

## അറിയിപ്പ്

കേരള നിയമ പരിഷ്കരണ കമ്മീഷൻ സർക്കാരിന് സമർപ്പിച്ചിട്ടുള്ളതും ഇതോടൊപ്പം ഉള്ളടക്കം ചെയ്തിട്ടുള്ളതുമായ “ The Kerala Protection of Right, Title and Interest of Parish Church Properties and Right of Worship of the Members of Malankara Church Bill, 2020” ബില്ലിന്മേൽ സർക്കാർ പൊതുജനാഭിപ്രായം തേടുന്നു. ബിൽ പൊതുജനങ്ങൾക്ക് പരിശോധിക്കാവുന്നതും ആയതിന് നേലുള്ള നിർദ്ദേശങ്ങളും അഭിപ്രായങ്ങളും ബിൽ വെബ്സൈറ്റിൽ പ്രസിദ്ധീകരിച്ച തീയതി മുതൽ 30 ദിവസത്തിനകം നിയമവകുപ്പ് സെക്രട്ടറി, നിയമ (ഉപദേശ ഇ) വകുപ്പ്, ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്, തിരുവനന്തപുരം എന്ന വിലാസത്തിൽ നേരിട്ടോ തപാൽ മാർഗ്ഗമോ ലഭ്യമാക്കാവുന്നതുമാണ്.

**THE KERALA PROTECTION OF RIGHT, TITLE AND INTEREST OF  
PARISH CHURCH PROPERTIES AND RIGHT OF WORSHIP OF THE  
MEMBERS OF MALANKARA CHURCH BILL, 2020**

**A**

**Bill**

to protect the right, title, and interest of Church properties and right of worship of the members of Malankara Church in the State of Kerala and for other matters connected therewith or incidental thereto.

*Preamble:* WHEREAS, the Hon'ble Supreme Court in its Judgment in C.A.No.3674 of 2015 (Varghese V. St.Peter's and Paul's Syrian Orthodox Church) has held that the Malankara Church, its properties and other matters are to be governed by the 1934 Constitution;

AND WHEREAS, the Hon'ble Supreme Court has further held that the 1934 Constitution, being an unregistered instrument, does not create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent in the Malankara Church Properties and only provides a system of administration;

**AND WHEREAS, the properties of each Parish Church were acquired or purchased by using the donations and offerings made by the Parishioners;**

**AND WHEREAS, despite the judgment of the Hon'ble Supreme Court dated 3<sup>rd</sup> July, 2017, disputes among the two denominations of Malankara Church continue to exist with respect to the right, title and interest over the properties and buildings and also regarding the right of worship and other religious ceremonies of the members of Malankara Church;**

**AND WHEREAS, very serious law and order problems are being created in various parts of the State between the two denominations of Malankara Church which results in threatening the freedom of worship and other religious ceremonies among the members of Malankara Church;**

**AND WHEREAS, the repeated attempts initiated by the Government to resolve the differences subsisting between the two denominations of Malankara Church through mediation and other means by bringing them on a common platform did not yield any positive result;**

**AND WHEREAS, Government have decided to enact a law to protect the right, title and interest of church properties and right of worship of the members of Malankara Church in the State of Kerala and for other matters connected therewith or incidental thereto.**

BE it enacted in the Seventy first year of the Republic of India as follows:-

1. **Short title, extend and commencement.-** (1) This Act may be called the Kerala Protection of Right, Title and Interest of Parish Church Properties and Right of Worship of the Members of Malankara Church Act, 2020.  
(2) It extends to the whole of the State of Kerala.  
(3) It shall come into force at once.
2. **Definitions.-** In this Act unless the context otherwise requires,-
  - (a) "Authority" means the authority appointed under Section 5 of this Act;
  - (b) "Denomination" means any section of Malankara Church consisting of its members distinguishing itself from another denomination;
  - (c) "Dispute" means and includes any dispute between the two denominations of Malankara Church which arose or may arise consequent to the judgment of Hon'ble Supreme Court dated 20<sup>th</sup> June, 1995 in Most.Rev.P.M.A.Metropolitan & Others V/s Moran Mar Marthoma and Another;
  - (d) "Malankara Church" means and includes Malankara Jacobite Syrian Church and Malankara Orthodox Syrian Church

- (e) "Malankara Jacobite Syrian Church" means the denomination in which its members accept the Patriarch of Antioch as the Supreme primate being the successor of St. Peter on whom Jesus Christ conferred the authority to establish the Church;
- (f) "Malankara Orthodox Syrian Church" means the denomination in which its members accept the Catholicos of the East as the Supreme primate of the Church of St. Thomas, through whom the Ecclesiastic authority conferred by Jesus Christ devolves;
- (g) "Notification" means notification published in the Official Gazette;
- (h) "Parish" means the group of Christian families having a church or prayer hall for its members to offer worship;
- (i) "Parish Church" means and includes the chancel cum prayer halls, burial ground / cemetery and the premises appurtenant there-to and all buildings therein;
- (j) "Parishioner" means a member of a parish whose name is entered in the register maintained by the Parish;
- (k) "Prescribed" means prescribed by rules made under this Act;
- (l) "Referendum" means the referendum conducted under section 6 of this Act.

3. **Ownership of the parish church.-** (1) Notwithstanding anything contained in any judgment, decree or order of any

Court, the right, title and interest of the Parish Church shall vest with the Parishioners of that Parish church.

(2) No parishioner shall either be evicted or ousted from the parish church or shall be denied the right of worship or the right to participate in the communion worship of his parish church:

Provided that the ownership and administration of Parish Church shall be vested with the parishioners in accordance with the order of referendum issued under section 6.

(3) Every member of a parish church shall have the absolute right to follow the religious faith as guaranteed under Article 25 of the Constitution of India and to offer worship in his parish church.

4. **Procedure for vesting of right, title and interest of Parish Church.**- (1) When a dispute arises between the members of Malankara Jacobite Syrian Church and Malankara Orthodox Syrian Church as to the right, title and interest of the parishioners of that church, the same shall be vested with the majority members of the Parish of that Church.

(2) In respect of any dispute between the Members of Malankara Jacobite Syrian Church and Malankara Orthodox Syrian Church as to the right, title and interest of a Parish church, any member of that Parish Church may prefer a written representation before the District Magistrate concerned for ascertaining the majority among the members.

(3) On receipt of a representation under sub section (2), the District Magistrate concerned shall, after conducting such inquiry as may be required regarding the bonafides of the representation, refer the matter to the Authority for conducting a referendum, in the manner prescribed.

5. **Appointment of Authority.-** (1) The Government may, by notification in the Official Gazette, appoint an Authority consisting of a retired judge of the Supreme Court or High Court as Chairman and other two members nominated by each of the denomination, in the manner as may be prescribed for the purpose of ascertaining the majority of parishioners:

Provided that, in case any of the denomination fails to make their nomination within the time prescribed, Government may appoint such member, as may be prescribed.

(2) The staff and other employees of the Authority shall be in the manner as may be prescribed.

(3) The remuneration, allowances and other expenses of the Authority shall be, as may be prescribed.

6. **Powers and functions of the Authority.-** (1) The Authority shall, on receipt of the representation from the District Magistrate, conduct a referendum among the adult parishioners of such parish church to ascertain the majority, in the manner as may be prescribed.

(2) After ascertaining the majority under sub section (1), the Authority shall pass an order declaring the result of the referendum.

(3) The order passed under sub section (2) shall be conclusive and binding on all the parishioners of the respective parish church.

7. **Protection from eviction of parishioners.-** (1) Until the procedure of referendum is complete no parishioner shall either be evicted or ousted from such parish church or shall be denied his right of worship including the right to participate in the communion worship of his parish church.

(2) After passing an order under sub section (2) of Section 6 the minority members shall have the option either to continue in the same Parish Church or to join any other Parish.

8. **Power to remove difficulties.-** (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

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

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature.



9. **Power to make rules.-** (1) The State Government may make rules for carrying out the purposes of this Act.
- (2) All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the sessions in which they are so laid or of the sessions immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

#### Statement of Objects and Reasons

Between the two denominations of the Malankara Church in the State of Kerala, namely, Malankara Jacobite Syrian Church and Malankara Orthodox Syrian Church, serious disputes have arisen with respect to the ownership and administration of the properties of the Parish Church. It creates hindrances in the right of worship and other religious ceremonies of the members of the denominations. Obviously the properties of each Parish Church of Malankara Church were acquired or purchased by using the donations or offerings made by the Parishioners of the respective churches and hence the same actually belongs to the Parishioners of that church.

The Hon'ble Supreme Court of India in its judgment in C.A.No.3674 of 2015 (Varghese V. St.Peter's and Paul's Syrian Orthodox Church) has held that the Malankara Churches, its properties and other matters are to be governed by the 1934 constitution. It is further held that the 1934 constitution, being an unregistered instrument, does not create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent in the Malankara church properties and only provides a system of administration. Even after the above judgment, such disputes continue to exist with respect to the right, title and interest over the properties and buildings and also regarding the right of worship and other religious ceremonies of the members of such groups. This causes serious law and order problems in various parts of the State. The repeated attempts initiated by the Government to resolve the differences between the two denominations through mediation and other means by bringing them on a common platform did not yield any positive results.

As the properties of Malankara church were acquired or purchased by using the donations and offerings made by the Parishioners of the respective churches, the ownership and administration of the parish church have to be vested with the majority parishioners of the respective churches.

Therefore Government have decided to enact a law to protect the right, title and interest of the Parish Church properties of Malankara Church and right of worship of its members by incorporating provisions for ascertaining the majority members by way of a referendum and also to provide provisions with respect

to the ownership of each Parish Church and Protection from denial of right of worship of the minority members.

The Bill is intended to achieve the above objects.