

**Twelfth Kerala Legislative Assembly**  
**Bill No. 121**

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**THE KERALA POLICE (AMENDMENT) BILL, 2007**

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*A*

*BILL*

*further to amend the Kerala Police Act, 1960.*

*Preamble.*—WHEREAS, it is considered necessary to make certain measures to improve the functioning of the Police in the State of Kerala ;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Police (Amendment) Act, 2007.

(2) It shall be deemed to have come into force on the 7th day of April, 2007.

2. *Amendment of section 2.*—In the Kerala Police Act, 1960 (5 of 1961) (hereinafter referred to as the principal Act) in sub-section (1) of section 2,—

(1) the existing clause (i) shall be renumbered as clause (ib) and before the clause as so renumbered, the following clauses shall be inserted, namely :—

“(i) “Authority” or “Authorities” shall mean the Police Complaints Authority established at the State level and at the District level, respectively, under section 17 E ;

(ia) “Board” means the Police Establishment Board constituted under section 17C ;”;

(2) after the existing clause (i) renumbered as clause (ib), the following clause shall be inserted, namely :—

“(ic) “Commission” means the State Security Commission constituted under section 17 A ;”;

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

“(iia) “Government” means the Government of Kerala ;”;

(4) after clause (iv), the following clause shall be inserted, namely :—

“(iva) “prescribed” means prescribed by rules made under the Act ;”.

3. *Insertion of new section 3A.*—After section 3 of the principal Act, the following section shall be inserted, namely :—

“3A. *Separation of Investigation from Law and Order.*—(1) The Government may, having regard to the population in an area or the circumstances prevailing in such area, by order, separate the investigating police from the law and order police in such area as may be specified in order to ensure speedier investigation, better expertise and improved rapport with people.

(2) The Director General of Police shall ensure the full co-ordination between the two wings of the police force separated under sub-section (1).” .

4. *Substitution of section 4.*—For section 4 of the principal Act, the following sections shall be substituted, namely :—

“4. *Director General of Police.*—(1) The administration of the police throughout the State shall, subject to the control of the Government, be vested in the Director General of Police.

(2) The Director General of Police shall be appointed by the Government from amongst those officers of the State cadre of the Indian Police Service who have either already been promoted to such rank or are eligible to be promoted to such rank, considering his overall record of service and experience for leading the police force of the State :

Provided that the officer selected as the Director General of Police must not have a charge pending against him in any Court or Tribunal or Departmental agency on a charge filed on behalf of the State.

4A. *Minimum Tenure of Police Officers.*—(1) The Government may ensure a normal tenure of two years from the date of assuming charge of the post to the Director General of Police; and to all officers holding charge of Police Stations, Police Circles, Police Sub-divisions, Police Districts, Police Ranges and Police Zones :

Provided that the normal tenure shall not be applicable in cases of superannuation, promotion, reversion, suspension and leave.

(2) The Government or the appointing authority may, without prejudice to any other legal or departmental action, transfer any police officer before completing the normal tenure of two years, on being satisfied *prima facie* that it is necessary to do so on any of the following grounds, namely :—

(a) if he is found incompetent and inefficient in the discharge of duties so as to affect the functioning of the police force ;

- (b) if he is accused in a criminal case involving moral turpitude ;
- (c) initiation of departmental proceedings against him ;
- (d) if he exhibits a palpable bias in the discharge of duties ;
- (e) misuse or abuse of powers vested in him; and
- (f) incapacity in the discharge of official duties.”.

5. *Insertion of new Chapter IIIA.*—After chapter III of the principal Act, the following chapter shall be inserted, namely :—

“CHAPTER III A

STATE SECURITY COMMISSION, POLICE ESTABLISHMENT BOARD AND  
POLICE COMPLAINTS AUTHORITY

17 A. *The State Security Commission.*—(1) The Government may, by notification in the Official Gazette constitute a State Security Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission under this Act.

(2) The Commission shall consists of the following members, namely :—

- (i) The Minister in-charge of Home Department who shall be the Chairman ;
- (ii) The Leader of Opposition ;
- (iii) The Chief Secretary—*ex-officio* ;
- (iv) The Secretary to Government, Home Department—*ex-officio* ;
- (v) The Director General of Police—*ex-officio* ;
- (vi) Three non-official members nominated by the Governor.

(3) The Director General of Police shall be the Secretary of the Commission.

(4) Every member nominated under clause (vi) of sub-section (2), shall, unless their seats become vacant earlier by resignation, death or otherwise, hold office for a period of three years and shall be eligible for re-nomination.

(5) If a non-official member of the Commission is absent without sufficient cause for more than three consecutive meetings thereof, the Chairman of the Commission may, remove such member from the membership of the Commission :

Provided that no member shall be removed under the provisions of this sub-section except after giving him a reasonable opportunity of showing cause against such removal.

(6) Any non-official member of the Commission, may resign his office by giving notice in writing, of his intention so to do, to the Chairman, and on such resignation being accepted, he shall be deemed to have vacated his office.

(7) The Commission shall regulate its own procedure and the conduct of the business to be transacted by it.

(8) The qualifications and disqualifications of the members to be nominated by the Governor under clause (vi) of sub-section (2), the fees and allowances payable to them and their conditions of service shall be such as may be prescribed.

17B. *Functions of the Commission.*—(1) The Commission shall have the following functions, namely :—

(a) to frame the broad policy guidelines for the functioning of the police force in the State;

(b) to issue directions for the performance of the preventive tasks and service oriented functions of the police;

(c) to evaluate, from time to time, the performance of the police in the State in general;

(d) to prepare and submit an yearly report of its functions to the Government; and

(e) to discharge such other functions as may be assigned to it by the Government.

(2) The report submitted by the Commission under clause (d) of sub-section (1) shall, on receipt, be placed before the Legislative Assembly.

(3) No act or proceedings of the Commission shall be deemed to be invalid merely by reason of any vacancy at the time of any such act or proceedings is done or passed.

(4) Notwithstanding any guidelines or directions issued by the Commission, the Government may issue such directions as it deems necessary on any matter, if the situation so warrants, to meet any emergency.

(5) The directions of the Commission shall be binding on the Police Department :

Provided that the Government may, for reasons to be recorded in writing, fully or partially reject or modify any recommendation or direction of the Commission.

17C. *Police Establishment Board.*—(1) The State Government may constitute a Police Establishment Board which shall be a departmental body consisting of the Director General of Police as Chairman and four other senior Police Officers of the Department of the rank of Additional Director General of Police as members.

(2) The term of office of the members of the Board, the procedure for the functioning of the Board and the guidelines to be followed by the Board in the exercise of its functions shall be in such manner as may be prescribed.

17D. *Functions of the Board.*—The Board shall discharge the following functions, namely :—

(a) to decide on all transfers, postings, promotions and other service related matters of police officers of and below the rank of Inspector of Police, subject to the provisions of the relevant service laws as may be applicable to each category of police officers;

(b) to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Deputy Superintendent of Police;

(c) to review the functioning of the police in the State either in general or with regard to specific instances; and

(d) to discharge such other functions as may be assigned to the Board by the Government.

(2) The Government shall give due consideration to the recommendations of the Board.

(3) The Government may, either *suo motu* or on a representation filed by the affected person, for reasons to be recorded in writing, set aside or modify any decision or order of the Board.

17E. *Police Complaints Authority.*—(1) The Government shall establish a Police Complaints Authority at the State level to look into complaints of grave misconduct against police officers of and above the rank of Superintendent of Police as well as serious complaints including death, grievous hurt or rape or molestation of women in police custody against officers of all ranks.

(2) The State Authority shall consist of the following members, namely :—

(i) a retired Judge of a High Court who shall be the Chairman of the Authority ;

(ii) a serving officer of the rank of Principal Secretary to Government ;  
and

(iii) a serving officer of the rank of Additional Director General of Police.

(3) The Government shall establish Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police.

(4) The District Authority shall consist of the following members, namely :—

(i) a retired District Judge, who shall be the Chairman ;

(ii) the District Collector ; and

(iii) the District Superintendent of Police :

Provided that the Chairman of one District Authority may be appointed as the Chairman of one or more District Authorities.

(5) The conditions of service, remuneration and other allowances of the members of the State Authority and District Authorities and the procedure for functioning of the authority or authorities shall be in such manner as may be prescribed.

(6) The Government shall, in consultation with the authority or authorities, provide all necessary facilities for their proper functioning.

(7) The State Authority and the District Level Authorities shall, while conducting enquiry, have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of any document ;

(c) receiving evidence on affidavit; and

(d) any other matter which may be prescribed.



(8) All agencies of the Government shall render all possible assistance to the authority or authorities in respect of production of documents, examination of records, analysis of evidence or provision of expert assistance in any matter in which such authority or authorities or an officer acting under the orders of such authority or authorities requires their assistance.

(9) The recommendations of the Authority or Authorities, for any action, departmental or criminal, against a delinquent police officer shall be binding in so far as initiation of departmental proceedings or registration of a criminal case is concerned. Such recommendation shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental enquiry or criminal investigation, as the case may be.”.

6. *Repeal and Saving.*—(1) The Kerala Police (Amendment) Ordinance, 2007 (45 of 2007), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Ordinance.

#### STATEMENT OF OBJECTS AND REASONS

The Honourable Supreme Court vide judgment dated 22-9-2006 in W.P(C) No. 310/96 directed the States, including the State of Kerala to undertake certain measures for reforming the functioning of the Police. The Court Order stipulates that the State Governments should modify the Police Act and till such time the State Governments should implement the directions contained in the Court order.

2. The directions of the Court relate to (i) constitution of State Security Commission, (ii) Selection and appointment of the Director General of Police, (iii) Fixed Tenure for the Inspector General of Police, Deputy Inspector General, Superintendent of Police and SHO, (iv) Separation of the investigating and Law and Order Police, (v) Establishment of a Police Establishment Board, and (vi) Constitution of Police Complaint Authorities at the State and District Levels.

3. The Hon'ble Court vide judgment dated 11-1-2007 directed to comply with all the directions before, 31-3-2007 and to file affidavit before the court on 10-4-2007 after implementing the directions.

4. As the Legislative Assembly was not in session and as the aforesaid proposals had to be given effect to immediately, the Kerala Police (Amendment) Ordinance, 2007 was promulgated by the Governor of Kerala on the 12th day of February, 2007 and was published as Ordinance No. 23 of 2007 in the Kerala Gazette Extraordinary No. 268 dated the 12th day of February, 2007.

5. As a Bill to replace Ordinance No. 23 of 2007 by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly during the session which commenced on the 2nd day of March, 2007 and ended on the 29th day of March, 2007 the Kerala Police (Amendment) Ordinance, 2007 was promulgated by the Governor of Kerala on the 30th day of March, 2007 and was published as Ordinance No. 29 of 2007 in the Kerala Gazette Extraordinary No. 634 dated the 2nd day of April, 2007.

6. As a Bill to replace Ordinance No. 29 of 2007 by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly during its session which commenced on the 19th day of June, 2007 and ended on the 26th day of July, 2007 the Kerala Police (Amendment) Ordinance was promulgated by the Governor of Kerala on the 30th day of July, 2007 and was published as Ordinance No. 45 of 2007 in the Kerala Gazette Extraordinary No. 1405 dated the 30th day of July, 2007.

7. The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

#### FINANCIAL MEMORANDUM

(I) Clause 17 A of the Bill provides that Government may by notification in the official Gazette constitute a State Security Commission which consists of 3 non-official members nominated by the Governor. The anticipated expenditure for these members would be Rs. 5 Lakhs per annum on account of emoluments, Fees, TA, DA. etc.

(II) Clause 17 E of the Bill provide for Police Complaints Authorities at the State Level and District Level to look into the complaints against Police Officers. The State Authority shall consist of (a) Retired Judge of the High Court (b) an officer of the rank of Principal Secretary to Government and officer of the rank of Additional Director General of Police. The District Authority shall consist of a Retired District Judge as its Chairman, the District Collector and District Police Superintendent as members. The anticipated recurring expenditure for this item would be around Rs. 60,80,000. Non-recurring expenditure for the Police Complaint Authorities would be 75,00,000.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 3 A proposed to be inserted by the clause 3 of the Bill empowers Government to issue the order separating the investigating Police from the law and order Police to ensure speedier Investigations, better expertise and improved rapport with people. Rules will require to be framed for the purpose of specifying the areas for such separation.

Sub-section (8) of section 17 A proposed to be inserted by clause 5 of the Bill empowers Government to constitute a State Security Commission for the purpose of exercising the functions and discharging the duties assigned to them. Rules on terms and conditions of the appointment of members and their allowances will have to be prescribed under this section.

Sub-section (1) of section 17 C proposed to be inserted by clause 5 of the Bill, empowers Government to constitute a Police Establishment Board. As per section 17 C (2) of the proposed Bill, Rules have to be framed on the terms and condition of the members of the Board, the procedure for the functioning, and the guidelines to be followed by the Board in the exercise of its functions.

Section 17 E proposed to be inserted by clause 5 of the Bill empowers Government to establish Police Complaints Authorities at the State and District Level. Rules regarding conditions of service, remuneration and other allowances of the members of the State Authority and District Authorities and the procedures for the functioning of the Authorities have to be framed.

The rules to be made are of a routine nature and are intended to implement various provisions of the Act. Further, the rules to be made are subject to the scrutiny by the Legislative Assembly. The delegation of legislative powers is of a normal character.

KODIYERI BALAKRISHNAN

EXTRACT FROM THE KERALA POLICE ACT, 1960  
(5 of 1961)

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2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(i) “cattle” shall besides horned cattle, include elephants, camels, horses, mules, asses, sheep, goats and swine ;

(ii) “District Magistrate” shall mean the officer charged with the executive administration of a district and invested with the powers of a Magistrate of the first class by whatever designation such officer is styled ;

(iii) “place of public resort” shall include any place whether public or private, open or enclosed, to which the public are admitted for purposes of recreation, diversion, amusement, entertainment, refreshment or relaxation ;

(iv) “police” shall include all persons by whatever name known who exercise any police functions in any part of the State of Kerala and “police officer” means any member of the police force ;

(v) “property” shall include money, valuable security and all property, whether movable or immovable ;

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CHAPTER II

**Organization of the Police**

3. *Constitution of police force.*—The entire police establishment of the State shall be deemed to be one police force and shall consist of such number of superior and subordinate police officers and shall be otherwise constituted in such manner, as may, from time to time, be ordered by the Government.

4.(1) *Inspector General of Police.*—The administration of the police throughout the State shall, subject to the control of the Government, be vested in an officer to be styled the Inspector General of Police (hereinafter referred to as the Inspector General) and in such superior police officers as the Government shall deem fit.

5. *Control and direction by District Magistrate.*—The police force within the local jurisdiction of a District Magistrate shall be under the general control and direction of such Magistrate. In exercising authority under this section, the District Magistrate shall be governed by such rules and orders as the Government may, from time to time, make in this behalf.

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CHAPTER III

**Regulation, Control and Discipline of the Police Force**

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17. *Police officers always on duty.*—Every police officer not on leave or under suspension shall, for all purposes of this Act, be considered to be always on duty and may at any time be employed as police officer in any part of the State.

CHAPTER IV

**Police Regulation**

**Rules for Preservation of Order**

18. *Powers to make rules for regulation of traffic and for preservation of order in public places etc.*—(1) In any local area in which he thinks fit, the District Magistrate, with the previous sanction of the Government and in consultation with the municipal or other local authority may, from time to time, make rules not inconsistent with this Act, for—

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