

Fourteenth Kerala Legislative Assembly

Bill No. 163

**THE KERALA SHOPS AND COMMERCIAL
ESTABLISHMENTS (AMENDMENT)
BILL, 2018**



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further to amend the Kerala Shops and Commercial Establishments Act, 1960.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Shops and Commercial Establishments Act, 1960, (34 of 1960) for the purposes hereinafter appearing;

BE it enacted in the Sixty-ninth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called The Kerala Shops and Commercial Establishments (Amendment) Act, 2018.

(2) It shall be deemed to have come into force on the 4th day of October, 2018.

2. *Amendment of section 2.*—In The Kerala Shops and Commercial Establishment Act, 1960 (34 of 1960), (herein after referred to as the principal Act), for clause (6) of section 2, the following clause shall be substituted, namely:—

“(6) “employee” means a person wholly or principally employed in, and in connection with any establishment and includes an apprentice or any class of persons as the Government may, by notification in the Gazette, declare to be an employee for the purposes of this Act;”.

3. *Substitution of new section for section 11.*—For section 11 of the principal Act, the following section shall be substituted, namely:—

“11. *Grant of weekly holidays.*—(1) Every person employed in a shop or a commercial establishment shall be allowed in each week a holiday of one whole day:

Provided that nothing in this sub-section shall apply to any person whose total period of employment in the week including any days spent on authorised leave, is less than six days.

(2) No deduction shall be made from the wages of any employee in an establishment on account of any day on which a holiday has been allowed in accordance with this section and if such person is employed on the basis that he would not ordinarily receive wages for such day, he shall nonetheless be paid for such day the wages he would have drawn had the holiday not been allowed on that day."

4. *Amendment of section 20.*—In section 20 of the principal Act,—

(i) for the figure and letters "7 P.M." the figure and letters "9 P.M." shall be substituted;

(ii) the following proviso shall be added, namely:—

"Provided that an employer may employ women employees between 9 P.M. and 6.00 A.M., after obtaining the consent of such women employee and ensuring that no female employee is employed between those hours other than in groups consisting of at least five employees having a minimum of two female employees and adequate protection of their dignity, honour and safety, protection from sexual harassment and facility for transportation from the shop or establishment to the doorstep of their residence."

5. *Insertion of new section 21B.*—After section 21A of the principal Act, the following section shall be inserted, namely:—

"21B. *Seating facilities.*—In every shop and establishment suitable arrangements for sitting shall be provided for all workers so as to avoid 'on their toes' situation throughout the duty time, so that they may take advantage of any opportunity to sit which may occur in the course of their work.

6. *Amendment of section 29.*—In section 29 of the principal Act,—

(1) in sub-section (1A),—

(a) after the figure and letter "21A", the figure and letter "21B" shall be inserted;

(b) for the words "five thousand rupees", the words "one lakh rupees" shall be substituted;

(c) for the words "ten thousand rupees", the words "two lakh rupees" shall be substituted;

(2) after sub-section (1A), the following proviso shall be inserted, namely:—

"Provided that the amount of fine for contravention of any of the provisions shall not exceed two thousand and five hundred rupees per worker employed."

(3) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) Whoever contravenes any of the provision of sections 7, 19, 20, 28 and 30 shall, on conviction, be punishable with fine which may extend to fifty thousand rupees:

Provided that the amount of fine for contravention of any of the provisions shall not exceed two thousand rupees per worker employed."

(4) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Whoever, wilfully obstructs an Inspector in exercising all or any of the powers conferred upon him by or under this Act or the rules made thereunder or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, enquiry or investigation authorised by or under this Act or the rules made thereunder, in relation to a shop or establishment shall be punishable with fine which may extend to one lakh rupees."

(5) after sub-section (4) the following sub-section shall be inserted, namely:—

"(5) Notwithstanding anything contained in sub-section (2) of section 29 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) a Judicial Magistrate of the First Class shall be empowered to impose a fine which may extend to two lakh rupees for the offences punishable under this Act."

7. *Amendment of section 30.*—The following provisos shall be added, to section 30 of the principal Act, namely:—

“Provided that the registers and records may be maintained electronically in such form and manner, as may be prescribed:

Provided further that at the time of inspection, a hardcopy of such records, if demanded, shall be submitted to the Inspector duly signed by the employer.”

8. *Repeal and savings.*—(1) The Kerala Shops and Commercial Establishments (Amendment) Ordinance, 2018 (50 of 2018) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action 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

Most of the security employees working in shops and other commercial establishments in the State are employed through security agencies and their employment is temporary in nature. They are not covered under the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) and hence they are not getting any benefit under the said Act. Therefore, the Government have decided to amend the definition of the word ‘employee’ in the said Act empowering the Government to notify any class of persons as employees so as to bring them under the purview of the said Act and to extend the benefits under the Act to such persons also.

Since there are many complaints from employees, trade unions and social workers regarding the lack of sitting facilities at working places the Government have decided to amend the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) to incorporate provisions for providing sitting facilities to the employees. By upholding the concept of gender equality, women workers who are willing to work during night are allowed to work between 9.00 p.m. and 6.00 a.m. for which certain conditions are being imposed in order to ensure their safety. At present the employees working in shops and other establishments can

avail weekly off only on fixed days in a week. There is also a strong demand from the employees to take away the provision for compulsory closing of establishments on a particular day of a week.

Considering the present business scenario and change in shopping tendency of people the Government is of the view that it is better to allow the establishments coming under the Kerala Shops and Commercial Establishments Act, 1960 to open on all days with effective monitoring to ensure weekly off to all employees. The amendment also intends to strengthen enforcement mechanism. Further the Government also intends to make provisions for maintaining registers and records in electronic forms.

As the Legislative Assembly of the State of Kerala was not in session and the above said proposals had to be given effect to immediately, the Kerala Shops and Commercial Establishments (Amendment) Ordinance, 2018 (50 of 2018) was promulgated by the Governor of Kerala on the 4th day of October, 2018 and the same was published in the Kerala Gazette Extraordinary No.2495 dated 4th October, 2018.

This Bill seeks to replace Ordinance No. 50 of 2018 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause (6) of section 2 of the principal Act proposed to be substituted by Clause 2 of the Bill seeks to empower the Government to declare any class of persons as employees, for the purposes of the Act, by notification in the Gazette.

The first proviso to section 30 of the principal Act proposed to be inserted by clause 7 of the Bill seeks to empower the Government, to prescribe the manner and the form in which the registers and records are to be maintained electronically.

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

T. P. RAMAKRISHNAN.

EXTRACT FROM THE KERALA SHOPS AND COMMERCIAL
ESTABLISHMENTS ACT, 1960

(34 of 1960)

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

(1) "apprentice" means a person, aged not less than twelve years, whom an employer employs in his service for training by himself or by any other person for any trade or calling:

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(6) "employee" means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice;

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11. *Closing of shops and grant of weekly holidays*.—(1) Every shop shall remain entirely closed on one day of the week which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop, and the day so specified shall not be altered by the shop-keeper more often than once in three months.

(2) Every person employed in a shop or a commercial establishment shall be allowed in each week a holiday of one whole day:

Provided that nothing in this sub-section shall apply to any person whose total period of employment in the week including any days spent on authorized leave, is less than six days, or entitle a person who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of sub-section (1) to an additional holiday.

(3) No deduction shall be made from the wages of any employee in an establishment on account of any day on which a holiday has been allowed in accordance with this section; and if such person is employed on the basis that he would not ordinarily receive wages for such day, he shall nonetheless be paid for such day the wages he would have drawn had the holiday not been allowed on that day.

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20. *Prohibition of employment of women and persons below seventeen years during night.*—No women or any person who has not attained the age of seventeen shall be required or allowed to work whether as an employee or otherwise in any establishment before 6 A.M. or after 7 P.M.

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21A. *Hostel Facilities.*—Every employer of a big establishment employing more than fifty employees shall provide hostel facilities to such employees, in such manner as may be prescribed.

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29. *Penalties.*—(1) Whoever commits any breach of the provisions of sections 5A and 5C of Chapter 1A shall be punishable,—

(a) with fine which may extend to five thousand rupees and in case of continuing breach with fine which may extend to two hundred and fifty rupees for every day during which the breach continues after convictions for the first breach; or

(b) with fine which may extend to two hundred and fifty rupees for every day during which the breach continues after receipt of notice from the competent authority to discontinue such breach.

(1A) Whoever contravenes any of the provisions of sections 5D, 5E, 5F, 6, 8, 9 to 11, 13, 13A, 14, 18, 21, 21A and 22 shall on conviction be punishable with fine, which for a first offence, may extend to five thousand rupees and for a second or any subsequent offence, may extend to ten thousand rupees.

(2) Whoever contravenes any of the provisions of sections 7, 19, 20, 28 and 30 shall, on conviction, be punishable with fine which may extend to two thousand and five hundred rupees.

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(4) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act or any rules or orders made thereunder.

30. *Maintenance of registers and records and display of notices.*—Subject to the general or special orders of the Government, an employer shall maintain such registers and records and display on the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

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