

THE KERALA CHILD LABOUR (RELEASE, REHABILITATION AND WELFARE) BILL, 2002.

Background Note.

In the Supreme Court Judgment on Child Labour pronounced in M.C. Mehta Vs State of Tamil Nadu, the State Governments were directed to scrupulously follow certain stipulations for the regulation and abolition of Child Labour and their rehabilitation and welfare. The Kerala Government started District Child Labour-cum-Welfare Societies in each district. The Government also promulgated an ordinance namely "The Kerala Child Labour (Release, Rehabilitation and Welfare) Ordinance, 2000 (14 of 2000)" vide Notification No.18059/Leg.C2/Law dated 21st November, 2000 for the constitution of a State Council for rehabilitation and welfare of children released from occupations and processes which are of hazardous in nature and prohibited by statutes. The said ordinance could not be got passed as an Act within the stipulated time and was re-promulgated twice in 2001. Both these ordinances also lapsed.

The Committee has looked into the question in consultation with the Labour Department. While the earlier Ordinance's aim was to rehabilitate only children released from hazardous and prohibited occupations and process, it was felt that rehabilitation and welfare should cover all children released from any type of employment in the State. The Committee has therefore prepared a revised draft of the Kerala Child Labour (Release, Rehabilitation and Welfare) Bill for the creation of a State Council which will be tripartite in nature with powers to establish institutions and centres for rehabilitation, to levy contribution so as to provide opportunities and facilities to children released from employment to develop in a healthy manner and in conditions of freedom and dignity. The draft Bill is appended.

**THE KERALA CHILD LABOUR
(RELEASE, REHABILITATION AND WELFARE) BILL, 2002**

**A
BILL**

to provide for the constitution of a State Council for rehabilitation and welfare of children released from employments in the State, in order to give them opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and matters connected therewith;

Preamble.- WHEREAS, it is desirable for the public interest to constitute a State Council for the rehabilitation and welfare of children released from employments in the State, in order to give them opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and matters connected therewith.

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

CHAPTER I.

PRELIMINARY

1. **Short title and commencement.-** (1) This Act may be called the Kerala Child Labour (Release, Rehabilitation and Welfare) Act, 2002.

(2) It shall come into force at once.

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

(a) "child" means a person who has not completed his fourteenth year of age;

(b) "District Child Labour Rehabilitation -Cum- Welfare Society" means the District Child Labour Rehabilitation -cum-Welfare society constituted as per the direction of the Government for each district and registered as society under the Societies Registration Act, 1860 (Act XI of 1860) or under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955;

(c) "Fund" means the fund of the State Council;

(d) "Government" means the Government of Kerala;

(e) "Member" means member of the State Council;

(f) "prescribed" means prescribed by rules made under this *Act*.

(g) "rehabilitation" includes providing food, shelter, clothing, education, vocational training and amusement to a child till the age of fourteen years;

(h) " State Council" means the Kerala State Child Labour (Release, Rehabilitation and Welfare) Council constituted under section 3 of this *Act*.

(i) All other words and expressions used but not defined in this *Act*, and defined in the Child Labour (Prohibition and Regulation) Act, 1986(Central Act of 1986), shall have the same meanings assigned to them in that Act.

CHAPTER II

CONSTITUTION OF THE STATE COUNCIL

3. Constitution and composition of the Kerala State Child Labour (Release, Rehabilitation and Welfare) Council.- (1) The Government may by notification in the Gazette, constitute a State Council known as the Kerala State Child Labour (Release, Rehabilitation and Welfare) Council, for the purpose of performing the powers, duties and functions under this *Act*.

(2) The State Council shall consist of a Chairman, who shall be a non-official representing Social workers and working for the welfare of children, appointed by the Government and of the following other members, namely:-

- (a) the Labour Commissioner, Kerala - Member
- (b) all District Collectors of the State - Member
- (c) an officer of the Labour Department , not below the rank of a Deputy Labour Commissioner appointed by Government who shall be the Member Secretary of the State Council; --Member
- (d) four persons nominated by Government -Member
representing the owners of factories, plantations,
shops and commercial establishments
- (e) six persons nominated by Government -Members
representing social workers and social scientists
and Non- Governmental Organisations working
for welfare of children of whom at least three
shall be women

(3) The State Council shall be a body corporate having perpetual succession and a common seal with power to acquire property both movable and immovable and shall by the said name sue and be sued.

4. **Term of office and conditions of services of non official members.-** (1) Every non official member shall hold office for a period of three years.

(2) Notwithstanding anything contained in sub-section (1), a non- official member may,-

- (i) by writing under his hand and addressed to the Government resign his office at any time;
- (ii) be removed from his office in accordance with the provisions of the section 8.

(3) A vacancy arising by reason of resignation or removal of any non official of the State Council under sub-section(2) or otherwise shall be filled up in accordance with the provisions contained in section 3:

Provided that a person so appointed shall hold office for the remaining period of the term of the person in whose place such person is appointed.

(4) The Chairman and members shall receive such sitting and travelling allowances as may be prescribed.

5. **Quorum.**- The quorum for a meeting of the Council shall be nine.

6. **Disposal of business.**- (1) The meeting of the State Council shall be presided over by the Chairman or in his absence a member chosen for the purpose by the members present.

(2) All questions at a meeting of the State Council shall be decided by the majority of the votes of the members present and voting and in case of equality of votes the Chairman or the member presiding, as the case may be, shall have a second or casting vote.

(3) The State Council may invite, if it is considered necessary, for such purposes and on such conditions as may be prescribed, any person with expert knowledge in particular subject to be present at the meeting to assist the State Council in arriving at a decision, but such person shall not be entitled to vote.

7. **Acts of the State Council not to be invalidated by infirmity or any vacancy etc.**- No act or proceeding of the State shall be invalidated by reason only of any defect or irregularity in its constitution or on the ground of existence of any vacancy in the office of any member.

8. **Removal of non- official members from office.**- Any non- official member of the State Council may be removed from office by an order of the Government, if he, becomes an undischarged insolvent;

(a) is convicted and sentenced to imprisonment for an offence which involves moral turpitude;

(b) becomes unsound mind;

(c) refuses to act becomes incapable of acting;

(d) is without obtaining leave of absence from the State Council absents from three consecutive meetings of the State Council; or

(e) in the opinion of the Government has so abused the position of member as to render that person's continuance in office detrimental to the public interest:

Provided that a member shall not be removed under this section until that person has been given a reasonable opportunity of being heard in the matter.

9. **Powers and functions of the State Council.**- The State Council shall have the following powers and functions, namely:-

(a) to advise Government in matters relating to abolition, regulation, rehabilitation and welfare of child labour;

- (b) to take steps to release the children employed in occupations and processes prohibited under the Child Labour (Prohibition and Regulation) Act, 1986 (Central Act 61 of 1986) or under any other law for the time being in force;
- (c) to co-ordinate, control and monitor the functioning of the District Child Labour Rehabilitation –cum- Welfare Societies;
- (d) to establish educational institutions for the children released from employments independently or through other agencies;
- (e) to establish centres for rehabilitating the children released from employments, independently or through other agencies.
- (f) to undertake awareness generation programme on the evils of child labour;
- (g) to network various activities of International and National organisations or agencies, Governmental as well as Non- Governmental, for the prevention of exploitation of children and for their welfare;
- (h) to assign duties and functions to the District Child Labour Rehabilitation-cum- Welfare Societies, from time to time;
- (i) to recommend Government, the welfare measures to be adopted and implemented by the Government with a view to ameliorating the conditions of children released from employments.
- (j) to recommend to the appropriate authority to take prosecution proceedings in respect of offences committed against abolition or regulation of child labour under any statute providing for penalty or punishment for violation of the provisions of such statute;
- (k) to formulate a comprehensive and affirmative scheme for welfare of children released from employments and devise a programme for implementing such schemes which shall be forwarded to the Government for approval and on obtaining the approval thereof with or without modifications, implement the scheme;
- (l) to maintain comprehensive data bank relating to the social economic development of children and to report the Government the lacunae, inadequacies or shortcomings in the laws in force which affect the child labour abolition and also on the remedial legislative measures to be taken to meet the situation;
- (m) to participate and advise on the planning process of socio economic development of children and to report the Government the lacunae, inadequacies or shortcomings in the laws in force which affect the child labour abolition and also on the remedial legislative measures to be taken to meet the situation;
- (n) any other functions incidental or ancillary to achieve the above objects or functions as may be assigned by Government from time to time.

CHAPTER III

FINANCE

10. **State Council's Fund.**- (1) The State Council shall have its own fund.

(2) The State Council may accept grants, donations and gifts from the Central or State Government or a local authority or an individual or organisation whether incorporated or not for all or any of the purposes of this *Act*.

(3) The Fund of the State Council shall also consists of. –

- (a) amounts received under sub-section (2);
- (b) contributions from owners of factories, plantations, shops and commercial establishments;
- (c) amounts received as aid from International or National organisations for the rehabilitation or welfare of children;
- (d) any amount borrowed by the State Council;
- (e) such other sums as may be received.

(4) All moneys forming part of the State Council's fund shall be deposited in such Scheduled or Co-operative bank as the State Council may decide and the accounts shall be operated by the Member Secretary.

(5) The Fund shall be utilized for the following purposes, namely:-

- (a) for giving grants to the District Child Labour Rehabilitation –cum- Welfare Societies;
- (b) for the construction of or giving grants to non- Governmental organisations to build child care homes for accommodating the released children who were employed or engaged in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986(Central Act 61 of 1986) or this Act;
- (c) for establishing and running educational institutions for imparting quality education to the children;
- (d) for meeting the expenses for exercising or performing other powers and functions of the State Council mentioned under section 9;
- (e) such other purposes as may be prescribed by Government from time to time.

11. **Power of the State Council to levy contributions.**- The State Council shall have the power to levy such contributions as may be fixed by the Government from time to time from the owners of the factories, plantations, shops and commercial establishments.

12. **Annual audit of accounts.**- The accounts of the State Council shall be done by a Chartered Accountant appointed by Government from time to time.

CHAPTER IV

MISCELLANEOUS

13. **The Government to consult the State Council.-** The Government shall consult the State Council on all major policy matters regarding child labour.

14. **Deployment of Officers.-** (1) The Government may deploy any officer of the Labour Department to assist the State Council for the purpose of performing the functions entrusted to it under this Act.

(2) The officers so deployed under sub-section(1) shall continue to be Government servants.

15. **Members and Officers deployed to the State Council to be public servants.-** All members and all officers deployed under section 14 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code, 1860(Central Act 45 of 1860)

16. **Application of other laws not barred.-** Save as otherwise provided, the provisions of this Act shall be in addition to and not in derogation of any other laws for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

17. **Protection of action taken in good faith.-** No suit , prosecution or other legal proceedings shall lie against any member of the State Council or any officer of the State Council for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

18. **Annual Report and audited statement of accounts.-** (1) The annual report of the State Council shall be prepared under the direction of the State Council and after approval by the State Council, a copy of the report together with an audited statement of accounts shall be submitted to the Government before the end of July every year.

(2) The Government shall, as soon as the annual report is received cause the same together with the audited statement of accounts to be laid on the table of the Legislative Assembly.

19. **Power to remove difficulties.-** If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order do anything not inconsistent with such provisions, which appear to them necessary for the purpose of removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this *Act*.

20. **Power to make rules.-**(1) The Government may, by notification in the Official Gazette, make rules for carrying into effect the provisions of this *Act*.

(2) Every rule made under this Act shall be laid, ass soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS.

1. In the Supreme Court Judgment on Child Labour pronounced in M.C.Mehta Vs State of Tamil Nadu, the State Governments were directed to scrupulously follow certain stipulations for the regulation and abolition of Child Labour and the rehabilitation and welfare. The Kerala Government started District Child Labour Rehabilitation cum Welfare Societies in each district, as per the direction of the Supreme Court. Now it is proposed to bring a legislation for the constitution of a State Council for rehabilitation and welfare of children released from occupations and processes which are of hazardous in nature and prohibited by statutes. The State Council will be tripartite in nature with powers to establish institutions and centres for rehabilitation to levy contribution so as to provide opportunities and facilities to children released from employment to develop in a healthy manner and to conditions of freedom and dignity.

1. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the Constitution of the Kerala State Child Labour (Release, Rehabilitation and Welfare) Council with official and non-official members. The said council shall be a body corporate having perpetual succession and a common seal which requires the travelling allowance and sitting allowances to the Chairman and members for attending the meeting of the Council. There may be variation in the amounts to be spent under these items depending on the number of meeting Convened and the venue of the meeting. These amount will have to be paid from the Fund of the State Council. The Fund of the State Council includes grants from the State Government also. This amount will have to be paid to the State Council for every year from this budgetary provision. However, the exact amount that may be paid to the State Council from consolidated Fund cannot be calculated any degree of accuracy.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Clause 3 seeks to empower the Government to constitute a State Council by notification in the Gazette for the purpose of the performing the powers, duties and functions under this Act.

2. Sub-clause (4) of clause 4 seeks to empower the Government to prescribe the sitting and traveling allowances of the Chairman and members.

3. Sub-clause (3) of clause 6 empowers the Government to prescribe such purposes and such conditions to invite any person with expert knowledge in a particular subject to be present at the meeting to assist the State Council in arriving at a decision.

4. Clause 8 seeks to empower the government to remove any non-official member of the State Council by an order and in accordance with the provision contained clause 8.

5. Item (e) of Sub-clause (5) of clause 10 seeks empower the Government to prescribe such other purposes of which the Fund of the State Council shall be utilized.

6. Clause 11 seeks to empower the Government to fix the contributions, from the owners of the factories, plantations, shops and commercial establishments, from time to time and it also empowers the State Council to levy such contributions.

7. Sub-Clause (1) of clause 14 empowers the Government to deploy any officers of the Labour Department to assist the State Council for the purpose of performing the functions entrusted to it under this Act.

8. Clause 19 seeks to empower the Government to make orders not inconsistent with the provision of the Act, for the purpose of removing any difficulty in giving effect to the provision of this Act.

9. Clause 20 seeks to empower the Government to make rules for carrying into effect the provisions of this Act.

10. The above are matters of an administrative or of routine nature or matters of details. Further, the rules after they are made are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is therefore of a normal character.