

**Fifteenth Kerala Legislative Assembly**

**Bill No. 174**

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**THE KERALA PUBLIC RECORDS BILL, 2023**

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[Translation in English of “2023-ലെ കേരള പൊതുരേഖ ബിൽ” published under the authority of the Governor.]

**THE KERALA PUBLIC RECORDS BILL, 2023**

**A**

**BILL**

*to regulate the collection, classification, preservation and administration of public records of the Government Departments, Local Self Government Institutions, State Public Sector Undertakings, Commissions and Committees constituted by the Government and matters connected therewith or incidental thereto.*

*Preamble.*—WHEREAS, it is expedient to regulate the collection, classification, preservation and administration of public records of the Government Departments, Local Self Government Institutions, State Public Sector Undertakings, Commissions and Committees constituted by the Government and matters connected therewith or incidental thereto;

BE it enacted in the Seventy-fourth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Public Records Act, 2023.

(2) It shall be deemed to have come into force on such date as the Government may, by notification in the Gazette, appoint.

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

(a) “Board” means the Archival Advisory Board constituted under sub-section (1) of section 13;

(b) “defunct institutions” means departments or institutions under the Government, private institutions which have ceased to function due to economic/technical/other reasons;

(c) “Director” means the Director of Archives Department and includes an officer authorised by the Government to perform the functions of the Director;

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

(e) “prescribed” means prescribed by rules made under this Act;

(f) “public records” includes,—

(i) any manuscript, copper plates/copper rolls, bamboo splints, palm leaves, ancient texts, leaves, case files, diagram, maps, photos, charts, documents, paper records, files, plans, audio clippings etc. recorded in various media;

(ii) any microfilm, microfiche and facsimile copy of records;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not);

(iv) any other records produced by computer or any other device of records creating agency;

(g) “public records of archival value” means records having historical or national importance which is recommended by the board to be acquired by the State Archives Department;

(h) “public records of permanent value” means the records which are identified as not destructible after appraisal under various office manuals prevailing in the State such as “Manual of Office Procedure”, “Kerala Secretariat Office Manual”, “District Office Manual”, “Police Manual of Office Procedure” on the administration, preservation, appraisal, disposal etc. of public records;

(i) records creating agency means,—

(i) departments, offices related to the Government;

(ii) institutions, commissions, committees and their offices constituted under State law and Corporations functioning wholly or substantially under the control or with the financial assistance of the Government;

(iii) Local Self Government Institutions and related offices;

(j) “records officer” means the officer nominated by the records creating agency under sub-section (1) of section 5 of this Act;

(k) “rules” means rules made under this Act;

(l) “State” means the State of Kerala.

3. *Power of the Government to coordinate, regulate and supervise operations connected with administration, management, etc., of public records.*—(1) The Government shall have the power to coordinate, regulate and supervise the operations connected with the administration, management, maintenance, selection, disposal and destruction of public records under this Act.

(2) The Government may, in relation to the public records of the records creating agencies, by order, authorise the Director, subject to such conditions as may be specified in the order, to carry out all or any of the following functions, namely:—

(a) supervision, management and control of the archives;

(b) acceptance for deposit of public records of permanent nature after such period as may be prescribed;

(c) custody, use and withdrawal of public records;

(d) arrangement, preservation and exhibition of public records;

(e) preparation of inventories, indices, catalogues and other reference media of public records;

(f) analysis, development, promotion and coordination of the standards, procedures and techniques for improving the records management system;

(g) ensuring the maintenance, arrangement and security of public records in the State Archives Department and in the offices of the records creating agencies;

(h) promoting utilization of available space for the preservation of public records and maintenance of equipments;

(i) rendering advice to records creating agencies on the compilation, classification and disposal of public records and application of standards, procedures and techniques of records management;

(j) survey and inspection of public records;

(k) organising training programmes in various disciplines of archives administration and records management etc.;

(l) accepting records of archival value from private sources;

(m) regulating access to public records;

(n) receiving records from defunct bodies and making arrangement for ensuring the security of public records in the event of national emergency;

(o) receiving reports on records management and disposal practices from the records officer;

(p) providing authenticated copies of, or extracts from, public records;

(q) destruction and disposal of public records;

(r) obtaining on lease or purchasing or accepting as gift any record of historical or national importance;

(s) providing guidelines for the preservation of public records that are destroyed in disasters which comes under the definition of 'disaster' under the Disaster Management Act, 2005 (Central Act 53 of 2005).

4. *Prohibition against taking of public records out of State.*—No person or institution shall take or cause to be taken out of State public records without the prior approval of the Government:

Provided that no such prior approval shall be required if any public records are taken or sent out of State for official purpose.

5. *Records officer.*—(1) Every records creating agency shall appoint one of its officers as records officer to discharge the functions under this Act.

(2) Every records creating agency shall set up such number of record rooms in such places as it deems fit in such offices and shall authorise one records officer for each record room.

6. *Responsibilities of records officer.*— (1) The records officer shall have the following responsibilities, namely:—

(a) proper arrangement, maintenance and preservation of public records under his charge;

(b) periodical review of all public records and weeding out public records of ephemeral value;

(c) appraisal of public records which are more than twenty-five years old, in consultation with the State Archives Department, for retaining public records of permanent value;

(d) destruction of public records as provided in sub-section (1) of section 8;

(e) preparation of a schedule of retention indicating period of retention of public records in consultation with the State Archives Department;

(f) periodical review for downgrading of classified public records in such manner as may be prescribed;

(g) adoption of such standards, procedures and techniques as may be recommended from time to time by the State Archives Department for the improvement of records management system and security of public records;

(h) compilation of annual indices of public records;

(i) consolidation of organisational history and annual supplement thereto;

(j) assisting the State Archives Department for public records management;

(k) submission of annual report to the Director in such manner as may be prescribed;

(1) transferring the records of any defunct body to the State Archives Department subject to the directions of the Director.

(2) The records officer shall discharge the responsibilities under sub-section (1) in accordance with the provisions of the Act.

*7. Records officer to take appropriate action in the event of unauthorised removal, destruction, etc., of public records in his custody.*—(1) The records officer shall, in the event of any unauthorised removal, destruction, defacement or alteration of any public record under his charge, forthwith take appropriate action for the recovery or restoration of such public records.

(2) The records officer shall submit a report in writing to the Director without any delay on information about any unauthorised removal, destruction, defacement or alteration of any public records under his charge and about the action initiated by him and shall take action as he deems fit, subject to the directions of the Director.

(3) The records officer may seek assistance from any Government officer or any other person for the purpose of recovery or restoration of public records and such officer or person shall render all assistance to the records officer.

*8. Destruction or disposal of public records.*—(1) No public record shall be destroyed or otherwise disposed unless under the Kerala Destruction of Records Act, 1961 (2 of 1962) and the various rules made thereunder, or under the rules made under this Act, as the case may be, and subject to conditions and in such manner.

(2) No records that are more than 100 years old shall be destroyed except on the report of the Director that it is so defaced or is in a condition that it cannot be put to archival use.



9. *Power to file case and punishment.*—(1) The records officer shall as early as possible with the prior permission of the Director of Archives file case before the Court of Chief Judicial Magistrate.

(2) Whoever contravenes any of the provisions of section 4 or section 8 shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty five thousand rupees or with both.

10. *Public records bearing security classification.*—No public records bearing security classification shall be transferred to the State Archives Department.

11. *Receipt of records from private source.*—(1) The State Archives Department may accept any record of historical or national importance from private source by way of gift, purchase or otherwise.

(2) The State Archives Department may, subject to such conditions and in such manner as may be prescribed, make any record referred to in sub-section (1) available to any *bona fide* research scholar.

12. *Access to public records.*—(1) All unclassified public records which are more than thirty years old and are transferred to the State Archives Department may, subject to such exceptions and restrictions as may be prescribed make available to any *bona fide* research scholar.

*Explanation.*—For the purposes of this sub-section, the period of thirty years shall be reckoned from the year of the creation of the public record.

(2) The records creating agency may grant to any person access to any public record in its custody in such manner and subject to such conditions as may be prescribed.

13. *Archival Advisory Board.*—(1) The Government shall, by notification in the Gazette, constitute an Archival Advisory Board for the purposes of this Act.

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

- |  |   |                                   |
|--|---|-----------------------------------|
| (a) Secretary, State Archives Department   | : | Chairperson<br>(ex-officio);      |
| (b) an officer not below the rank of<br>Joint Secretary, Cultural Affairs Department   | : | Member<br>(ex-officio);           |
| (c) an officer not below the rank of Joint<br>Secretary Personnel and Administrative<br>Reforms Department                     | : | Member<br>(ex-officio);           |
| (d) an officer not below the rank of<br>Joint Secretary, Finance Department  | : | Member<br>(ex-officio);           |
| (e) an officer not below the rank of<br>Joint Secretary, Local Self Government<br>Department                                   | : | Member<br>(ex-officio);           |
| (f) an officer not below the rank of<br>Joint Secretary, Home Department   | : | Member<br>(ex-officio);           |
| (g) an officer not below the rank of<br>Joint Secretary,   | : | Member<br>(ex-officio);           |
| (h) Director,<br>State Archeological Department  | : | Member<br>(ex-officio);           |
| (i) Director, Museums and Zoos Department<br>Department  | : | Member<br>(ex-officio);           |
| (j) an archivist nominated by Government   | : | Member                            |
| (k) an expert in Information<br>Technology nominated by Government   | : | Member                            |
| (l) two persons having Post Graduate Degree<br>or Doctorate in History from a recognised<br>University nominated by Government | : | Member                            |
| (m) Director, State Archives Department  | : | Member Secretary<br>(ex-officio). |

14. *Term of Board.*—(1) The term of members of the Board other than ex-officio members shall be three years from the date of notification.

(2) The members of the Board shall continue to hold office until a new Board is constituted subject to the provisions of this Act and the rules made thereunder.

(3) The nominated members shall hold office during the pleasure of the Government which shall not exceed three years at a time and shall be eligible for re-appointment:

Provided that a person shall not be appointed as member for more than two terms.

(4) A member nominated to fill a casual vacancy shall continue for the remaining term of the member in whose place he is nominated.

(5) A nominated member may resign his office by writing under his hand addressed to the Government but he shall continue his office until his resignation is accepted by the Government.

(6) No act or proceedings of the Board shall be deemed to be invalid by reason of any defect or irregularity in its constitution or on the ground of existence of any vacancy in the office of any member.

(7) The Board shall regulate its own procedure for the conduct of its business.

(8) The allowances of the nominated members shall be such as may be prescribed.

15. *Meeting of the Board.*—(1) The Board shall meet in such place and time as decided by the Chairperson as and when required:

Provided that the Board shall convene its meeting atleast twice a year.

(2) The Chairperson or in his absence, a member of the Board elected from among the members present at the meeting shall preside over the meeting.

(3) The quorum for the meeting of the Board shall be one third.

16. *Functions of the Board.*—The Board shall perform the following functions, namely:—

(a) rendering advice to Government in matters relating to handling, administration, management, preservation and use of public records;

(b) preparing guidelines for imparting training to Archivists and employees of State Archives Department;

(c) providing directions for acquisition of records from private custody;

(d) deal with such other matters as may be prescribed.

17. *Power to determine norms and standards for courses in archival science.*—The Director shall, subject to the approval of the Board, have the power to determine norms and standards for courses, curricula, assessment and examinations relating to the training in archival science and other allied subjects.

18. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

19. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette, make such provisions not inconsistent with the provisions of this Act, which appears to it to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be issued after two years from the date of commencement of this Act.

(2) Every order issued under sub-section (1) shall be laid before the Legislative Assembly.

20. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the provisions 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:—

(a) the period after which public records of permanent nature may be accepted under clause (b) of sub-section (2) of section 3;

(b) the manner in which periodical review of classified public records for downgrading shall be undertaken under clause (f) of sub-section (1) of section 6;

(c) the manner in which the records officer shall submit annual report to the Director under clause (k) of sub-section (1) of section 6;

(d) the manner and conditions for destroying or disposing the public records under sub-section (1) of section 8;

(e) the manner and conditions for making available records of historical or national importance to *bona fide* research scholars under sub-section (2) of section 11;

(f) exceptions and restrictions for making available the public records to a *bona fide* research scholar under sub-section (1) of section 12;

(g) the manner and conditions for granting permission by any records creating agency for accessing public records in its custody to any person under sub-section (2) of section 12;

(h) the allowances which may be granted to the members of the Board under sub-section (8) of section 14;

(i) any other matter which is, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as 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 followed, the Legislative Assembly makes any modification in

the Rule 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 the rule.

21. *Repeal of existing Order.*—(1) G.O.(Ms.) No.157/76/H.Edn dated 11<sup>th</sup> day of October, 1976 issued by Higher Education (A) Department is hereby repealed.

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

#### STATEMENT OF OBJECTS AND REASONS

The appraisal of records of the Secretariat, Government Departments, Committees and Commissions constituted by the Government, State Public Service Commission, offices connected with and under other departments and transferring of records of permanent value to the Archives Department, setting up of department wise record rooms, destruction of records, preparation of retention schedule etc. are being done as per G.O.(Ms.) No.157/76/H.Edn. dated 11<sup>th</sup> October, 1976 of the Higher Education (A) Department. The said order is not applicable to the Local Self Government Institutions.

2. An efficient records management system is necessary for the preservation of public records of records creating agencies such as Government Departments, Local Self Government Institutions, State Public Sector Undertakings, Commissions and Committees established by the Government under law. Hence the Government have decided to make legislation on matters such as authorising the Director of the State Archives Department as an authority to discharge the functions relating to the administration of records, constituting an Archival Advisory Board to advice the Government regarding maintenance and preservation of public records, incorporating penal provisions for taking public records out of the State and destruction of public records.

3. The Bill seeks to achieve the above object.

## 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

Sub-clause (1) of clause 3 of the Bill empowers the Government to co-ordinate, regulate and supervise the operations connected with the administration, management, preservation, selection, disposal and destruction of public records.

2. Sub-clause (2) of clause 3 of the Bill empowers the Government to issue order for authorising the Director to carry out the functions relating to the public records of records creating agencies.

3. Item (b) of sub-clause (2) of clause 3 of the Bill empowers the Government to make rules prescribing the period after which the public records of permanent nature may be accepted for deposit.

4. Item (f) of sub-clause (1) of clause 6 of the Bill empowers the Government to make rules prescribing the manner of conducting periodical review for downgrading the classified public records.

5. Item (k) of sub-clause (1) of clause 6 of the Bill empowers the Government to make rules prescribing the manner of submitting annual report to the Director.

6. Sub-clause (1) of clause 8 of the Bill empowers the Government to make rules prescribing the conditions and manner for the destruction and disposal of public records.

7. Sub-clause (2) of clause 11 of the Bill empowers the Government to make rules prescribing the manner and conditions for making available the records for *bona fide* research scholars.

8. Sub-clause (1) of clause 12 of the Bill empowers the Government to make rules prescribing the exceptions and restrictions for providing the unclassified public records which are more than thirty years old and transferred to the State Archives Department to *bona fide* research scholars.

9. Sub-clause (2) of clause 12 of the Bill empowers the Government to make rules prescribing the manner and conditions for accessing the public records to any person which are in the custody of records creating agency.

10. Sub-clause (1) of clause 13 of the Bill empowers the Government to constitute an Archival Advisory Board by notification in the Gazette.

11. Sub-clause (2) of clause 13 of the Bill empowers the Government to nominate an Archivist, an expert in Information Technology and two persons having Post Graduate Degree or Doctorate in History from a recognised University as members of the Board.

12. Sub-clause (5) of clause 14 of the Bill empowers the Government to accept the resignation of nominated members of the Board.

13. Sub-clause (8) of clause 14 of the Bill empowers the Government to make rules prescribing the allowances of the nominated members of the Board.

14. Item (d) of clause 16 of the Bill empowers the Government to make rules prescribing the matters which may be entrusted to the Board.

15. Clause 19 of the Bill empowers the Government to issue order not inconsistent with the provisions of this Act, to remove any difficulties which arises while giving effect to the provisions of this Act.

16. Clause 20 of the Bill empowers the Government to make rules by notification in the Gazette required for the implementation of the provisions of this Act.

17. The matters 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 so made and the notifications issued are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

AHAMMAD DEVARKOVIL.