently lighted, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The Government may make rules requiring that all factories of specified classes shall be lighted in accordance with prescribed standards.

19. (1) In every factory a sufficient supply of water <sup>Water.</sup> fit for drinking shall be provided for the workers at suitable places.

(2) The supply required by sub-section (1) shall comply with such standards and conditions as may be prescribed.

(3) In every factory <sup>1</sup>[.....] a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed.

20. For every factory sufficient latrines and urinals, <sup>Latrines and urinals.</sup> according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours.

21. In every factory the doors of each room in which more than twenty persons are employed shall, except in the case of sliding doors, be constructed so as to open out-wards, <sup>Doors to open out-wards.</sup> or, where the door is between two rooms, in the direction of the nearest exit from the building, and no such door shall be locked or obstructed while any work is being carried on in the room.

22. In every factory such precautions against fire <sup>Precautions against fire.</sup> shall be taken as may be prescribed.

23. (1) Every factory shall be provided with such means of escape in case of fire <sup>Means of escape.</sup> <sup>2</sup>[as may be prescribed].

(2) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The means of escape shall not be obstructed while any work is being carried on in the factory.

<sup>1</sup> Deleted by section 3, Act VIII of 1121.

<sup>2</sup> Substituted by section 4, *ibid.*

Fencing.

24. (1) In every factory the following shall be kept adequately fenced, namely.—

(a) every exposed moving part of a prime mover and every fly-wheel directly connected to a prime mover,

(b) every hoist or lift, hoist-well, or lift-well, and every trap-door or similar opening near which any person may have to work or pass, and

(c) every part of the machinery which the Government may prescribe.

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) All fencing required by or under this section or under sub-section (1) of section 26 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery.

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory.

Power to require specifications of defective parts or tests of stability.

25. If it appears to the Inspector that any building or part of a building, or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date—

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof.

Safety of buildings and machinery.

26. (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or

plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

27. (1) No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed or moving parts of any machinery which is in motion under power.

Restrictions on work near machinery in motion.

(2) The Government may, by notification in the Cochin Government Gazette, prohibit, in any specified factory or class of factories, the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power.

28. (1) The Government may make rules prohibiting the admission to any specified class of factories or to specified parts thereof, of children who cannot be lawfully employed therein.

Power to exclude children.

(2) If it appears to the Inspector that the presence in any factory or part of a factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing, directing him to prevent the admission of such children to the factory or any part of it.

29. No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Prohibition of employment of women and children near cotton-openers.

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof, or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Notice of  
certain  
accidents.

30. Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory during the forty-eight hours after the accident occurred; or which is of any nature which may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time as may be prescribed.

Appeals.

31. (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this chapter, or the occupier of the factory, may, within thirty days of the service of the order, appeal against it to the Government or to such authority as the Government may appoint in this behalf; and the Government or appointed authority may, subject to rules made in this behalf by the Government, confirm, modify or reverse the order.

(2) The appellate authority may, and if so required in the petition or appeal, shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the Industry concerned or otherwise as the Government may prescribe in this behalf:

Provided that if no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

(3) In the case of an appeal against an order under section 16 the appellate authority shall, and in any other case, except an appeal against an order under sub-section (2) of section 26 or sub-section (2) of section 28, the appellate authority may, suspend the order appealed against, pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case.

Power of Gov-  
ernment to  
make rules to  
supplement  
this Chapter,

32. The Government may make rule.—

(a) providing for any matter which, according to any of the provisions of this Chapter, is or may be prescribed;

(b) requiring the managers of factories to maintain stores of first-aid appliances and provide for their proper custody;

(e) providing against danger arising from the use of mechanical transport in factories other than railways subject to the Cochin Railways Act, XI of 1111;

(d) prescribing the manner of the service of orders under this Chapter on managers of factories;

(e) regulating the procedure to be followed in presenting and hearing appeals under section 31, and the appointment and remuneration of assessors;

(f) regulating the exercise by Inspectors of their powers under this Chapter; and

(g) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

33. (1) The Government may make rules requiring that in any specified factory, wherein more than one hundred and fifty workers are ordinarily employed, an adequate shelter shall be provided for the use of workers during periods of rest, and such rules may prescribe the standards of such shelters.

Additional power to make health & safety rules relating to—shelters during rest,—rooms for children.

(2) The Government may also make rules—

(a) requiring that in any specified factory, wherein more than fifty women workers are ordinarily employed a suitable room shall be reserved for the use of children under the age of six years belonging to such women, and

(b) prescribing the standards for such rooms and the nature of the supervision to be exercised over the children therein.

(3) The Government may also make rules, for any class of factories and for the whole or any part of the State, requiring that work or a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act, until a certificate of stability in the prescribed form, signed by a person possessing the prescribed qualifications, has been sent to the Inspector.

Certificates of stability.

(4) Where the Government are satisfied that any operation in a factory exposes any persons employed

Hazardous operations.

upon it to a serious risk of bodily injury, poisoning or disease, they may make rules applicable to any factory or class of factories in which the operation is carried on—

(a) specifying the operation and declaring it to be hazardous,

(b) prohibiting or restricting the employment of women, adolescents or children upon the operation,

(c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and

(d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

## CHAPTER IV

### Restrictions on working hours of adults

Weekly hours.

34. No adult worker shall be allowed to work in a factory for more than <sup>1</sup>[forty-eight] hours in any week, or, where the factory is a seasonal one, for more than <sup>2</sup>[Fifty] hours in any week:

Provided that an adult worker in a non-seasonal factory engaged in work which for technical reasons must be continuous throughout the day may work for fifty-six hours in any week.

35. (1) No adult worker shall be allowed to work in a factory on a Sunday unless—

Weekly holi-  
days.

(a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday; and

(b) the manager of the factory has, before that Sunday or the substituted day, whichever is earlier—

(i) delivered a notice to the office of the Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted; and

(ii) displayed a notice to that effect in the factory:

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<sup>1</sup> and <sup>2</sup> Substituted by section 2, Act III of 1122

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on a Sunday and has had a holiday on one of the three days immediately before it, that Sunday shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

<sup>1</sup>[35A. (1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 35, a worker is deprived of any of the weekly holidays for which provision is made by sub-section (1) of that section, he shall be allowed, as soon as circumstances permit, compensatory holidays of equal number to the holidays so lost. Compensatory holidays.

(2) Government may make rules prescribing the manner in which the holidays, for which provision is made in sub-section (1), shall be allowed].

36. No adult worker shall be allowed to work in a factory for more than <sup>2</sup>[nine] hours in any day: Daily hours.

Provided that a male adult worker in a seasonal factory may work for <sup>3</sup>[ten] hours in any day.

37. The periods of work of adult workers in a factory during each day shall be fixed either— Intervals for rest.

(a) so that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least one hour;

or

(b) so that no period shall exceed five hours and so that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour, or for more than eight and a half hours before he has had at least two such intervals.

<sup>1</sup> Inserted by section 5, Act VIII of 1121.

<sup>2</sup> and <sup>3</sup> Substituted by section 3, Act III of 1122.



Spread over.

38. The periods of work of an adult worker in a factory shall be so arranged that, along with his intervals for rest under section 37, they shall not spread over more than [ten and a half hours or where the factory is a seasonal one, eleven and a half] hours in any day, save with the permission of the Government and subject to such conditions as the Government may impose, either generally or in the case of any particular factory.

Notice of  
Periods for  
Works for  
Adults and  
preparation  
thereof.

39. (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 76 a Notice of Periods for Work for Adults showing clearly the periods within which adult workers may be required to work.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed before-hand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 34, 35, 36, 37 and 38.

(3) Where all the adult workers in a factory are required to work within the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work within the same periods, the manager of the factory shall classify them into groups according to the nature of their work.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods within which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shift, the manager of the factory shall fix the periods within which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

<sup>1</sup> Substituted by section 4, Act III of 1122.

(8) The Government may make rules prescribing forms for the Notice of Periods for Work for Adults and the manner in which it shall be maintained.

40. (1) A copy of the Notice referred to in sub-section (1) of section 39 shall be sent in duplicate to the Inspector within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act, before the day on which it begins work.

Copy of notice of periods for work to be sent to Inspector.

(2) Any proposed change in the system of work in a factory which will necessitate a change in the Notice shall be notified to the Inspector in duplicate before the change is made, and, except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

41. (1) The manager of every factory shall maintain a Register of Adult Workers showing—

Register of Adult Workers.

- (a) the name of each adult worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) such other particulars as may be prescribed:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent, be maintained in place of and be treated as the Register of Adult Workers in that factory:

Provided further that, where the Government is satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this Chapter in the case of that factory or factories of that class, as the case may be, the Government may, by written order, exempt, on such conditions as they may impose, that factory or all factories of that class, as the case may be, from the provisions of this section.

(2) The Government may make rules prescribing the form of the Register of Adult Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Hours of work to correspond with Notice under section 39 and Register under section 41.

42. No adult worker shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Adults displayed under sub-section (1) of section 39 and the entries made before-hand against his name in the Register of Adult Workers maintained under section 41.

Power to make rules exempting from restrictions.

43. (1) The Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this Chapter other than the provisions of clause (b) of sub-section (1) of section 45 and the provisos to that sub-section shall not apply to any person so defined.

(2) The Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

(a) of workers engaged on urgent repairs—  
from the provisions of sections 34, 35, 36, 37 and 38;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory— from the provisions of sections 34, 36, 37 and 38;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 37—from the provisions of sections 34, 36, 37 and 38;

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day—from the provisions of sections 34, 35, 36, 37 and 38;

(e) of workers engaged in making or supplying articles of prime necessity which must be made

or supplied every day—from the provisions of section 35;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons—from the provisions of section 35;

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces—from the provision of section 35 and section 37; and

(h) of workers engaged in engine rooms or boiler-houses—from the provisions of section 35.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 39 and 40 which the Government may deem to be expedient, subject to such conditions as they may impose.

(4) In making rules under this section the Government shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given, other than an exemption under clause (a) of sub-section (2), shall be subject to such limits.

(5) Rules made under this section shall remain in force for not more than three years.

44. (1) Where the Government are satisfied that owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, they may, by written order, relax or modify the provisions of sections 39 and 40 in respect of such workers to such extent and in such manner as they may think fit, and subject to such conditions as they may deem expedient to ensure control over periods of work.

Power to  
make orders  
exempting  
from res-  
trictions.

(2) The Government, or subject to the control of the Government, the Chief Inspector, may, by written order, exempt on such conditions as they or he may deem expedient, any or all of the adult workers in any factory, or group or class of factories, from any or all of the provisions of sections 34, 35, 36, 37, 38, 39 and 40, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (4) of section 43.

<sup>1</sup>[(4) An order under sub-section (2) shall remain in force for such period, not exceeding two months from the date on which notice thereof is given to the manager of the factory, as may be specified in the order:

Provided that if in the opinion of Government the public interest so requires, Government may from time to time, by notification in the Cochin Government Gazette, extend the operation of any such order for such period, not exceeding six months at anyone time, as may be specified in the notification].

Further restrictions on the employment of women.

45. (1) The provisions of this Chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions, namely:—

(a) no exemption from the provisions of section 36 may be granted in respect of any woman; and

(b) no woman shall be allowed to work in a factory except between 6 a.m. and 7 p.m.

Provided that the Government may, by notification in the Cochin Government Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary the limits laid down in clause (b) to any span of <sup>2</sup>[ten and a half hours, or where the factory is a seasonal one, of eleven and a half hours] between 5 a.m. and 7-30 p.m.

Provided further that, in respect of any seasonal factory or class of seasonal factories in a specified area, the Government may make rules imposing a further restriction by defining the period or periods of the day within which women may be allowed to work, such that the period or periods so defined shall lie within the span fixed by clause (b) or under the above proviso and shall not be less than ten hours in the aggregate.

(2) The Government may make rules providing for the exemption from the above restrictions, to such extent and subject to such conditions as they may prescribe, of women working in fish curing or fish-canning factories where the

<sup>1</sup> Substituted by section 5, Act III of 1122.

<sup>2</sup> Substituted by section 6, *ibid.*

employment of women beyond the said hours is necessary to prevent damage to or deterioration in any raw material.

(3) Rules made under sub-section (2) shall remain in force for not more than three years.

46. Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day:

Special provision for night-shifts.

Provided that the Government may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day.

47. [(1) Where a worker—

(a) in a non-seasonal factory works for more than nine hours in any day or for more than forty-eight hours in any week, or

Extra-pay for over-time.

(b) in a seasonal factory works for more than nine hours in any day or for more than fifty hours in any week, he shall be entitled, in respect of the overtime worked, to pay at the rate of twice his ordinary rate of pay.]

(3) Where any workers are paid on a piece rate basis, the Government in consultation with the industry concerned may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section.

(4) The Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

48. No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Restriction on double employment.

49. The Government may make rules providing that in any specified class or classes of factories work

Control of over-lapping shifts.

<sup>1</sup> Substituted by section 7, Act III of 1122 for original sub-sections

shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time, save with the permission of the Government and subject to such conditions as they may impose, either generally or in the case of any particular factory.

## <sup>1</sup>[CHAPTER IV-A

### Holidays with Pay

Application of Chapter.

49A. (1) The provisions of this Chapter shall not apply to a seasonal factory.

(2) The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other enactment, or under the terms of any award, agreement or contract of service.

Annual holidays.

49B. (1) Every worker who has completed a period of twelve months' continuous service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten or, if a child, fourteen consecutive days, inclusive of the day or days, if any, on which he is entitled to a holiday under sub-section (1) of section 35.

(2) If a worker fails in any one such period of twelve months to take the whole of the holidays allowed to him under sub-section (1), any holidays not taken by him shall be added to the holidays to be allowed to him under sub-section (1) in the succeeding period of twelve months, so however that the total number of days holidays which may be carried forward to a succeeding period shall not exceed ten or, in the case of a child, fourteen.

(3) If a worker entitled to holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if, having applied for and having been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay him the amount payable under section 49-C in respect of the holidays.

*Explanation.*—A worker shall be deemed to have completed a period of twelve months' continuous service in

<sup>1</sup> Inserted by section 6, Act VIII of 1121.

a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorised leave not exceeding ninety days in the aggregate for all three or by a lock-out, or by a strike which is not an illegal strike or by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate ; and authorised leave shall be deemed not to include any weekly holiday allowed under section 35 which occurs at the beginning or end of an interruption brought about by the leave.

49C. Without prejudice to the conditions governing the day or days, if any, on which the worker is entitled to a holiday under sub-section (1) of section 35, the worker shall, for the remaining days of the holidays allowed to him under section 49B, be paid at a rate equivalent to the daily average of his wages as defined in the Cochin Payment of Wages Act, IV of 1113, for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime:

Pay during annual holidays.

49D. A worker who has been allowed holidays under section 49B shall, before his holidays begin, be paid half the total pay due for the period of holidays.

Payment when to be made.

49E. Any Inspector may institute proceedings on behalf of any worker to recover any sum required to be paid under this Chapter by an employer which the employer has not paid.

Power of Inspector to act for worker.

49F. (1) Government may make rules to carry into effect the provisions of this Chapter.

Power to make rules.

(3) Without prejudice to the generality of the foregoing power, rules may be made under this section prescribing the keeping by employers of registers showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors.

49G. / Where Government are satisfied that the leave rules applicable to workers in a factory provide benefits substantially similar to those for which this Chapter makes provision they may, by written order, exempt the factory from the provisions of this Chapter.]

Exemption of factories from provisions of this Chapter.



## CHAPTER V

## Special Provisions for Adolescents and Children

Prohibition of employment of young children.

50. No child who has not completed his twelfth year shall be allowed to work in any factory.

Non-adult workers to carry tokens giving reference to certificates of fitness.

51. No child and no adolescent shall be allowed to work in any factory unless—

(a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving a reference to such certificate.

Certificate of fitness.

52. (1) A certifying surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

(2) The certifying surgeon, after examination, may grant to such person, in the prescribed form,—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work; or

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A certifying surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a certifying surgeon or a practitioner authorised under sub-section (2) of section 12, refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing.

53. (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 52, and who, while at work in a factory carries a token giving referenee to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

Effect of certificate granted to adolescent.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall, notwithstanding his age, be deemed to be a child for the purposes of this Act.

54. (1) No child shall be allowed to work in a factory for more than five hours in any day.

Restrictions on the working hours of a child.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 a.m. and 7 p.m.

Provided that the Government may, by notification in the Cochin Government Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 a.m. and 7-30 p.m.

(4) The provisions of section 35 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

55. (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 76, a Notice of Periods for Work for Children, showing clearly the periods within which children may be required to work.

Notice of periods for work for children.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 39 and shall be such that children working for those periods would not be working in contravention of section 54.

(3) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children.

(4) The Government may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained.

Register of  
Child Workers.

56. (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,
- (e) the number of his certificate of fitness granted under section 52, and
- (f) such other particulars as may be prescribed.

(2) The Government may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

Hours of work  
to correspond  
with Notice  
and Register.

57. No child shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Children displayed under sub-section (1) of section 55 and the entries made beforehand against his name in the Register of Child Workers maintained under sub-section (1) of section 56.

Power to re-  
quire medi-  
cal examina-  
tion.

58. Where an Inspector is of opinion—

(a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or

(b) that a child or adolescent working in a factory with a certificate is no longer fit to work in the capacity stated therein;

he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall be examined by a certifying surgeon or by a practitioner authorised under sub-section (2) of section 12, and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

Power to make  
rules.

59. The Government may make rules—

(a) prescribing the forms of certificates of fitness to be granted under section 52, providing for the grant of

duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and such duplicates;

(b) prescribing the physical standards to be attained by children and adolescents;

(c) regulating the procedure of certifying surgeons under this Chapter, and specifying other duties which they may be required to perform in connection with the employment of children and adolescents in factories; and

(d) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

## [CHAPTER VA

### Small Factories

59A. (1) In this Act, unless there is anything repugnant in the subject or context, "small factory" means any premises including the precincts thereof whereon ten or more but less than twenty workers are working or were working on any day of the preceding six months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on : Small Factories.

Provided that Government may, by notification in the Cochin Government Gazette, declare any premises to be a small factory, notwithstanding that less than ten workers are working thereon, if such premises would otherwise be a small factory.

(2) For the purposes of this Chapter an adolescent holding a certificate granted under this Act to work as an adult shall be deemed to be an adult.

59B. (1) All the provisions of this Act, except clause (i) of section 2, sections 4, 5, 6 and 7, sub-sections (1) and (4) of section 14, sections 15, 21, 22 and 25, sub-sections (1), (2) and (3) of section 33 and Chapter IV shall apply to, and in relation to, all small factories wherein any worker who is not, or is not deemed to be, an adult is employed; and in the provisions hereby made so applicable every reference to a factory shall be deemed to include, so far as may be, a reference to a small factory. Certain provisions of this Act to apply to small factories wherein child labour is employed.

(2) The aforesaid provisions shall cease to apply to a small factory on the expiry of six months from the receipt by the Inspector of a notice in writing from the occupier that he has ceased to employ therein any worker who is not, or is not deemed to be, an adult, unless any such worker is employed therein on any day of the said six months:

Provided that if any such worker is thereafter employed in the small factory, the said provisions of this Act shall again apply thereto.

Certain other provisions of law not barred.

59C. The provisions of this Chapter shall be in addition to and not in derogation of, the provisions of the Cochin Employment of Children Act, XIII of 1120].

## CHAPTER VI

### Penalties and Procedure

Penalty for contraventions of Act and Rules.

60. If in any factory—
- (a) there is any contravention—
    - (i) of any of the provisions of sections 13 to 29 inclusive, or
    - (ii) of any order made under any of the said sections, or
    - (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 32, or
    - (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 32 or section 33, or
    - (v) of any condition imposed under sub-section (3) of section 31, or
  - (b) any person is allowed to work in contravention—
    - (i) of any of the provisions of sections 34 to 38 inclusive, 42, 45 and 48, or
    - (ii) of any rule made under any of the said sections or under section 49, or
    - (iii) of any condition attached to any exemption granted under section 43 or section 44 or section 45 or to any permission granted under section 38 or section 49, or

(c) there is any contravention of any of the provisions of sections 39 to 41 inclusive, or of any rule made under section 39, section 41 or section 47, or of any condition attached to any exemption granted under section 41 or to any modification or relaxation made under section 44, or

(d) any person is not paid any extra pay to which he is entitled under the provisions of section 47; or

(e) any adolescent or child is allowed to work in contravention of any of the provisions of sections 50, 51, 54, 55, 57 and 58, or

(f) there is any contravention of section 55 or section 56 or of any rules made under either of these sections or under clause (d) of section 59, the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees, <sup>1</sup>[or]

<sup>2</sup>[(g) there is any contravention of section 49B, 49C or 49D or of any rule made under section 49F]:

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount.

61. If any person who has been convicted of any offence punishable under clauses (b) to <sup>3</sup>[(g)], inclusive of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees:

Enhanced penalty in certain cases after previous conviction.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which he is being punished:

<sup>1</sup> Added by section 8, Act VIII of 1121.

<sup>2</sup> Added by section 8, *ibid.*

<sup>3</sup> Substituted by section 9, *ibid.*

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

Penalty for failure to give notice of commencement of work or of change of manager.

Penalty for obstructing Inspector.

62. An occupier of a factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 9 shall be punishable with fine which may extend to five hundred rupees.

63. Whoever wilfully obstructs an Inspector in the exercise of any power under section 11, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder, or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of accidents.

64. A manager of a factory who fails to give notice of an accident as required under section 30 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to make returns.

65. If in respect of any factory any return is not furnished as required under section 77, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees:

Provided that if both the manager and the occupier are convicted the aggregate of the fines inflicted shall not exceed this amount.

Penalty for smoking or using naked light in vicinity of inflammable material.

66. Whoever smokes, or uses a naked light or causes or permits any such light to be used in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees.

*Exception.*—This provision does not extend to the use, in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process.

Penalty for using false certificates.

67. Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 52, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees.

68. If a child works in a factory on any day on which he has already been working in another factory the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person.

Penalty on guardian for permitting double employment of a child.

69. A manager of a factory who fails to display the notice required under sub-section (1) of section 76 or by any rule made under this Act, or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to display certain notices.

70. (1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Determination of occupier for purposes of this Chapter.

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in Cochin State to be the occupier of the factory for the purposes of this Chapter, and such individual shall, so long as he is so resident, be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the share-holders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a share-holder, who is resident in either case in Cochin State, to be the occupier of the factory for the purposes of this Chapter, and such director or share-holder shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or share-holder.



Exemption of occupier or manager from liability in certain cases.

71. (1) Where the occupier or manager of a factory charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court.—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager, and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the Inspector at any time prior to the institution of the proceedings.—

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act; and

(b) by what person the offence has been committed and

(c) that it has been committed without the knowledge, consent or connivance of the occupier or manager; and in contravention of his orders,

the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

Presumption as to employment.

72. If a child over the age of six years is found inside any part of a factory in which children are working; he shall, until the contrary is proved, be deemed to be working in the factory.

Evidence as to age.

73. (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act and such person is in the opinion of the Court apparently under or over such age, the burden shall

be on the accused to prove that such person is not under or over such age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that worker.

74. (1) No prosecution under this Act, except a prosecution under section 66, shall be instituted except by or with the previous sanction of the Inspector. Cognizance of offences.

(2) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder, other than an offence under section 66 or section 67.

75. No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 62 or section 64, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed: Limitation of prosecutions.

Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which the offence is alleged to have been committed.

## CHAPTER VII

### Supplemental

76. (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder, in English and in the Vernacular of the majority of the workers as the Government may prescribe. Display of factory notices.

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

77. The Government may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in their opinion be required for the purposes of this Act. Power to make rules.

Publication of  
rules,

78. (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified under section 21 of the General Clauses Act, III of 1079, shall not be less than three months from the date on which the draft of the proposed rules was published.

(2) All such rules shall be published in the Cochin Government Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

Application to  
Sirkar  
factories.

79. This Act shall apply to factories belonging to the Sirkar.

Protection to  
persons acting  
under this Act.

80. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Repeal and  
savings.

81. The Act VII of 1083 is hereby repealed :  
Provided that all notifications issued, appointments made, certificates given and other acts done under the said Act shall, so far as may be, be deemed to be respectively issued, made, given and done under this Act,

and that any enactment or document referring to the enactment hereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

**THE COCHIN PAYMENT OF WAGES ACT**  
**(IV OF 1113)**

**(As amended up to 1st Kumbham 1122)**

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**THE COCHIN PAYMENT OF WAGES ACT,  
(IV OF 1113)**

**An Act to regulate the payment of wages to certain classes  
of persons employed in industry**

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1113	IV	The Payment of Wages Act	Amended by Act IV of 1119

*Passed by His Highness the Maharaja of Cochin on the  
25th day of Kanni 1113, corresponding to the  
11th day of October 1937*

Whereas it is expedient to regulate the payment of wages to certain classes of persons employed in industry; it is hereby enacted as follows:—

1. (1) This Act may be called the Cochin Payment of Wages Act, IV of 1113.

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

(3) It shall come into force on such date as Government may, by notification in the Cochin Government Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) Government may, after giving three months' notice of its intention of so doing, by notification in the Cochin Government Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Short title  
extent,  
commence-  
ment and  
application.

2. In this Act, unless there is anything repugnant in the subject or context — Definitions.

(i) “factory” means a factory as defined in clause (i) of section 2 of the Cochin Factories Act, 1113;

(ii) “industrial establishment” means any—

(a) tramway or motor omnibus service;

(b) dock, wharf or jetty;

(c) [inland vessel; propelled by steam, electricity or other mechanical power]

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(iii) “plantation” means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

(iv) “prescribed” means prescribed by rules made under this Act;

(v) “railway administration” has the meaning assigned to it in clause (6) of section 3 of the Cochin Railways Act, XI of 1111; and

(vi) “wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

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<sup>1</sup> Substituted by section 2, Act IV of 1119.

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

Responsibility  
for payment  
of wages.

3. Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)—

(a) in factories, if a person has been named as the manager of factory under clause (e) of sub-section (1) of section 9 of the Cochin Factories Act, 1113,

(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Fixation of  
wage-periods.

4. (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

Time of pay-  
ment of wages.

5. (1) The wages of every person employed upon or in—

(a) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned

by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

4. All payments of wages shall be made on a working day.

6. All wages shall be paid in current coin or currency notes or in both.

Wages to be paid in current coin or currency notes.

7. (1) Notwithstanding the provisions of sub-section 2 of section 16 of the Cochin Railways Act, XI of 1111, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Deductions which may be made from wages.

*Explanation.*—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deduction from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

(a) fines;

(b) deductions for absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) deductions for house-accommodation supplied by the employer;

(e) deductions for such amenities and services supplied by the employer as the Government may, by general or special order, authorise;

*Explanation.*—The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.



(f) deductions for recovery of advances or for adjustment of overpayments of wages;

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Cochin Provident Funds Act, XXIII of 1111, applies or any recognised provident fund as defined in section 56A of the Cochin Income-tax Act, VIII of 1108, or any provident fund approved in this behalf by Government, during the continuance of such approval; and

(j) deductions for payments to co-operative societies approved by Government or to a scheme of insurance maintained by the Indian Post Office.

**Fines.**

8. (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half-an-anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the

expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

*Explanation.*—When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

9. (1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. Deductions for absence from duty.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

*Explanation.*—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Deductions  
for damage or  
loss.

10. (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Deductions  
for services  
rendered.

11. A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and in the case of a deduction under the said clause (e), shall be subject to such conditions as Government may impose.

Deductions  
for recovery of  
advances.

12. Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely.—

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses ;

(b) recovery of advances of wages not already earned shall be subject to any rules made by Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

13. Deductions under clause (j) of sub-section (2) of section 7 shall be subject to such conditions as Government may impose.

Deductions for payments to co-operative societies and insurance schemes.

14. (1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Cochin Factories Act, 1113, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

Inspectors.

(2) Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) Government may, by notification in the Cochin Government Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Cochin Penal Code.

15. (1) Government may, by notification in the Cochin Government Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages, of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other

person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bonafide error or bonafide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

16. (1) Employed person are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

Single application in respect of claims from unpaid group.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section and the provisions of that sub-section shall apply accordingly.

17. (1) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred, within thirty days of the date on which the direction was made before the District Court—

Appeal.

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

18. Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Cochin Code of Civil Procedure, XXIX of 1111, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 172 and of Chapter 35 of the Code of Criminal Procedure, II of 1086.

Powers of Authorities appointed under section 15.

19. When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

Power to recover from employer in certain cases.

20. (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

Penalty for offences under the Act.

(2) Whoever contravenes the provisions of section 4, section 6 or section 24 shall be punishable with fine which may extend to hundred rupees.

21. (1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

Procedure in trial of offences.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(a) a *bonafide* error or *bonafide* dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under subsection (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

22. No court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

Bar of suits

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.

23. Any contract or agreement, whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Contracting out.

24. The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such

Display by notice of abstracts of the Act.



abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

Rule making  
power.

25. (1) Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) Government may, by notification in the Cochin Government Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof;

(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

(d) prescribe the manner of giving notice of the days on which wages will be paid;

(e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;

(f) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;

(g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;

(h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;

(i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of section 12;

(j) regulate the scale of cost which may be allowed in proceedings under this Act;

(k) prescribe the amount of Court-fees payable in respect of any proceedings under this Act;

(l) prescribe the abstracts to be contained in the notices required by section 24.

(4) In making any rule under this section Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 21 of the Cochin General Clauses Act, III of 1079, shall not be less than three months from the date on which the draft of the proposed rules was published.

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# THE COCHIN TENANCY ACT

(XV of 1113)

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## THE COCHIN TENANCY ACT

(XV of 1113)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	XV	The Cochin Tenancy Act	Amended by Act VI of 1115 and *Proclamation XVIII of 1117

*Passed by His Highness the Maharaja of Cochin on the 16th day of Makaram 1113, corresponding to the 29th day of January 1938*

Preamble.

Whereas it is expedient to define, declare, alter and amend, to the extent, in the manner and for the purposes hereinafter appearing, the law relating to land-lord and tenant, including the law relating to compensation for improvements made by the tenant, it is hereby enacted as follows.—

## PRELIMINARY

Short title and extent.

1. (1) This Act may be called the “Cochin Tenancy Act, XV of 1113”.

(2) It extends to the whole of Cochin.

(3) The Cochin Tenancy Act, II of 1090, is hereby repealed.

(4) The explanation to sub-section (d) of section 2 of this Act shall apply to all suits pending in the Court of first instance or in appeal on the date of the passing of this Act.

Suits instituted after the 15th Medam 1107 for the eviction of kanam tenants shall be governed by this Act.

Subject to the foregoing provisions, nothing herein contained shall render not maintainable any suit pending on the date of the passing of this Act which was maintainable while the said Act, II of 1090, was in force.

\*Provisions relating to compensation in the Tenancy Act not applicable to leases in pursuance of the Scheme for Food Production. (See Proclamation XVIII of 1117).

(5) Save as herein otherwise provided, in all suits for eviction pending in the Court of first instance which could have been governed by the provisions of this Act had it been in force at the time of their institution, the rights and obligations of the parties concerned shall be regulated by the provisions of this Act.

(6) The provisions of this Act shall also apply to suits decreed before the passing of this Act so far as the valuation or re-valuation of improvements under section 5 hereof is concerned.

## CHAPTER I

### Definitions

2. In this Act, unless there is something repugnant Definitions.  
in the subject or context:

(a) "Eviction" means the recovery of possession of land from a tenant.

(b) "Holding" means a parcel or parcels of land held under a single engagement by a tenant from a landlord and shall include any portion of a holding as above defined which the land-lord and tenant have agreed to treat as a separate holding.

(c) "Improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding is let, mortgaged or occupied, but does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by the tenant in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry.

(d) "Kanam" means a demise with the following incidents:—

(1) an initial lump sum consideration in money or in kind or both given or deemed to be given by the tenant to the landlord which is mentioned as such in the demise and bears a specified interest;

(2) the payment of michavaram, if any, by the tenant to the land-lord;

(3) the right of the tenant to occupy the property demised for 12 years or for any other longer period which is specified;

(4) the liability to pay a renewal fee on renewal of the demise.

*Explanation*<sup>1</sup> [I]A transaction called 'panayam' in the document evidencing it may create a kanam within the meaning of this section.

(e) "Kanam amount" means the amount specified in sub-clause (l) of sub-section (d) of this section in respect of a kanam.

(f) "Landlord" means a person immediately under whom a tenant holds.

(g) "Michavaram" means the balance of money or produce or both accruing due periodically to the landlord after deducting from the pattam the interest due on the kanam amount and puramkadam, if any.

(h) "Nilam" means land adapted for the cultivation of paddy.

(i) "Paramba" means cultivable land other than nilam.

(j) "Pattam" means the landlord's share as fixed by the contract of tenancy of the produce of the holding whether in money or in kind or both, but does not include renewal fee.

(k) "Pay", with its grammatical variations, includes "deliver"

(l) "Puramkadam" means a further sum of consideration received by the landlord subsequently to the kanam amount from a kanam-tenant in respect of the holding.

(m) "Puravaka dues" means whatever is payable in money or in kind or both by the terms of a demise other than pattam, or michavaram and renewal fee.

(n) "Renewal fee" means fee or fees payable by a kanam-tenant to his landlord for the renewal of the legal relationship under which the tenant has been holding any land.

(o) "Tenant", with its grammatical variations and cognate expressions, includes a person who, as kanam-tenant, lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be kanam-tenant, lessee,

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<sup>1</sup> Numbered by section 3, Act VI of 1115.

sub-lessee, mortgagee or sub-mortgagee of land, is in possession thereof or who, with the *bona-fide* intention of attorning and paying a reasonable rent to the person entitled to cultivate or let waste land but without the permission of such person brings such land under cultivation and is in occupation thereof as cultivator.

<sup>1</sup>["*Explanation II.*—

(i) A transaction called "*panayam*" in the document evidencing it and possessing the incidents mentioned in sub-clauses (1) and (2) of this clause shall, until the contrary is proved, be presumed to be a *kanam* within the meaning of this section, if it is a renewal of a previous document or if in respect of it a counter-part has been executed by the *panayam* tenant or there is a provision for renewal or for the payment of *puravaka* dues:

Provided that nothing in this Explanation shall apply to a document expressly described as *karipanyam*, *kaivasapanam*, *kozhuverukkanayam* or *nadappupanyam*.

(ii) A provision in any document of the kind referred to in clause (i) providing for surrender of the holding on demand to the landlord shall not, by itself, give rise to any presumption contrary to that provided for in clause (i) of this Explanation].

## CHAPTER II

### Compensation for Improvements

3. Until the contrary is shown, the following works or the products of such works shall be presumed to be improvements for the purposes of this Act.—

What are presumed to be improvements.

(a) the erection of dwelling houses, buildings appurtenant thereto and farm buildings;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(c) the preparation of land for irrigation;

(d) the conversion of one crop into two crop land;

(e) the drainage, reclamation from rivers or other waters or protection from floods, or from erosion or other

<sup>1</sup> Added by section 3, Act VI of 1115.



damage by water, of land used for agricultural purposes, or waste land which is culturable;

(f) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(g) the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto; and

(h) the planting or protection and maintenance of fruit trees, timber trees and other useful trees and plants.

Tenant  
entitled to  
compensation  
for improve-  
ments.

4. (1) Every tenant shall, on eviction, be entitled to compensation for improvements which were made by him, his predecessor-in-interest or by any person not in occupation at the time of the eviction who derived title from either of them and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the kanam amount and puramkadam, if any, or the mortgage money or premium, be entitled to remain in possession until eviction in execution of a decree or order of Court:

Provided that nothing herein contained shall be construed as affecting the provisions of Chapter IV of the Cochin Revenue Recovery Act, IV of 1083.

(2) A tenant so continuing in possession shall, during such continuance, hold subject to the terms of his kanam, lease or mortgage, if any.

Decree in  
eviction to be  
conditional on  
payment of  
compensation.

5. (1) In a suit for eviction instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 4 for improvements, the Court shall ascertain as provided in sections 8 to 17, the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that, on payment by the plaintiff into the Court of the amount so found due and also the kanam amount and puramkadam, if any, or the mortgage money or the premium, as the case may be, the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent, michavaram or otherwise in respect of the tenancy, the

Court shall set off such sum against the sum found due under sub-section (1) and shall pass a decree declaring as the amount payable to him on eviction the amount, if any, remaining due to the defendant after such set-off.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements was adjudged in the decree and the re-valuation of an improvement, for which compensation was so adjudged, when and in so far as such re-valuation may be necessary, with reference to the condition of such improvement at the time of eviction as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent, michavaram or otherwise in respect of the tenancy shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of sub-section (1) of section 41 of the Cochin Code of Civil Procedure, Act XXIX of 1111:

6. Whenever a Court passes a decree or order for eviction against a tenant and such tenant has erected any building, constructed any work or planted any tree which, the Court finds is not an improvement for which compensation can be claimed, but which, the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree or order. The Court may, from time to time, extend the time so fixed.

Tenant's right to remove buildings, works or trees deemed not improvements.

7. The Diwan may, with the sanction of His Highness the Maharaja, from time to time, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 5 for an improvement, such number of assessors, as the Diwan thinks fit, determining the qualification of those assessors, the mode of selecting them and the fee payable to them, and prescribing the procedure to be followed in case of difference of opinion between the Judge and one or more of such assessors. The rules so made shall be published in the Cochin Government Gazette and shall have the force of law.

Assessors for estimating the compensation.

Improvement producing an increase in the value of the annual net produce.

8. When the improvement is not an improvement to which section 12 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and shall award as compensation for the improvement, three-fourths of the amount arrived at by capitalising such net money value at 20 times.

*Explanation 1.*—The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and local taxes.

*Explanation 2.*—In determining the net money value of the increase, regard shall also be had to the condition of the improvement and probable duration of its effects and the labour and capital required for making such improvement.

Trees or plants spontaneously grown.

9. When the improvement is not an improvement to which section 8 applies but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 4, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realise if sold by public auction to be cut and carried away.

Other kinds of improvements.

10. When the improvement is not an improvement to which section 8 or 9 applies, the compensation to be awarded shall be the cost of the labour including supervision thereof and of the materials together with other expenditure, if any, which would, at the time of the valuation, be required to make the improvement, less a reasonable reduction on account of the deterioration, if any, which may have taken place from age or other cause.

Value of improvements to be ascertained in the way most favourable to the tenant.

11. Notwithstanding anything contained in sections 8, 9 and 10, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

*Illustrations.*—(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 8 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 9 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 9 to be Rs. 20, but under section 10 to be Rs. 100.

In each case the Court shall award the higher amount.

12. When the improvement consists of the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons, mentioned in section 4, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 10.

Improvement consisting of the protection and maintenance of trees and plants.

13. The Diwan may prepare for the whole or any part of the State, tables showing the maximum and minimum rates of compensation to be awarded under this Act, for all or any class of improvements and when such tables have been published, the amount awarded as compensation under sections 8, 9, 10 and 11 shall not ordinarily exceed such maximum rates nor shall it in any case be less than such minimum rates.

Power to frame tables of maximum and minimum rates of compensation.

14. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Diwan may prepare tables for the whole or any part of Cochin showing all or any of the following matters.—

Power to prepare tables of prices of produce, etc.

(a) the price of cocoanuts, arecanuts, pepper and paddy;

(b) the cost of (i) cultivating and harvesting a crop of paddy; (ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and pepper vine, until the tree or vine is in bearing; (iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall, on publication, be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved. provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price, as provided in section 15.

Value how ascertained when no table has been prepared or the presumption is rebutted.

15. In respect of any product for which no table showing the price has been published and whenever the presumption under section 14 is rebutted, the Court shall adopt, as the money value for the purpose of awarding compensation under section 8, the average price, as nearly as may be ascertainable in the taluk where the land is situated, for a period of 10 years, immediately preceding the institution of the suit.

Tables to be published,

16. The tables prepared under this Act shall be published in English and Malayalam in the Cochin Government Gazette and shall be kept publicly posted in the Civil Courts having jurisdiction over the area to which the tables apply.

The Diwan may, by like publication, cancel or vary, from time to time, the tables so published.

Compensation refused when area is overplanted.

17. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant compensation or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature.

Cocoanut trees	..	120 per acre.
Areca nut trees	..	720 „
Jack trees	..	60 „

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

Invalid contracts affecting compensation for improvements.

18. Nothing in any contract made after the 9th March 1912 (26th Kumbham 1087) shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act:

Provided that nothing herein contained shall affect any agreement in writing registered and made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

### CHAPTER III

#### Creation and Renewal of Kanams and Eviction

Creation and renewal of kanams.

19. No kanam can be created after this Act comes into force except by a registered instrument or renewed

after such date except by such an instrument or by decree of Court.

20. No instrument by which a kanam is created or renewed or its counterpart shall be registered unless it contains.—

Particulars which the instrument should contain.

(a) the name, if any, and description and extent of the holding;

(b) the Government revenue and local taxes, if any, payable in respect of the holding;

(c) the kanam amount and puramkadam, if any;

(d) the rate or the amount of interest payable in respect of the kanam amount and puramkadam, if any;

(e) the renewal fee, if any, levied, and in case no such fee was levied, a statement to that effect;

(f) the amount of michavaram and puravaka dues, if any, payable in respect of the holding; and

(g) the relation that any para or other measure according to which the michavaram is to be paid bears to the standard measure prescribed by Government.

21. An order of the Registrar refusing registration on the ground of the absence of any of the particulars above mentioned shall be subject to appeal in accordance with the provisions of the Registration Act.

Appeal from the order of the Registrar.

22. The stamp and registration charges for a kanam instrument and for its counterpart shall be borne by the tenant and the landlord respectively.

Stamp and registration charges for kanam instruments.

23. The provisions contained in sections 24 to 36 both inclusive of this Act shall apply only to kanam tenants who by themselves or through their predecessors-in-interest have uninterruptedly held the holding under kanam tenures created on or before the 8th day of Thulam 1090.

Application of sections 24 to 36.

*Explanation I.*—The omission, addition or substitution of an item of land from, to or in a holding shall not be taken to have interrupted the continuity of the holding. The substituted item shall be considered to have been in the original demise in place of the item for which it was substituted.

*Explanation II.*—Where a holding is by partition, assignment or otherwise severed, the severance shall not be taken to have interrupted the continuity of the holding

and each of the severed portions shall be recognised as a distinct holding unless such recognition would materially affect the rights of the landlord.

Surrender of  
kanams.

24. A kanam tenant may, after the original term of the kanam, surrender the holding to his landlord by a registered document: provided—

(1) three months' notice of his intention to do so has been given in writing to the landlord;

(2) no portion of the holding is excluded except as the result of irresistible force;

(3) the renewal fee, if any, the arrears of michavaram and other accrued dues are tendered;

(4) the value or utility of the holding has not been materially and permanently impaired during the tenancy by acts of waste;

(5) in case the kanam includes nilam, the surrender is made within a month of the date on which michavaram is due.

The landlord may, within the period of three months mentioned in sub-clause (1), give notice in writing to the tenant that he will not accept the surrender. If such notice is given the tenant shall retain the holding without payment of renewal fee, michavaram or other dues but shall be bound to pay the taxes due on the land.

If no such notice is given by the landlord, he shall accept the surrender but shall not be bound to refund the kanam amount and puramkadam, if any, or to pay the value of improvements which he would otherwise be bound to pay under this Act.

Nothing in this section shall enable the kanam tenant to terminate the tenancy so as to prejudice the claims of his sub-tenant or any person having an interest in the holding as his mortgagee, attaching creditor or otherwise.

Eviction of  
kanams.

25. (1) On the expiry of the demise, the kanam tenant shall be liable to eviction from the whole or a portion of his holding as the case may be, for any of the following causes.—

(a) If the holding or a portion thereof is required by the landlord for the bonafide purposes of extending his own residential house or building a new house for his residence:

Provided that, if the landlord fails to extend his residence or build a new house for his residence within a period of three years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

(b) If the kanam tenant wilfully denies the landlord's title.

*Explanation:—*A denial of the landlord's title under a bonafide mistake of fact is not wilful within the meaning of clause (b).

(c) If the kanam tenant intentionally and wilfully commits such acts of waste as are calculated to materially and permanently impair the value and utility of the holding.

A suit for eviction on the ground stated in clause (c) should not be entertained unless the landlord has served a notice on the tenant specifying the particular act of waste complained of, and, when the waste is capable of remedy, requiring the tenant to remedy the same and in any case to pay reasonable compensation for the waste, and the tenant has failed to comply within a reasonable time, with that request.

(2) During the currency of the lease, the kanam tenant shall also be liable to eviction under clauses (b) and (c) in the foregoing sub-section (1) of this section.

26. Subject to the other provisions of this Act, it shall be obligatory on the part of the landlord to give and of the kanam-tenant to accept a renewal of the tenancy at the expiry of 12 years from the date of the last demise and thereafter at the end of every successive period of 12 years. Renewal of kanams.

*Exception.—*When the period of the kanam is other than 12 years, such other period shall be read in lieu of 12 years in applying this section.

27. The following amounts shall be payable by the kanam tenant at the time of renewal.— Dues payable on renewal.

(a) all arrears of michavaram and puravaka dues accruing for a period not exceeding 12 years;

(b) all arrears of Government or local taxes and other dues which he was bound to pay but which were paid by the landlord irrespective of the time when they were paid.



Rate of  
renewal fee.

28. In addition to the above amounts the kanam-tenant shall pay a renewal fee of  $27\frac{1}{2}$  per cent of the kanam amount and 15 per cent of the puramkadam, if any.

*Explanation (1).*—For the purposes of this section, the term 'renewal fee' includes all dues such as Sakshiavakasam and Opputhoosi which are customarily payable on renewal.

*Explanation (2).*—The kanam amount mentioned in this section does not include the additional kanam amount levied under section 23 (e) of Act II of 1090.

Nothing in this section shall make the kanam-tenant liable to pay as renewal fee anything more than 5 per cent of the kanam amount and puramkadam, if any when there is no michavaram payable under the kanam to be renewed, or it is less than  $12\frac{1}{2}$  per cent of the pattam fixed therein.

Suit for execu-  
tion of re-  
newal deed.

29. (1) Subject to the other provisions of this Act, a suit may be brought by the kanam-tenant or the landlord for the execution of a renewal deed.

(2) On the hearing of the suit, the Court shall determine.—

(a) the amounts due under sections 27 and 28.

(b) the enhancement of michavaram, if any, to which the landlord is entitled under section 33,

(c) the reduction of michavaram, if any, to which the kanam-tenant is entitled under the same section,

(d) the terms of the expiring kanam so far as they are in accordance with law;

and make an order for the payment of the amounts due to the landlord under sub-clause (a) of sub-section (2) of this section and interest thereon from their due dates at such rates as the Court may determine and the execution of a renewal deed on the terms determined under sub-clause (d) with the variations, if any, under sub-clauses (b) and (c) within a time to be fixed by the Court;

Provided that arrears of michavaram shall bear interest at the contract rate, if any, and renewal fee at the rate of six per cent from their due dates unless the landlord has refused a valid tender of the renewal fee, in which case, no interest thereon shall be payable.

30. If, within the time fixed by the Court or such further time as is allowed by it, the order made under the last section has not been complied with, the Court shall pass a decree for payment of the said amounts or so much as remains due with future interest, at such rate as it may think fit, or execute a renewal deed or do both, as the case may require, and make such order as to the cost of the proceedings, as it may deem fit.

Effect of failure to comply with the order under the last section.

31. The renewal deed executed by the Court under the last section shall contain the terms determined under sub-clause (d) of section 29 with the variations, if any, under sub-clauses (b) and (c) of the said section.

Execution of renewal deed by court.

32. A renewal deed executed by the Court under section 30 shall have the same effect as if it were executed by the landlord or the tenant respectively.

Legal effect of deed executed by Court.

33. The michavaram payable by a kanam-tenant may, at the time of renewal, be enhanced or reduced by enhancing or reducing the pattam as hereinafter provided.

Enhancement and reduction of michavaram.

34. (a) The pattam may be proportionately enhanced if during the currency of the kanam or of the last renewal, as the case may be,—

When pattam may be enhanced or reduced.

(1) the area of the holding actually under cultivation has increased ;

(2) the productive power of the land comprised in the holding has increased on account of a specific cause not merely temporary or casual ;

(3) where the land demised is paramba, the number of trees in the holding on which pattam is assessable has increased ; or

(4) the land being paramba, the average local price of the produce of the trees on which pattam is assessable has risen.

Where reclamation or other permanent improvement was effected at the expense of the kanam-tenant and has contributed to the increase in the area under cultivation, the productive power of the land or the number of assessable trees taken account of under this section, the cost of such improvement shall be determined in accordance with Chapter II of this Act and the enhancement of pattam shall be reduced by the amount of interest on such cost calculated at the same rate as on the kanam amount.

(b) The pattam may be proportionately reduced, if, during the currency of the kanam or of the last renewal, as the case may be,—

(1) the area of the holding has been diminished by causes beyond the control of the tenant, such as action of the sea, river or lake;

(2) the soil of the holding has permanently deteriorated and such deterioration was not due to improper use or neglect by the tenant;

(3) where the land is paramba, the number of trees in the holding on which pattam is assessable has been diminished by causes beyond the control of the tenant; or

(4) the land being paramba, the average local price of the produce of the trees on which pattam is assessable has fallen.

*Explanation (1).*—Where the area comprised in the kanam is described in the kanam deed in terms of para and there is no other indication calculated to make the extent more definite, a para of land shall be taken, for the purposes of this section to measure 12 cents.

*Explanation (2).*—The trees on which pattam is assessable are the following.—

Cocoonut trees, arecanut trees and jack trees.

Time for suit under section 29.

35. The suit provided for by section 29 shall be dismissed unless it is brought within three years of the termination of the previous kanam, original or renewed, or within two years of the passing of this Act whichever is later.

Landlord entitled to renewal fee even if no suit is brought under section 29.

36. If no renewal is effected in the manner hereinbefore provided, the tenant shall, notwithstanding anything contained in section 19, be deemed to have obtained a renewal on the previous terms for 12 years from the termination of the previous kanam, original or renewed, and the landlord shall be entitled to the renewal fee as on renewal.

*Exception.*—When the period of the previous kanam is other than 12 years, such other period shall be read in lieu of 12 years in applying this section.

Applicability of the rule in section 36 to subsequent period.

37. At the expiry of the said renewed period and of every successive period of the same duration, the rule stated in the preceding section shall be applied in the

same manner as if the last renewed period were the original period of the kanam.

## CHAPTER IV

### Payment of Rent, Michavaram and other Dues

38. In the absence of a written agreement specifying the time and place at which rent, michavaram or other dues shall be paid to the landlord, they shall be paid in the manner following namely.—

Payment of rent and other dues.

(1) The annual rent or michavaram shall be paid on or before the last day of Kumbham of each year except when the demise is of puncha and kole nilams, in which case it shall be paid on or before the last day of Edavam of each year.

*Explanation.*—Puncha and kole nilams are those harvested in or about the month of Medam.

(2) If the rent or michavaram is payable in money, it shall be paid at the residence of the landlord and if in kind at the residence or granary of the landlord within the village in which the holding is situate and if there be no such residence or granary, at such place within the village as may be indicated by the landlord by notice in writing given to the tenant.

Place of Payment.

(3) Puravaka dues, either at the time they are due by custom or on demand.

39. Every tenant paying rent, michavaram or puravaka dues shall be entitled to a receipt specifying—

Tenant's right to a receipt.

(a) a description of the holding in respect of which it is paid;

(b) the date of payment;

(c) the amount paid,

(d) the period to which the amount paid relates;

and (e) the arrears, if any, remaining due from the tenant after the said payment.

40. A reference to the date and registration number of the document under which the holding is held and also the name of the registration district in which the said holding is situate shall be deemed to be a sufficient description of the holding for the purpose of the above section.

What is a sufficient description of the holding.

Burden of proof in the absence of particulars.

41. In the absence of the particulars specified in clause (e) of section 39, the burden of proving that the tenant is bound to pay any arrears of rent or michavaram which had accrued due previous to the date of the receipt shall be on the person claiming such arrears.

Procedure when landlord fails to grant receipt.

42. If the landlord refuses or neglects to grant a receipt as provided in section 39, the tenant shall be entitled to send by money order, after deducting the charges for doing so,—

(a) the money, if the rent, michavaram or other dues are payable in money; or

(b) the money value of the rent, michavaram or other dues, if they are payable in kind.

Such money value shall be computed with reference to the rate published in the Cochin Government Gazette for the date on which the value is remitted or if no such rate is published for that date, at the rate for the next previous date for which a rate is so published.

Government shall cause to be published in the Cochin Government Gazette every month the price of paddy, cocoanut, arecanut, pepper and such other produces at each Taluk Head-quarters by a Gazetted officer.

Exemption from stamp duty.

43. A receipt granted under this chapter shall be exempt from stamp duty under the Stamp Act.

## CHAPTER V

### Jurisdiction of Courts

Jurisdiction of Courts and court-fee for suits.

44. The suit provided for by section 29 of this Act may be brought in the Court having jurisdiction to entertain a suit for eviction of the holding.

Notwithstanding anything contained in the Court-fees Act to the contrary, the court-fee payable on the plaint or memorandum of appeal in such a suit shall be *ad valorem* on the kanam amount but shall not exceed Rs. 10.

Summary Jurisdiction of Munsiffs' Courts.

45. District Munsiffs may summarily try and dispose of suits by landlords for recovery of arrears of pattam, michavaram, renewal fee or other dues when the amount or value of the suit does not exceed Rs. 200.

In such suits, the Court shall, except as hereinafter provided, follow the procedure prescribed in the Cochin Code of Civil Procedure for the trial of small cause suits.

Notwithstanding anything contained in the Court-fees Act, the court-fee payable on the plaint in such suits shall be the same as on an application when the arrears to be recovered have accrued due within 12 months of the date of the institution of the suit.

46. In respect of suits under section 45, the plaint may be signed by an agent of the landlord having written authority in that behalf and he shall be deemed to be the recognised agent of the plaintiff within the meaning of the Code of Civil Procedure. Recognised agent of landlord.

In such suits the Court may decide any question of title to immovable property or status which may be necessary for the determination of the suit but such decision shall not be *Res-Judicata* in any proceeding other than a suit under section 45.

47. The decision passed in a suit under section 45 shall not be appealable. Decision non-appealable.

48. (1) It shall be competent to the land-lord of any holding to which Chapter III applies, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of michavaram, tax or other dues in respect of that holding : Application to Tahsildar for recovery of arrears.

Provided that the arrears are not more than one year old on the date of the application and a demand in writing by registered anchal or post has been sent to the tenant for the payment of such arrears not less than seven days before the date of application.

(2) The application shall be in such form and shall contain such particulars as may be prescribed by the Diwan and shall be signed and verified by the landlord, in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

(3) The applicant shall, from time to time, pay to the Tahsildar such fees as may be prescribed by the Diwan for the several processes that may be necessary for realising the arrears. The applicant shall be entitled to a refund of any portion of such fees that may remain unexpended at the termination of the proceedings.

(4) If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the

tenant, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and interest and the fees paid under sub-section (3) by the applicant as if they were an arrear of land revenue due to Government and the provisions of the Revenue Recovery Act, IV of 1083, shall, *Mutatis Mutandis*, apply to all the proceedings.

(5) (a) The amount that is recovered shall be paid by the Tahsildar to the applicant on taking a receipt from him in a form as near as may be to that contemplated by section 39.

(b) A copy of the receipt with the attestation of the Tahsildar shall be given free of cost to the tenant if he applies for it.

*Explanation.*—Nothing in this section shall be deemed to bar the right of civil suit which any aggrieved party may have in law.

Application to Court when landlord refuses to accept a tender.

49. If the landlord refuses to accept a tender of any dues mentioned in Chapter IV of this Act or the tenant is doubtful as to the person entitled to receive the same and no suit has been brought against the tenant for recovery of the said dues, the tenant may apply to the court having jurisdiction to entertain a suit for the eviction of the holding for permission to pay the same through the Court.

Along with the said application, the tenant shall deposit in Court the said dues together with interest, if any, accruing thereon.

Procedure on such application.

50. When such application and deposit have been made, the Court shall examine the applicant and if it finds that the application has been made in accordance with the above section, bonafide and on justifiable grounds it shall allow the application and give notice, at the cost of the applicant, to every person who, in the opinion of the Court, is entitled to be heard as to the claim to receive the said amount, and may after hearing such of them as appear, pay the amount to the person found entitled to receive it.

The Court may make such order as to the cost of the said proceeding as it may deem fit.

Nothing in this section shall affect the right of any person to recover the said amount by suit from the person

to whom it is paid, but the order allowing the application shall be deemed a full acquittance to the tenant in respect of the amount covered by it.

## CHAPTER VI

### Miscellaneous

51. In the absence of a contract to the contrary, the kanam-tenant shall be liable as between himself and the land-lord to pay all Government and local taxes, in respect of the land comprised in his holding whether existing at the time of the demised or imposed afterwards.

Tenant's liability to pay taxes, etc.

52. Subject to the provisions of this Act, all rights which a tenant has in his holding shall be heritable and alienable.

Tenant's rights to be heritable and alienable.

53. Arrears of pattam, michavaram, renewal fee and other dues owing to the landlord as well as arrears of revenue or other dues hereunder mentioned in this section, which are payable by the tenant but have been paid by the landlord, shall be a charge on the holding and shall have priority over all other charges on the same save arrears of revenue and any dues thereon payable to Government or to a local authority and made a charge thereon by any law for the time being in force.

Priority of claim for arrears of pattam, etc.



**THE GOVERNMENT TRADING TAXATION ACT**  
**(V of 1115)**

**CONTENTS**

**Sections**

1. Short title and commencement.
2. Liability of foreign Governments to taxation in respect of trading operations.

**THE GOVERNMENT TRADING TAXATION ACT**  
**(V of 1115)**

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1115	V	The Government Trading Taxation Act	Amended by Act IX of 1117

*Passed by His Highness the Maharaja of Cochin  
on the 27th day of Dhanu 1115, cor-  
responding to the 11th day of  
January 1940.*

WHEREAS it is expedient to determine the liability to taxation for the time being in force in Cochin of foreign Governments in respect of any trade or business carried on by or on behalf of such Government; It is hereby enacted as follows.—

Short title  
and com-  
mencement.

1. (1) This Act may be called the Government Trading Taxation Act, V of 1115.

(2) It shall come into force on such <sup>1</sup> date as Government may, by notification in the Cochin Government Gazette, appoint.

Liability of  
foreign  
Governments  
to taxation  
in respect of  
trading  
operations

2. (1) Where a trade or business of any kind is carried on by or on behalf of any Government other than the Government of Cochin, that Government shall, in respect of the trade or business and of all operations

<sup>1</sup> Brought into force from 1st Chingam 1116 by Finance Department Notification No. 19 dated 2nd Kumbham 1115.

connected therewith, all property occupied in Cochin State and all goods owned in Cochin State for the purposes thereof, and all income arising in connection therewith, be liable—

- (a) to taxation under the Cochin Income-tax Act (VIII of 1108), in the same manner and to the same extent as in the like case a company would be liable;
- (b) to all other taxation for the time being in force in Cochin State in the same manner as in the like case any other person would be liable;

! [Provided that Government may, by notification in the Cochin Government Gazette, make an exemption, reduction in rate or other modification they deem fit in respect of the tax payable under this Act in favour of any such Government either in regard to the whole or any part of their income.]

- (2) For the purposes of the levy and collection of income-tax under the Cochin Income-tax Act (VIII of 1108), in accordance with the provisions of sub-section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act and the provisions of that Act shall apply accordingly.

## PROCLAMATION

(No. III of 1113)

[As amended by Proclamations X of 1116 and XX of 1117]

BY HIS HIGHNESS SIR SREE RAMA VARMA,  
G.C.I.E., MAHARAJA OF COCHIN

*Issued under date the 10th day of Mithunam 1113,  
corresponding to the 24th day of June 1938*

WHEREAS it is deemed necessary that action should be taken for the levy of Landing and Shipping Fees upon passengers and goods landed from or shipped into any vessel lying or being within the limits of OUR Port of Cochin: WE are pleased to command as follows:—

1. Landing and Shipping Fees, according to the rates which may be fixed by the Administrative Officer <sup>1</sup>[ \* \* ] of the Cochin Harbour, shall be levied upon passengers and goods landed from or shipped into any vessel lying or being within the limits of OUR Port of Cochin:

Provided that OUR Government may, by general or special order, exempt any class or classes of passengers or goods from payment of fees under this Proclamation and may, in special cases, remit the whole or any portion of the same.

2. The said Administrative Officer <sup>1</sup>[ \* \* ] shall receive such fees.

3. Such fees shall be credited to the Landing and Shipping Fund.

<sup>2</sup>4. Government may from time to time make rules—

(a) appointing places where goods or particular classes of goods intended for shipment or landed from ships within the port are to be placed for the purpose of assessing the fees payable under this Proclamation and places where passengers may land or embark;

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<sup>1</sup> Deleted by Proclamation X of 1116.

<sup>2</sup> Added by Proclamation XX of 1117.

(b) providing for the ascertainment and recovery of the amount of any damage that may be caused to a pier, jetty, wharf, quay or other work in a port by any person or by any vessel or drift; and

(c) generally for carrying out the purposes of this Proclamation.

Such rules and any alteration or cancellation thereof shall be published in the Cochin Government Gazette, and shall thereupon have the force of law.]

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# THE COCHIN MATERNITY BENEFIT ACT

(XXVII of 1113)

(As amended up to 1st Kumbham 1122)

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Preamble

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12. Period of limitation for prosecution under this Act
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## THE COCHIN MATERNITY BENEFIT ACT

(XXVII of 1113)

### HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	XXVII	The Cochin Maternity Benefit Act	Amended by Act II of 1122

*Passed by His Highness the Maharaja of Cochin on the 29th day of Mithunam 1113, corresponding to the 13th day of July 1938*

Preamble. Whereas it is expedient to prevent the employment of women in factories for some time before and some time

after confinement and to provide for the payment of maternity benefit to them; It is hereby enacted as follows.—

1. This Act may be called the Cochin Maternity Short title.  
Benefit Act, XXVII of 1113.

2. (1) It shall come into force at once.

Commence-  
ment and  
extent.

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

3. In this Act unless there is anything repugnant in Definition.  
the subject or context—

(a) “employer” includes an occupier of a factory as defined in the Cochin Factories Act and the Manager of a factory;

(b) the expressions “factory”, “Inspector of Factories”, “seasonal factory” and “worker” shall have the same meanings as are respectively assigned to them by the Cochin Factories Act, II of 1113, and

(c) “maternity benefit” means the amount of money payable under the provisions of this Act to a woman worker in a factory.

4. After this Act comes into operation no employer shall knowingly employ a woman in any factory during the four weeks immediately following the day of her confinement. Prohibition of  
employment of  
women in  
factories  
immediately  
after confine-  
ment.

5. (1) Subject to the provisions of this Act every woman worker in a factory not being a seasonal factory shall be entitled to the payment of maternity benefit at the rate of <sup>1</sup>[eight annas a day] for the actual days of her absence during the period immediately preceding her confinement and for the four weeks immediately following her confinement as mentioned in sub-section (2): Right to  
maternity  
benefit of wo-  
men workes in  
non-seasonal  
factories.

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory of the employer from whom she claims maternity benefit for a period of not less than 12 months immediately preceding the date on which she gives notice under sub-section (1) of section 6.

(2) The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be eight weeks, that is to say, four weeks up to and including

<sup>1</sup> Substituted by section 2, Act XXVII of 1113.

the day of her confinement and four weeks immediately following that day. If a woman dies during this period the maternity benefit shall be payable only for the days up to and including the day of her death.

Notice of claim of maternity benefit and payment thereof.

6. (1) Any woman worker in a factory entitled to maternity benefit under the provisions of this Act may give notice in writing to her employer stating that her maternity benefit may be paid to her or to such other person as she may nominate in this behalf and that she will not work in any employment during the period for which she receives maternity benefit. If the woman worker has not been confined, such notice shall state that she expects to be confined within one month from the date of the notice; if she has been confined, such notice shall be given within one week of her confinement.

(2) The employer shall, on receipt of the notice permit such woman to absent herself from the factory until the expiry of four weeks after the day of her confinement.

(3) The amount of maternity benefit for the period up to and including the day of confinement shall be paid by the employer to the woman within forty-eight hours of the production of such proof as the Government may, by rule, prescribe that the woman has been confined. The amount due for the subsequent period shall be paid punctually each fortnight in arrear.

Payment of maternity benefit in case of claimant's death.

7. If a woman worker entitled to maternity benefit under the provisions of this Act dies during the period for which she is entitled to maternity benefit, the employer shall pay the amount of maternity benefit due to the nominee mentioned in the notice given under sub-section (1) of section 6 and if there is no such nominee to her legal representative.

Prohibition of notice of dismissal to woman worker in certain cases.

8.—(1) When a woman worker absents herself from work in accordance with the provisions of this Act it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman worker within a

period of three months before her confinement shall have the effect of depriving her of any maternity benefit to which but for such notice she would have been, or would, on or before the date of her confinement, have become, entitled under this Act.

(b) If any question arises as to whether any notice of dismissal given under clause (a) was or was not given for sufficient cause, it shall be referred to the Inspector of Factories whose decision shall be final.

(c) The provisions of this sub-section shall not apply to notices falling under sub-section (1).

9. If a woman works in any factory after she has been permitted by her employer to absent herself under the provisions of section 6, she shall forfeit her claim to the payment of the maternity benefit to which she is entitled.

Forfeiture of  
maternity  
benefit.

10. If any employer contravenes the provisions of this Act he shall be punishable with fine which may extend to one hundred rupees.

Penalty for  
contravention  
of Act by  
employer.

11.—(1) No prosecution for any offence against this Act or any rules thereunder shall be instituted except by or with the previous sanction of the Inspector of Factories.

Jurisdiction  
of Courts.

(2) No court inferior to that of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

12. No Court shall take cognizance of, or convict a person for, any offence against this Act or any rule thereunder unless complaint thereof has been made within six months of the date on which the offence was committed. In computing the period of six months aforesaid, the time, if any, taken for the purpose of obtaining the previous sanction of the Inspector of Factories under sub-section (1) of section 11 shall be excluded.

Period of  
limitation  
for prose-  
cutions  
under this  
Act.

13.—(1) The Government may make rules for the purpose of carrying into effect the provisions of this Act.

Rules.

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



(a) the preparation and maintenance of a muster roll and the particulars to be entered in such roll;

(b) the inspection of factories for the purposes of this Act by Inspectors of Factories;

(c) the exercise of powers and the performance of duties by Inspectors of Factories for the purposes of this Act; and

(d) the method of payment of maternity benefit in so far as provision has not been made therefor in this Act.

(3) Any such rule may provide that a contrvention thereof shall be punishable with fine which may extend to rupees twenty-five.

(4) The making of rules under this section shall be subject to the condition of previous publication.

14. A copy of the provisions of this Act and the rules thereunder in Malayalam shall be exhibited in a conspicuous place by the employer in every factory in which women are employed.

Copy of Act  
and rules to  
be exhibited  
in factories  
employing  
women.

# THE COCHIN TEA CESS ACT

(XXX of 1113)

(As amended up to 1st Kumbham 1122)

## CONTENTS

### Preamble

#### Sections

1. Short title, extent and commencement.
2. Definitions.
3. Imposition of Tea Cess.
4. Agency for collecting Tea Cess.
5. Power of Government to make rules.

# THE COCHIN TEA CESS ACT

(XXX of 1113)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	XXX	The Cochin Tea Cess Act	Amended by Act XI of 1114

*Promulgated under the prerogative powers of  
His Highness the Maharaja of Cochin  
on the 28th day of Karkadagam 1113, corresponding  
to the 12th day of August 1938.*

WHEREAS it is expedient to collaborate with the Government of India in providing for the creation of a fund to be expended by the committee constituted by the Government of India under the Indian Tea Cess Act, 1903, for the promotion of the cultivation, manufacture and sale of Indian tea, it is hereby enacted as follows:—

1. (1) This Act may be called the Cochin Tea Cess Act, XXX of 1113.

(2) It shall extend to the whole of Cochin State and shall come into force at once and shall continue to be in force for a period of ten years and for such further

Preamble.  
Short title,  
extent and  
commence-  
ment.

period as the Government may, from time to time, notify in the Cochin Government Gazette.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Tea Cess” means the Customs Duty imposed by section 3 of this Act; and

(2) “India” means the whole of British India including all the Indian States.

Imposition of  
Tea Cess.

3. <sup>1</sup>[A customs duty at such rate as Government may, from time to time, fix by notification in the Cochin Government Gazette shall be levied on all tea produced in India and exported by sea from any port in the Cochin State.]

Agency for  
collecting  
Tea Cess.

4. The collection of the Tea Cess shall be made by such officers of customs as have been appointed by the Government for the purpose under section 5 of the Cochin Sea Customs Act, XII of 1109, and shall be governed by the provisions contained in that Act.

Power of  
Government  
to make rules.

5. The Government may make rules, not inconsistent with the provisions of this Act, to carry out the provisions of this Act.

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<sup>1</sup> Substituted by section 2, Act XI of 1114.

**Correction Slip to page 423**

**\*[For the words "the salaries of the Minister and the Deputy President of the Cochin Legislative Council" occurring in the preamble read "the salaries and allowances of the Ministers and of the President and Deputy President of the Cochin Legislative Council.]**

**\*Substituted by section 2 of Act XVI of 1122.**

# THE COCHIN PAYMENT OF SALARIES AND ALLOWANCES ACT

(XXXI of 1113)

(As amended up to 1st Kumbham 1122)

## CONTENTS

### Preamble

#### Sections

1. Short title and commencement.
2. Salary of Ministers.
- 2A. Travelling and daily allowances to the Ministers.
3. Salary of Deputy President.
4. Allowances to Non-official members of the Legislative Council

## THE COCHIN PAYMENT OF SALARIES AND ALLOWANCES ACT

(XXXI of 1113)

### HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	XXXI	The Cochin Payment of Salaries and Allowances Act	Amended by Acts IX and X of 1121 and I of 1122

*Passed by His Highness the Maharaja of Cochin  
on the 28th day of Karkadagam 1113, corresponding  
to the 12th day of August 1938.*

WHEREAS it is expedient to provide by an Act of the Legislature for the salaries of the Minister and of the Deputy President of the Cochin Legislative Council and for the allowances to the members thereof; It is hereby enacted as follows:—

1. (1) This Act may be called the Cochin Payment of Salaries and Allowances Act, XXXI of 1113.

Short title and commencement.

(2) This Act shall come into force at once.

2. <sup>1</sup>[(1)] There shall be paid to <sup>2</sup>[each Minister] a salary of Rs. 500 per mensem, <sup>3</sup>[and dearness allowance at

Salary of Minister.

<sup>1</sup> Renumbered by section 2, Act I of 1122.

<sup>2</sup> Substituted by section 2, Act X of 1121.

<sup>3</sup> Substituted by section 2, Act IX of 1121.

such rates as officers of Government drawing a salary of Rs. 500 per mensem shall be entitled to from time to time.]

<sup>4</sup>[(2) Government shall provide each Minister throughout his term of office.—

(a) With a furnished residence without payment of rent or hire or other charges; and

(b) With a car for his use free of all charges, except the cost of petrol and lubricating oil;

(3) Each Minister shall be paid a fixed allowance of Rs. 100 per mensem to cover the charges for petrol and lubricating oil for the car provided for his use under sub-section (2).]

Travelling and daily allowances to the Ministers.

<sup>5</sup>[2. A. Each Minister shall be entitled to Travelling and Daily allowances at such rates as the Diwan may be entitled to from time to time.]

Salary of Deputy President.

3. There shall be paid to the Deputy President of the Legislative Council a salary of <sup>6</sup>[Rs. 2,000] per annum, which he shall receive in addition to <sup>7</sup>[Travelling and Daily allowances as a member of the Council under sub-section (2) of section 4.]

Allowances to non-official members of the Legislative Council.

4. <sup>8</sup>[(1) Every non-official member of the Legislative Council who does not hold any of the offices referred to in section 2 or section 3 shall be entitled to receive a consolidated allowance at the rate of Rs. 1,000 per annum.

(2) <sup>9</sup>[The non-official members] of the Legislative Council shall be entitled to receive Travelling and Daily allowances at such rates as may be prescribed from time to time for first class officers of Government in the Cochin Service Regulations:

Provided that the non-official members of the Legislative Council who draw the consolidated allowance referred to in sub-section (1) shall not be entitled to any Travelling allowance or Daily allowance for attending the meetings of the Legislative Council.]

<sup>4</sup> Added by section 2, Act I of 1122.

<sup>5</sup> Added by section 3, *ibid*

<sup>6</sup> Substituted by section 2, Act IX of 1121.

<sup>7</sup> Substituted by section 2, *ibid*.

<sup>8</sup> Substituted by section 3, *ibid*.

<sup>9</sup> Substituted by section 4, Act I of 1122.

### Correction Slip to page 424

\*[For the existing section 2 A the following shall be substituted.—

Subject to the other provisions contained in the Cochin Service Regulations, each Minister shall be entitled to Travelling and Daily allowances at the rates specified in the Schedule.]

\*\*[After section 2 A the following section 2 B and 2 C shall be added.

2B. The President of the Legislative Council shall be provided by Government with a car for his use and shall be paid

(i) a salary of Rs. 500 per mensem and Dearness allowance at such rates as Officers of Government drawing a salary of Rs. 500 per mensem may be entitled to from time to time.

(ii) a House Rent allowance of Rs. 150 per mensem and

(iii) an allowance of Rs. 75 per mensem towards the cost of petrol and lubricating oil for the car.

2C. Subject to the other provisions contained in the Cochin Service Regulations, the President shall be entitled to Travelling and Daily allowances at the rates specified in the Schedule.]

\*\*\*[In sub-section (i) of section 4 after the word and figure "Section 2" the word, figure and letter "section 2B" shall be added.]

\*\*\*\*[The following schedule shall be annexed to the Act.

*See Schedule 2 A and 2 C*

#### I. Travelling allowance.

<i>Particulars</i>	<i>Rates</i>
1. Railway fare	1½ First Class
2. Plane fare	Actual plane fare plus half first class railway fare.
3. Mileage in connection with journeys outside the State	Re. 1.
Mileage is not admissible for journeys within the State.	

#### II. Daily allowance.

<i>Particulars</i>	<i>Rates</i>
1. For halts (at places other than at Headquarters) and journeys within the Cochin State	Daily allowance of Rs. 10
2. For halts.—	
(i) in the city of Madras,	} Daily allowance of Rs. 45 including carriage allowance
(ii) in provinces other than the Province of Madras, and	
(iii) in Indian States other than Mysore, Travancore, Pudukkotta, Banganapalle and Sandur	
3. For halts in places not provided for in 1 and 2 above	Daily allowance of Rs. 30 including carriage allowance

\*Substituted by section 2 of Act XVI of 1122.

\*\*Section 2-B substituted by section 3 of Act VII of 1123. Section 2 C inserted by section 4 *ibid*.

\*\*\*Added by section 5 *ibid*.

\*\*\*\*Added by *ibid*.

# PROCLAMATION

(No. I of 1114)

Promulgated by

HIS HIGHNESS SIR SREE RAMA VARMA G.C.I.E.,  
MAHARAJA OF COCHIN

*on the 17th day of Chingam 1114, corresponding to the  
2nd day of September 1938.*

(As amended by Proclamation XV of 1118)

WHEREAS deeds of surrender (Documents Nos. 627 of 1113 to the Enammavu District Registry Office, 123 of the Sreemoolanagaram District Registry Office and 312 of the Narakkal District Registry Office) have been executed to OUR Diwan for and on behalf of OUR Government by all the members of the families of Chazhur Thekkepat Kovilagam, Vellarappilli Vadakke Kovilagam and the Elankunnapuzha Nadakkal Kovilagam respectively,

And whereas difficulties and confusion have of late arisen in connection with the management of the affairs of the respective Kovilagams.

And whereas it is deemed necessary for the proper and efficient management of the aforesaid Kovilagams that OUR Government should assume the management of the affairs of the said Kovilagams,

WE are pleased to command as follows.—

1. That the management of the aforesaid Kovilagams and the Devaswams appertaining thereto now being attended to by the respective Karanavans (hereinafter referred to as the Estate of the respective Kovilagam) shall be assumed forthwith by OUR Government and that such management by OUR Government shall be continued until such time as OUR Government may deem fit.

2. That during the period of such management of the Estates OUR Government shall have plenary powers with regard to alienation of properties belonging to each Estate, with regard to composition with tenants in respect of arrears of rent, michavaram and kindred dues accruing and accrued due and with regard to the rights of management in general and to do all that OUR Government consider necessary for the efficient administration and management of the Estates.



3. OUR Government may, by notification published in the Cochin Government Gazette, appoint a person or persons to manage the affairs of the aforesaid Estates and OUR Government may delegate, by notification published in the Cochin Government Gazette, to the person or persons so appointed or to such other person or persons they may nominate in this behalf all or any of the powers conferred upon them by clauses 1 and 2 above.

4. OUR Government may frame such rules, as may, from time to time, be deemed necessary for managing the affairs of the aforesaid Estates. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other grounds:

5. All suits on behalf of or against the aforesaid Estates shall, during the period of management of the Estates by OUR Government, be brought in the name of OUR Government or in the name of any officer or persons as OUR Government may, generally or specially, by rules framed under this Proclamation, appoint.

6. All acts done by OUR Government or by their nominee or nominees in pursuance of the powers conferred by this Proclamation and during the period of management by OUR Government shall be accepted without question by the members of the aforesaid Kovilagams and all accounts of management maintained by OUR Government or their nominees and all items of expenditure incurred by them for and on behalf of the aforesaid Kovilagams during such period shall also be accepted without question by the members of the aforesaid Kovilagams.

7. For the recovery of dues already accrued due, or accruing due in future, to the aforesaid Estates, during the period of their management by OUR Government, the provisions of the Revenue Recovery Act, IV of 1083, shall apply in the case of the Chazhur Thekkepatt Kovilagam Estate and the provisions of the Devaswam Rent Recovery Rules shall apply in the case of the Vellarappilli Vadakke Kovilagam Estate and the Elankunnapuzha Nadakkal Kovilagam Estate.

8. [Every officer or servant employed by OUR Government in relation to the management of the Estate shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code].

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<sup>1</sup> Added by the schedule to Proclamation XV of 1118.

# THE REGISTRATION OF FOREIGNERS ACT

(XV of 1114)

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2. Definitions.
3. Power to make rules.
4. Burden of proof.
5. Power to exempt from application of Act.
6. Protection to persons acting under this Act.
7. Application of other laws not barred.
8. Penalties.

## THE REGISTRATION OF FOREIGNERS ACT

(XV of 1114)

### HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1114	XV	The Registration of Foreigners Act	Amended by Act XVI of 1114 and application extended by Proclamation, XXII of 1117 <sup>1</sup>

*Promulgated by His Highness the Maharaja of Cochin on the 16th day of Mithunam 1114 corresponding to the 30th day of June 1939*

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in and departing from Cochin State; It is hereby enacted as follows:—

1. (1) This Act may be called the Registration of Foreigners Act, XV of 1114.

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

<sup>1</sup>Proclamation XXII of 1117, extends the application of the provisions of this Act and Rules and Orders made thereunder to any person who was at birth a subject of any State in Europe excluding His Majesty's dominions in Europe or a Japanese, Chinese, or their subject.

## Definitions.

## 2. In this Act—

(a) the term 'foreigner' shall denote a person who is not—

(i) a British subject domiciled in the United Kingdom; or

(ii) a British Indian subject; or

(iii) a ruler or subject of this or any other Indian State; or

(iv) a person duly appointed by a Foreign Government to exercise diplomatic functions with the Government of India; <sup>1</sup>[ or

(v) a consul or a vice-consul.]

(b) 'prescribed' means prescribed by rules made under this Act.

## Power to make rules.

3. Government may after previous publication by notification in the Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say—

(a) for requiring any foreigner entering or being present in Cochin State, to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in Cochin State to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave Cochin State to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, Cochin State to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

(e) for requiring any person having the management of any hotel, boarding-house or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority

<sup>1</sup>Added by section 2, Act XVI of 1114.

within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from Cochin State in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to Government necessary or expedient for giving effect to this Act.

4. If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act as made applicable to Cochin, lie upon such person. <sup>Burden of proof.</sup>

5. Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees. <sup>Power to exempt from application of Act.</sup>

6. Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order to or in relation to any individual foreigner or any class or description of foreigner. <sup>Protection to persons acting under this Act.</sup>

7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act. <sup>Application of other laws not barred.</sup>

8. The provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force. <sup>Penalties.</sup>

# PROCLAMATION

(IV of 1114)

*Promulgated by His Highness Sir Sree Rama Varma,  
G.C.I.E., Maharaja of Cochin, on the 18th day of  
Karkadagam 1114 corresponding to  
the 3rd day of August 1939*

**(As amended by Proclamation XIV of 1122)**

WHEREAS it is necessary to enact a law relating to Merchant Shipping, We are pleased to command that the provisions of the Indian Merchant Shipping Act, 1923, <sup>1</sup>[with all the amendments hitherto made or hereafter to be made], shall *mutatis mutandis* come into force in Our State.

We are further pleased to command that Our Government may, by notification in the Cochin Government Gazette, provide that the rules and notifications <sup>1</sup>[hitherto issued or hereafter to be issued] under the Indian Merchant Shipping Act or so much of them as are necessary shall apply *Mutatis Mutandis* in our State.

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<sup>1</sup> Substituted by Proclamation XIV of 1122.

## PROCLAMATION

(VII of 1115)

*Promulgated by His Highness Sir Sree Rama Varma,  
G. C. I. E., Maharaja of Cochin, on the 14th day  
of Vrischigam 1115 corresponding to  
the 30th day of November 1939*

(As amended by Proclamation IV of 1117)

WHEREAS for the efficient and prompt collection of *pattam, michavaram*, renewal fees and other dues, due to the Palliara Muthalpidi Estate <sup>1</sup>[and to the Devaswams under the management of the said Estate] it is deemed necessary to apply the provisions of the Cochin Revenue Recovery Act, We are hereby pleased to command as follows.—

1. All dues whether accrued due or accruing due in future to the Palliara Muthalpidy Estate, <sup>2</sup>[and to the Devaswams under the management of the said Estate] hereinafter referred to in this Proclamation as the Estate, shall be recovered as an arrear of revenue due to Government under the Cochin Revenue Recovery Act, IV of 1083, and the said Act shall apply *mutatis mutandis* to the collection of such dues and to all proceedings connected therewith.

2. Our Government may, from time to time, by rules, prescribe the procedure to be adopted for the recovery of the dues owing to the Estate and generally for giving effect to this Proclamation. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other ground.

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<sup>1</sup> Inserted by section 1, Proclamation IV of 1117.

<sup>2</sup> Inserted by section 2, *ibid.*

**THE COCHIN STATE SOLDIERS (LITIGATION) ACT**  
**(I of 1116)**  
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4. Particulars to be furnished in complaints, applications or appeals to Court.
5. Power of the Diwan Peishkar to intervene in case of unrepresented State soldier.
6. Notice to be given in case of unrepresented State soldier.
7. Postponement of proceedings.
8. Court may proceed when no Certificate received.
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10. Power to set aside decrees and orders passed against a State soldier serving under war or special conditions.
11. Modification of law of limitation where State soldier or his legal representative is a party.
12. Power of Court to refer questions to prescribed authorities.
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**THE COCHIN STATE SOLDIERS**  
**(LITIGATION) ACT**  
**(I of 1116)**

**HISTORY OF LEGISLATION**

Year	Number	Short title	Amendments
1116	I	The Cochin State Soldiers (Litigation) Act	Amended by Acts XIII of 1118 and XVIII of 1119

*Promulgated by His Highness the Maharaja of Cochin  
on the 27th day of Chingam 1116, corresponding  
to the 11th day of September 1940*

**[Published in the Cochin Government Gazette, dated  
6th Kanni 1116]**

**Preamble.**

**WHEREAS** it is expedient to consolidate and amend the law to provide for the special protection in respect of

civil and revenue litigation of State soldiers serving under special conditions; It is hereby enacted as follows.—

1. (1) This Act may be called the Cochin State Soldiers (Litigation) Act I of 1116. Short title, extent and commencement.

(2) It extends to the whole of Cochin and shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context. Definitions.—

(a) “Court” means a Civil or Revenue Court;

[ (b) ‘State Soldier’ means any member of the State Force or of any other Indian State Force or any person subject to the Indian Army Act, 1911, or the Indian Air Force Act, 1932, or any person to whom the provisions of the Indian Soldiers (Litigation) Act, 1925, for the time being apply by virtue of a direction of the Central Government of India under section 14 thereof ].

(c) “prescribed” means prescribed by rules made under this Act; and

(d) “proceeding” includes any suit, appeal or application.

3. For the purposes of this Act, a State soldier shall be deemed to be or, as the case may be, to have been serving— Circumstances in which a State soldier shall be deemed to be serving under special conditions.

(a) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place in Persia, Tibet, Afghanistan, Kashmir, Nepal or China, or with any unit the headquarters of which are situated at any place in Chitral, Waziristan, the North West Frontier Province or British Baluchistan which is more than fifty miles distant by road from the nearest railway station;

(b) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the Government of India by Notification in their Official Gazette to constitute a state of war for the purposes of the Indian Soldiers (Litigation) Act IV of 1925 or at any time during a period of six months thereafter,—

(i) serving out of India,

(ii) under orders to proceed on field service,

<sup>1</sup> Substituted by section 2. Act XIII of 1119.



(iii) serving with any unit which is for the time being mobilised, or

(iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Government of India by notification in their Official Gazette to be service under war conditions; and

(c) overseas—when he is or has been serving in any place outside India (other than Ceylon) the journey between which and Cochin is ordinarily undertaken wholly or in part by sea.—

<sup>1</sup>[*Explanation.*—For the purposes of this section and with effect from the 3rd day of September, 1939, a soldier who is or has been a prisoner of war shall be deemed to be or to have been serving under war conditions.]

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a State soldier who is serving under special conditions, he shall state the fact in his plaint, application, or appeal.

Power of the Diwan Peishkar to intervene in case of unrepresented State soldier.

5. If the Diwan Peishkar has reason to believe that any State soldier who ordinarily resides or has property within Cochin State and who is a party to any proceeding pending before any Court, is unable to appear therein, the Diwan Peishkar may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented State soldier.

<sup>2</sup>[6. (1)] If the Diwan Peishkar has certified under section 5, or if the Court has reason to believe, that a State soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or Act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

<sup>1</sup> Added by section 2, Act XIII of 1118.

<sup>2</sup> Renumbered by section 3, *ibid.*

(a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others, with the object of enforcing a right of pre-emption, or

(b) the interests of the soldier in the proceeding are, in the opinion of the court either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

<sup>1</sup>[(2) If it appears to the Court before which any proceeding is pending that a State soldier though not a party to the proceeding is materially concerned in the outcome of the proceeding, and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority.]

7. If on receipt of a notice under section, 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the court shall thereupon postpone the proceedings in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit. Postponement of proceedings.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding. Court may proceed when no certificate received.

9. When any document purporting to be signed by the Commanding Officer of a State soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier— Postponement of proceedings against State soldier on leave.

(a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his

<sup>1</sup>Added by section 3, Act XIII of 1118.

unit with a view to proceeding on service under special conditions, the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to <sup>2</sup>[sub-section (1) of section 6,] and shall, in any other case be postponed in the manner provided in section 7.

Power to set aside decrees and orders passed against a State soldier serving under war or special conditions.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any State soldier <sup>2</sup> [ .. .. ] whilst he was serving under any special conditions, the soldier <sup>3</sup>[or, if he is dead, his legal representative] may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

<sup>3</sup>[(2) The period of limitation for an application under sub-section (1) shall be ninety days from the date of the decree or order, or, where the summons or notice was not duly served on the soldier in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order; and the provisions of section 5 of the Cochin Limitation Act, XII of 1112, shall apply to such applications.]

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

Modification of law of limitation where State soldier or his legal representative is a party.

<sup>4</sup>[11. In computing the period of limitation prescribed by sub-section (2) of section 10 of this Act, the Cochin Limitation Act, XII of 1112, or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been a State soldier, or is the legal representative of a State soldier the

2 Substituted by Section 6, Act XIII of 1118.

3 Deleted by Section 5, *ibid.*

3 Inserted by *ibid.*

4 Substituted by Section 4, *ibid.*

period during which the soldier has been serving under any special conditions, and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next of kin by the authorities in India, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

<sup>1</sup> [12. If any Court is in doubt whether, for the purpose of section 10 or section 11, a State soldier is or was at any particular time serving under special conditions, or has died while so serving, or as to the date of such death or as to the date on which official intimation of such death was sent to his next of kin by the authorities in India, the Court may refer the point for the decision of the prescribed authority, and the certificate of that authority, shall be conclusive evidence on the point.

Power of Court to refer questions to prescribed authorities.

13. Government may by notification in the Cochin Government Gazette, make rules to provide for all or any of the following matters namely.—

Rule-making power.

(a) the manner and form in which any notice or certificate under this Act shall be given;

(b) the period for which proceedings or any class of proceedings shall be postponed under section 7;

(c) the persons who shall be the prescribed authorities for the purposes of this Act;

(d) any other matter which is to be or may be prescribed; and

(e) generally, any matters incidental to the purposes of this Act.

14. Proclamation dated 7th Thulam 1091 is hereby Repeal, repealed.

<sup>1</sup> Substituted by Section 7, Act XIII of 1118.

# THE COCHIN CHILD MARRIAGE RESTRAINT ACT

(IV of 1116)

## CONTENTS

### Preamble

#### Sections

1. Short title, extent and commencement.
2. Definitions.
3. Punishment for male adult below 21 years of age marrying a child.
4. Punishment for male adult above 21 years of age marrying a child.
5. Punishment for solemnising a child marriage.
6. Punishment for parent or guardian concerned in a child marriage.
7. Imprisonment not to be awarded for offences under section 3.
8. Jurisdiction under this Act.
9. Mode of taking cognizance of offences.
10. Preliminary enquiry into offences under this Act.
11. Power to take security from complainant.
12. Power to issue injunction prohibiting marriage in contravention of this Act.

### \* THE COCHIN CHILD MARRIAGE RESTRAINT ACT

(IV of 1116)

*Passed by His Highness the Maharaja of Cochin  
on the 25th day of Dhanu 1116  
corresponding to the 8th day of January 1941.*

#### Preamble.

WHEREAS it is expedient to restrain the solemnisation of child marriages; It is hereby enacted as follows.—

#### Short title, extent and commence- ment.

1. (1) This Act may be called the Cochin Child Marriage Restraint Act, IV of 1116.

(2) It extends to the whole of Cochin State, and applies also to all subjects of His Highness the Maharaja wherever they may be.

(3) It shall come into force at once.

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\*Provisions of this Act not made applicable to Thrithalicharthu ceremony in the Ruling family and certain other families and the Thalikettu of the Thirumulpad Community by Proclamation V of 1116.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "child" means a person who, if a male is under 18 years of age, and if a female, is under 14 years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnised; and

(d) "minor" means a person of either sex who is under 18 years of age.

3. Whoever, being a male above 18 years of age and below 21, contracts a child marriage shall be punishable with fine which may extend to Rs. 1,000,

Punishment for male adult below 21 years of age marrying a child.

4. Whoever, being a male above 21 years of age, contracts a child marriage shall be punishable with fine which may extend to Rs. 1,000.

Punishment for male adult above 21 years of age marrying a child.

5. Whoever performs, conducts or directs any child marriage shall be punishable with fine which may extend to Rs. 1,000, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for solemnising a child marriage.

6. (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised, shall be punishable with fine which may extend to Rs. 1,000.

Punishment for parent or guardian concerned a child in marriage.

(2) For the purposes of this section, it shall be presumed unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

7. Notwithstanding anything contained in section 23 of the Cochin General Clauses Act, III of 1079 or section 55 of the *Cochin Penal Code*, I of 1059, a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.

Imprisonment not to be awarded for offences under section 3.

Jurisdiction  
under this  
Act.

8. Notwithstanding anything contained in section 168 of the *Cochin Code of Criminal Procedure*, II of 1086, no Court other than that of a Magistrate of the First Class shall take cognizance of, or try, any offence under this Act.

Mode of  
taking cogni-  
zance of  
offences.

9. No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

Preliminary  
enquiries into  
offences  
under this  
Act.

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 180 of the *Cochin Code of Criminal Procedure*, II of 1086, either itself make an enquiry under section 179 of that Code or direct a Magistrate of the First Class subordinate to it to make such enquiry.

Power to  
take security  
from com-  
plainant.

11. (1) When the Court takes cognizance of any offence under this Act upon a complaint made to it, it may, for reasons to be recorded in writing, at any time after examining the complainant and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding Rs. 100 as security for the payment of any compensation which the complainant may be directed to pay under section 226 of the *Cochin Code of Criminal Procedure*, II of 1086, and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

(2) A bond taken under this section shall be deemed to be a bond taken under the *Cochin Code of Criminal Procedure*, II of 1086, and Chapter XLI of that Code shall apply accordingly.

Power to  
issue injunc-  
tion prohi-  
biting  
marriage in  
contravention  
of this Act.

12. (1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of the Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to 3 months, or with fine which may extend to Rs. 1,000, or with both:

Provided that no woman shall be punishable with imprisonment.

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# PROCLAMATION

(V of 1117)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 13th day of Vrischigam 1117*

*corresponding to the 28th day of November 1941*

**(As amended by Proclamations XV and XXV of 1118)**

**[Published in the Cochin Government Gazette,**

**dated 14th Vrischigam 1117]**

WHEREAS for the proper and efficient management of the Cheranellur Swaroopam, We consider that OUR GOVERNMENT should assume the management of the affairs of the said Swaroopam;

AND WHEREAS a deed of surrender (Document No. 21 of Book II of 1117 of the Ernakulam District Registry Office) has been executed to the Secretary to Government for and on behalf of OUR GOVERNMENT by all the members of the aforesaid Swaroopam;

WE are pleased to command as follows.—

1. The management of the Cheranellur Swaroopam, the Sree Chakram Temple, the Thottathingal Sastha Temple, the <sup>1</sup>[Parambanarkulangara Temple, the Kandankulangara Bhagavathi Devaswam] and of all the properties appertaining thereto (hereinafter referred to as the Estate) shall be assumed forthwith by OUR GOVERNMENT and such management by OUR GOVERNMENT shall be continued until such time as OUR GOVERNMENT may deem fit:

Provided that Government shall, on a requisition made to them by a majority of the adult members of the Swaroopam, restore the management of the Estate to the Swaroopam.

2. During the period of such management of the Estate, OUR GOVERNMENT shall have plenary powers with regard to the alienation of the properties belonging to the Estate, with regard to composition with tenants in

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<sup>1</sup> Substituted by Proclamation XXV of 1118.

respect of arrears of *pattam*, *michavaram* and kindred dues accruing and accrued due and with regard to the rights of management in general and to do all that OUR GOVERNMENT consider necessary for the efficient administration and management of the Estate.

3. OUR GOVERNMENT may, by notification published in the Cochin Government Gazette, appoint a person or persons to manage the affairs of the Estate and OUR GOVERNMENT may delegate, by notification published in the Cochin Government Gazette, to the person or persons so appointed or to such other person or persons they may nominate in this behalf all or any of the powers conferred upon them by clauses 1 and 2 above.

4. OUR GOVERNMENT may frame such rules, as may, from time to time, be deemed necessary for managing the affairs of the Estate. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other grounds.

5. All suits on behalf of or against the Estate shall, during the period of management of the Estate by OUR GOVERNMENT, be brought in the name of OUR GOVERNMENT or in the name of any officer or person as OUR GOVERNMENT may, generally or specially, by notification in the Cochin Government Gazette, specify.

6. All acts done by OUR GOVERNMENT or by their nominees in pursuance of the powers conferred by this Proclamation during the period of management by OUR GOVERNMENT shall be accepted without question by the members of the aforesaid Swaroopam and all accounts of management maintained by OUR GOVERNMENT or their nominees and all items of expenditure incurred by them for and on behalf of the aforesaid Swaroopam during such period shall also be accepted without question by the members of the aforesaid Swaroopam.

7. During the period of the management of the Estate by OUR GOVERNMENT the provisions of the Cochin Revenue Recovery Act, IV of 1083, shall apply for the recovery of *pattam*, *michavaram*, renewal fee and other

dues of a like nature already accrued due or accruing due hereafter to the Estate.

8. The validity of the Deed of Surrender (Document No. 21 of Book II of 1117 of the Ernakulam District Registry Office) or of the acts of OUR GOVERNMENT in pursuance of this Proclamation shall not be liable to be questioned by any member of the Cheranellur Swaroopam in any court of law.

<sup>1</sup>[9. Every officer or servant employed by OUR GOVERNMENT in relation to the management of the Estate shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code].

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<sup>1</sup>Added by Proclamation XV of 1118.

# PROCLAMATION

(XII of 1117)

(As amended by Proclamation XV of 1122)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 21st day of  
Kumbham 1117, corresponding to the  
4th day of March 1942.*

[Published in the Cochin Government Gazette Extraordinary  
dated 21st Kumbham 1117]

WHEREAS it is necessary to apply the provisions of the Indian Aircraft Act, XXII of 1934 and the rules issued thereunder to OUR State, WE are pleased to command that the Indian Aircraft Act, XXII of 1934, the rules issued under the said Act and Part IX of the Indian Aircraft Rules, 1920 <sup>1</sup>[with all the amendments hitherto made or hereafter to be made to the said Act or Rules] shall be in force *mutatis mutandis* in OUR State until such time as Government may, by notification in the Cochin Government Gazette, rescind this Proclamation,

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<sup>1</sup> Inserted by Proclamation XV of 1122.

**THE COCHIN PORT ROADS CONTROL ACT**  
**(X of 1117)**  
**CONTENTS**

**Preamble**

**Sections**

1. Short title and commencement.
2. Definitions.
3. Levy of fees on carriages using Port Road and on goods entering or leaving Port Area by road.
4. Credit of fees to Cochin Port Fund.
5. Procedure in case of non-payment of fees.
6. Penalty for evasion or unauthorised levy of fees.
7. Prohibition of Vehicles to use Port Roads.
8. Power to alter the schedules.
9. Mode of recovering fines.
10. Power to make rules.

SCHEDULE I

SCHEDULE II

**THE COCHIN PORT ROADS CONTROL ACT**  
**(X of 1117)**

HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1117	X	The Cochin Port Roads Control Act	Amended by Act VIII of 1119.

*Passed by His Highness Sree Kerala Varma  
Maharaja of Cochin  
on the 1st day of Karkadagam 1117 corresponding  
to the 17th day of July 1942*

**[Published in the Cochin Government Gazette  
dated 2nd Karkadagam 1117]**

**Preamble.**

WHEREAS it is expedient to provide for the levy of special fees on carriages and carts <sup>1</sup>[entering the Port Roads and of terminal fees on goods carried by such roads

<sup>1</sup> Substituted by section 2, Act VIII of 1119.

and for the regulation of traffic in such roads]; It is hereby enacted as follows.—

1. This Act may be called the Cochin Port Roads Control Act X of 1117 and shall be deemed to have come into force with effect from 16th Kanni 1116, corresponding to 1st October 1940. Short title and commencement.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(i) “carriage” means any wheeled vehicle with springs or other appliances acting as springs and includes motor cars, motor lorries, motor omnibuses, motor cycles, bicycles and rickshaws; but does not include a perambulator or other form of vehicle designed for the conveyance of small children;

(ii) “cart” means any wheeled vehicle with or without springs which is not a carriage and includes a hand cart;

(iii) “port roads” mean the roads in Willingdon Island to the north of the Mattancheri Halt Station;

(iv) “prescribed” means prescribed by Government by rules made under this Act.

3. No carriage or cart shall enter or make use of any of the Port Roads and no goods shall be carried along the said roads unless the fees specified in Schedule I or Schedule II as the case may be, are duly paid to such person and at such place and in such manner as may be prescribed. Levy of fees on carriages using Port Road and on goods entering or leaving Port Area by road.

Provided that no such fees shall be levied on goods or carriages or carts belonging to or in the service of Government or exempted by general or special order of Government].

4. All fees levied under this Act shall be credited to the Cochin Port Fund. Credit of fees to Cochin Port Fund.

5. (1) If the fee payable under section 3 is not paid the person appointed to collect it may seize and detain, in the case of the fees leviable on goods such portion of the goods and in the case of the fees leviable on carriages and carts such portion of the appurtenances of the carriage or cart as will in his opinion suffice to defray the amount due Procedure in case of non-payment of fees.

<sup>1</sup> Substituted by section 3, Act VIII of 1119.

<sup>2</sup> Substituted by section 4, *ibid.*

in the absence of appurtenances or in the event of the value of such appurtenances being insufficient to defray the fee due in respect of the carriage or cart, he may seize and detain the carriage or cart.]

(2) All property seized under sub-section (1) shall be sent within twenty-four hours to the Tahsildar, Cochin-Kanayannur Taluk, or to such person as he may have authorised to receive and sell such property and the Tahsildar shall forthwith give notice to the proprietor of the property seized, or, if the proprietor is not known or cannot be found, to the person who was in charge of the said property at the time when it was seized, or, if such person cannot be found publish by beat of drum, that, after the expiry of two days, exclusive of Sundays and public holidays, from the date of service or publication of such notice the property will be sold in auction at a place to be specified in the notice.

(3) If at any time before the sale has begun, the amount due on account of the fee together with a sum of annas eight on account of charges incurred in connection with the seizure and detention is tendered to the officer conducting the sale, the property seized shall forthwith be released.

(4) If no such tender is made, the property may be sold and the proceeds of the sale applied to the payment of—

- (a) the amount due on account of the fee;
- (b) such penalty not exceeding the amount of the fee as the Tahsildar may direct;
- (c) a sum of rupee one on account of charges incurred in connection with the seizure, detention and sale; and
- (d) the surplus sale proceeds, if any, shall be returned to the proprietor if claimed within two months from the date of sale failing which the surplus proceeds shall be credited to the Cochin Government.

Penalty for  
evasion or  
unauthorised  
levy of fees.

6. Any person who refuses or evades the payment of fees payable under this Act or without due authority levies any such fee under colour of this Act or being empowered to collect fees under this Act collects or receives any

sum in excess of the lawful due or plies any <sup>1</sup>[Carriage or Cart] within the Port Road contrary to the provisions of section 3 or section 7 of this Act shall be punished, on conviction before a Magistrate, with fine which may extend to fifty rupees, or with simple imprisonment which may extend to one month.

7. No vehicle, other than rubber tyred, shall be driven along the Port Roads. Prohibition of vehicles to use Port Roads.

8. The Government shall have power to alter, add to or cancel in part, the <sup>2</sup>[Schedules] attached to this Act. Such alteration, addition or cancellation shall be published in the Cochin Government Gazette and on such publication shall have effect as if enacted in this Act. Power to alter the Schedule.

9. All fines imposed under this Act may be recovered in the manner prescribed by the Code of Criminal Procedure, Act II of 1086. Mode of recovering fines.

10. (1) Government may make rules to carry out the provisions of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the conditions under which fees are leviable;

(b) the authority by whom and the manner in which such fees are to be levied; <sup>3</sup>[ .. ]

(c) for regulating the issue of permits evidencing payment of fees under this Act; <sup>4</sup>[and]

<sup>4</sup>[(d) the regulation of traffic on the Port Roads.]

<sup>1</sup> Substituted by section 5, Act VIII of 1119,

<sup>2</sup> Substituted by section 6 *ibid.*

<sup>3</sup> Deleted by section 7, *ibid.*

<sup>4</sup> Added by section <sup>5</sup>7, *ibid.*



<sup>1</sup>[SCHEDULE I]

	For each day Rs.	Per Quarter Rs.	Per year Rs.
(1) Private cars each	0—8—0	..	5—0—0
(2) Motor cycles with or without side cars each	0—4—0	..	5—0—0
(3) Taxis or private cars plying with G. Per- mits	0—8—0 per taxi or car	15—0—0 per taxi or car	50—0—0 per taxi or car
(4) Buses each	1—8—0	..	..
(5) Rickshaws	} each 0—1—0	1—0—0	3—0—0
(6) Bicycles			
(7) Small rubber tyred hand-carts			

<sup>2</sup>[SCHEDULE II]

Goods	Rate		
	Rs.	A.	P.
1. Grains and Pulses ..	0	4	0 per ton
2. Goods other than Grains and Pulses ..	0	7	0 do.]

<sup>1</sup> Numbered by section 8, *ibid.*<sup>2</sup> Added by section 8, *ibid.*

# THE COCHIN VERUMPATTAMDARS ACT

(VIII of 1118)

*(As amended up to 18th Dhanu 1122)*

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**\*THE COCHIN VERUMPATTAMDARS ACT**  
(VIII of 1118)  
HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1118	VIII	The Cochin Verumpattamdars Act	Amended by Acts XV of 1118, XV of 1119, XVII of 1120 and VI of 1122 See also Proclamations I of 1119, II of 1119, XI of 1122 and XIV of 1122.

*Passed by His Highness the Maharaja of Cochin,  
on the 19th day of Kumbham 1118  
corresponding to the 3rd day of March 1943  
[Published in the Cochin Government Gazette,  
dated 22nd Kumbham 1118]*

Preamble.

WHEREAS it is deemed expedient to confer on certain terms and conditions, fixity of tenure to *verumpattam* tenants; It is hereby enacted as follows.—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Cochin *Verumpattamdars* Act, VIII of 1118.

(2) It extends to the whole of Cochin and shall come into force at once.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "*Kudikidappukaran*" means a person who has been permitted to have the use and occupation of a portion of a property for the purpose of erecting a homestead with or without an obligation to pay rent for the use and occupation of the site so given;

(b) "*Kudiyrippu*" means the site of any residential building, the site or sites of other buildings appurtenant

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\*Proclamation I of 1119 extends the time for the payment of pattam till the last day of Thulam 1119, in respect of cocoanut gardens. Proclamation II of 1119 extends the time for payment of arrears of pattam up to the last day of Vrischigam 1119. For condonation of forfeiture under clause (c) and (d) of section 8 in respect of certain suits on certain conditions see Proclamation XI of 1122. Proclamation XVI of 1122 presents the institution of suits and stays suits, appeals, etc., for eviction of tenants with houses of their own in Municipalities.

thereto, such other lands as are necessary for the convenient enjoyment of such residential building and the easements attached thereto;

(c) "*pattam*" includes "*puravaka*" dues, if any, payable under the contract of tenancy and the enhanced revenue, cess, tax or other special charges mentioned in section 6; and

(d) "*verumpattamdar*" means a lessee or sub-lessee of immovable property who has contracted to hold the same under a lease with or without *mupattam* either as a tenant at will or for a term and includes a *Tharikuthukaran* of the Chittur Taluk, but does not include a holder of a *kanam*, *nerkanam*, *otti*, *'adima*, *anubhogam* and other cognate tenures or a person who cultivates land under *varam* or *pankupattam* agreement or a *Kudikidappukaran*<sup>1</sup> [or a *Nadupattamdar*].

3. This Act shall not apply to—

Application.

(a) lands owned by Government; or

<sup>2</sup>[(b) leases granted by the Official Receiver or by a mortgagee or by any officer appointed by a court under the provisions of any law in force or by any person holding under or deriving title from any of them:

Provided that nothing in this clause shall apply to a lease which is a renewal or an attornment of a lease in favour of a Verumpattamdar who would have acquired fixity of tenure at the commencement of this Act.]

(c) leases of any building owned by a landlord including a house, shop or warehouse and the site thereof, together with the garden or land appurtenant thereto; or

(d) leases of land or buildings or of both for industrial or commercial purposes; or

(e) leases of land or buildings or of both in the Willingdon Island; or

(f) leases of land situate within the limits of the Municipalities constituted under the Cochin Municipal Act, XVIII of 1113: Provided that the restriction contained in this clause shall not apply to—

<sup>1</sup> Added and always deemed to have been added by section 2, Act XV of 1119.

<sup>2</sup> Substituted and always deemed to have been substituted by section 3, *ibid.*

(i) lands used for the cultivation of paddy within the limits of the Municipalities; and

(ii) lands held in *Tharikuthu* right within the Municipal areas in the Chittur Taluk.

Verumpattamdar to have fixity of tenure.

4. Notwithstanding any law, custom or contract to the contrary, every *Verumpattamdar* shall have fixity of tenure in respect of his holding and shall not be evicted therefrom except as provided in section 8 of this Act.

Pattam payable by a verumpattamdar.

5. (1) Subject to sub-section (2) and to any remission to which a *Verumpattamdar* may be entitled under the provisions of this Act, the *pattam* payable by him in respect of his holding under the contract of tenancy shall not be enhanced or reduced.

<sup>1</sup>[Provided that a verumpattamdar shall, where a portion of the land comprised in his holding is acquired under the provisions of the Cochin Land Acquisition Act, II of 1070, be entitled to an abatement in the rent in the same proportion as the yield from the portion acquired bears to the yield from the entire holding].

<sup>2</sup>[Provided that where any material part of the holding be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, by fire, tempest or flood or violence of any army or mob or other irresistible force, the *pattam* may be proportionately reduced if the part so destroyed or rendered unfit is unconditionally surrendered by the *verumpattamdar* to his lessor.]

<sup>3</sup>[(2) Where cocoanut is the major produce of a garden land and the *pattam* fixed therefor under the contract of tenancy is payable in money, it shall be obligatory on the part of the *verumpattamdar* to give and the lessor to accept the *pattam* accruing due after the commencement of this Act in kind computed on the basis of the average market value of cocoanut for a period of twenty years prior to the date of the contract of tenancy or the money value thereof computed at the market rate prevailing on the date on which such *pattam* accrues due:

<sup>1</sup> Added and always deemed to have been added by section 4, Act XV of 1119.

<sup>2</sup> Added by section 2, Act VI of 1122.

<sup>3</sup> Substituted by section 2, Act XVII of 1120.

Provided that—

(1) Where the date of the contract of tenancy is after the commencement of this Act and before the commencement of the Cochin Verumpattamdars (Amendment) Act, XVII of 1120, the *pattam* payable in kind under this sub-section shall be computed on the basis of the market value of cocoanuts prevailing on the date of the contract of tenancy;

(2) where the money value computed under this sub-section exceeds the *pattam* payable in money fixed under the contract of tenancy, the *pattam* payable shall be the *money pattam* fixed in the contract of tenancy together with half of such excess;

(3) where the *pattam* payable in money fixed under the contract of tenancy exceeds the money value computed under this sub-section the *pattam* payable shall be the money value computed under this sub-section together with half of such excess;

(4) where there is a contract by the *Verumpattamdar* to pay the tax of the holding and such tax is included in the *pattam* fixed in the contract of tenancy such tax shall be payable by the *verumpattamdar* only in money and the same shall be excluded in computing the *pattam* payable in kind or the money value thereof.

(3) The market rate and the average rate for cocoanuts for the purpose of sub-section (2) shall be deemed to be such rates as Government or such officer specially authorised may by notification in the Cochin Government Gazette specify in this behalf.]

(4) In the absence of any express stipulation to pay rent in the contract of tenancy, a *Tharikuthukaran* of the Chittur Taluk shall be liable to pay to his lessor an annual *pattam* calculated at the rate of one anna per cent of land comprised in his holding.

6. As between a *verumpattamdar* and his lessor, the latter shall, in the absence of any custom or contract to the contrary, be liable for the revenue, cess or tax payable to Government or to any local authority; but the former shall be liable for—

Liability for  
tax, etc.

(a) any enhancement subsequent to the commencement of this Act in the revenue, cess, or tax payable to

(b) any special charges leviable by Government for special or additional crops raised on *nilams*;

(c) any special charges payable to Government in connection with survey or settlement operations or for the maintenance of survey marks.

Verumpattamdar's right to remission of pattam in proportion to remission of revenue.

7. (1) Where the land revenue payable for any year in respect of any land comprised in a *verumpattam* holding is remitted in whole or in part by Government, the *verumpattamdar* shall be entitled to a remission of the *pattam* payable by him for that year in the same proportion. If the *verumpattamdar* is liable under the contract of tenancy to pay the land revenue he shall also be entitled to a remission of the land revenue remitted by Government.

(2) If no land revenue is payable to Government in respect of any land comprised in the holding, the Diwan Peishkar, on an application made to him by the *verumpattamdar* may order the remission of so much of the *pattam* as would have been remitted under sub-section (1) had such land been charged with the payment of land revenue. The decision of the Diwan Peishkar shall be final and the *verumpattamdar* shall be entitled to get the benefit of the remission so ordered from his lessor.

Grounds for eviction of verumpattamdar.

8. (1) No suit for eviction of a *verumpattamdar* from his holding or any portion thereof shall lie except on the following grounds—

(a) that he has wilfully denied the title of the *jenmi* or of any intermediate landlord between himself and the *jenmi* before the date of such suit;

*Explanation.*—A denial of title under a *bonafide* mistake of fact is not wilful within the meaning of this clause.

(b) that he has intentionally and wilfully committed such acts of waste as are calculated to impair materially and permanently the value or utility of the holding;

(c) that he has not paid the *pattam* due in respect of the holding or the revenue, cess, tax or special charges, if any, specified in section 6 <sup>1</sup>[\*\*]:

<sup>2</sup>[Provided that where the *pattam* unpaid represents only the *puravaka* dues or the value thereof payable by the

<sup>1</sup> Deleted by section 3, Act VI of 1122.

<sup>2</sup> Added by section 3, *ibid.*

*verumpattamdar*, the lessor shall be entitled only to sue for the recovery of such dues or value and not for the eviction of the *verumpattamdar* from his holding].

(d) that he has not paid within six months from the commencement of this Act the entire arrears of *pattom*, if any, due in respect of the holding <sup>1</sup>[at the commencement of this Act]:

Provided that a *verumpattamdar* whose arrears of *pattam* has been scaled down under section 16 of the Cochin Agriculturists' Relief Act, XVIII of 1114, shall be liable to be evicted on this ground only if the arrears are not paid on or before the date fixed for the payment of each instalment by the Cochin Agriculturists' Relief Act, XVIII of 1114, as modified by Proclamation, III of 1117,

(e) that he has intentionally or otherwise allowed a stranger to encroach on the holding or part thereof adversely to the interests of the *jenmi* or any intermediate landlord between himself and the *jenmi*,

(f) that at the end of the agricultural year the *jenmi* or any intermediate landlord requires the holding or part thereof, except the *Kudiyiruppu*, *bonafide* for building residential quarters for the use of himself or for any member of his family or *tarwad* or *thavazhi* who has a beneficial or proprietary interest therein:

Provided that in cases falling under clauses (e) and (f) where only a part of the holding has been encroached upon or is required, as the case may be, the eviction shall be from such part of the holding only.

*Explanation:* The wife or husband and the children of the lessor shall be deemed to be members of the lessor's family having a beneficial and proprietary interest in the holding.

<sup>2</sup>[(2) When a *verumpattamdar* is sought to be evicted on the grounds specified in clause (c) or clause (d) of sub-section (1), if at the first hearing of the suit the *verumpattamdar* pays or tenders to the lessor the *pattam* in arrear together with interest thereon and his full costs of the suit or if at the first hearing of the suit he gives such security as the court thinks sufficient for making such payment within fifteen days and such payment is made within the

<sup>1</sup>Substituted by section 3 of Act XV of 1118.

<sup>2</sup>Substituted by section 3, Act VI of 1122.



said period of fifteen days, the court shall, in lieu of making a decree for eviction, pass an order condoning the default and thereupon the *verumpattamdar* shall hold the property leased as if the default had not occurred. Where the payments referred to above are not made or tendered at the first hearing of the suit or within fifteen days thereof in case security is furnished; the court shall not either extend the time for or condone the delay in the payment but shall be bound to order the eviction of the *verumpattamdar* from the holding.

*Explanation.*—‘First hearing’ means the date fixed in the summons served on the *verumpattamdar* for his appearance under Rule 6 of Order V or in the notice issued to him under Rule 6(1) (c) of Order IX of the Cochin Code of Civil Procedure, XXIX of 1111, as the case may be].

(3) (i) In any case in which eviction has been obtained on the ground mentioned in clause (f) of subsection (1), the *verumpattamdar* shall be entitled to sue for the restoration to him of the possession of all the lands from which he has been evicted and to hold them with all the rights and subject to all the liabilities of a *verumpattamdar* if the lessor who has obtained such eviction transfers any of the land to any person on any kind of lease or mortgage with possession or on *kanam* within five years of such eviction or if the building for constructing which the eviction was obtained is not erected on the land within five years of the eviction.

(ii) A suit for restoration on the ground of failure to erect the building shall be instituted within one year from the date of the expiry of five years after eviction and a suit for restoration on the ground of transfer of possession shall be instituted within one year from the date of the transfer.

9. (1) Any person having an interest in the holding of a *verumpattamdar* by virtue of a title acquired by act of parties or by operation of law shall—

(a) where such interest has been acquired prior to the date of the commencement of this Act, within a month from such date, and

(b) where such interest is acquired after the commencement of this Act within a month from the date of such acquisition,

Notice to  
jenmi and  
landlord for  
sub-leasing  
a verumpat-  
tam holding.

give registered notice of his interest in the holding to the *jenmi* and to all the intermediate landlords between the *jenmi* and the *verumpattamdar* whose interest he has acquired. The said notice shall contain particulars of the property, its extent, the nature of the interest acquired and the date of acquisition of such interest. Failure to give the notice shall disentitle such person to relief against forfeiture under sub-section (2).]

(2) Where default is made by a *verumpattamdar* in the payment of *pattam* or arrears of *pattam* under clauses (c) and (d) of sub-section (1) of section 8, his lessor shall give registered notice of the default to the persons <sup>1</sup>[who have acquired an interest in the holding prior to the date of such default and] who have notified the existence of their interest under sub-section (1). The sub-lessees in the order of priority of their leases and the other persons having an interest in the holding shall be entitled to relief against forfeiture on payment of the arrears within a period of one month from the date of service of the notice of default. The lessor shall be bound to receive such payment and the liability of the sub-lessee to his lessor for the payment of *pattam* or arrears shall be reduced to the extent of the payment made by him :

Provided that where a person has acquired interest only in a portion of the holding, such person shall be bound to pay only so much of the *pattam* or arrears of *pattam* as will on apportionment fall on such portion of the holding. In the absence of agreement such apportionment shall be made by the court on application made to it by such person within one month from the date of service of the notice of default. The time between the date of the petition and the date of the final order shall be excluded from the period of one month specified in sub-section (2).

(3) All applications for apportionment under the proviso to sub-section (2) <sup>2</sup>[shall, notwithstanding anything contained in the Cochin Civil Courts Act, III of 1076, be made] to the Court of the District Munsiff within whose jurisdiction the property is situate :

Provided that where Government is a party, all such applications shall be made to the District Court within whose jurisdiction the property is situate.

<sup>1</sup> Inserted by section 4 of Act XV of 1118.

<sup>2</sup> Substituted by section 4 of Act XV of 1118.

The order of apportionment shall have the force of a decree and be appealable as such.

(4) The sub-lessee who makes payment under sub-section (2) shall have a charge in respect of the amount paid by him over the interest of the lessee who committed the default and the interests of all intermediate landlords between such lessee and himself,

Conditions of  
surrender of  
holding.

10. A *verumpattamdar* may surrender the holding to his lessor where he has not sub-leased the holding, provided.

(1) one month's notice of his intention to do so has been given in writing to the landlord;

(2) no portion of the holding is excluded except as the result of irresistible force:

(3) the arrears of *pattam* and other accrued dues are tendered;

(4) the value or utility of the holding has not been materially and permanently impaired during the tenancy by acts of waste.

The lessor shall be bound to accept the surrender after giving credit to the *muppattam*, if any, received but shall not be liable to pay the value of improvements, which he would otherwise be bound to pay under the provisions of the Cochin Tenancy Act, XV of 1113.

Annulment  
of subsisting  
decrees for  
eviction on  
certain  
conditions.

11. All decrees subsisting at the commencement of this Act for the eviction of a *verumpattamdar* from his holding shall be annulled if—

(1) the entire arrears of *pattam* due in respect of the holding is paid within the time and in accordance with the provisions contained in clause (d) of sub-section (1) of section 8, and

(2) the costs awarded under the decree and the costs, if any, incurred in execution proceedings are paid within six months from the commencement of this Act or where the decree is for the arrears of *pattam* scaled down under section 16 of the Cochin Agriculturists' Relief Act, XVIII of 1114, on or before the date specified for the payment of the last instalment of such arrears by the said Act as modified by Proclamation III of 1117.

12. All suits and appeals for eviction instituted against *verumpattamdars* and stayed by Proclamation VI of 1117 shall be proceeded with only if default is made by the *verumpattamdar* to pay the arrears of *pattam* and costs of the plaintiff within the time and in accordance with the provisions contained in clause (d) of sub-section (1) of section 8.

Suits and appeals stayed to be proceeded with only on failure to comply with section 18.

13. Notwithstanding any contract to the contrary express or implied, no *verumpattamdar* shall be liable to pay to his lessor anything more than what is payable under the provisions of this Act <sup>1</sup> [except interest, if any, thereon].

Invalidity of claim for anything more than *pattam* under Act.

14. Every *verumpattam* lease if reduced to writing and its counterpart, if any, shall contain—

Contents of lease and counterpart.

(a) the name, if any, and description and extent of the holding;

(b) the Government revenue, cesses and taxes, if any, payable in respect of the holding;

(c) the amount of *pattam* payable in respect of the holding;

(d) the relation that any *para* or other measure according to which the rent has to be paid bears to the standard measure prescribed by Government.

15. The Stamp and Registration charges for any lease deed and for the counterpart, if any, of such lease shall be borne by the *verumpattamdar* and the lessor respectively.

Stamp and Registration fees of lease and counterparts.

<sup>2</sup> [16. If the *pattam* is payable in money, it shall be paid at the residence of the lessor and if in kind at the residence or the granary of the lessor within the village in which the holding is situate and if there be no such residence or granary, at such place within the village as may be indicated by the lessor by notice in writing given to the *verumpattamdar*.

Place of payment.

17. Every *verumpattamdar* paying *pattam* shall be entitled to a receipt specifying—

Tenant's right to receipt.

(a) a description of the holding in respect of which it is paid,

<sup>1</sup> Added and always deemed to have been added by section 5, Act XV of 1119.

<sup>2</sup> Inserted by section 4, Act VI of 1122.

- (b) the date of payment,  
 (c) the amount paid,  
 (d) the period to which the amount paid relates,  
 and  
 (e) the arrears, if any, remaining due after the said payment.

Burden of proof in the absence of particulars.

18. In the absence of the particulars specified in clause (e) of section 17, the burden of proving that the tenant is bound to pay any arrears of *pattam* which had accrued due previous to the date of the receipt shall be on the person claiming such arrears.

Procedure when lessor fails to grant receipt.

19. If the lessor refuses or neglects to grant a receipt as provided in section 17, the *verumpattamdar* shall be entitled to send by money order, after deducting the charges for doing so,—

- (a) the money, if the *pattam* is payable in money; or  
 (b) the money value of the *pattam* if it is payable in kind.

Such money value shall be computed with reference to the rate published in the Cochin Government Gazette under section 42 of the Cochin Tenancy Act, XV of 1113].

Apportionment of land value in case of acquisition.

<sup>1</sup>[20.] Where land comprised in the holding of a *verumpattamdar* is acquired under the provisions of the Cochin Land Acquisition Act, II of 1070, the land value inclusive of the fifteen per cent thereon awarded under sub-section (2) of section 22 of the said Act shall be apportioned in the proportion of seven-eighths and one-eighth between the *jenmi* and the *verumpattamdar* respectively.

The provisions of this Act to prevail in cases of conflict.

<sup>1</sup>[21.] Where there is any conflict or inconsistency between the provisions of this Act and the provisions of the Cochin Transfer of Property Act, XVII of 1111, or the Cochin Tenancy Act, XV of 1113, the provisions of this Act shall prevail.

Amendment to section 25 of the Co-operative Land Mortgage Bank Act.

<sup>2</sup>[22.] For section 25 of the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111, the following shall be substituted, namely—

<sup>1</sup> Renumbered by section 4, Act VI of 1112,

<sup>2</sup> Renumbered by *ibid.*

The improvements, if any, made subsequent to the date of the mortgage by a lessee of property mortgaged to the bank shall be treated as accession to the mortgaged property and shall be available to the bank for the realisation of the mortgaged amounts.

Bank's right  
to improve-  
ments effect-  
ed by lessee.

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# PROCLAMATION

(XIX of 1118)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 1st day of Edavam 1118, corresponding to  
the 15th day of May 1943*

*(As amended by Proclamation X of 1121)*

**[ Published in the Cochin Government Gazette  
dated 1st Edavam 1118 ]**

Preamble.

WHEREAS it is necessary that all lands fit for the raising of food crops should be brought under cultivation and whereas the planting of sugar-cane on lands hitherto used for the cultivation of paddy should be discouraged; We are hereby pleased to command as follows:—

Extent and commencement.

1. (1) This Proclamation shall extend to the whole of Cochin State.

(2) It shall come into force at once and shall continue to be in force until such time as Government may, by notification in the Cochin Government Gazette, deem fit to withdraw this Proclamation.

Definition.

2. "Food crops", for the purpose of this Proclamation shall include paddy, tapioca, banana, ragi and other articles of food ordinarily grown in Cochin State.

Power to impose penal assessment.

3. (1) So long as this Proclamation is in force, no person in possession of lands fit for the raising of food crops shall, without reasonable excuse being shown to the satisfaction of the Diwan Peishkar, leave such lands uncultivated with food crops.

(2) No person shall after the coming into force of this Proclamation plant sugar-cane in any land in his possession on which paddy used to be cultivated prior to the 1st day of Chingam 1118:

<sup>1</sup>[ Provided that a person may, with the previous sanction of the Diwan Peishkar, plant sugar-cane in any such land if he utilises an equal extent of land for the

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<sup>1</sup> Added by Proclamation X of 1121.

cultivation of paddy from other lands in which sugar-cane used to be planted by him].

(3) The Diwan Peishkar may levy from any person who contravenes the provisions of sub-section (1) or sub-section (2) of this section an annual penal assessment at a rate not exceeding 25 times the land revenue assessment on the lands left uncultivated or on which sugar-cane is planted.

4. The penal assessment leviable under sub-section (3) of section 3 shall also be a first charge on the interests of the person over such lands and the said sum shall be recoverable as arrears of revenue under the provisions of the Cochin Revenue Recovery Act, IV of 1083.

5. The order of the Diwan Peishkar imposing a penal assessment shall be final and not liable to be called in question in any of Our Civil Courts.

Penal assess-  
ment to be  
first charge  
and recover-  
able as arrears  
of revenue.

Diwan  
Peishkar's  
order to be  
final.



**THE COCHIN STATE FORCES PROCLAMATION**

**(XIII of 1119)**

*Promulgated by His Highness Sri Ravi Varma,  
Maharaja of Cochin,  
on the 26th day of Kumbham 1119 corresponding to  
the 9th day of March 1944*

*(As amended by Proclamation XXI and XXIII of 1119)*

**[Published in the Cochin Government Gazette,  
dated 28th Kumbham 1119]**

Preamble.

WHEREAS it is necessary to provide for the government, control, discipline, trial and punishment of the members of the Cochin State Forces; We are pleased to command as follows.—

Short title,  
application  
and commen-  
cement.

1. (1) This Proclamation may be called the Cochin State Forces Proclamation, XIII of 1119.

(2) It shall apply to the members of the Cochin State Forces.

(3) It shall come into force at once.

Power to  
make rules.

2. (1) Our Government may, by notification in the Cochin Government Gazette, make rules for the Government, control, discipline, trial and punishment of the members of the Cochin State Forces.

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

(a) prescribe the offences which when committed by the members of the Cochin State Forces shall be treated as military offences;

(b) provide for the arrest and trial of persons accused of the commission of military offences by court martial or otherwise and the carrying into effect of the sentences awarded;

<sup>1</sup>[(c) prescribe the punishment for military offences <sup>2</sup>[other than those tried by court-martial] which may include imprisonment for a period not exceeding twenty-eight days with or without hard labour and confinement to lines for a term not exceeding twenty-eight days].

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<sup>1</sup> Substituted by section 2, Proclamation XXI of 1119.

<sup>2</sup> Inserted by section 2, Proclamation XXIII of 1119.

(d) provide for the convening and constitution of court martial, the procedure to be observed in trials and other enquiries by court martial <sup>1</sup>[and the award of punishments by court-martial, not exceeding imprisonment for one year, rigorous or simple];

(e) provide for the arrest and capture of deserters from the Cochin State Forces by the civil and military authorities; and

(f) provide generally for the control and discipline of the Cochin State Forces.

<sup>2</sup>[3. OUR Government may, by notification in the Cochin Government Gazette, specify the military laws, subject to such conditions and restrictions as they may deem fit, which shall govern the members of the Cochin State Forces when such Forces are sent for service outside Cochin State.]

Laws to govern the Forces when serving outside.

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<sup>1</sup> Added by section 2, Proclamation XXIII of 1119.

<sup>2</sup> Added by section 3 *ibid.*

# **THE COCHIN TRADE MARKS ACT**

**(XIX of 1119)**

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## THE COCHIN TRADE MARKS ACT

(XIX of 1119)

## HISTORY OF LEGISLATION

Year	Number	Short title	
1119	XIX	The Cochin Trade Marks Act	Amended by Act XVIII of 1121

*Passed by His Highness Sree Ravi Varma,  
Maharaja of Cochin  
on the 9th day of Mithunam 1119 corresponding to  
the 22nd June 1944*

[Published in the Cochin Government Gazette,  
dated 25th Mithunam 1119]

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks; It is hereby enacted as follows.—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Cochin Trade Marks Act, XIX of 1119. Short title, extent and commencement.

(2) It extends to the whole Cochin State.

(3) [This Act shall come into force on such date as Government may by notification in the Cochin Government Gazette appoint in this behalf.]

2. (1) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy

<sup>1</sup>Substituted by section 2, Act XVIII of 1121.

The Act was brought into force from 16th Chingam 1122 by Development Department Notification No. 6, dated 6th Chingam 1122 (22nd August 1946).

or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person

(c) "District Court" has the meaning assigned to it in the Cochin Code of Civil Procedure, XXIX of 1111

(d) "limitations" (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded within Cochin State, or as to use in relation to goods to be exported to any market outside Cochin State;

(e) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, or numeral or any combination thereof;

(f) "permitted use" means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject;

(g) "prescribed" means prescribed by rules made, in relation to proceedings before the High Court, by the High Court, and in other cases, by Government;

(h) "registered" (with its grammatical variations) means registered under this Act;

(i) "registered trade mark" means a trade mark which is actually on the register;

(j) "registered user" means a person who is for the time being registered as such under section 41.

(k) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person;

(l) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(m) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation whatsoever to, such goods.

3. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Application of other laws not barred.

## CHAPTER II

### THE REGISTER AND CONDITIONS FOR REGISTRATION

4. (1) For the purposes of this Act there shall be established <sup>1</sup>[ ] <sup>2</sup>[a Trade Mark Registry at Trichur or such other place as government may by notification in the Cochin Government Gazette specify], and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar. The register of trade marks.

(2) Subject to the Superintendence and direction of Government, the register shall be kept under the control and management of <sup>3</sup>[an officer appointed by Government who shall be called the Registrar of Trade Marks.

<sup>1</sup> Deleted by section 3, Act XVIII of 1121.

<sup>2</sup> Substituted by *ibid.*

<sup>3</sup> Substituted by section 3 *ibid*



<sup>1</sup>[(2A) The Cochin Government shall appoint a Deputy Registrar of Trade Marks and an Additional Registrar of Trade Marks to discharge under the superintendence and direction of the Registrar such functions of the Registrar under this Act as he may from time to time authorise them to discharge; and any reference in this Act to the Registrar shall include a reference to the Deputy Registrar of Trade Marks or Additional Registrar of Trade Marks, as the case may be, when so discharging any such function.

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

<sup>2</sup>[(4) There shall be a seal for the Trade Marks Registry.

Registration to be in respect of particular goods.

5. (1) A trade mark may be registered only in respect of particular goods or classes of goods,

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

Distinctiveness requisite for registration.

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—

(a) the name of a company, individual, or firm, represented in a special or particular manner;

(b) the signature of the applicant for registration of some predecessor in his business;

(c) one or more invented words;

(d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;

(e) any other distinctive mark provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered,

<sup>1</sup> Inserted by Act XVIII of 1121

<sup>2</sup> Added by *ibid*

to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the trade mark is inherently so adapted to distinguish, and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish:

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for during a period from a date prior to the 1st day of Chingam 1114, to the date of application for registration the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

7. (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark. Limitation as to colour.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

8. No trade mark nor part of a trade mark shall be registered which consists of or contains, any scandalous design, or any matter the use of which would— Prohibition of registration of certain matter.

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of justice; or

(b) be likely to hurt the religious susceptibilities of any class of His Highness the Maharaja's subjects; or

(c) be contrary to any law for the time being in force or to morality.

Use of names  
of chemical  
elements  
barred.

9. No word which is the commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require:

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Prohibition of  
registration of  
identical or  
similar trade  
mark.

10. (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and [either already on the register or already registered in British India or in any Indian State to which section 78 A for the time being applies] in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

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<sup>1</sup> Substituted by section 4, Act XVIII of 1121.

11. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks. Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used; or

(b) statements of number, price, quality, or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour;

seeks to register those trade marks, they may be registered as a series in one registration.

12. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks. Associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(3) All trade marks registered in accordance with the provisions of sub-section (3) of section 11 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration  
subject to  
disclaimer.

13. If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or for the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character, the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration:

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III

#### PROCEDURE FOR AND DURATION OF REGISTRATION

Application for  
registration.

14. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant.

state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may, at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

15. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner: Opposition to registration.

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall serve in the prescribed manner a copy thereof on the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither

resides nor carries on business in Cochin State, the tribunal may require him to give security for costs of the proceedings before it, and in default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

Registration

16. (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless Government otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any directions made under section 79 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the <sup>1</sup>[Trade Marks Registry].

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

Jointly owned  
trade marks.

17. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in the trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to

<sup>1</sup> Substituted by Section 5, Act XVIII of 1121.

any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

18. (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section. Duration and renewal of registration.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

19. Where a trade mark has been removed from the register <sup>Effect of removal from register for failure to pay fee for renewal.</sup> [under this Act or from the register of trade marks in British India or in any Indian State to which section 78A for the time being applies] for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either.—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

<sup>1</sup> Inserted by section 6 Act XVIII of 1121.



## CHAPTER IV

## EFFECT OF REGISTRATION

No action for infringement of unregistered trade mark.

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 1st day of Chingam, 1114, by such person or by a predecessor in title of his and unless an application for its registration, made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Right conferred by registration.

21. <sup>1</sup>[(1)] Subject to the provisions of sections 22, 25 and 26, the registration of a person in the register as proprietor of a trade mark in respect of any goods shall <sup>2</sup>[if valid] give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being use as a trade mark; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

<sup>3</sup>[(2) A person registered in British India or in any Indian State to which section 78A for the time being applies as proprietor of a trade mark shall have the same

<sup>1</sup>Renumbered by section 7, Act XVIII of 1121.

<sup>2</sup>Deleted by *ibid.*

<sup>3</sup>Added by *ibid.*

rights in respect thereof as are conferred by this section on a person registered under this Act as proprietor of a trade mark.]

22. (1) The right to the use of a trade mark given under section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations the registration does not extend.

No infringement in certain circumstances.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of<sup>1</sup> [two or more registered trade marks registered under this Act or in British India or in any Indian State of which section 78A, for the time being applies] which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

<sup>1</sup> Substituted by section 8, Act XVIII of 1121.

Registration to be *prima facie* evidence of validity.

23. In all legal proceedings relating to a [trade mark registered under this Act or in British India or in any Indian State to which section 78A for the time being applies] the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration to be conclusive as to validity after seven years.

24. In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

Saving for vested rights.

24. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his ; or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever is the earlier, or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

Saving for use of name, address, or description of goods.

26. No registration of a trade mark shall interfere with any *bonafide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any, such reference as is mentioned <sup>2</sup>[in clause (b) of sub-section (1) of section 21 or in clause (b) of sub-section (1) of section 57.]

<sup>1</sup> Substituted by section 9, Act XVIII of 1121.  
Substituted by section 10, *ibid*.

27. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance:

Words used as name or description of an article or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor; or

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cesser of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance,—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then—

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made;

(b) for the purposes of any other legal proceedings relating to the mark,—

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the exclusive use of such words, in such relation as aforesaid, shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (1) first became well-known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V

### ASSIGNMENT AND TRANSMISSION

Power of registered proprietor to assign and give receipts.

28. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

Assignability of registered trade marks.

29. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

Assignability of unregistered trade marks.

30. An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not,

Provided that, except in connection with the goodwill of a business, assignment or transmission shall be permissible only if—

(a) at the time of assignment or transmission of the unregistered trade mark it is used in the same business as a registered trade mark, and

(b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and

(c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

31. (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Restrictions on assignment or transmission where multiple exclusive rights would be created.

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within Cochin State (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside Cochin State.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

Restrictions  
on assignment  
or transmission  
when exclusive  
rights would  
be created in  
different parts  
of Cochin  
State.

32. Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist whether under this Act or any other law an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in Cochin State and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in Cochin State:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

Conditions  
for assignment  
otherwise than  
in connection  
with the good-  
will of a busi-  
ness.

33. Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the good-will of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

34. (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

35. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration of assignments and transmissions.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before a tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI

### USE OF TRADE MARKS AND REGISTERED USERS

36. (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Indian Companies Act, 1913, as made applicable to Cochin and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the



name of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

Removal from register and imposition of limitations on ground of non-use.

37. (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, on the ground either—

(a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ;  
or

(b) that to a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bonafide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in Cochin State (otherwise than for export from Cochin State), or in relation to goods to be exported to a particular market outside Cochin State, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to the High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

38. (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade Mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so

Defensive registration of well-known trade marks.

registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks

and of trade marks so registered as they apply in other cases.

39. (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

Registered users.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for any purpose for which such use is material under this Act or any other law.

40. (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

Power of registered user to take proceedings against infringement.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

41. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

Application for registration as registered user.

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods in respect of which registration is proposed;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter ;

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof ;

and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

(5) The Registrar shall issue notice in the prescribed manner—

(a) of the registration of a person as a registered user, to any other registered user of the trade mark ;

(b) of an application under section 42, to the registered proprietor, and each registered user (not being the applicant) of the trade mark.

42. Without prejudice to the provisions of section 46, the registration of a person as a registered user—

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;

Power to  
Registrar to  
vary or  
cancel registra-  
tion as  
registered  
user.

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely.—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause or to be likely to cause deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

43. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

44. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

Use of trade mark of export trade, and use when form of trade connection changes.

45. (1) The application in Cochin State of a trade mark to goods to be exported from Cochin State, and any other act done in Cochin State in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within Cochin State would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII

### RECTIFICATION AND CORRECTION OF THE REGISTER

Power to cancel or vary registration and to rectify the register.

46. (1) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

<sup>1</sup>[*Explanation.*—For the purposes of sub-section (1) and this sub-section, a person who has registered a trade mark in British India or in any Indian State to which section 78A for the time being applies, may be a 'person aggrieved'.]

(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or

<sup>1</sup> Added by section 11, Act XVIII of 1121.

expedient to decide in connection with the rectification of the register.

(4) The High Court or the Registrar, of its or his own motion, may after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

47. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,— Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;

(c) cancel the entry of a trade mark on the register;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

48. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit. Alteration of registered trade mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice



to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of entries in register to amended or substituted classification of goods.

49. (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 80, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of antedating the registration of a trade mark in respect of any goods:

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII

### CERTIFICATION TRADE MARKS

Provisions of this Act applicable to certification trade marks.

50. Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

51. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

52. In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

Determination whether a mark is a certification trade mark.

(a) the mark is inherently so adapted to distinguish in relation to the goods in question; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

53. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

Application for registration.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for reference therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 14 and to any other considerations (not being matters within the competence of Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

54. When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to Government who shall consider the application with regard to the following matters, namely.—

Consideration of application for Registration by Government.

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered.

(b) whether the draft of the regulations to be deposited under section 56 is satisfactory;

(c) whether in all the circumstances the registration applied for would be to the public advantage;

and may either—

(i) direct that the application shall not be accepted; or

(ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters; but, except in the case of a direction for acceptance and approval without modification and unconditionally, Government shall not decide the matter without giving to the applicant an opportunity of being heard:

Provided that Government may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so however that Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

Opposition to  
registration.

55. (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14.

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54.

(2) When notice of opposition is given relating to any of the matters referred to in section 54, Government shall, after hearing the parties, if so required, and considering any evidence, decide whether and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations

to be deposited under section 56, registration is, having regard to those matters, to be permitted.

56. (1) There shall be deposited at the <sup>1</sup>(Trade Marks Registry) in respect of every mark registered as a certification trade mark regulations approved by Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so deposited shall be open to inspection in like manner as the register.

Deposit of regulations governing the use of a certification trade mark.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of Government.

(3) Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, Government shall not decide the matter without giving the parties an opportunity of being heard.

57. <sup>2</sup>[(1)] Subject to the provisions of sections 25, 26 and 58, the registration of a person as proprietor, of a certification trade mark in respect of any goods shall <sup>3</sup>[ ] give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

Right conferred by registration.

1 Substituted by section 12, Act XVIII of 1121.

2 Renumbered by section 13, Act XVIII of 1121.

3 Deleted by section 13, Act XVIII of 1121.

(a) as being use as a certification trade mark; or  
 (b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

<sup>1</sup> [(2)] A person registered in British India or in any Indian State to which section 78A for the time being applies as proprietor of a certification trade mark shall have the same rights in respect thereof as are conferred by this section on a person registered under this Act as proprietor of a certification trade mark.

No infringement in certain circumstances.

58. (1) The right to the use of a certification trade mark given under section 57 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that clause (a) shall not apply to the case of use contesting of the application of any such mark

<sup>1</sup> Aded by section 13, Act XVIII of 1121.

as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more <sup>1</sup>[certification trade marks registered under this Act or in British India or in any Indian State to which section 78A for the time being applies] which are identical or nearly resemble each other, the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

59. (1) Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely.—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered, to certify those goods;

(b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part;

(c) that it is no longer to the public advantage that the mark should be registered;

(d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied;

and neither the High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (1).

60. The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Costs not to be awarded in certain cases.

1. Substituted by section 14, Act, XVIII of 1121.

Decisions of  
Government  
to be final.

61. Save as otherwise expressly provided in this Chapter, every decision of Government under this Chapter shall be final.

## CHAPTER IX

### SPECIAL PROVISION FOR TEXTILE GOODS

Textile  
goods.

<sup>1</sup>[61A. Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.]

Restrictions  
on registration  
of textile  
goods.

<sup>2</sup>[62. (1) In respect of textile goods being piece goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be adapted to distinguish;

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.]

Refused Textile  
Marks  
List.

<sup>3</sup>[62A. Trade Marks in respect of textile goods of which registration has been refused shall be entered by the Registrar in a list called the Refused Textile Marks List, and the said list shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Advisory  
Committees.

62B. (1) Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar shall consult any such Committee with respect to any circumstances peculiar to the

<sup>1</sup> Inserted by section 15, Act XVIII of 1121.

<sup>2</sup> Substituted by section 16, *ibid.*

<sup>3</sup> Inserted by section 17, *ibid.*

textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.]

## CHAPTER X

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS

63. If any person makes, or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both,

Penalty for falsification of entries in register.

64. (1) From such date, not being earlier than one year from the commencement of this Act, as Government may, by notification in the Cochin Government Gazette, appoint in this behalf, no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered in the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.



(3) For the purposes of this section, the use in Cochin State in relation to a trade mark of the word "registered", or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Cochin State, being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside Cochin State and in relation solely to goods to be exported to that country.

[<sup>1</sup>(4) Nothing in this section shall—

(a) apply to a trade mark, application for the registration of which has been made before the 1st day of January 1947 until such application has been disposed of;

(b) affect the use of the word 'registered' in respect of a trade mark registered in British India or in any Indian State to which section 78A for the time being applies, or until the application has been disposed of, in respect of a trade mark, application for the registration of which has been made in British India or in any such Indian State before the aforesaid date.]

Restraint of use  
of Royal Arms  
and State  
emblems.

65. If a person, without due authority, uses in connection with any trade, business, calling or profession—

(a) the Cochin Coat of Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Cochin Coat of Arms, or

(b) the Royal Arms of His Majesty the King Emperor of India (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be

<sup>1</sup> Inserted by section 18, Act XVIII of 1121.

calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(c) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, the Government of Travancore or the Government of His Majesty the King Emperor of India or the Government of India or any Provincial Government or any department of any such Government,

he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title, or of the Registrar, be restrained by injunction from continuing so to use the same.

2. [Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such Arms, device, emblem or title, to continue to use such trade mark.]

## CHAPTER XI MISCELLANEOUS

66. In all proceedings under this Act before the Registrar—

Procedure  
before the  
Registrar.

(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) evidence shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to such evidence by affidavit;

(c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard;

(d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 80 make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a Civil Court.

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<sup>1</sup> Added by section 19, Act XVIII of 1121.

Procedure  
before  
Government.

67. In all proceedings under this Act before Government, evidence shall be given by affidavit, provided that Government may, if they think fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 66.

Procedure in  
certain cases of  
option to apply  
to High Court  
or the  
Registrar.

68. Where under this Act an applicant has the option of making an application either to the High Court or to the Registrar,—

(a) if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the application shall be made to the High Court;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

Suits for in-  
fringement to  
be instituted  
before District  
Court.

69. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Appearance  
of Registrar in  
proceedings  
involving  
rectification of  
register.

70. (1) In any suit or other legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the [Trade Marks Registry] in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceeding.

<sup>2</sup>[(3)] \*

Costs of  
Registrar in  
proceedings  
before High  
Court.

<sup>3</sup>[70A. In all proceedings under this Act before the High Court the costs of the Registrar shall be in the discretion of the High Court but the Registrar shall not be ordered to pay the costs of any of the parties.]

<sup>1</sup> Substituted by section 20, Act XVIII of 1118.

<sup>2</sup> Omitted by *ibid.*

<sup>3</sup> Inserted by section 21, *ibid.*

71. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the <sup>1</sup>[Trade Marks Registry] shall be admitted in evidence in all Courts in Cochin State and in all proceedings without further proof <sup>2</sup>[or] production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof or of the matter or thing having been done or not done.

72. (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by Government, from any decision of the Registrar under this Act or the rules made thereunder to the High Court: <sup>Repeals</sup>

Provided that if any suit or other proceeding concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall be made to the High Court.

(2) In an appeal by the applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be; and where any such additional grounds are advanced, the applicant for registration may on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Cochin Code of Civil Procedure, XXIX of 1111, shall apply to appeals before the High Court under this Act.

73. The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it. <sup>Power to High Court to make rules.</sup>

<sup>1</sup> Substituted by section 22, Act XVIII of 1118.

<sup>2</sup> Substituted by *ibid.*

Certificate of validity.

74. If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a decision is given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Trade usage, etc., to be taken into consideration.

75. In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Agents.

76. Where by or under this Act any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of Government, be done, in lieu of by that person himself, by a duly authorised agent being either a legal practitioner or a person registered in the prescribed manner as a trade marks agent.

Fees.

77. There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by Government.

Government to be bound.

78. The provisions of this Act shall be binding on Government.

Power to make reciprocal arrangements with British India and Indian States.

<sup>1</sup>[78A. (1) Government may enter into reciprocal arrangements with British India and any Indian State whereby trade marks and certification trade marks registered under this Act shall have in British India or that Indian State protection as if registered in British India or in that Indian State and where such arrangements have been entered into with British India or any Indian State, Government shall by notification in the Cochin Government Gazette declare that this section will apply to British India or to that Indian State.

(2) Where any such arrangements as aforesaid with British India or any Indian State are terminated, Government shall, by a further like notification cancel the

<sup>1</sup> Inserted by section 23, Act XVIII of 1121.

notification under sub-section (1) relating to British India or to that Indian State].

79. If at any time after the expiry of six months from the commencement of this section it is made to appear to Government that any Government outside <sup>Power to make reciprocal arrangements with other Governments.</sup> <sup>1</sup>[India] has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in Cochin State, Government may, by notification in the Cochin Government Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in Cochin State under this Act on his making an application for registration in Cochin State within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

80. (1) Government may, subject to the condition of previous publication by notification in the Cochin Government Gazette, make rules to carry out the purposes of this Act. <sup>Power of Government to make rules.</sup>

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

(a) prescribe the classification of goods for the purpose of the registration of trade marks, and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

(c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;

(d) prescribe additional matters to be entered in the register;

<sup>1</sup> Substituted by section 24, Act XVIII of 1121.

(e) prescribe the conditions and restrictions subject to which the register <sup>1</sup>[and the Refused Textile Marks List] may be inspected;

(f) prescribe the form of certificates of registration:

(g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;

(h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;

<sup>2</sup>[(hh) prescribe classes of goods as textile goods for the purposes of Chapter IX;

(hhh) provide for the constitution of Advisory Committees referred to in section 62B, and prescribe the places of meeting, and conduct of business at meetings, of such Committees];

(i) regulate the awarding of costs by the Registrar under section 66;

(j) prescribe the conditions subject to which an agent referred to in section 76 may act;

(k) prescribe the fees to be paid under this Act;

(l) prescribe the manner in which, in proceedings under this Act before Government or the Registrar, application shall be made, notices given and matters advertised;

(m) prescribe times or periods required by this Act to be prescribed;

(n) provide, generally, for regulating the business of the Trade Marks Registry and for regulating all things by this Act placed under the direction or control of Government or the Registrar.

<sup>3</sup>[(o) make such supplementary provision as may be necessary or expedient to give effect to reciprocal arrangements entered into with British India or any Indian State under section 78A].

1 Inserted by section 25, Act XVIII of 1121.

2 Inserted by *ibid.*

3 Inserted by *ibid.*

4 Deleted by section 26, *ibid.*

# THE COCHIN BETELNUTS, COFFEE AND TEA (EXCISE DUTY) PROCLAMATION

(II of 1120)

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**THE COCHIN BETEL NUTS, COFFEE AND TEA  
(EXCISE DUTY)**

**PROCLAMATION**

**(Amended by Proclamation XIV of 1121)**

*Promulgated by His Highness Sri Ravi Varma,  
Maharaja of Cochin,  
on the 27th day of Chingam 1120 corresponding  
to the 11th day of September 1944*

**[Published in the Cochin Government Gazette,  
dated 32nd Chingam 1120]**

Short title,  
extent and  
commence-  
ment.

Whereas it is expedient to impose and collect duties of excise on betel nuts, coffee and tea, WE are hereby pleased to command as follows.—

1. (1) This Proclamation may be called the “Cochin Betel nuts, Coffee and Tea (Excise Duty) Proclamation II of 1120”.

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

(3) It shall be deemed to have come into force on the 31st day of March 1944.

Definitions.

2. In this Proclamation unless there is anything repugnant in the subject or context,—

(a) “broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

(b) “Commissioner” means Commissioner of Excise;

(c) “curing” includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

(d) “excisable goods” for the purposes of this Proclamation means goods specified in the First Schedule to this Proclamation as being subject to a duty of excise;

(e) “factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

**Correction Slip to page 514**

**\*[For sub-section (3) of section 1 the following shall be substituted.—**

**“(3) It shall be deemed to have come into force on the 16th day of September 1944 in so far as it applies to Betel-nuts, and on the 31st day of March 1944 in so far as it applies to the other excisable goods specified in the Schedule”]**

**\*Substituted by section 2 of Proclamations IV of 1123.**

### **Correction Slip to page 515**

**\*[For section 3 the following shall be substituted.—**

**There shall be levied and collected in such manner as may be prescribed duties of excise at the rates set forth in the 1st Schedule on all excisable goods which are produced or manufactured in Cochin State with effect from the 16th day of September 1944 on item Number (1) in the first Schedule and the 1st day of April 1944 on the other items and in the case of item Number (1) in the said Schedule such duty shall be levied and collected also on the stock of betel-nuts held by dealers or curers or in transit within the State on the 16th day of September 1944].**

**\*Substituted by section 3 of Proclamation V of 1123.**

(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product;

(g) "prescribed" means prescribed by rules made under this Proclamation;

(h) "sale" and "purchase" with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;

(i) "wholesale dealer" means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and includes a broker or commission agent who in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

3. There shall be levied and collected with effect from the first day of April 1944, in such manner as may be prescribed duties of Excise on all excisable goods which are produced or manufactured in Cochin State at the rates set forth in the First Schedule. Levy and collection of duty.

4. Government may, by notification in the Cochin Government Gazette, impose on any excisable goods brought into Cochin State from the territory of any Indian State, not being territory which has been declared under section 5 of the Indian Tariff Act, 1934 to be foreign territory for the purposes of that section, a duty of customs equivalent to the duty imposed by this Proclamation on the like goods produced or manufactured in Cochin State. Power of Government to impose customs duty on goods mentioned in the First Schedule.

5. Government may, by notification in the Cochin Government Gazette, provide that, from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under this Proclamation, engage in— Certain operations to be subject to licence.

(a) the production or manufacture or any process of the production or manufacture of any specified excisable goods or any specified component parts or ingredients of such goods or of specified containers of such goods, or

(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any excisable goods specified in the Second Schedule.

Form and conditions of licence.

6. Every licence under section 5 shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars, as may be prescribed.

Offences and Penalties.

7. Whoever commits any of the following offences, namely.—

(a) contravenes any of the provisions of a notification issued under section 5 or of a rule made under this Proclamation;

(b) evades the payment of any duty payable under this Proclamation;

(c) fails to supply any information which he is required by rules made under this Proclamation to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

(d) attempts to commit or abets the commission of any of the offences mentioned in clauses (a) and (b) of this section;

shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Power of courts to order forfeiture.

8. Any court trying an offence under this Proclamation may order the forfeiture to Government of any goods in respect of which the court is satisfied that an offence under this Proclamation has been committed, and may also order the forfeiture of any receptacles, packages, or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances, used in carrying the goods, and any implements or machinery used in the manufacture of the goods.

Recovery of sums due to Government.

9. In respect of duty and any other sums of any kind payable to Government under any of the provisions of this Proclamation or of the rules made thereunder, the Commissioner may deduct the amount so payable from any money owing to the person from whom such sums

may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Diwan Peishkar and the Diwan Peishkar on receipt of such certificate shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

10. Government may by notification in the Cochin Government Gazette declare that any of the provisions of the Sea Customs Act, XII of 1109, relating to the levy of and exemption from customs duties, draw back of duty, warehousing offences and penalties, confiscation and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

Application of the provisions of Act XII of 1109.

11. (1) Any officer duly empowered by Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Proclamation.

Power to arrest.

(2) Any person accused or reasonably suspected of committing an offence under this Proclamation or any rules made thereunder who on demand of any officer duly empowered by Government in this behalf refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, may be arrested by such officer in order that his name and residence may be ascertained.

12. (1) The Commissioner shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which he is making for any of the purposes of this Proclamation. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

Power to summon persons to give evidence and produce documents in inquiries under this Proclamation.

(2) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required.

Provided that the exemptions under section 103 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of sections 179 and 240 of the Cochin Penal Code.

Officers re-  
quired to  
assist Com-  
missioner.

13. All officers of Police and all officers of Government engaged in the collection of land-revenue, and all village officers are hereby empowered and required to assist the Commissioner in the execution of this Proclamation.

Owners or  
occupiers of  
land to report  
manufacture  
of contraband  
excisable  
goods.

14. Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate or to an officer of the Excise, Police, or Land Revenue Department, immediately the fact comes to his knowledge.

Punishment  
for connivance  
at offences.

15. Any owner or occupier of land, or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Proclamation or of any rules made thereunder shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Searches and  
arrests how  
to be made.

16. All searches made under this Proclamation or any rules made thereunder and all arrests made thereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure II of 1086, relating to searches and arrests made under that Code.

Disposal of  
persons  
arrested.

17. Every person arrested under this Proclamation shall be forwarded without delay to the officer in charge of the nearest Police Station who shall either admit him to bail to appear before the Magistrate having jurisdiction

or in default of bail forward him in custody to such Magistrate.

18. Any officer exercising powers under this Proclamation or under the rules made thereunder who—

Vexatious search, seizure, etc., by an officer.

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place ;

(b) vexatiously and unnecessarily detains, searches or arrests any person ;

(c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Proclamation ;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty, shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Proclamation shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

19. No prosecution for any offence under this Proclamation shall be instituted except with the previous sanction of—

Procedure.

(a) Government in the case of offences under section 18 ; and

(b) the Commissioner in all other cases.

20. Any person deeming himself aggrieved by any decision or order passed by the Commissioner under this Proclamation or the rules made thereunder may, within thirty days from the date of such decision or order, appeal therefrom to Government.

Appeals.

21. (1) Government may by notification in the Cochin Government Gazette make rules to carry into effect the purposes of this Proclamation.

Power of Government to make rules.

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



(i) provide for the assessment and collection of duties of excise, the authorities by whom functions under this Proclamation are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid ;

(ii) to regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market ;

(iii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses ;

(iv) provide for the distinguishing of goods which have been manufactured under licence, or materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Proclamation ;

(v) provide for the issue of licences, and transport permits and the fees, if any, to be charged therefor ;

(vi) provide for the inspection of factories and conducting of searches ;

(vii) provide generally for carrying into effect the provisions of this Proclamation.

(3) In making rules under this section, Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Proclamation, be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated.

Power of  
adjudication.

22. Where by the rules made under this Proclamation anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the Commissioner of Excise without limit and by such other officer of the Excise Department as may be specially authorised in this behalf subject to such limit as may be prescribed.

Option to  
pay fine in  
lieu of con-  
fiscation.

23. Wherever confiscation is adjudged under this Proclamation or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

24. (1) No suit shall lie against the Government or against any officer of Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Proclamation.

Bar of suits and limitation of suits and other legal proceedings.

(2) No suit, prosecution, or other legal proceeding shall be instituted for anything done or ordered to be done under this Proclamation after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

FIRST SCHEDULE

Item Number	Description of Goods	Rate of duty
1	<p><b>Betel Nuts, cured—</b>                      “Betel nut” means the fruit of the areca-palm (areca catechu), whether with or without husk, whether cured or uncured, but does not include the fruit while still attached to the tree.</p>	<p><sup>1</sup>[One anna per pound]</p>
2	<p><b>Coffee, cured—</b>                      “Coffee” means the seed of the coffee tree (coffee) whether with or without husk, whether cured or uncured, but does not include the seed while still attached to the tree</p>	<p><sup>1</sup>[2 annas per pound]</p>
3	<p><b>Tea—</b>                      “Tea” means the commodity known as tea made from the leaves of the plant <i>Camellia Thea</i> (linn) and includes green tea</p>	<p>do.</p>

SECOND SCHEDULE

- 1. Betel nuts
  - 2. Coffee
- } When supplied by a curer to a wholesale dealer whether directly or through a broker or a commission agent.

<sup>1</sup> Substituted by section 2, Proclamation XIV of 1121.

# THE GOVERNMENT OF COCHIN ACT, XX OF 1113

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*(As amended up to 27th Edavam 1123)*

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# THE GOVERNMENT OF COCHIN ACT

(XX of 1113)

## HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1113	XX	The Government of Cochin Act	Amended by Proclamation IX of 1122 and Acts VII of 1121, XIV of 1122, XV of 1122 I of 1123 <sup>1</sup> and XV of 1123

*Passed by His Highness the Maharaja of Cochin  
on the 3rd day of Mithunam 1113, corresponding  
to the 17th day of June 1938*

Whereas it is expedient to consolidate and amend Preamble.  
the laws relating to the Government of Cochin, it is hereby  
enacted as follows.—

### PART I

#### Introductory

1. This Act may be cited as “The Government of Short title.  
Cochin Act, 1113”.

2. This Act shall extend to the whole of the Cochin Extent and  
State and shall come into force at once.  
State and shall come into force at once.

3. The territories for the time being vested in His Government  
Highness the Maharaja of Cochin are governed by and in  
of Cochin by  
the name of His Highness, and all rights, authority and  
His Highness  
jurisdiction which appertain or are incidental to the  
the Maharaja.  
Government of such territories are exercisable by His  
Highness, except in so far as may be otherwise provided  
by or under this Act, or as may be otherwise directed by  
His Highness.

<sup>1</sup> Under section 24 of Act I of 1123 all appointments, orders, rules and standing orders issued under the Government of Cochin Act which were in force immediately prior to the commencement of that Act, namely 3rd Mithunam 1113/17th June 1938, are deemed to have been issued under the corresponding provisions of that Act as amended by Act I of 1123 so far as they are not inconsistent with the Act as amended and are to continue in force till they are superseded.

## PART II

## The Executive

Executive  
Authority of  
the Cochin  
State.

¶4. (1) The executive authority of the Cochin State is vested in His Highness and subject to the provisions of this Act, shall be exercised by His Highness, in relation to reserved subjects in the manner provided for in subsection (2) and in relation to transferred subjects through a Council of Ministers appointed under this Act, but nothing in this section shall prevent the Cochin Legislature from conferring functions upon subordinate authorities or be deemed to transfer to the Ministers any functions conferred by any existing law on any Court, judge or officer or on any local or other authority.

(2) His Highness may, in his descretion, entrust the administration of any reserved subject to a Minister on such terms and conditions as His Highness may determine:

Provided that the Ministers may exercise their functions either directly or through officers subordinate to them.

*Explanation.*—In this Act, the expression “transferred subjects” shall mean those subjects which under subsection (1) of section 8 of this Act, have been transferred for being administered through Ministers appointed under this Act; and the expression “reserved subjects” shall mean all other subjects not so transferred.]

5. <sup>2</sup>[.....]

Appointment  
of the  
Ministers.

6. (1) <sup>3</sup>[The Ministers are] appointed by His Highness and <sup>3</sup>[shall hold office] during His Highness' pleasure:

<sup>4</sup>[(1A) The Council of Ministers, one of whom shall be designated as the Prime Minister shall act as a collective authority and shall be collectively responsible to the Legislature in respect of transferred subjects].

(2) <sup>3</sup>[A Minister] who, for any period of six consecutive months, is not an elected member of the

<sup>1</sup> Substituted by section 2, Act I of 1123.

<sup>2</sup> Deleted by section 3, Act I of 1123.

<sup>3</sup> Substituted by section 2, Act VII of 1121.

<sup>4</sup> Inserted by section 4, Act I of 1123.

Legislative <sup>1</sup>[Assembly] shall, at the expiration of that period, cease to be Minister.

(3) There shall be paid to <sup>2</sup>[each Minister] such salary and allowances as may be provided for by Act of the Legislature, and, until such provision is made, His Highness may prescribe his salary and allowances.

<sup>3</sup>[(4) In the administration of transferred subjects, His Highness is guided by the advice of the Council of Ministers or the Minister concerned, as the case may be, unless His Highness sees cause to dissent from the advice of the Council of Ministers or the Minister concerned, in which case, His Highness may require action to be taken otherwise than in accordance with such advice.

(5) Subject to the provisions of this Act, all references in the laws of the Cochin State to the Diwan or to a Minister either expressly or by virtue of the provisions contained in sub-section (5) of section 6 of this Act as it stood prior to the amendment effected by the Government of Cochin (Amendment) Act, I of 1123, shall be construed as references to the Government].

<sup>4</sup>[7. (1) If at any time His Highness is satisfied that a situation has arisen in which the Government cannot be carried on in accordance with the provisions of this Act, His Highness may, by Proclamation —

Provisions in case of failure of Constitutional Machinery:

(a) declare that the Government shall, to such extent as may be specified in the Proclamation, be exercised by His Highness in His Highness' discretion;

(b) assume to himself all or any of the powers vested in or exercisable by the Legislative <sup>1</sup>[Assembly] or by any authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to His Highness to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part the operation of any provisions of this Act relating to the Legislative <sup>1</sup>[Assembly] or any authority:

<sup>1</sup> Substituted by section 2 of Act XV of 1123.

<sup>2</sup> Substituted by section 2, Act VII of 1121.

<sup>3</sup> Inserted by section 4, Act I of 1123.

<sup>4</sup> Substituted by section 5, *ibid.*



Provided that nothing in this sub-section shall authorise His Highness to assume to himself any of the powers vested in or exercisable by the High Court or to suspend either in whole or in part the operation of any provision of this Act relating to the High Court.

(2) To assist His Highness in the exercise of the functions of Government assumed under sub-section (1), His Highness may appoint a Council of Advisers whose salaries and conditions of service shall be such as may be determined by His Highness.

(3) His Highness shall withdraw such Proclamation as soon as His Highness is satisfied that the situation which necessitated the issue thereof has ceased to exist].

Classification  
of transferred  
subjects.

8. His Highness <sup>1</sup>[.....] may, by rules under this Act, provide—

(1) for the transfer from time to time of one or more subjects for being administered through <sup>2</sup>[Ministers] appointed under this Act.

(2) for the allocation of revenues of moneys for the purpose of such administration, and

(3) for the settlement of doubts arising as to whether any matter does or does not relate to a transferred subject, and for the treatment of matters which affect both a transferred subject and a reserved subject.

Conduct of  
business of  
the executive  
authority of the  
Cochin State.

<sup>3</sup>[9. His Highness may make rules and orders for the more convenient transaction of the business of the executive authority of the Cochin State and in particular—

(a) to regulate the procedure at meetings of the Council of Ministers, and

(b) to require the Ministers to transmit to His Highness all such information with respect to the Government of the Cochin State as may be specified, or as His Highness may otherwise require to be so transmitted.—

Authentication  
of orders and  
other instru-  
ments.

10. (1) All orders and other instruments of the executive authority of the Cochin State shall be expressed to be made by the Government of Cochin and shall be authenticated as His Highness may by rule direct, and provision may be made by rule for distinguishing orders and other instruments relating to transferred subjects from other orders and instruments.

<sup>1</sup> Deleted by section 6, Act 1 of 1123.

<sup>2</sup> Substituted by section 2, Act VII of 1121.

<sup>3</sup> Substituted by section 7, Act I of 1123.

(2) The validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the executive authority of the Cochin State.

11. (1) His Highness may appoint a person, being a person qualified to be appointed a judge of the High Court, to be Advocate-General of Cochin. Advocate-General.

(2) It shall be the duty of the Advocate-General to give advice to the Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by His Highness, and in the performance of his duties, he shall have right of audience in all courts in the Cochin State.

(3) The Advocate-General shall hold office during His Highness' pleasure, and shall receive such remuneration as His Highness may determine.

### PART III

#### The Legislature

12. There shall be a Legislature for the Cochin State which shall consist of His Highness, and a Chamber to be known as the Cochin Legislative <sup>Cochin</sup> <sup>Legislature.</sup> <sup>1</sup>[Assembly].

13. (1) The Legislative Assembly shall consist of <sup>2</sup>[.....] <sup>3</sup>[fifty-eight members,] of whom <sup>4</sup>[fifty-three] members shall be representatives elected, and the rest nominated by His Highness, in accordance with the rules made in that behalf. Constitution and duration of the Cochin Legislative [Assembly]

Provided that His Highness may, for the purpose of any Bill introduced or proposed to be introduced in the <sup>1</sup>[Assembly] nominate not more than two members having special knowledge or experience of the subject matter of the Bill, and these persons shall, in relation to the Bill, have, for the period for which they are nominated, all the rights of members of the <sup>1</sup>[Assembly] and shall be in addition to the members referred to:

Provided further that <sup>5</sup>[every Minister] and the Advocate-General shall have the right to speak in and

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Deleted by section 2, Act XV of 1122.

<sup>3</sup> Substituted by section 4 of Act XV of 1123.

<sup>4</sup> Substituted by section 4 of *ibid.*

<sup>5</sup> Deleted by section 2, Act VII of 1121.

otherwise take part in the proceedings of, the <sup>1</sup>[Assembly] and any Committee of the <sup>1</sup>[Assembly] of which they may be named members, but shall not, by virtue of this provision only, be entitled to vote.

(2) Every <sup>1</sup>[Assembly] shall continue for <sup>2</sup>[four] years from the date of its first sitting:

Provided that—

(a) the said period may be extended from time to time by His Highness, if in special circumstances His Highness so thinks fit;

(b) the <sup>1</sup>[Assembly] may at any time be dissolved by His Highness.

13A. <sup>3</sup>[.....]

Rules.

14. Subject to the provisions of this Act, provisions may be made by rules under this Act, with respect to the matters hereinafter mentioned or any of them, that is to say—

<sup>4</sup>[(a) the delimitation of territorial constituencies for the purpose of elections under this Act and for the reservation of such number of seats in joint electorates in territorial constituencies as may be fixed by Government for Muslims, Latin Christians and the Depressed Classes in the first Legislative Assembly to be formed after the coming into force of the Government of Cochin (Amendment) Act, XV of 1123.

*Explanation.*—For purposes of this clause, “Depressed Classes” shall mean the following communities, namely:—

Kanakkan, Kuravan, Koodan, Kavara, Pulayan, Sambavan (Parayan), Valluvan and Vettuvan.];

(b) the qualifications entitling <sup>5</sup>[and the disqualifications disentitling] persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;

(c) the qualifications for being elected at such elections as a member of the Legislative <sup>1</sup>[Assembly];

(d) the conduct of elections under this Act and the methods of voting thereat;

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Substituted by section 4 of Act XV of 1123.

<sup>3</sup> Deleted by section 8, Act I of 1123.

<sup>4</sup> Substituted by section 5 (i) of Act XV of 1123.

<sup>5</sup> Inserted by section 5 (ii) of *ibid.*

- (e) the expenses of candidates at such elections;
- (f) corrupt practices and other offences at or in connection with such elections;
- (g) the decision of doubts and disputes arising out of or in connection with such elections;
- (h) the term of office of nominated members of the <sup>1</sup>[Assembly];
- (i) the conditions under which and the manner in which persons may be nominated as members of the <sup>1</sup>[Assembly];
- (j) the filling in of casual vacancies in the <sup>1</sup>[Assembly] and
- [(k) making, notwithstanding the provisions contained in the Code of Criminal Procedure, II of 1086, any or all the offences under Chapter VIII A of the Cochin Penal Code, I of 1059, cognisable offences as defined in the said Code of Criminal Procedure.]

<sup>3</sup>[(l)] matters ancillary to any such matter as aforesaid.

15. (1) If a member of the Legislative <sup>1</sup>[Assembly] Vacation of seats.

(a) becomes subject to any of the disqualifications mentioned in <sup>4</sup>[clause (a) and clauses (c) to (h) of subsection (1)] of the next succeeding section; or

(b) by writing under his hand addressed to the <sup>5</sup>[President] resigns his seat,

his seat shall thereupon become vacant.

(2) If for a period of four consecutive months, a member of the <sup>1</sup>[Assembly] is unable to attend to the duties of his membership, the Government may, by notification in the Gazette, declare his seat vacant.

16. (1) A person shall be disqualified for being Disqualifications for membership. chosen as, and for being a member of the Legislative <sup>1</sup>[Assembly]

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Inserted by section 5(iii) of Act XV of 1123.

<sup>3</sup> Relettered by section 5 *ibid.*

<sup>4</sup> Substituted by section 6 *ibid.*

<sup>5</sup> Substituted by section 9 Act I of 1123.

(a) if he holds any office of profit under His Highness or under any Municipal or Local Authority:

Provided that this shall not apply to a nominated member;

*Explanation.*—(1) <sup>1</sup>[The Ministers] appointed under this Act, or the President or the Deputy President of the Legislative <sup>2</sup>[Assembly] or the Chairman or Vice-Chairman of a Municipal or Local Authority, or the holder of any office in the Civil or Military Service under the Government, if the office is one which does not involve either of the following incidents, namely, that the incumbent—

(i) is a whole time servant of the Government, or

(ii) holds a pensionable office or is in pensionable service, within the meaning of the Cochin Service Regulations,

shall not be treated as a person holding an office of profit under His Highness under this section.

*Explanation.*—(2) If any question arises whether any person holds an office of profit under this section, the decision of the <sup>3</sup>[Government] shall be final.

(b) if he is under 25 years of age;

<sup>4</sup>[(c) if he is not a Cochin subject as defined in the Cochin Nationality and Naturalisation Act, XIX of 1122;]

(d) if he is of unsound mind and stands so declared by a competent court;

(e) if he is an undischarged insolvent;

<sup>5</sup>[(f) if after the declaration hereinafter referred to in this clause, he is convicted of an offence under Chapter VIIIA of the Cochin Penal Code, or after such declaration he is reported guilty in proceedings for questioning the validity or regularity of an election of a corrupt or illegal practice relating to elections in Cochin State which may be declared by His Highness, by notification in the Cochin Government Gazette, to be an offence or practice entailing disqualification for membership of the Cochin Legislative

<sup>1</sup> Substituted by section 2, Act VII of 1121.

<sup>2</sup> Inserted by section 10, Act I of 1123.

<sup>3</sup> Inserted by section 10, Act I of 1123.

<sup>4</sup> Substituted by section 7 of Act XV of 1123.

<sup>5</sup> Substituted and always deemed to have been substituted by section 2, Act XIV of 1122.

<sup>1</sup>[Assembly] unless such period has elapsed as may be specified in that behalf in the provisions of that notification;

(*f*) if he has been convicted, or has, in proceedings for questioning the validity or regularity of an election been found to have been guilty of any offence or corrupt or illegal practice relating to elections <sup>2</sup>[declared by the laws for the time being in force in the Dominion of India] to be an offence or practice entailing disqualification for membership of legislature in <sup>3</sup>[in the Dominion of India] unless such period has elapsed as may be specified in that behalf <sup>4</sup>[in the laws in force in the Dominion of India;]

(*g*) if he has been convicted of any other offence by a court in the Cochin State or <sup>4</sup>[the Dominion of India] and sentenced to imprisonment for not less than two years, unless a period of five years or such less period as His Highness may allow in any particular case, has elapsed since his release;

(*h*) if having been nominated as a candidate for the <sup>5</sup>[Assembly] or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any rules made under this Act, unless five years have elapsed from the date by which it ought to have been lodged, or His Highness has removed the disqualification:

Provided that the disqualification under paragraph (*h*) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as His Highness may in any particular case allow.

(2) A person shall not be capable of being chosen a member of the <sup>1</sup>[Assembly] while he is serving a sentence of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (*f*) <sup>2</sup>[or paragraph (*f*)] or

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Substituted by section 7 *ibid.*

<sup>3</sup> Substituted by section 7 *ibid.*

<sup>4</sup> Substituted by section 7 *ibid.*

<sup>5</sup> Substituted and always deemed to have been substituted by section 2, Act XIV of 1123.

<sup>6</sup> Inserted by section 10, Act 1 of 1123.

paragraph (g) of sub-section (1) of this section is at the date of the disqualification a member of the <sup>1</sup>[Assembly] his seat shall, notwithstanding anything in this or the last preceding section; not become vacant by reason of the disqualification until three months have elapsed from the date thereof, or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that petition or appeal is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.

Meeting of  
Assembly.

17. (1) The Legislative <sup>1</sup>[Assembly] is summoned by His Highness to meet once at least every year; and twelve months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) Subject to the provisions of this section His Highness may—

(a) summon the <sup>1</sup>[Assembly] to meet at such times and places as His Highness thinks fit.

(b) prorogue the <sup>1</sup>[Assembly].

Oath of mem-  
bers.

18. Every member of the Legislative <sup>1</sup>[Assembly] shall, before taking his seat, make and subscribe before <sup>2</sup>[the President or a person appointed by His Highness for the purpose], an oath or affirmation according to the form set out in the schedule to this Act.

Officers of the  
Assembly.

<sup>3</sup>[19 (1) The <sup>1</sup>[Assembly] shall, as soon as may be, choose two members of the <sup>1</sup>[Assembly] to be respectively President and Deputy President thereof and so often as the office of President or Deputy President becomes vacant, the <sup>1</sup>[Assembly] shall choose another member to be President or Deputy President as the case may be.

(2) A member holding office as President or Deputy President of the <sup>1</sup>[Assembly] shall, vacate his office if he ceases to be a member of the <sup>1</sup>[Assembly] may, at any time, resign his office by writing under his hand addressed to <sup>4</sup>[His Highness] and may be removed from

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Substituted by section 11, Act I of 1123 and under section 1 (2) *ibid* this amendment is deemed to have come into force on the 1st of Karkadagam 1122.

<sup>3</sup> Substituted by section 5, Act XV of 1122.

<sup>4</sup> Substituted by section 12, Act I of 1123.

his office by a resolution of the <sup>1</sup>[Assembly] passed by a majority of the then members of the <sup>1</sup>[Assembly], but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided that whenever the <sup>1</sup>[Assembly] is dissolved, the President shall not vacate his office until immediately before the first meeting of the <sup>1</sup>[Assembly] after the dissolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy President, or, if the office of Deputy President is also vacant, by such member of the <sup>1</sup>[Assembly] as <sup>2</sup>[His Highness may in His Highness' discretion] appoint for the purpose, and during any absence of the President from any sitting of the <sup>1</sup>[Assembly] the Deputy President, or, if he is also absent, such person as may be determined by the rules of procedure of the <sup>1</sup>[Assembly] or, if no such person is present, such other person as may be determined by the <sup>1</sup>[Assembly], shall act as President :

Provided that where an election of the President has to be conducted the duties pertaining to the conduct of the election shall be performed by <sup>3</sup>[.....] such member of the <sup>1</sup>[Assembly] as <sup>2</sup>[His Highness] may appoint in this behalf.

(4) There shall be paid to the President and Deputy President of the <sup>1</sup>[Assembly] such salaries as may be fixed by Act of the Legislature, and until provision in that behalf is so made, such salaries as His Highness may determine.”]

20. (1) Save as provided in the last preceding section, all questions at any sitting of the Legislative <sup>1</sup>[Assembly] shall be determined by a majority of votes of the members present and voting, other than the President or person acting as such.

Voting in the Assembly, power of the Assembly to act notwithstanding vacancies and quorum.

The President or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Substituted by section 12, Act I of 1123.

<sup>3</sup> Deleted by *ibid*.



(2) The <sup>1</sup>[Assembly] shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the <sup>1</sup>[Assembly] shall be valid, notwithstanding that it is discovered subsequently that some one who was not entitled so to do, sat and voted or otherwise took part in the proceedings.

(3) If, at any time during a meeting of the <sup>1</sup>[Assembly] less than fifteen members of the <sup>1</sup>[Assembly] are present, it shall be the duty of the President or person acting as such either to adjourn the <sup>1</sup>[Assembly] till the next day on which the <sup>1</sup>[Assembly] would ordinarily sit, or to suspend the meeting until at least fifteen of the members are present.

Penalty for sitting and voting when not qualified or disqualified.

21. If a person sits or votes as a member of the Legislative <sup>1</sup>[Assembly] when he is not qualified, or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of section 16 of this Act, he shall be liable to a penalty of Rs. 100 to be recovered as a debt due to the Government.

Privileges of members.

22. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislative <sup>1</sup>[Assembly], there shall be freedom of speech in the <sup>1</sup>[Assembly] and no member or other person entitled to take part in the proceedings of the <sup>1</sup>[Assembly] shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the <sup>1</sup>[Assembly] or any committee thereof, and no person shall be liable in respect of the publication, by or under the authority of the <sup>1</sup>[Assembly], of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members and other persons entitled to take part in the proceedings of the <sup>1</sup>[Assembly] shall be such, as may from time to time, be defined by Act of the Legislature.

(3) Nothing in this Act shall be construed as conferring or empowering the <sup>1</sup>[Assembly] to confer on itself or on any of its committees or officers, the status of a court or any punitive or disciplinary powers, other than a power to remove or exclude persons infringing the rules or standing orders or otherwise behaving in a disorderly manner.

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<sup>1</sup> Substituted by section 3 of Act XV of 1123.

23. Members of the Legislative <sup>1</sup>[Assembly] shall be entitled to receive such allowances as may from time to time be determined by Act of the Legislature, and until provision in that respect is so made, as may be determined by rules under this Act. Allowances of members.

24. (1) Subject to the provisions of this Act, the Cochin Legislature may make laws for the whole of the Cochin State or any part thereof, and for the subjects of His Highness wherever they may be. Powers of the Legislature.

(2) There shall not be introduced into or moved in the Legislative <sup>1</sup>[Assembly] any Bill or Amendment or Motion or Resolution or Interpellation or other proceedings relating to or affecting the following matters:—

(a) the Ruling family of Cochin; or

(b) <sup>2</sup>[ \* \* \* \* ]

(c) <sup>2</sup>[ \* \* \* \* ]

(d) <sup>2</sup>[ \* \* \* \* ]

(e) <sup>2</sup>[ \* \* \* \* ]

(f) <sup>2</sup>[ \* \* \* \* ]

(g) the Military forces including the Nayar Brigade, and His Highness' Body Guard; or

(h) the conduct of any judge of the High Court in the discharge of his duties; or

(i) coinage or legal tender; or

(j) State charities; or

(k) Devaswams belonging to or under the control of His Highness' Government; or

(l) the Cranganur Chief or his family; or

(m) the provisions of this Act.

25. There shall not be introduced into or moved in the Legislative <sup>1</sup>[Assembly] without the previous sanction of His Highness any Bill or Amendment— Measures requiring previous sanction.

(a) affecting the public revenues of the State or by which any charge would be imposed on such revenues; or

(b) affecting the religion or religious rights and usages of any class of His Highness' subjects; or

<sup>1</sup> Substituted by Section 3 of Act XV of 1123.

<sup>2</sup> Deleted by section 13 Act I of 1123.

(c) affecting any Act, Proclamation or Order made or passed by His Highness in the exercise of His Highness' prerogative; or

(d) affecting the privileges of members of the Legislative <sup>1</sup>[Assembly].

Power of His Highness in certain cases.

26. <sup>2</sup>[If His Highness is of opinion] that the discussion of a Bill introduced or proposed to be introduced in the Legislative <sup>1</sup>[Assembly] or any specified clause of a Bill or of any Amendment moved or proposed to be moved to a Bill would affect the safety or tranquillity of the Cochin State or any part thereof, <sup>1</sup>[His Highness] may direct that no proceedings or no further proceedings shall be taken in relation to the Bill, Clause or Amendment; and effect shall be given to the direction.

Assent and withholding of assent to Bills.

27. <sup>3</sup>[(1) When a Bill has been passed by the Legislative <sup>1</sup>[Assembly] it shall be presented to His Highness and His Highness shall in His Highness' discretion declare either that His Highness assents thereto or that His Highness withholds His Highness' assent, therefrom by notification in the Cochin Government Gazette, or may return the Bill to the Legislative <sup>1</sup>[Assembly] with a message that the Legislative <sup>1</sup>[Assembly] will reconsider the Bill or any specified portions thereof and, in particular, will consider the desirability of introducing any such amendment as His Highness may, in such message, advise.

(2) A Bill which is assented to under sub-section (1) shall become an Act.]

Annual Financial Statement.

28. (1) The estimated annual expenditure and revenues of the State shall be laid in the form of a statement, in this Act referred to as "the Annual Financial Statement", before the Legislative <sup>1</sup>[Assembly] in each year, and the proposals of the Government for the appropriation of the revenues and other moneys in any year shall be submitted to the vote of the <sup>1</sup>[Assembly] in the form of demands for grants. The <sup>1</sup>[Assembly] may assent or refuse its assent, to a demand or may reduce the amount therein referred to, either by a reduction of the whole grant, or by the omission or reduction of any of the items of expenditure of which the grant is composed;

<sup>1</sup> Substituted by section 3 of Act XV of 1123.

<sup>2</sup> Substituted by section 14, Act I of 1123.

<sup>3</sup> Substituted by section 15, *ibid.*

Provided that—

(a) the estimates of expenditure embodied in the Annual Financial Statement which relate to Cranganur shall be shown separately;

(b) the Government shall have power in relation any such demand to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject and <sup>1</sup>[if His Highness is of opinion] that the expenditure provided for by the demand is essential with respect to the proper administration of that subject;

(c) His Highness may in cases of emergency, authorise such expenditure as may be in His Highness' opinion necessary for the safety or tranquillity of the State or for the carrying on of any department;

(d) no proposal for imposing or increasing any tax or for regulating the borrowing of money or for amending the law with respect to any financial obligations of the State shall be made, except on the recommendation of the Government, communicated to the <sup>2</sup>[Assembly]

(e) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made, except on the recommendation of the Government, communicated to the <sup>2</sup>[Assembly,]

*Explanation.*—A proposal shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for fines or other pecuniary penalties or for the payment of fees for licenses or fees for services rendered.

(2) Nothing in this Act shall require proposals to be submitted to the <sup>2</sup>[Assembly] relating to the following heads of expenditure which shall be expenditure charged on the revenues of the State.—

(a) Expenditure relating to any matter removed from the cognisance of the <sup>2</sup>[Assembly] by sub-section 2 of section 24 of this Act;

(b) Expenditure authorised under clause (c) of the preceding sub-section;

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<sup>1</sup> Substituted by section 16, Act I of 1123.

<sup>2</sup> Substituted by section 3, of Act XV of 1123.

(c) Expenditure which is obligatory under any law;

(d) Pensions and gratuities granted by His Highness or with His Highness' sanction; or under the rules of the Government;

(e) Salaries and allowances of such officers as may from time to time be specified by His Highness;

(f) Interest on loans and sinking fund charge;

(g) Contributions (charitable or otherwise) made by or with the sanction of His Highness;

(h) Expenditure classified by the <sup>1</sup>[Government] as political expenditure.

If any question arises whether any proposed appropriation of revenues or moneys does or does not relate to the above heads of expenditure, the decision of the <sup>1</sup>[Government] shall be final.

Authentication  
of schedule of  
authorised  
expenditure

29. (1) The <sup>2</sup>[Minister in charge of Finance] shall authenticate by his signature a schedule specifying.—

(a) the grants made by the Legislative <sup>3</sup>[Assembly] under sub-section (1) of the last preceding section;

(b) the several sums required to meet the expenditure certified under proviso (b) of sub-section (1) or relating to the heads of expenditure mentioned in sub-section (2) of the last preceding section.

(2) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the State shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary  
statement of  
expenditure.

30. If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure theretofore authorised for that year, the Government shall lay before the Legislative <sup>3</sup>[Assembly] a supplementary statement showing the estimated amount of that expenditure, and the provisions of this Act relating to the Annual Financial Statement, shall apply to such supplementary statement.

Provided that where His Highness authorises any expenditure under proviso (c) of sub-section (1) or relating

<sup>1</sup> Substituted by section 16, Act I of 1123.

<sup>2</sup> Substituted by section 17, *ibid.*

<sup>3</sup> Substituted by section 3 of Act XV of 1123.

to the heads of expenditure mentioned in sub-section (2) of section 28 of this Act over and above the expenditure theretofore authorised for that year, the <sup>1</sup>[Minister in charge of Finance] shall authenticate by his signature a schedule specifying the several sums so authorised, and the expenditure of such sums from the revenues of the State shall thereupon be deemed to be duly authorised,

3i. (1) The <sup>2</sup>[Government] may make rules from time to time for the purpose of carrying into effect the provisions of this Part, and more particularly for regulating the course of business in the Legislative <sup>3</sup>[Assembly] and as to the person or persons presiding over the meetings thereof in the absence of the President and the Deputy President, and the preservation of order at meetings, and the rules may provide for the prohibiting or regulating the asking of questions on and the discussion of any subject specified under the rules.

Power to make rules and standing orders.

(2) The <sup>3</sup>[Assembly] may from time to time make Standing Orders for the conduct of business and the procedure to be followed in the <sup>3</sup>[Assembly] in so far as these matters are not provided for by rules under this section. The first Standing Orders shall be made by the Diwan, but may, subject to the assent of the <sup>2</sup>[Government] be altered by the <sup>3</sup>[Assembly].

(3) Any Standing Order made as aforesaid which is repugnant to the provisions of any rules made under this section shall, to the extent of that repugnancy, but not otherwise, be void.

## PART IV

### The Judicature

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32. (1) The Chief Court of Cochin shall henceforth be designated the High Court of Judicature, Cochin and shall, unless His Highness otherwise directs, consist of three judges one of whom shall be the Chief Justice.

The High Court.

(2) Notwithstanding the repeal of the Cochin Chief Court Act by this Act —

(a) The Chief Judge and judges of the Chief Court shall continue to be the Chief Justice and judges of the High Court subject to the provisions of this Act;

<sup>1</sup> Substituted by section 18, Act I of 1123.

<sup>2</sup> Substituted by section 19, *ibid.*

<sup>3</sup> Substituted by section 3 of Act XV of 1123.

(b) All proceedings commenced in the Chief Court prior to the date of the coming into force of this Act shall be continued and depend in the High Court as if they had commenced in the High Court after such date, and all rules and orders in force in the Chief Court immediately before such date shall, continue in force, except so far as the same are altered by or under this Act.

Appointment  
and tenure  
of judges.

33. Every judge of the High Court shall be appointed by His Highness and shall hold office until he attains the age of fifty-five years, unless His Highness otherwise directs:

Provided that—

(a) a judge may by resignation under his hand addressed to <sup>1</sup> [His Highness] resign his office;

(b) a judge may be removed from his office by order of His Highness on the ground of misbehaviour, or of infirmity of mind or body.

Qualification  
of judges.

34. A person shall not be qualified for appointment as a judge of the High Court unless he—

(a) has, for at least three years held a judicial office in the Cochin State, not inferior to that of a District Judge; or,

(b) has, at least for ten years been a pleader of the Chief Court or the High Court of Cochin or both; or,

(c) has, for at least five years held a judicial office in <sup>2</sup>[the Dominion of India] not inferior to that of a subordinate judge, or judge of a Small Causes Court; or,

(d) has, for at least ten years been a pleader of any High Court in <sup>2</sup>[the Dominion of India] or of two or more such courts in succession; or,

(e) is, a barrister of England or Northern Ireland of at least ten years' standing or member of the Faculty of Advocates in Scotland of at least ten years' standing:

Provided that one of the judges shall be a Christian.

In computing for the purposes of this section, the period during which a person has been a pleader, or the standing of a barrister, or a member of the Faculty of

<sup>1</sup> Substituted by section 20, Act I of 1123.

<sup>2</sup> Substituted by section 8 of Act XV of 1123.

Advocates, any period during which the person has held judicial office after he became a pleader, barrister or a member of the Faculty of Advocates, as the case may be, shall be included.

*Explanation.*—In this section, the expression “pleader” shall include vakil, advocate, or any other person entitled to practise as a pleader.

35. Every person appointed to be a judge of the High Court shall, before he enters upon his office, make and subscribe before His Highness, or some person appointed by His Highness, an oath according to the form set out in that behalf in the Schedule to this Act. Oath.

36. The judges of the High Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may, from time to time, be fixed by His Highness: Salaries, etc., of judges.

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment:

Provided further that the salary and allowances fixed under this section, shall be the whole profit or advantage which a judge shall enjoy from his office during his continuance therein.

37. (1) The Chief Justice shall have rank and precedence before the other judges of the High Court. Precedence of judges.

(2) All the other judges of the High Court shall have rank and precedence according to the seniority of their appointments, unless His Highness otherwise directs.

38. (1) If the Office of the Chief Justice of the High Court becomes vacant, or if the Chief Justice is by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Highness to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court, as His Highness may think fit to appoint for the purpose, and until such appointment is made, by the senior judge of the court present. Temporary and Additional judges.

(2) If the office of any other judge of the High Court becomes vacant, or if any such judge is appointed



to act temporarily as Chief Justice, or is by reason of absence or for any other reason, unable to perform the duties of his office, His Highness may appoint a person duly qualified for appointment as a judge to act as a judge of the High Court, and the person so appointed shall, unless His Highness thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Highness to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of the High Court, or by reason of arrears of work in such court, or for any other reason, it appears to His Highness that the number of the judges of the court should be for the time being increased, His Highness may appoint persons duly qualified for appointment as judges to be additional judges of the court, for such period as His Highness may specify.

Seal of High Court.

39. The High Court shall be a court of record and shall sit in Ernakulam unless His Highness otherwise directs.

Seal of the High Court.

40. The Court shall have and use, as occasion may require, a seal bearing a device and impression of His Highness' Coat of Arms with a label surrounding it with this inscription in Malayalam "കൊച്ചി ഹൈക്കോട് മറ്റു", and a second label surrounding the above with this inscription in English, "The Seal of the High Court of Cochin". The seal shall be in the custody of the Chief Justice, or in his absence, of the judge performing the duties of the Chief Justice.

Jurisdiction of the High Court.

41. (1) Subject to the provisions of this Act, the High Court shall have and exercise, all the jurisdiction and powers vested in it by this Act and any other law which is in force, or may hereafter come into force and all the jurisdiction and powers vested in the Chief Court including—

(a) the power to hear and determine appeals from the Civil Courts of the Cochin State and from all other courts subject to its superintendence and to exercise appellate jurisdiction, in such cases as are subject to appeal to the Chief Court, by virtue of any law now in force;

(b) the power to hear and determine appeals from the criminal courts of the Cochin State and from all

other courts subject to its superintendence, and to exercise appellate jurisdiction, in such cases as are subject to appeal to the Chief Court, by virtue of any law now in force;

(c) the power to withdraw and to try and determine, as a court of original jurisdiction, any civil suit pending in any court subordinate to it, either on the application of both the parties to the suit or for any good and sufficient cause, after recording the reasons for such a transfer. Any suit so withdrawn shall be tried by a single judge of the High Court, and the decree therein passed shall be executed by the court from which the suit was withdrawn, as if it had been passed by itself, and any order passed by the latter in executing such decree, shall be subject to the same rules in respect of appeal, as if the decree had been passed by such court;

(d) the power to withdraw and try any criminal case pending in any criminal court subordinate to it for any good and sufficient cause, after recording the reasons for such withdrawal. Any case so withdrawn shall be tried by a single judge of the High Court.

(2) It is hereby declared that neither the High Court nor any court subordinate thereto, has or shall claim, any jurisdiction or powers over the person or property of His Highness, but His Highness may, make rules providing for the determination by the courts, of claims by or against His Highness.

(3) (a) His Highness may refer to the High Court any question of law for its opinion and the High Court shall, after such hearing as it may think fit, submit a report thereon to His Highness.

(b) No report shall be made under this sub-section save in accordance with an opinion delivered by a bench consisting of not less than three judges in open court, with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge, who does not concur from delivering a dissenting opinion.

(c) The opinion contained in the report submitted to His Highness under this sub-section shall have the same effect as any other judgment of the High Court.

42. Subject to the provisions of this Act and of any other Act which is in force or may hereafter come into force, the High Court may, with the sanction of His <sup>Power to make rules.</sup>

Highness, make rules to regulate its own practice and procedure, and provide for the exercise by one or more judges of the High Court, of the appellate and revisional jurisdiction and the power of superintendence over subordinate courts vested in the High Court, and of the original jurisdiction conferred on it by this Act or any other Act now in force or which may thereafter come into force, in such manner as may appear to such court, to be convenient for the due administration of justice.

Constitution of benches.

43. The Chief Justice shall, from time to time, determine what judge in each case shall sit alone, and what judges of the court whether with or without the Chief Justice, shall constitute the several division courts.

Administrative Control.

44. The administrative control of the High Court shall vest in the Chief Justice who may exercise it in such manner and after such consultation with the other judges as he may think fit.

Superintendence over subordinate courts.

45. The High Court shall have superintendence over all courts subordinate to it and shall have power. —

(a) to call for returns;

(b) to make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) to prescribe forms in which books, entries and accounts shall be kept by the officers of such courts:

Provided that such rules and forms shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous sanction of His Highness.

Writs, etc. to issue in the name of His Highness.

46. All writs, summons, precepts, rules and orders and other mandatory process to be used, issued or awarded by the High Court, shall run and be in the name and style of His Highness the Maharaja of Cochin, and shall be sealed with the seal of the High Court.

Appeal against decisions of a single judge.

47. An appeal shall lie from the decree, sentence, or order of the High Court to two judges of such court in any civil suit tried under clause (c) of sub-section (1) of section 41 or in any criminal case tried under clause (d) of sub-section (1) of section 41 of this Act.

48. (1) Where for reasons adequate in the opinion of the Chief Justice, a judge is unable to be a member of the bench, and for that reason a bench of three judges cannot be formed, a division court of two judges may dispose of the case.

Procedure where bench of three judges cannot be formed, or in case of difference of opinion between two judges.

(2) Where two judges of a division court differ in opinion, the case shall be referred to a third judge unless such judge is for reasons adequate in the opinion of the Chief Justice, unable to hear the same. If the case is referred to the third judge, it shall be, decided according to the decision of the majority, if there is a majority, of all the judges who have heard the appeal, including those who first heard it. If the case is not referred to the third judge, or if there is no such majority, the decree, sentence or order appealed against shall be affirmed.

49. When a case is heard by a division court of three or more judges and there is a difference of opinion among the judges, it shall be decided according to the opinion of the majority of the judges. If there be no majority, the decree, order, or sentence appealed against shall be confirmed.

Procedure in case of difference of opinion in matters heard by three judges.

50. The High Court shall comply with such requisitions as may be made by His Highness for records, returns and statements, in such form and manner as His Highness may deem proper.

Requisitions by His Highness for records, etc.

## PART IV-A

### Public Service Commission

50A. There shall be a Public Service Commission for the Cochin State.

Public Service Commission.

50B. (1) The Chairman and the other members of the Public Service Commission shall be appointed by His Highness in His Highness' discretion.

Composition and staff of Commission

(2) His Highness, in His Highness' discretion, may, by rules—

(a) determine the number of members of the Commission, their terms of office and their conditions of service; and

(b) make provision with respect to the numbers of staff of the Commission and their conditions of service.

(3) On ceasing to hold office, the Chairman of the Public Service Commission shall be ineligible for further employment under the Government of Cochin and no other member of the Commission shall be eligible for any other appointment under the Government of Cochin without the approval of His Highness, in His Highness' discretion.

Functions of  
the Public  
Service  
Commission.

50C. (1) It shall be the duty of the Public Service Commission to conduct examinations for appointment to the services of the Cochin State.

(2) His Highness may by rules or orders specify the matters on which either generally or in any particular class of cases or in any particular circumstance it shall not be necessary for the Public Service Commission to be consulted; but subject to rules and orders so made and to the provisions of the next succeeding sub-section, the Public Service Commission shall be consulted—

(a) on all matters relating to methods of recruitment to the civil service and for civil posts;

(b) on the principles to be followed in making appointments to the civil services and posts and in making promotions and transfers and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving the Government in a civil capacity including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served the Government in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Cochin State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving the Government in a civil capacity and any question as to the amount of any such award,

and it shall be the duty of the Public Service Commission to advise on any matter so referred to them and on any other matter which His Highness may refer to them.

(3) Nothing in this section shall require the Public Service Commission to be consulted as respects the manner

in which appointments and posts are to be allocated as between the various communities in the Cochin State or in the case of the subordinate ranks of the Police Force, as respects any of the matters mentioned in clauses (a), (b) and (c) of sub-section (2) of this section.

50D. Subject to the provisions of this section, an Act of the Legislature may provide for the exercise of additional functions by the Public Service Commission: Power to extend functions of the Public Service Commission.

Provided that—

(a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of His Highness and

(b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable in relation to any person appointed to a service or a post by His Highness or any officer in the Cochin State Forces.

50E. The expenses of the Public Service Commission including salaries, allowances and pensions payable to or in respect of the members or staff of the Commission shall be charged on the revenues of the Cochin State]. Expenses of the Public Service Commission.

## PART V

### Miscellaneous

<sup>1</sup>[50F. In this Act, the expression "the Government" shall mean His Highness exercising the executive authority of the Cochin State, in accordance with the provisions of this Act. "Government" defined.

50G. (1) The provisions of this Act shall not apply.— Saving.

(a) to incorporated or un-incorporated Devaswams or to Hindu Religious Institutions which are under the management of Government or to Hindu Religious Institutions governed by the provisions of the Cochin Hindu Religious Institutions Act, I of 1081 or to the Estates under the management of the Devaswam Department; and

(b) to the administration of Palaces, Palace Funds and the Valiamma Thampuran Kovilagam Estate.

(2) The executive authority in respect of Devaswams, Hindu Religious Institutions, Estates and of Palaces

<sup>1</sup> Inserted by section 22, Act I of 1123.

and Palace Funds and the Valiamma Thampuran Kovilagam Estate mentioned in sub-section (1) shall be exercised by His Highness in His Highness' discretion and in such manner as His Highness may determine].

Revenues of  
the Cochin  
State.

51. The revenues of the Cochin State shall be received for and in the name of His Highness.

*Explanation.*—The expression 'revenues of the Cochin State' means all revenues and public moneys raised or received by the State and includes—

(a) all fines and penalties incurred by the sentences or order of any court of justice in the Cochin State, and all forfeitures for crimes of any movable or immovable property in the State: and

(b) all movable and immovable property in the State escheating or lapsing for want of an heir or successor, and all property in the State devolving as *bona vacantia*, for want of a rightful owner.

Provision as  
to custody of  
public moneys.

52. Rules may be made by the Government for the purpose of securing that all moneys received on account of the revenues of the State shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the State and the rules so made may prescribe the procedure to be followed in respect of the payment of moneys into the State account, the withdrawal of moneys therefrom, the custody of moneys therein and any other matters connected with or ancillary to the matters aforesaid:

Provided that the rules relating to such moneys in force immediately before the commencement of this Act, shall continue in force, except in so far as the same are altered by or under this Act.

Power to  
acquire  
property,  
borrow  
moneys, make  
contracts, etc.

53. (1) The executive authority of the Cochin State shall extend, subject to the provisions of this Act and any law which is in force or may hereafter come into force, to the grant, sale, disposition or mortgage of any public property, to the purchase or acquisition of property, to the making of contracts, and to borrowing upon the security of the revenues of the State for purposes of the Government of Cochin.

(2) All such contracts and all assurances of property made by the Government shall be executed by such

persons and in such manner as the Government may direct or authorise.

(3) Any person making any such contract or assurance on behalf of the Government shall not be personally liable in respect thereof.

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54. Notwithstanding the repeal of the Cochin Legislative Council Act by this Act, but subject to the provisions of this Act, all the laws in force in the Cochin State immediately before the commencement of this Act, shall continue to be in force in the Cochin State, except in so far as the same are altered by competent authority.

Continuation  
of existing  
laws.

[55. (1) The first preliminary electoral rolls for the Cochin Legislative Assembly to be published after the coming into force of the Government of Cochin (Amendment) Act, XV of 1123, shall be deemed to have been prepared and published in compliance with the provisions of the Government of Cochin Act and rules thereunder in force from time to time and shall not be called in question before any Civil Court, Revising Authority or Election Commissioners on the ground of any irregularity or any non-compliance with the provisions of the Government of Cochin Act or the rules thereunder in force either at the time of the preparation or at the time of the publication of the preliminary electoral rolls.

Validation of  
Proceedings  
and saving.

(2) Notwithstanding the change in the designation of the Legislature effected by the Government of Cochin (Amendment) Act, XV of 1123, references to the Legislative Assembly in sections 6 and 19 of the Government of Cochin Act, XX of 1113, shall until immediately before the first meeting of the first Legislative Assembly, have effect as if they were references to the Legislative Council].

56. Notwithstanding anything contained in this or any other Act, the prerogative of His Highness to make, and pass Acts, Proclamations and Orders in His Highness' discretion without reference to the Legislative <sup>2</sup>[Assembly] or any other authority, is hereby declared to be and to have always been possessed and retained by His Highness.

Savings of pre-  
rogative of  
His Highness.

57. The Cochin Legislative Council Act, the Cochin Chief Court Act and the Panel of Chairmen Proclamation are hereby repealed.

Repeals.

<sup>1</sup> Substituted by section 9 of Act XV of 1123.

<sup>2</sup> Substituted by section 10 of Act XV of 1123.



## SCHEDULE

## FORMS OF OATHS OR AFFIRMATIONS

## 1.

Sections 18  
and 35.

FORM OF OATH OR AFFIRMATION TO BE TAKEN  
OR MADE BY A MEMBER OF THE COCHIN  
LEGISLATIVE [ASSEMBLY]

I, A. B., having been elected (*or* nominated) a member of this <sup>1</sup>[Assembly] do solemnly swear (*or* affirm) that I will be faithful and loyal to His Highness the Maharaja of Cochin and to <sup>2</sup>[His heirs] and successors, and that I will faithfully discharge the duty upon which I am about to enter.

## 2.

FORM OF OATH OR AFFIRMATION TO BE TAKEN  
OR MADE BY THE JUDGES OF THE  
HIGH COURT

I, A. B., having been appointed Chief Justice (*or* a judge) of the High Court of Judicature, Cochin, do solemnly swear (*or* affirm) that I will be faithful and loyal to His Highness the Maharaja of Cochin and <sup>2</sup>[His heirs] and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.

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<sup>1</sup> Substituted by section 11 of Act XV of 1123.

<sup>2</sup> Substituted by section 23, Act I of 1123.

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**THE COCHIN HINDU RELIGIOUS INSTITUTIONS ACT**  
**ACT I OF 1081**

*(As amended up to 1st Kumbham 1123)*

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# THE COCHIN HINDU RELIGIOUS INSTITUTIONS ACT

(I of 1081)

*(As Amended up to 1st Kumbham 1123)*

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THE COCHIN HINDU RELIGIOUS  
INSTITUTIONS [ACT]

(I OF 1081)

HISTORY OF LEGISLATION

Year	Number	Short title	Amendments
1081	I	The Cochin Hindu Religious Institutions Act	Amended by Acts II of 1091, XV of 1095, V of 1098, I of 1109 XXXII of 1112, XII of 1116 and X of 1123 and Proclamation V of 1112

AN ACT TO PROVIDE FOR THE BETTER ADMINISTRATION  
OF HINDU RELIGIOUS INSTITUTIONS  
IN THE COCHIN STATE

*Passed by His Highness the <sup>2</sup>[Maharaja] of Cochin on the  
31st day of Edavam 1081 corresponding with  
the 13th day of June 1906*

Whereas it is expedient to provide for the regulation Preamble.  
and supervision of Hindu Religious Institutions in the  
Cochin State and for the due administration of properties  
belonging thereto, it is hereby enacted as follows.—

<sup>1</sup> Substituted for "Regulation" throughout the enactment by Proclamation V of 1112.

<sup>2</sup> Substituted for "Raia" by section 2 of Act I of 1109.

## CHAPTER I

### PRELIMINARY

Short title and commencement.

1. This Act shall be called "The Cochin Hindu Religious Institutions Act, I of 1081", and it shall come into force on the 1st Karkadagam 1081.

Local extent and application.

2. It extends to the whole of the Cochin State and applies to all Hindu Religious Institutions hereinafter defined.

Repeal of rules, etc.

3. After the commencement of this Act all rules not contained in any Act in force in the Cochin State and all laws in so far as they relate to any matter herein provided for shall be repealed.

Saving clause.

But nothing herein contained shall be deemed to affect the provisions of section 1[523 of the Code of Civil Procedure, Act I of 1079].

Interpretation clause.

4. Unless there be something repugnant in the subject or context—

(1) The term "Institution" shall, wherever it occurs in the Act, means a Hindu Religious Institution dedicated to, or used as of right by the Hindu community or any section thereof, and shall include—

(a) every Hindu temple or shrine so dedicated or used,

(b) Samuham or Samuhamadham (of the Paradesa Brahmans), or Sabhamadham, Yogam or Brahaswamadham (of the Nambudiri Brahmans), or

(c) other endowment or foundation of a Hindu religious nature or both combined, by whatever local designation known, and all property belonging thereto, whether applied wholly to religious purposes or partly to religious and partly to charitable or other purposes, and every express or constructive trust of a Hindu religious nature by which property is vested in the hands of any person or persons;

(2) "Trustee" shall mean person or persons administering the affairs of, or having control over, any institution as defined in this Act or holding any property in trust therefor, and includes Uralars, Madhadhipatis and

<sup>1</sup> Now section 77 of the Code of Civil Procedure, Act XXIX of 1111.

the like by whatever local designation such persons may be known ;

(3) "Founders" shall include their legal representatives ;

(4) <sup>2</sup>[Devaswam Commissioner] means the officer appointed by His Highness' Government to superintend the management of religious and charitable institutions in the State and includes also any other person or officer appointed or directed by His Highness' Government to discharge all or any of the functions of the <sup>2</sup>[Devaswam Commissioner] in the management and administration of any of the religious and charitable institutions in the State.]

<sup>3</sup>(5) "Executive Authority" means the Executive Authority referred to in section 50G of the Government of Cochin Act, XX of 1113, in respect of incorporated and unincorporated Devaswams and Hindu religious institutions.]

## CHAPTER II

### GENERAL SUPERVISION

5. <sup>4</sup>[The Executive Authority] may at any time call upon the trustees of any institution to submit periodically accounts of income and expenditure or lists of properties, jewels, vessels, furniture or other things belonging to the institution, and the trustees shall comply with such requisitions. The Executive Authority has power to call for accounts, etc.

6. (1) <sup>5</sup>[The Executive Authority] may depute any officer not lower in grade than a Tahsildar <sup>6</sup>[or Devaswam Assistant Commissioner] to examine the accounts of income and expenditure, or properties, jewels, vessels, furniture, etc., of any institution and to submit a full report on the result of such inspection. On the receipt of such report, <sup>1</sup>[the Executive Authority] may pass such orders as <sup>1</sup>[he] may think proper. The trustees and the servants of such institution shall furnish the officer so deputed with all the information he may call for and shall also assist The Executive Authority may depute an officer to examine accounts, etc.

<sup>1</sup> Substituted by section 2 of Act II of 1091.

<sup>2</sup> Substituted by section 3 of Act XXXII of 1112.

<sup>3</sup> Added by section 2 of Act X of 1123.

<sup>4</sup> Substituted by section 3, *ibid.*

<sup>5</sup> Substituted by section 4 *ibid.*

<sup>6</sup> Inserted by section 2 of Act XXXII of 1112.

him in the examination of accounts and moveable properties.

(2) Where the officer deputed under this section finds that any moveables are likely to be removed or misappropriated, he shall take immediately such steps for their temporary safe custody as may be necessary and make a report to <sup>1</sup>[the Executive Authority] who, on receipt of such report, shall, after hearing the parties concerned, pass such orders as <sup>1</sup>[he] may think proper.

The Executive Authority may fine trustee or servant and dismiss him for disobedience.

7. <sup>2</sup>[The Executive Authority] may fine any trustee or servant of an institution who wilfully or contumaciously disobeys any order passed by <sup>2</sup>[him] under sections 5 and 6 in an amount not exceeding rupees fifty for each act of disobedience. If the said trustee or servant fails to carry out the said order within one week from the date of receipt by him of the order imposing fine, <sup>2</sup>[the Executive Authority] may dismiss him. The trustee of an institution shall be bound to give effect to the order passed by <sup>2</sup>[the Executive Authority] under this section in respect of any servant of the institution and any failure on his part to give effect to such order shall be deemed disobedience within the meaning of this section. <sup>3</sup>[ \* \* ]

The Executive Authority to frame rules for supervision.

8. In exercising the powers of supervision <sup>4</sup>[the Executive Authority] may frame such <sup>5</sup>[rules or schemes] as <sup>6</sup>[he] may deem necessary for the management of <sup>5</sup>[any institution] and it shall be the duty of the trustee or trustees of such institution to conform to such <sup>3</sup>[rules or schemes].

<sup>8</sup> [(e) Such rules or schemes may provide for the supersession of the body in management of the institution under the rules or scheme and for carrying on the

<sup>1</sup> Substituted by section 4 of Act X of 1123.

<sup>2</sup> Substituted by section 5 of Act X of 1123.

<sup>3</sup> The words "The fine imposed under this section may be recovered as arrears of land revenue" were omitted by section 5 of Act XV of 1095.

<sup>4</sup> Substituted by section 6 (a) of Act X of 1123.

<sup>5</sup> Substituted and always deemed to be substituted by section 6 (b) *ibid.*

<sup>6</sup> Substituted by section 6 (c) *ibid.*

<sup>7</sup> Substituted by section 6 (d) *ibid.*

<sup>8</sup> Added by section 6 (e) *ibid.*

management of the institution in the interim if the Executive Authority is satisfied that it is necessary to do so in the interest of the institution ].

9. If the trustee or trustees fail to conform to the rules framed under the last preceding section or if in the enquiry or on the report referred to in section 6 <sup>1</sup> [the Executive Authority] is satisfied that the removal of a trustee or trustees is necessary in the interests of the institution, <sup>1</sup> [he] may remove such trustee or trustees.

The Executive Authority has power to dismiss trustees for failure to conform to rules.

10. In cases in which a trustee is dismissed under the last preceding section or under section 7, <sup>2</sup> [the Executive Authority] shall, where such trusteeship is hereditary, appoint a competent adult male member of the family in which such trusteeship is hereditarily vested, and in other cases, shall make the appointment, in accordance with the scheme of management, if any, existing in such institution or the usage of such institution.

The Executive Authority to appoint trustees in place of those removed by him.

Proviso.—Where no competent adult male member of the family is available, <sup>2</sup> [the Executive Authority] may appoint a proper person to be trustee.

### CHAPTER III

#### ASSUMPTION OF MANAGEMENT

11. <sup>3</sup> [The Executive Authority] may assume the management of an institution in the following cases.—

When Executive Authority may assume management.

<sup>4</sup> [(a) On the application of a majority of the trustees or where there are only two trustees, of any one of them, and in cases where the founders have reserved to themselves the power of appointing and dismissing trustees, of a majority of such founders or where there are only two such founders, of any one of them;]

(b) On the refusal of not less than half the number of trustees to accept or to continue in the trusteeship or on their admission of incapacity to continue in the trust;

(c) In cases where <sup>5</sup> [the Executive Authority] already takes part in the management by the appointment

<sup>7</sup> Substituted by section 7, Act X of 1123.

<sup>8</sup> Substituted by section 8, *ibid.*

<sup>9</sup> Substituted by section 9, *ibid.*

<sup>1</sup> Substituted by Act XII of 1116.

<sup>2</sup> Substituted by section 9 (1) of *ibid.*



of certain officers or servants according to the existing usages, if the trustees have failed to carry on their duties properly and in the best interests of the institution;

(d) In cases where <sup>1</sup>[the Executive Authority] <sup>2</sup>[has] succeeded to the right of management in part by reason of escheat, if the remaining trustees have failed to carry on their duties properly and in the best interests of the institution; and

(e) In cases of proved mismanagement although the institutions do not fall under clauses (c) and (d) of this section.

Procedure  
before  
assuming  
management.

12. Before assuming the management of any institution under this Act, <sup>3</sup>[the Executive Authority] shall require an officer not inferior in rank to a Peishkar or <sup>4</sup>[Devaswam Commissioner] to inquire into the affairs of such institution and to submit a full report. If, on such report, and after hearing the parties affected or interested, if any, <sup>5</sup>[the Executive Authority] is satisfied that <sup>5</sup>[he] should assume the management for the protection and conservation of the trust, <sup>5</sup>[he] may pass an order for the assumption of the management of such institution. Such order shall be duly notified in the Cochin Government Gazette and shall take effect from such date as <sup>1</sup>[the Executive Authority] may fix.

Power of  
Executive  
Authority to  
pass orders  
for carrying  
out the order  
of assumption.

<sup>6</sup>[12A. Where an order <sup>7</sup>[for the dismissal or removal of a trustee or servant, or for the appointment of a new trustee, has been made under sections, 7, 9, or 10, or where an order] for the assumption of the management of an institution has been made under the foregoing section, <sup>8</sup>[the Executive Authority] may pass such other or further orders as <sup>8</sup>[he] may deem necessary, incidental or conducive to the carrying out of the order.

Without prejudice to the generality of the foregoing clause, <sup>8</sup>[the Executive Authority] may pass such orders for the search or seizure of the keys, jewels, vessels,

<sup>1</sup> Substituted by section 9 (1) of Act X of 1123.

<sup>2</sup> Substituted by section 9 (11), *ibid.*

<sup>3</sup> Substituted by section 10, *ibid.*

<sup>4</sup> Substituted for "Superintendent of Devaswams" by section 3 of Act XXXII of 1112.

<sup>5</sup> Substituted by section 10 of Act X of 1123.

<sup>6</sup> Substituted by section 11 of Act X of 1123.

<sup>7</sup> Inserted by section 2, sub-section (1) of Act V of 1098.

<sup>8</sup> Inserted by section 2 of Act XV of 1095.

furniture, records and other properties, moveable, or immovable belonging to the said institution or for the transfer of their possession to such <sup>1</sup>[person or persons] as <sup>2</sup>[he] may direct.

12B. If a trustee or servant of an institution or any other person, knowing that an order under the foregoing section has been promulgated, disobeys any direction contained in such order, or otherwise fails to comply with the requirements of the said order within the period prescribed in such order or, if no such period is prescribed, within a reasonable time, <sup>3</sup>[the Executive Authority] may impose upon him a fine not exceeding rupees fifty for each day during which the disobedience or default continues, and he shall also be deemed to have committed an offence under section 174 of the Cochin Penal Code.

Penalty for failure to comply with order under section 12A.

Provided that <sup>4</sup>[the Executive Authority] may also, in <sup>4</sup>[his] discretion, if sufficient cause or excuse is shown, cancel any order imposing fine which <sup>4</sup>[he] has passed under this section].

13. (a) If at any time <sup>5</sup>[the Executive Authority] is satisfied that in the interests of the institution it is desirable for <sup>5</sup>[him] to withdraw from the management of an institution assumed under clauses (a) and (b) of section 11, <sup>5</sup>[he] may so withdraw and restore the management of the institution to the original trustees or founders and may make such rules or lay down such conditions as <sup>5</sup>[he] may deem fit for the proper management of the institution after such withdrawal or restoration.

The Executive Authority may withdraw from management and restore the institution to original trustees or founders.

(b) Where the management of an institution is assumed under clause (e) of section 11, <sup>5</sup>[the Executive Authority] shall restore the management to the trustees or founders on their application for the same. Provided that (1) the affairs of the institution have been restored to a satisfactory condition and (2) such trustees or founders undertake in writing to abide by such rules and conditions as may be prescribed by <sup>5</sup>[the Executive Authority] in regard to the proper management of the institution.

<sup>1</sup> Substituted by section 2, sub-section (2) of Act V of 1098.

<sup>2</sup> Substituted by section 11 of Act X of 1123.

<sup>3</sup> Substituted by section 12 *ibid.*

<sup>4</sup> Substituted by section 12 *ibid.*

<sup>5</sup> Substituted by section 13, *ibid.*

<sup>1</sup>(c) Where the management of an institution is assumed under clause (a) of section 11, <sup>2</sup>[the Executive Authority] shall restore the management to the trustees on application being made in that behalf by a majority of the trustees or founders and where there are only two trustees or founders, by both of such trustees or founders:

Provided that all moneys recoverable by <sup>2</sup>[the Executive Authority] from the institution on account of loans advanced or sums spent during the period of management by <sup>2</sup>[the Executive Authority] are paid before the restoration of the management of the institution.]

Executive Authority to frame rules or schemes for management of institutions assumed.

<sup>3</sup>[13A. The Executive Authority may frame such rules or schemes as he may deem necessary for the management of any institution which has been assumed or which may hereafter be assumed under the provisions of this Chapter and such rules or schemes may provide for the association of any person with or the constitution of any separate body for participating or assisting in the administration of such institution.]

## CHAPTER IV MISCELLANEOUS

The Executive Authority may determine purposes for which the trust may be applied.

14. Whenever any object designated by the founder of an institution fails or becomes impracticable or the terms of the deed or writing creating the trust cannot be carried out <sup>4</sup>[the Executive Authority] may either of <sup>4</sup>[his] own accord or on the application of a trustee or any other person interested therein, order the trust property to be devoted to such other religious and charitable purposes as <sup>4</sup>[he] may deem proper.

Rules to be framed for regulating collection of rents, etc.

<sup>3</sup>15. [The Executive Authority] may frame rules from time to time for regulating and simplifying the procedure to be adopted in the collection and disposal of *pattam*, *michavaram*, renewal fees and other dues, the renewal of documents, the mode of management, the keeping of accounts, or other matter relating to the institutions

<sup>1</sup> Added by Act XII of 1116.

<sup>2</sup> Substituted by section 13 of Act X of 1123.

<sup>3</sup> Substituted by section 14, *ibid.*

<sup>4</sup> Substituted by section 15, *ibid.*

<sup>5</sup> Substituted by section 16, *ibid.*

already under <sup>1</sup>[his] management or whose management is assumed under the provisions of this Act.

<sup>2</sup>[16. Suits by or against incorporated and unincorporated Devaswams and Hindu Religious Institutions under the management of the Executive Authority shall be instituted by or against the Devaswam Commissioner and all contracts and assurances of property made by or in favour of such Devaswams and Institutions shall be executed or made in favour of such persons and in such manner as the Executive Authority may direct or authorise.]

Institution of suits and execution of contracts.

17. All expenses incurred by <sup>3</sup>[the Executive Authority] <sup>4</sup>[and other charges leviable under rules which may, from time to time, be framed by <sup>3</sup>[him] for carrying out the provisions of this Act shall be recovered out of the funds of the institution.

Expenses incurred to be recovered from the funds of the institution.

18. The officers holding enquiry under the provisions of this Act shall have the power of summoning and examining witnesses and the provisions of the Code of Civil Procedure shall apply to the summonses issued under this Act.

Powers of officers holding enquiries to summon and examine.

19. No action for damages shall lie against <sup>5</sup>[the Executive Authority] or <sup>5</sup>[any officer under him] or against any person acting under, or in pursuance of the authority conferred by this Act for any act *bona fide* done or ordered to be done under this Act, and no suit shall be entertained by any Civil Court in respect of acts done or orders passed under this Act.

No action for damages lies against the Executive Authority.

<sup>6</sup>[19A. Any sale, mortgage, pledge or other alienation of the property of an institution executed, or made or any debt contracted on its behalf on or after the 1st day of Chingam 1117, shall be void unless it is executed or made or contracted with the previous sanction of <sup>6</sup>[the Executive Authority]. The provisions of this section shall not apply to *bona fide* renewals of debts existing on the last day of Karkadagam 1116.]

Transactions without sanction of Executive Authority void.

<sup>1</sup> Substituted by section 16 of Act. X of 1123.

<sup>2</sup> Substituted by section 17, *ibid.*

<sup>3</sup> Substituted by section 18, *ibid.*

<sup>4</sup> Substituted by section 3 of Act XV of 1095.

<sup>5</sup> Substituted by section 19, Act X of 1123.

<sup>6</sup> Inserted by Act XII of 1116.

<sup>7</sup> Substituted by section 20 of Act X of 1123.

Rules to have  
force of law.

20. All rules framed under this Act shall on publication in the Cochin Government Gazette obtain the force of law.

Mode of  
recovery of  
moneys.

<sup>1</sup>[21. All moneys recoverable under this Act shall be treated as arrears of revenue within the meaning of the Revenue Recovery Act, IV of 1083, and shall be recoverable as such].

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<sup>1</sup> Added by Act XV of 1095.