

Twelfth Kerala Legislative Assembly
Bill No. 260

**THE KERALA ADVOCATES' WELFARE FUND
(AMENDMENT) BILL, 2009**

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BILL

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

Preamble.—WHEREAS, it is expedient further to amend the Kerala Advocates' Welfare Fund Act, 1980 for the purposes hereinafter appearing ;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Advocates' Welfare Fund (Amendment) Act, 2009.

(2) It shall be deemed to have come into force on the 10th June, 2008.

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

(i) clause (a) shall be numbered as clause (aa) and before clause (aa) so renumbered, the following clause shall be inserted, namely :—

“(a) “actual practice” means carrying on the profession of an Advocate and filing of at least 5 vakalath per year in case of Advocates other than Senior Advocates, under the Advocates Act, 1961 (Central Act 25 of 1961).”;

(ii) in clause (aa) as so renumbered, the words “and who is a member of the Bar Association” shall be added at the end ;

(iii) in clause (d),—

(a) after the words “on account of his retirement” the words “due to chronic ailment which permanently incapacitates him to carry on the profession of an Advocate” shall be added ; and

(b) for the word “death”, the words “on completion of fifteen years of continuous membership” shall be substituted ;

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

“(dd) “chronic ailment” means physical or mental ailment which incapacitates a lawyer to continue his professional practice forever.”.

3. *Amendment of section 3.*—In sub-section (2) of section 3 of the principal Act, after clause (k), the following clause shall be inserted, namely :—

“(1) the sum repaid under item (a) of rule 4 in Chapter 5 of the Bar Council of Kerala Rules.”.

4. *Amendment of section 9.*—In sub-section (2) of section 9 of the principal Act, after clause (g), the following clause shall be inserted, namely :—

“(gg) issue pass book with photograph to the members of the fund, on payment of such fee as may be fixed by the Trustee Committee from time to time.”.

5. *Amendment of section 11.*—In section 11 of the principal Act, after clause (h), the following clause shall be inserted, namely :—

“(hh) issue duplicate copy of membership certificate in lieu of original to members on payment of such charges as may be fixed by the Trustee Committee from time to time.”.

6. *Amendment of section 14.*—After sub-section (2) of section 14 of the principal Act, the following sub-sections shall be inserted, namely :—

“(3) Every Bar Association shall receive subscriptions mentioned in sub-section (5) of section 15 from its members who are in active practice and remit the same to the fund forthwith.

(4) Every Bar Association shall issue certificates of recommendations as stated in sub-section (6) of section 15 to its members on request made to that effect :

Provided that the Bar Association shall not issue any certificate of recommendation unless the Association is satisfied that the member is actively practicing as an advocate.”.

7. *Amendment of section 15.*—In section 15 of the principal Act,—

(i) in sub-section (1a), after the words “after retirement”, the words “or resignation” shall be inserted ;

(ii) after sub-section (1a), the following sub-section shall be inserted, namely :—

“(1b) A person who received retirement benefit from the fund shall not be admitted as member of the fund.”;

(iii) In sub-section (3), for the words “three hundred”, the words “five hundred” shall be substituted ;

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

“(5) Every member shall pay an annual subscription to the Fund on or before the 30th June of every year at the following rates, namely :—

- | | | |
|-------|--|--------------------------------------|
| (i) | Where the standing of the Advocate at the Bar is less than five years | three hundred rupees |
| (ii) | Where the standing of the Advocate at the Bar is five years and more but less than ten years | seven hundred and fifty rupees |
| (iii) | Where the standing of the Advocate at the Bar is ten years and more but less than fifteen years | one thousand and five hundred rupees |
| (iv) | Where the standing of the Advocate at the Bar is fifteen years and more but less than twenty years | two thousand rupees |
| (v) | Where the standing of the Advocate at the Bar is twenty years and more but less than twenty five years | two thousand and five hundred rupees |
| (vi) | On or above twenty five years | three thousand rupees. |

Provided that an Advocate designated as Senior Advocate under the Advocates Act, 1961 (Central Act 25 of 1961), shall pay an annual subscription at the rate of five thousand rupees.”;

(v) after sub-section (5) of the principal Act, the following sub-sections shall be inserted, namely :—

“(6) The payment referred to in sub-section (5) shall be made through the Bar Association in which the contributor is a member or directly to the fund along with a letter of recommendation from the respective Bar Association.

(6A) All members of the fund shall furnish before the Trustee Committee every year, along with the payment of subscription, a declaration in such form as may be prescribed to the effect that he is in actual practice and not in any other employment and not engaged in any other profession or calling.”;

(vi) in sub-section (7), for the words “at the rate of five rupees per month or part thereof”, the words “at the rate of twelve per cent per annum” shall be substituted ;

(vii) after sub-section (12), the following sub-section shall be inserted, namely :—

“(13) A member who voluntarily suspended his membership may resume his membership in the fund on payment of two thousand rupees as resumption charges, provided he had resumed his practice as an Advocate before the Bar Council.”.

8. *Amendment of section 16.*—In section 16 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) A member of the fund shall on cessation of practice be entitled to receive from out of the fund an amount at the rate specified in the schedule for every completed year of practice till the commencement of the Kerala Advocates’ Welfare Fund (Amendment) Act, 2009 (... of 2009) and thereafter at the rate of fourteen thousand two hundred and eighty five rupees for every completed year of practice subject to a maximum amount of five lakh rupees in aggregate :

Provided that a member who opts retirement benefits before the completion of fifteen years of continuous membership in the fund shall be entitled to receive the aggregate of the subscription remitted by him to the fund with interest at the rate of six per cent thereof, except in the case of cessation due to chronic ailment.”;

(ii) In sub-section (2A), after the words “or an amount of two lakh rupees whichever is higher”, the words “for every completed year of practice till the commencement of the Kerala Advocates’ Welfare Fund (Amendment) Act, 2009 (... of 2009) and thereafter at the rate of fourteen thousand two hundred and eighty five rupees for every completed year of practice subject to a maximum amount of five lakh rupees in aggregate” shall be inserted ;

(iii) in clause (i) of sub-section (4), for the words, brackets and figure “sub-section (1)”, the words, brackets and figures “sub-sections (1) and (2)” shall be substituted ;

(iv) sub-sections (5) and (5A) shall be omitted ;

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

“(8) The person who had availed the entire welfare fund benefits and thereafter remitted that amount with interest in the welfare fund as per item (a) of rule 4 of Chapter 5 of the Bar Council of Kerala Rules shall be eligible for refund of such amount with six per cent interest from the date of remittance on his cessation of practice or death :

Provided that in the event of death of the remitter the amount shall be paid to the nominee or where there is no nominee to his legal heirs.”.

9. *Amendment of section 18.*—In clause (b) of section 18 of the principal Act, for the words “and their dependents”, the words “a maximum amount of five thousand rupees” shall be substituted.

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

(i) in sub-section (1), for the words “five rupees and ten rupees”, the words “fifteen rupees and twenty five rupees” shall be substituted.

(ii) in sub-section (4), after the words “through Bar Associations”, the words “or through the outlets set up by the Bar Council for the purpose” shall be added.

11. *Amendment of section 23.*—In sub-section (1) of section 23 of the principal Act,—

(i) the words “who is a member of the fund” shall be omitted ;

(ii) for the words “fifteen rupees” and “ten rupees”, the words “twenty five rupees” and “fifteen rupees” shall respectively be substituted ;

(iii) after the existing proviso, the following proviso shall be added, namely :—

“Provided further that no Court, Tribunal or other Authority shall receive any vakalath filed by an Advocate unless it is so stamped, and that any person found to be responsible for causing loss to the fund may be held liable for making good such loss.”.

12. *Repeal and saving.*—(1) The Kerala Advocates’ Welfare Fund (Amendment) Ordinance, 2009 (10 of 2009), 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 Act.

STATEMENT OF OBJECTS AND REASONS

The Bar Council of Kerala, All Kerala Law Graduates Association, the Kerala State Committee of All India Lawyers Union, Cherthala Bar Association, Bharatheeya Abhibhashaka Parishad and individuals also have submitted Memoranda before the Government for amending the Kerala Advocates’ Welfare Fund Act, 1980 (21 of 1980) for the enhancement of the amount payable to a member of the welfare fund from the present three lakh rupees to five lakh rupees.

2. Accordingly the Government have decided to provide for the enhancement of the amount payable to a member of the fund at the rate of fourteen thousand two hundred and eighty five rupees for every completed year of practice subject to a maximum of five lakhs in aggregate and also to provide

for making a member entitled to receive the aggregate of the subscription remitted by him to the fund with interest thereon at the rate of six per cent per annum to those who opt retirement before the completion of fifteen years of membership.

3. In order to mobilise additional funds to meet the possible expenditure, Government have also decided to enhance the rate of subscription of the members to the fund and the value of Advocates' Welfare Fund stamps to be affixed on the vakalath.

4. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Advocates' Welfare Fund (Amendment) Ordinance, 2008 was promulgated by the Governor on the 10th day of June, 2008 and the same was published as Ordinance No. 18 of 2008 in the Kerala Gazette Extraordinary No. 1164 dated 10th June, 2008.

5. As a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala in its 8th Session, the Kerala Advocates' Welfare Fund (Amendment) Ordinance, 2008 was promulgated by the Governor on the 1st day of August, 2008 and the same was published as Ordinance No. 28 of 2008 in the Kerala Gazette Extraordinary No. 1671 dated 2nd August, 2008.

6. As a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala in its 9th Session, the Kerala Advocates' Welfare Fund (Amendment) Ordinance, 2009 was promulgated by the Governor on the 3rd day of January, 2009 and the same was published as Ordinance No. 4 of 2009 in the Kerala Gazette Extraordinary No. 32 dated 5th January, 2009.

7. As a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala in its 10th Session, the Kerala Advocates' Welfare Fund (Amendment) Ordinance, 2009 was promulgated by the Governor on the 26th day of March, 2009 and the same was published as Ordinance No. 10 of 2009 in the Kerala Gazette Extraordinary No. 677 dated 26th March, 2009.

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

FINANCIAL MEMORANDUM

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

M. VIJAYAKUMAR

(a) hold the amounts and assets belonging to the Fund in Trust ;

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(g) communicate to the applicants by registered post with acknowledgment due the decisions of the Trustee Committee in respect of applications for admission or readmission to the Fund or claims to the benefit of the Fund ;

(h) do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

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11. *Powers and duties of Secretary.*—The Secretary of the Trustee Committee shall—

(a) be the chief executive authority of the Trustee Committee and responsible for carrying out its decisions ;

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(h) inspect and verify periodically the accounts and registers of the Bar Associations regarding stamps ;

(i) prepare an annual statement of business transacted by the Trustee Committee during each financial year ;

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14. *Duties of Bar Associations.*—(1) Every Bar Association shall, on or before the 15th April every year, intimate to the Bar Council a list of its members as on the 31st March of that year.

(2) Every Bar Association shall intimate to the Bar Council—

(a) any change of the office bearers of the association within fifteen days from such change ;

(b) any change in the membership including admissions and readmissions within thirty days of such change ;

(c) the death, retirement or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof ; and

(d) such other matters as may be required by the Bar Council from time to time.

15. *Membership in the Fund.*—(1) Every advocate practising in any court in the State and being a member of a Bar Association recognised by the State Bar Council may apply to the Trustee Committee for admission as a member of the Fund, in such form as may be prescribed.

(1a) A person enrolled as an advocate after retirement from the service of Central or any State Government or any public or private sector undertakings shall not be admitted as a member of the Fund if such person is eligible for or availed of any kind of retirement benefits from such Government or public or private sector undertakings.

(2) On receipt of an application under sub-section (1), the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or for reasons to be recorded in writing reject the application :

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(3) An Advocate applying for membership to the Fund shall pay a sum of rupees three hundred towards admission fee along with the application, in such manner as may be prescribed, to the account of the Trustee Committee.

(4) In the event of rejection of an application, the admission fee paid along with the application shall be refunded to the applicant.

(5) Every member shall pay an annual subscription to the Fund on or before 30th June of every year at the following rates, namely :—

- | | |
|---|--------------------------------------|
| (i) Where the standing of the Advocate at the Bar is less than five years | two hundred rupees |
| (ii) Where the standing of the Advocate at the Bar is five years and more but less than ten years | five hundred rupees |
| (iii) Where the standing of the Advocate at the Bar is ten years and more but less than fifteen years | one thousand rupees |
| (iv) Where the standing of the Advocate at the Bar is fifteen years and more | one thousand and five hundred rupees |

Provided that an Advocate designated as Senior Advocate under the Advocates Act, 1961 (Central Act 25 of 1961) shall pay an annual subscription at the rate of three thousand rupees.

(6) [omitted]

(7) A member who fails to remit the annual subscription for a year on or before the 30th June of that year may, within a period of six months from the said date, remit the amount in arrears together with fine at the rate of five rupees per month or part thereof.

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(12) Every member who voluntarily suspends practice or retires shall, within fifteen days of such suspension or retirement, intimate that fact to the Trustee Committee and if any member fails to do so without sufficient reasons the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount due to that member.

16. *Payment from the Fund on cessation of practice.*—(1) A member of the Fund shall, on cessation of practice, be entitled to receive from out of the Fund an amount at the rate specified to the Schedule :

Provided that a member removed under sub-section (8) or sub-section (8A) of section 15 or a member who has not continued his membership of the Fund at least for five years shall be entitled, on cessation of practice—

(a) after the commencement of Kerala Advocates' Welfare Fund, (Amendment) Act, 1995, to fifty percentage of the amount at the rate of three thousand and one hundred and twenty five rupees calculated for every completed year of practice ; and

(b) before the commencement of the said Act, to fifty percentage of the amount at the rate specified in sub-section (1A) calculated for every completed year of practice.

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(2A) Notwithstanding anything contained in sub-section (2), in the event of death of a member while in active practice and before attaining the age of fifty-five years, his nominee or where there is no such nominee his legal heirs, as the case may be, shall be entitled to receive from out of the Fund an amount at the rate specified in the Schedule or an amount of two lakh rupees whichever is higher.

(3) [omitted]

(4) For calculating the period of completed year of practice for the purpose of payment—

(i) under sub-section (1), every two years of practice at the Bar, and

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(5) In the case of a member who dies within five years of his admission to the Fund, his nominee or legal heir, as the case may be, shall be eligible to get an amount at the rate of three thousand one hundred and twenty five rupees per year of practice, or five thousand rupees whichever is higher.

(5A) Notwithstanding anything contained in this Act, where an applicant for membership in the Fund dies before he is admitted as a member of the Fund, his nominee or legal heir, as the case may be, shall be eligible to get an amount at the rate one thousand rupees per year of practice for the period commencing from the 5th day of April, 1981 and ending with the 5th day of May, 1989 two thousand rupees per year of practice from the 6th day of May, 1989 till the date preceding the date of commencement of the Kerala Advocates' Welfare Fund (Amendment) Act, 1993 and thereafter at the rate of three thousand one hundred and twenty-five rupees per year of practice, provided the deceased was otherwise eligible to be admitted as a member of the Fund.

(6) An application for payment from the Fund shall be preferred to the Trustee Committee in such form as may be prescribed.

(7) An application received under sub-section (6) shall be disposed of by the Trustee Committee after such enquiry as it deems necessary.

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18. *Group Life Insurance for members and other benefits.*—The Bar Council may, for the welfare of the members of the fund,—

(a) obtain from the Life Insurance Corporation of India policies of Group Insurance for the members of the Fund ;

(b) provide for medical and educational facilities for the members of the Fund and their dependants ;

(c) provide for such other benefits as may be prescribed.

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

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

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

(4) The Bar Council shall control the distribution and sale of the stamps through Bar Associations.

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23. *Vakalath to bear stamps.*—(1) Every vakalath filed by an advocate who is a member of the Fund shall in addition to the court fee stamps affixed thereon, be affixed with the welfare fund stamp of the value of fifteen rupees in the case of vakalath filed before the High Court, and of the value of ten rupees in the case of vakalath filed before subordinate courts, tribunals or other authorities, and no vakalath shall be valid unless it is so stamped :

Provided that nothing contained in this sub-section shall apply in respect of any memorandum of appearance filed by an advocate appearing on behalf of the Government.

Explanation : If three or more advocates jointly appear by a single vakalath, the maximum number of stamps that may be affixed thereon shall be three.

(2) The value of the stamp shall neither be costs in the case nor be collected in any event from the client.

(3) Any contravention of the provisions of sub-section (2) by any member shall disentitle him to the benefits of the Fund and the Trustee Committee shall report such instances to the Bar Council for appropriate action.

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