

Kerala Chitties Act, 1975

23 of 1975

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Kerala Chitties Act, 1975

23 of 1975

An Act to define, amend and consolidate the law relating to chitties in the State of Kerala; WHEREAS it is expedient to define, amend and consolidate the law relating to chitties in the State of Kerala; BE it enacted in the Twenty-sixth Year of the Republic of India as follows:-

CHAPTER 1

Preliminary

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Kerala Chitties Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall 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,-

(1) "approved bank" means a bank approved by the Government, from time to time, for the purposes of this Act;

(2) "chitty" means a transaction, whether called chitty or kuri, by which one or more persons, hereinafter called the "foreman" or "foremen", enter into an agreement with a number of persons that

every one of the contracting party shall subscribe a certain amount of money or quantity of grain or other commodity by periodical instalments for a certain definite period and that each in his turn, as determined by auction or both, shall be entitled to the prize amount, whether payable in cash, kind or any other article of value or in such other manner as may be provided for in the agreement;

(3) "chitty amount" means the sum total of the subscriptions payable by all the subscribers for any instalment without any deduction for discount;

(4) "discount" means the amount of money or quantity of grain or other commodity, which a prize winner has, under the terms of the variola, to forego for the payment of veethapalisa, foremans commission or such other expense; as may be prescribed;

(5) "drawing" includes the mode of ascertaining the Prize winner at any instalment of the chitty by lot or by auction or in such other manner as may be provided for in the variola;

(6) "foreman" means the person who, under the variola, is responsible for the conduct of the chitty and includes all persons taking his place under section 35;

(7) "non-prized subscriber" does not include a defaulter subscriber ;

(8) "prescribed" means prescribed by rules made under this Act;

(9) "prize amount" means the chitty amount, whether payable in cash, kind or any other article of value, less the discount; it includes, in the case of a fraction of a ticket, the difference between the proportionate chitty amount and the discount on the particular fraction of the ticket; when the prize is payable in movables it means the value thereof at the time it becomes payable;

(10) "Registrar" means a Registrar appointed by the Government under section 57 ;

(11) "special resolution" means a resolution which is passed at a meeting specially convened for the purpose of the general body of subscribers, by a majority of not less than two-thirds of the subscribers present at the meeting in person or by proxy, such majority being also of subscribers representing not less than three-fourths in value of the amount subscribed by the general body of non-prized and unpaid prized subscribers, if any;

(12) "subscriber" includes a person who holds a fraction of a ticket and also a transferee by assignment in writing or by operation of law ;

(13) "ticket" means the share of a subscriber in a chitty which

entitles the holder thereof to the chitty amount at any one instalment with or without any deduction by way of discount;

(14) "variola means the document containing the articles of agreement between the foreman and the subscribers relating to the chitty, and includes vaimpu and kurippattika or other similar instrument;

(15) "veethapalisa" means the share of a subscriber in the discount available under the variola for rateable distribution among the subscribers at each instalment of the chitty.

CHAPTER 2

Of Constitution and Registration

3. Prohibition Of Chitty Not Sanctioned Or Registered Under This Act :-

(1) No chitty shall, after the commencement of this Act, be started and conducted unless the previous sanction of the Government or of such officer as may be empowered by the Government in this behalf is obtained therefore and unless the chitty is registered in accordance with the provisions of this Act:

Provided that the previous sanction under this sub-section shall lapse unless the chitty is registered before the expiry of six months from the date of such sanction:

Provided further that such previous sanction shall not be necessary for starting and conducting any chitty by-

- (i) a company owned by the Government of Kerala; or
- (ii) a co-operative society registered or deemed to be registered under the Co-operative Societies Act for the time being in force; or
- (iii) a scheduled bank as defined in the Reserve Bank of India Act, 1934 ; or
- (iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970).

(2) The previous sanction referred to in sub-section (1) shall not be granted if-

- (i) the foreman has been convicted of any offence under this Act or under any of the Acts repealed by this Act; or
- (ii) the foreman has defaulted in the payment of fees or the filing of statements or records, required to be paid or filed under this Act, or has violated any of the provisions of this Act or the rules made thereunder; or
- (iii) the foreman has been convicted of any offence involving

misappropriation, forgery, counterfeiting, falsification of accounts or any other offence involving breach of trust and sentenced to imprisonment for any term, unless a period of five years has elapsed since his release :

Provided that before refusing previous sanction, the foreman shall be given an opportunity of being heard.

(3) The order of the Government and subject to the provisions of sub-section (4), the order of the officer empowered under sub-section (1), either granting sanction or refusing sanction, shall be final.

(4) Any person aggrieved by the refusal to grant previous sanction by an officer empowered under sub-section (1) may appeal to the Government within such time and in such manner as may be prescribed, and the decision of the Government on the appeal shall be final.

(5) No foreman shall be entitled to conduct at a time chitties, the aggregate amount of which exceeds-

(a) where foreman is a banking company as defined in the Banking Regulations Act, 1949 (Central Act 10 of 1949) or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970), 60 per cent of the net assets of the foreman:

(b) in other case, 50 per cent of the net assets of the foreman:

Provided that the chitty amount in the case of anyone chitty conducted by a foreman shall not exceed twenty-five thousand rupees:

Provided further that the maximum limit specified in the foregoing proviso shall be two lakhs rupees in the case of any chitty of which the foreman is a banking company as defined in the Banking Regulations Act, 1949 (Central Act 10 of 1949) or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970):

Provided also that nothing contained in this sub-section shall apply in the case of any chitty of which the foreman is a company owned by the Government of Kerala.

Explanation.-In determining the net assets of a foreman for the purposes of this sub-section, the amount of the security furnished by him under section 15 shall be excluded if such amount is the amount of subscription received in advance from the subscribers.

(6) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with

fine which shall not be less than five hundred rupees but which may extend to two thousand rupees.

4. Prohibition Of Invitation For Subscription Except Under Certain Conditions :-

(1) Where previous sanction is required by section 3 for starting and conducting a chitty, no person shall issue or publish any notice, circular, prospectus, proposal or other document inviting the public to subscribe for tickets in any such chitty or containing the terms and conditions of any such chitty unless such notice, circular, prospectus, proposal or other document contains a statement that the previous sanction required by section 3 has been obtained, together with the particulars of such sanction.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

5. Saving Of Some Chitties :-

(1) Notwithstanding anything contained in section 3, the provisions of this Act shall not apply to a chitty if the chitty amount or the value thereof is less than one hundred rupees:

Provided that no person shall conduct such a chitty except under a permit issued by such authority and in accordance with such terms and conditions as may be prescribed by the Government:

Provided further that no person shall be entitled to start a new chitty of the class specified in this sub-section till the expiry of the term of such a chitty already started.

(2) Whoever conducts a chitty of the class specified in sub-section (1) without taking a permit as provided therein or violates any of the terms and conditions prescribed thereunder or of the conditions of the permit shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to fifty rupees, or with both.

6. Variola :-

In every chitty there shall be a variola in duplicate signed by each of the subscribers or by a person authorized in writing by the subscriber in that behalf and such signature shall be attested by at least one witness.

7. Particulars Of Variola :-

(1) The variola shall contain the following particulars and shall not contain any other particulars in consistent with the provisions of this Act:-

- (i) the full name and residence of every subscriber;
- (ii) the number of tickets or the fraction thereof held by each subscriber;
- (iii) the number of instalments and the amount payable for each ticket at every instalment;
- (iv) the date on which the chitty is to be begin and the date on which it is to terminate;
- (v) the mode of ascertaining the prize winner at the successive instalments;
- (vi) the amount of discount which a prize winner at any instalment has to forego;
- (vii) the mode and proportion in which the discount is distributable by way of veethapalisa, foremans commission and other expenses if any;
- (viii) the time and place at which the chitty is to be conducted;
- (ix) the instalment at which the foreman is to get the prize;
- (x) the approved bank or banks in which chitty moneys shall be invested by the foreman under the provisions of this Act;
- (xi) the consequences to which a non-prized or prized subscriber or the foreman will be liable if he violates any of provisions of the variola;
- (xii) the conditions under which a subscriber will be treated as a defaulting subscriber;
- (xiii) the nature and particulars of the security offered by the foreman under section 15;
- (xiv) the name of the nominee of the subscriber to whom benefits accruing to the subscriber under the chitty may be paid in case of death of the subscriber; and
- (xv) any other particulars that may, from time to time, be prescribed by the Government.

(2) Provision shall also be made in the variola that veethapalisa shall be istributed among both the prized and non-prized subscribers, other than prized defaulter subscribers in respect of defaulted instalments of subscription.

Explanation.-For the avoidance of doubts, it is hereby declared that no provision shall be made in the variola for forfeiture by a non-prized defaulter subscriber of his right to obtain veethapalisa.

(3) Where the prize winner is to be determined by auction and more than one person bids for the same amount; the prize winner shall be determined by lots among them.

(4) The amount of discount in a chitty shall not exceed thirty per cent of the chitty amount.

8. Registration :-

(1) Every variola with its duplicate shall be filed by the foreman with the Registrar along with the order sanctioning the starting of the chitty (where such sanction is necessary under section (3), and the Registrar shall register and return the variola with an endorsement that the chitty is registered:

Provided that the Registrar may refuse to register the chitty on any of the following grounds, namely:-

(i) that the security offered by the foreman under section 15 is insufficient; or

(ii) that the foreman has been convicted of any offence under this Act or under any of the Acts repealed by this Act; or

((iii) that the foreman has defaulted in the payment of fees or the filing of statements or records, required to be paid or filed under this Act or has violated any of the provisions of this Act or the rules made thereunder; or

(iv) that the foreman has been convicted of any offence involving misappropriation, forgery, counterfeiting, falsification of accounts or any other offence involving breach of trust and sentenced to imprisonment for any term, unless a period of five years has elapsed since his release:

Provided further that before refusing to register a chitty, the foreman shall be given an opportunity of being heard.

(2) Any person aggrieved by an order of the Registrar under sub-section (1) may appeal to such authority, within such time, and in such manner, as may be prescribed and its decision thereon shall be final.

(3) On the registration of the variola, the Registrar shall endorse on the duplicate a certificate that the chitty is registered and shall retain in his office the duplicate so endorsed along with the order sanctioning the starting of the chitty.

9. Effect Of Registration :-

Every endorsement under sub-section (1) of section 8 shall be conclusive evidence that the chitty is duly registered under this Act.

10. Copies Of Variola To Be Given To Subscribers And Acknowledgements To Be Filed :-

(1) After the variola is signed by a subscriber or by a person authorized in writing by the subscriber in this behalf, the foreman shall supply a true copy of the variola certified as such by him to such subscriber or person authorized by the subscriber, who shall acknowledge receipt of the same, and the foreman shall file the acknowledgments with the Registrar within fourteen days of the first drawing of the chitty.

(2) If the foreman makes default in comply with the requirements of this section, he shall be punishable with fine which may extend to fifty rupees.

11. Alteration Of Variola :-

(1) Subject to the provisions of this Act and to the conditions contained in the variola, the subscribers to a chitty may, by a special resolution, -

(a) alter or add to the articles in the vaiola in respect of all or any of the following matters, namely: -

(i) the time at which or the place where the chitty is to be conducted;

(ii) the reduction of the chitty amount;

(iii) the continuance of the chitty in accordance with the provisions of section 35;

(iv) the suspension or prolongation of the chitty; or

(v) the termination of the chitty;

(b) omit the name of any approved bank specified in the vaiola or add the name of any approved bank in the variola;

(c) alter or substitute any of the articles of the variola that may be found to be not in consonance with any of the provisions of this Act or the rules made thereunder.

(2) Any alteration, addition, or substitution made under sub-section (1) shall be as valid as if originally contained in the variola and shall be subject, in like manner, to alteration, addition or substitution by a special resolution.

(3) A true copy of every special resolution passed under sub-section (1) or sub-section (2) shall be filed by the foreman with the Registrar within twenty-one days from the date of such resolution.

(4) The foreman shall-

(a) supply to every subscriber by registered post or otherwise, a

copy of every special resolution passed sub-section (1) or sub-section (2) within seven days from the date of such resolution; and
(b) file with the Registrar along with a copy of such resolution the acknowledgments given by the subscribers of the receipt by them of copies of the resolution.

(5) If the foreman makes default in complying with the requirements of this section, he shall be punishable with fine which may extend to five hundred rupees

12. Time And Place Of Conducting Chitty :-

(1) Every drawing of prizes in a chitty shall be conducted at the time and place mentioned in the variola and in accordance with the provisions contained therein.

(2) If a foreman makes default in complying with the requirements of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

13. Minutes Of Proceedings Of Drawing Of Chitty :-

(1) The minutes of the proceedings of every drawing shall be kept in a book and shall be signed-

(a) by the foreman and by at least two subscribers; and

(b) in cases where the prize amount is determined by auction, by the prize winner or his agent.

(2) The minutes mentioned in sub-section (1) shall state clearly-

(a) the date and hour when, and the place where, the proceedings began and ended;

(b) the number of the particular instalment of the chitty of which the proceedings are recorded;

(c) the names of the subscribers present;

(d) the person or persons who obtained the prize;

(e) the amount of discount; and

(f) full particulars regarding the disposal of the prize amount in respect of the preceding instalment and disposal of unpaid prize amount, if any, in respect of any previous instalment.

14. Copy Of Minutes To Be Filed With Registrar :-

(1) A true copy of the minutes of the proceedings of every drawing certified as such by the foreman shall be filed by him with the Registrar within fourteen days from the date of the instalment to

which it relates or before the date of the next succeeding instalment, whichever is earlier.

(2) If the foreman makes default in complying with the requirements of sub-section (1) or section 13, he shall be punishable with fine which may extend to one hundred rupees for every day during which he continues so to make default.

CHAPTER 3

Of the Foreman

15. Security To Be Given By Foreman :-

(1) Every foreman shall, before the first drawing of the chitty,-

(a) execute a bond in favour of or in trust for the other subscribers for the proper conduct of the chitty, charging immovable property sufficient to the satisfaction of the Registrar for the realization of twice the chitty amount; or

(b) deposit in an approved bank an amount equal to the chitty amount or invest in Government securities of the face value of note less than one and a half times the chitty amount and transfer the amount so deposited or the Government securities in favour of the Registrar to be held in trust by him as security for the due conduct of the chitty.

(2) If any foreman makes default in complying with the requirements of sub-section (1), he shall be punishable with fine which may extend to five hundred rupees.

(3) The security given by the foreman under sub-section (1) or any security substituted under sub-section (6) shall not be liable to be attached in execution of a decree or otherwise until the chitty is terminated and the claims of all are fully satisfied.

(4) The Registrar shall, after the termination of a chitty and after satisfying himself that the claims of all the subscribers have been fully satisfied, order the release of the security furnished by the foreman under sub-section (1) or the security substituted under sub-section (6), as the case may be, and in so doing he shall follow such procedure as may be, prescribed in that behalf.

(5) The security furnished under sub-section (1) shall, subject to the provisions of sub-section (6), be kept intact during the currency of the chitty and the foreman shall not commit any such act with respect thereto as are calculated to impair materially the nature of the security or the value thereof.

(6) The Registrar may,-

(a) at any time during the currency of the chitty, permit the

substitution of the security:

Provided that such substituted security shall not be less than the security given by the foreman under sub-section (1); or

(b) on the termination of the chitty, release a part of the security:

Provided that the security left after release of the part is sufficient to satisfy the outstanding claims of all subscribers.

16. Rights Of Foreman :-

(1) The foreman shall be entitled-

(a) to obtain his prize at the instalment specified in the variola without deduction of discount:

Provided that a foreman shall not be liable to get more than one prize in a chitty without deduction for discount.

(b) to such commission or remuneration not exceeding five per cent of the chitty amount as may be fixed in the variola for the conduct of the chitty;

(c) to receive and realize all subscriptions from the subscribers and to distribute the veethapalisa among them;

(d) to demand reasonable security from any prized subscriber for the amount of future subscriptions payable by him.

Explanation.-A security is reasonable within the meaning of this clause if its value exceeds twice the amount due from the subscriber;

(e) to substitute subscribers in the place of defaulters subject to the provisions hereinafter contained; and

(f) to do all other acts that may be necessary for the due and proper conduct of the chitty.

(2) Where there is any dispute between the foreman and a prized subscriber regarding the value of the property offered as security for the amount of future subscriptions payable by him, a valuation certificate in respect of the property issued by the Tahsildar of the taluk in which the property is situate shall be accepted by the foreman.

(3) Any foreman who does not accept a valuation certificate as required by sub-section (2) shall be punishable with fine which may extend to five hundred rupees.

17. Duties Of Foreman :-

(1) The foreman shall, on a prized subscriber furnishing security as provided for in clause (d) of sub-section (1) of section 16 for the payment of the future subscriptions, be bound to pay him the prize

amount and shall be entitled to get from him an acknowledgment in writing evidencing such payment:

Provided that the foreman shall, on demand by a prized subscriber, pay him on the due date the amount which represents the difference between the prize amount and the amount of the future subscriptions without any security whatsoever, and in such case the foreman shall, before the date of the next succeeding instalment, deposit in an approved bank mentioned in the vaiola the amount of future subscriptions and he shall not withdraw the amount so deposited except for payment of future subscriptions.

(2) If, owing to default of a prized subscriber, the prize amount due in respect of any drawing remains unpaid before the date of the next succeeding instalment, the foreman shall deposit the same forthwith in any approved bank mentioned in the variola and intimate in writing the fact of such investment together with the following particulars of the investment to the prized subscriber, namely: -

- (a) the number, year and office of registration of the chitty;
- (b) the particular instalment of the chitty;
- (c) the amount due to the subscriber;
- (d) the approved bank in which the amount is deposited;
- (e) the date of deposit;
- (f) the reason for the deposit; and
- (g) the conditions of disbursement.

(3) Payment of the prize amount or the investment of the amount of future subscriptions under sub-section (1) or the investment of the prize amount under sub-section (2) shall be intimated to the subscribers at the next succeeding instalment and such payment or investment entered in the minutes of proceedings of that instalment.

(4) The foreman shall not admit any person as a subscriber to a chitty if, by such admission, the total number of tickets mentioned in the variola is increased.

(5) If the amount of future subscriptions or the prize amount has not been invested in accordance with the provisions of sub-section (1) or sub-section (2), or if the amount so invested has been withdrawn for purposes other than those for which the same has been held in deposit, or if the requirements of sub-section (3) have not been complied with, the foreman shall be punishable with fine which may extend to five hundred rupees.

(6) Any foreman who contravenes the provisions of sub-section (4) shall be punishable with imprisonment for a term which may extend

to three months and with fine which may extend to five hundred rupees.

18. Books To Be Kept By Foreman :-

The foreman shall keep-

(1) a register containing-

(a) the names and full address of the subscribers together with the number of shares held by each subscriber;

(b) the dates on which the subscribers signed the variola; and

(c) in case of assignment by a subscriber, the name and full address of the assignee with the date of the assignment and the date on which the assignment has been recognized by the foreman;

(2) a book containing the minutes of the proceedings mentioned in sub-section (1) of section 13;

(3) a ledger containing-

(a) the amount paid by the subscribers and the dates of such payments ;

(b) the amount paid to the prized subscribers with the dates of such payments ; and

(c) in case of deposit in bank, the date and amount of such deposit;

(4) such other books, including a day book, as may be prescribed from time to time by the Government.

19. Punishment For Failure To Keep Books :-

If any foreman makes default in keeping the books as required by section 18, he shall be punishable with fine which may extend to one hundred rupees.

20. Balance Sheet :-

(1) Every foreman shall prepare and file with the Registrar in such manner and within such time as may be prescribed in that behalf, a balance sheet relating to the year of account containing a summary of the assets and liabilities of the chitty and giving such particulars as will disclose the nature of the assets and liabilities and how the value of the assets has been arrived at and duly audited by a chartered accountant who shall not be an employee of the foreman or a chitty auditor appointed under section 57:

Provided that where a balance sheet is audited by a chartered

accountant, a chitty auditor appointed under section 57 shall have the right to audit that balance sheet at any time.

(2) If any foreman makes default in complying with the provisions of sub-section (1), he shall be punishable with fine which may extend to twenty-five rupees for every day during which the default continues.

21. Liability Of Foreman To Subscribers :-

(1) Every foreman shall be liable to the subscribers for the amount due to them.

(2) Where there are more foremen than one in a chitty, each one of them shall be jointly and severally liable to the subscribers in respect of the obligations arising out of the chitty.

22. Withdrawal Of Foreman :-

(1) Where there are more foremen than one in a chitty, none of them shall withdraw from it unless such withdrawal is assented to in writing by all the non-prized and unpaid prized subscribers and a copy of such assent has been filed with the Registrar within fourteen days from the date of such assent.

(2) The withdrawal from a chitty of one of the foremen thereof shall not affect the security given under section 15.

CHAPTER 4

Of Non-Prized Subscribers

23. Non-Prized Subscribers To Pay Subscriptions And Get Receipts :-

(1) Every non-prized subscriber shall pay his subscription at the time and place mentioned in the variola and shall on such payment be entitled to get a receipt from the foreman.

(2) In default of any payment by a non-prized subscriber as required by sub-section (1), he shall be liable to such consequences as are provided for in the variola.

24. Removal Of Defaulting Subscribers :-

(1) If a non-prized subscriber defaults to pay his subscription in accordance with the terms of the variola for a period of one month, the foreman may, after intimating him by written notice, remove his name from the list of subscribers and substitute any other person in his place:

Provided that if the defaulter pays up the defaulted instalment with interest at the rate of nine per cent per annum within one week of receipt of such notice, his name shall not be liable to be removed.

(2) The foreman shall-

(a) enter every removal and substitution under sub-section (1) with the dates thereof in the chitty books; and

(b) give a written notice of such removal and substitution to the defaulting subscriber within fourteen days thereof.

(3) A true copy of the entry referred to in sub-section (2) shall be filed by the foreman with the Registrar within fourteen days from the date of such removal or substitution and any amount of arrears of subscriptions realised from a substituted subscriber to the extent of the amount already paid by the defaulting subscriber shall, before the date of the next succeeding instalment, be deposited by the foreman in an approved bank mentioned in the variola.

(4) The foreman shall not withdraw the amount deposited under sub-section (3) except for payment to the defaulting subscriber.

(5) If any foreman makes default in complying with the requirements of this section, he shall be punishable with fine which may extend to one hundred rupees.

25. Amount Due To Defaulting Subscriber How Dealt With :-

(1) When a substituted subscriber draws the prize amount, the defaulting subscriber shall be entitled to recover from the foreman his subscriptions subject to such deductions as may be provided for in the variola.

(2) The foreman shall on demand made by the defaulting subscriber and on his executing acknowledgment in writing be bound to pay to the defaulting subscriber the amount due to him before the date of the next succeeding instalment and if the defaulting subscriber fails to furnish the acknowledgment as aforesaid, the foreman shall, before the date of the next succeeding instalment, deposit in an approved bank the amount due to the defaulting subscriber.

(3) The amount deposited under sub-section (2) shall not be withdrawn by the foreman for any purpose other than for payment to the defaulting subscriber.

(4) Any foreman who contravenes the provisions of this section shall be punishable with fine which may extend to three hundred rupees.

26. Prized Subscriber To Sign Minutes Of Proceedings :-

In cases where the prize amount is determined by auction, every prized subscriber or a person authorised by him in writing sign the minutes of the proceedings relating to the drawing at which he obtains his prize.

27. Prized Subscriber To Give Security :-

(1) Before drawing the prize amount, every prized subscriber shall furnish, and before making payment of the prize amount, the foreman shall take, reasonable security for the due payment of future subscriptions; and if the foreman is the prized subscriber, he shall give security for the due payment of future subscriptions to the satisfaction of the Registrar.

(2) If any foreman makes default in complying with the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

28. Consequences Of Prized Subscriber Defaulting To Pay Subscriptions :-

Every prized subscriber shall pay his subscriptions regularly at the time and place mentioned in the variola and shall on such payment be entitled to get a receipt from the foreman, and in default of such payment, he shall be liable to such consequences as may be provided for in the variola and subject to the provisions of this Act.

29. Foreman To Give Notice In Writing Before Demanding Payment Of All Future Subscriptions :-

(1) A foreman shall not be entitled to claim consolidated payment of all the future subscriptions from a defaulting prized subscriber unless he shall have demanded the same in writing.

(2) If, in a suit instituted by a foreman for consolidated payment of future subscriptions from a defaulting prized subscriber, the defendant pays into court on or before the date to which the suit is posted for evidence the arrears of subscriptions till that date together with interest thereon at the rate provided for in the variola or at twelve per cent per annum, whichever is lower, and the costs of the suit, for payment to the plaintiff, then, notwithstanding any law or contract to the contrary, the court shall pass a decree

directing the defendant to deposit in court, for payment to the plaintiff, the future subscriptions on or before the dates on which they fall due and making him liable for the consolidated payment of all the future subscriptions with interest thereon in case of default to deposit in court any one instalment on or before the due date, and allowing the plaintiff in case of such default to realize in execution all the future subscriptions and interest thereon less the amount, if any already deposited by the defendant.

(3) Any person who holds an interest in the property furnished as security or any part thereof shall be entitled to make payment under sub-section (2).

(4) All consolidated payments of future subscriptions realized by a foreman shall be deposited in approved banks in trust for the benefit of the non-prized and unpaid prized subscribers before the date of the next succeeding instalment.

(5) The amount deposited under sub-section (4) may be withdrawn only for payment of future subscriptions.

(6) When the consolidated payment has been realised in the shape of property, such property shall remain as security for the due payment of future subscriptions.

(7) Any foreman who contravenes the provisions of sub-section (4) or sub-section (5) or sub-section (6) shall be punishable with fine which may extend to one hundred rupees.

CHAPTER 6

Of Transfer

30. Transfer Of Rights Of Foreman When Voidable :-

(1) No transfer of the rights of a foreman to receive subscriptions from prized subscribers shall be made without the previous sanction in writing of the Registrar.

(2) Any transfer of the rights of a foreman to receive subscriptions from prized subscribers shall, if it defeats or delays a non-prized subscriber, be voidable at the instance of such subscriber.

(3) When under sub-section (2) a transfer is disputed by a subscriber, the burden of proving that the foreman was in solvent circumstances at the time of the transfer and that the transfer does not defeat or delay such subscriber is upon the transferee.

31. Transfer To Be In Writing :-

Every transfer by a non-prized subscriber of his rights in the chitty shall be in writing and shall be filed with the foreman.

32. Recognition Of Transfer By Foreman :-

Every transfer under section 31 shall be recognised by the foreman unless-

- (a) the transferee is not solvent; or
- (b) the transfer was effected with a view to defeat the provisions of any law.

33. Entry Of Transferees Name In The Books :-

(1) Every transfer made under section 30 or section 31 shall be entered by the foreman in the books of the chitty.

(2) A true copy of any entry made under sub-section (1) shall be filed by the foreman with the Registrar within fourteen days from the date of such entry, in default of which the foreman shall be punishable with fine which may extend to one hundred rupees.

CHAPTER 7

Of Meetings of the General Body of Subscribers

34. How Meetings To Be Held :-

(1) The foreman may, on his own initiative, convene a special meeting of the general body of subscribers for considering any proposal to pass a special resolution.

(2) The foreman shall convene such a meeting on the requisition in writing of not less than twenty-five per cent of the number of non-prized and unpaid prized subscribers and the meeting so convened shall be held within thirty days of the date of the receipt of the requisition, and if the foreman refuses or fails to call the meeting within fourteen days of the receipt of such requisition, not less than twenty-five per cent of the number of non-prized and unpaid prized subscribers may give notice of the fact to the Registrar.

(3) The Registrar shall, within twenty-one days of the receipt of a notice under sub-section (2), convene a special meeting of the general body of subscribers.

(4) The Registrar shall be present at every special meeting convened-

(a) under sub-section (1) or sub-section (2), if the meeting is convened for considering any proposal to pass a special resolution for amending the variola; or

(b) under sub-section (3).

(5) If the foreman refuses or fails to convene a meeting as required by sub-section (2), he shall be punishable with fine which may

extend to one hundred rupees.

(6) Notice of not less than fourteen days shall be given to all subscribers of a meeting under this section specifying the object, date, hour and place of the meeting and a copy of the proposed special resolution shall also be sent along with the notice.

(7) The meeting shall elect its own chairman.

CHAPTER 8

Of Termination of Chitties

35. Provision For Continuation Of Chitties In Certain Cases

:-

(1) When a foreman dies or becomes of unsound mind, his legal representative or his guardian, as the case may be, may, in the absence of any provision in the variola to the contrary, in the absence of any provision to the contrary, take the place of the foreman and continue the chitty or make other arrangements in consultation with the non-prized and unpaid subscribers for the further conduct thereof.

(2) If the legal representative or the guardian, as the case may be, fails to make any arrangement under sub-section (1), any one or more of the non-prized or unpaid prized subscribers authorised by a resolution passed at a meeting of the non-prized and unpaid prized subscribers may, in the absence of any provision in the variola to the contrary, take the place of the foreman and continue the chitty or make other arrangements for the further conduct thereof.

(3) When a foreman is adjudicated an insolvent under the Insolvency Act, 1955 (2 of 1956), or withdraws from the chitty under section 22 or fails to conduct the chitty at any instalment or at any other date before the next succeeding instalment as may have been agreed upon by a resolution passed at a meeting of non-prized and unpaid prized subscribers held in that behalf, any one or more of the non-prized or unpaid prized subscribers authorized by the above resolution may, in the variola for the future conduct of the chitty, take the place of the foreman and have the right to continue the chitty or to make other arrangements for the further conduct of the chitty.

36. Termination Of Chitty :-

A chitty shall be deemed to have terminated only-

(a) when the period fixed in the variola or the period as altered by a subsequent special resolution for the duration of the chitty has expired ; or

(b) when all the non-prized and unpaid prized subscribers consent in writing to the termination of the chitty and a copy of such consent is filed with the Registrar within fourteen days from the date of such consent; or

(c) when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind or the subscriber or subscribers selected therefor fails or fail to continue the chitty or to make suitable arrangements for the further conduct of the chitty as provided for in section 35 :

Provided, however, that if there are more foreman than one and one or more of such foremen is or are living and is or are not disqualified to act under section 35, the chitty shall not be deemed to have terminated under this clause, if there is provision in the variola enabling the remaining foreman or foremen to conduct the chitty or if the non-prized and unpaid prized subscribers agree by a resolution to the conduct of the chitty by the remaining foreman or foremen.

37. Copy Of Resolution, Etc., To Be Filed With The Registrar :-

(1) A true copy of every assent mentioned in sub-section (1) of section 22 and of every consent and resolution mentioned in section 36 shall, with the date of such assent, consent or resolution, be filed by the foreman or by the remaining foreman or foremen, as the case may be, with the Registrar within fourteen days from the date of such assent, consent or resolution.

(2) If any foreman makes default in complying with the requirements of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

38. Refund Of Non-Prized Subscribers Subscription :-

(1) Except in the case of termination of a chitty under clause (a) or clause (b) of section 36, every non-prized subscriber shall, unless otherwise provided for in the variola, be entitled to get back his subscriptions at the termination of the chitty without any deduction for veethapoolisa, if any, received by him.

(2) Except in the case of termination of a chitty under clause (a) or clause (b) of section 36, if a chitty terminates on a date earlier than

the date originally fixed in the variola, the non-prized subscribers claim shall be deemed to have arisen on the date on which he has notice thereof.

39. Preference Of Subscribers Over Chitty Assets :-

Where there are debts due from the foreman of a chitty in relation thereto and also other debts due from such foreman, the chitty assets shall be a first charge for payment of a chitty debt due to the subscribers.

CHAPTER 9

Of Inspection of Documents

40. Foreman To Allow Subscriber To Examine Chitty Records :-

(1) Every foreman shall allow the non-prized and unpaid prized subscribers all reasonable facilities on all chitty days and on such other days as may be specified in the variola with such hours as may be provided therefor in the variola, for the inspection of security bonds and documents, receipts and other records, taken from prized subscribers or furnished by the foreman himself in his capacity as a subscriber, and all chitty records including account books and pass books, balance sheet and profit and loss accounts and such other records as may show the actual financial position of the chitty scheme.

(2) Any foreman who contravenes the provisions of sub-section(1) shall be punishable with fine which may extend to three hundred rupees.

41. Preservation Of Chitty Records By Foreman :-

All the records pertaining to a chitty shall be preserved in tact by the foreman and kept for a period of twelve years from the date of termination of the chitty and if he fails to do so, he shall be punishable with fine which may extend to three hundred rupees.

42. Inspection Of Chitty Books And Records :-

(1) The Registrar or an inspecting officer may inspect the chitty books and records after giving due notice in writing to the foreman.

(2) Every foreman shall be bound to produce the chitty books and records before the Registrar or the inspecting officer at the time and place mentioned in the notice, and shall furnish such

information to him as he may require:

Provided that if the foreman is a banking company or a company owned by the Government of Kerala or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, such inspection shall be held by the Registrar or the inspecting officer at the premises of the company or bank on any working day after notice, and it shall be the duty of the company or company or bank and its officers and servants to afford all facilities and assistance as may be necessary or reasonably required in regard to the inspection.

(3) If inspection of the chitty books or records is refused, the company or bank or any officer or servant thereof who is in default shall be punishable with fine which may extend to fifty rupees and with further fine which may extend to twenty rupee for every day during which the refusal continues.

(4) Any foreman other than a banking company or a company owned by the Government of Kerala or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, who contravenes the provisions of sub-section (2) shall be punishable with fine which may extend to one hundred rupees.

CHAPTER 10

Of Winding up of Chitties

43. Chitty When To Be Wound Up :-

A chitty may be wound up by the District Court within whose territorial jurisdiction the chitty has been registered, -

- (a) if the chitty has terminated under clause (c) of section 36; or
- (b) if the foreman fails to furnish the security specified in section 15, or if he commits any such acts in respect thereto as are calculated to impair materially the nature of the security or the value thereof, or if he fails to deposit the chitty moneys in accordance with the provisions of sub-section (1) and (2) of section 17 or sub-section (3) of section 24 or sub-section (2) of section 25 or sub-section (4) of section 29; or
- (c) if it is proved to the satisfaction of the court that the foreman is unable to pay the amounts due to the subscribers.

Explanation.-In determining whether the foreman is unable to pay the amounts due to the subscribers, the court shall take into account his contingent and prospective liabilities in respect of the chitty; or

- (d) if execution or other process issued on a decree or order of any court in favour of any subscriber in respect of amounts due to him from the chitty is returned unsatisfied in whole or in part; or
- (e) if it is proved that there has been fraud or collusion on the part of the foreman in the matter of taking securities from prized subscribers; or
- (f) if the foreman has appropriated the prize amount in his capacity as a subscriber without furnishing sufficient security for future subscriptions; or
- (g) if the court is of opinion that the affairs of the chitty are being conducted in a manner prejudicial to the interest of the subscribers.

44. Winding Up Application :-

The application to the court for the winding up of a chitty shall be by a petition presented by any non-prized or unpaid prized subscriber or by the Registrar, signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Central Act 5 of 1908) and shall contain such particulars as may be prescribed:

Provided that no petition for winding up of a chitty under clause (c) or clause (g) of section 43 shall lie unless such petition is presented by non-prized and unpaid prized subscribers representing not less than twenty-five per cent in value of the amount subscribed by the general body of non-prized and unpaid prized subscribers, if any, or with previous sanction of the Government.

Explanation.-For the purposes of the foregoing proviso, a subscriber of a fraction of a ticket shall be deemed to be a subscriber only to the extent of such fraction.

45. Insolvency Or Liquidation A Bar To Winding Up Proceedings :-

Notwithstanding anything contained in sections 43 and 44, no petition for the winding up of a chitty shall be entertained by a court if proceedings under the Insolvency Act, 1955 (2 of 1956), are pending against the foreman for adjusting him an insolvent or, where the foreman is a company, if proceedings for winding up the company are pending against such company in a court.

46. Commencement And Effect Of Winding Up Order :-

An order for the winding up of a chitty shall operate in favour of all the subscribers to whom amounts are due from the chitty and it

shall be deemed to have commenced from the time of the presentation of the petition for the winding up.

47. Injunction Order :-

The court may, upon the application of the foreman or of any subscriber to whom amounts are due in respect of a chitty, at any time after the presentation of the petition for the winding up of the chitty under this act and before the making of an order for the appointment of an interim receiver or for winding up the chitty, restrain further proceedings in any suit or proceeding instituted against the foreman for the realisation of amounts due from the chitty, upon such terms as the court thinks fit.

48. Powers Of Court On Hearing The Petition :-

On hearing the petition, the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that it deems fit.

49. Vesting Of Chitty Assets In Receiver :-

On the making of an order for winding up a chitty, the entire chitty assets shall vest in the court or in the receiver appointed by the court, for distribution amongst the subscribers to whom amounts are due in respect of the chitty.

50. Suits Stayed On Winding Up Order :-

When a winding up order has been made or an interim receiver has been appointed, no suit or other legal proceedings shall be continued or commenced against the foreman by a subscriber for the realization of amounts due to him in respect of the chitty except with the leave of the court winding up the chitty and on such terms as the court may impose.

51. Copy Of Winding Up Order To Be Filed With The Registrar :-

(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the receiver to file with the Registrar a copy of the order, within one month from the date of the making of the order.

(2) On the filing of a copy of the winding up order, the Registrar

shall make an entry thereof in his books relating to the chitty and shall notify in the Gazette that such order has been made.

52. Stay Of Winding Up Proceedings On Insolvency Of Foreman And Transfer Of Insolvency Proceedings :-

(1) Where during the pendency of the proceedings for winding up a chitty, the foreman or all the foremen, where there are more than one foreman, is or are adjudicated insolvent or insolvents or, where the foreman is a company, the company has been ordered to be wound up by the court, the winding up proceedings under this part shall cease and the distribution of the chitty assets shall, subject to the provisions contained in sections 39 and 46, be insolvency winding up the company as the case may be.

(2) Where insolvency proceedings against the foreman are pending in different courts, the High Court may transfer the proceedings from one court to another as it may deem fit.

53. Award Of Compensation To Foreman :-

(1) Where a petition presented for winding up a chitty is dismissed and the Court is satisfied that the petition was frivolous or vexatious, the court may, on the application of the foreman, award against the petitioner such amount not exceeding five hundred rupees as it deems reasonable compensation to the foreman for the expense or injury occasioned to him by the petition and the proceedings, thereon, and such amount may be realised as if the award were a decree.

(2) An award under sub-section (1) shall bar any suit for compensation in respect of such petition and the proceedings thereon.

54. Right Of Appeal :-

The foreman, any subscriber, the receiver or any other person aggrieved by a decision or order of the court in proceedings for winding up a chitty may, within sixty days from the date of such decision or order, appeal to the High Court.

55. Limitation :-

(1) Where an order refusing to wind up a chitty has been made under this Act, the chitty shall be deemed to have been under suspension from the date of the presentation Of the petition to the

date of such order in respect of non-prized subscribers; and notwithstanding anything contained in the variola, no non-prized subscriber who was not a defaulter On the date of the presentation of the petition for winding shall be deemed to be a defaulter on the date of its dismissal.

(2) Where an order refusing to wind up a chitty has been made under this Act, in computing the period of limitation prescribed for any suit or other legal proceedings (other than a suit or application in respect of which the leave of the court has been obtained) which might have been brought or made out for the presentation of the petition for winding up the chitty, the period from the date of the presentation of the petition to the date of the order refusing to wind up the chitty shall be excluded.

(3) Nothing contained in this Part shall affect the right of the subscriber to proceed against the foreman personally the balance, if any, of the amount due to him after the declaration of the final dividend in proceedings for winding up the chitty, and in computing the period of limitation prescribed of any such suit or application for execution of a decree, the period from the date of the presentation of the petition for winding up the chitty to the date of the declaration of the final dividend shall be excluded.

CHAPTER 11

Registration Office and Fees

56. Registration Office :-

For the purpose of registration of chitties under this Act, there shall be offices at such places as the Government may, by notification in the Gazette, specify and no chitty shall be registered except at such offices.

57. Appointment Of Registrars, Inspecting Officers And Chitty Auditors :-

The Government may appoint Registrars for the registration of chitties under this Act, and also inspecting officers and chitty auditors, and may by rules prescribe their respective duties.

58. Inspection Of Documents In Registrars Office :-

Any person may inspect the documents kept by the Registrar, on payment of such fees as may be prescribed, and any person may require a certificate of registration of any chitty or a copy or extract

of any other document to be certified by the Registrar on payment, for the certificate, certified copy or extract, of such fees as may be prescribed.

59. Levy Of Fees :-

There shall be paid to the Registrar such fees as the Government may, from time to time, prescribe, for-

- (a) a permit under section 5;
- (b) the registration of a variola under section 8;
- (c) filing with the registrar of copies of documents as required under sub-section (3) of section 11, sub-section (1) of section 14, sub-section (3) of section 24, sub-section (2) of section 33 and section 37;
- (d) the inspection of a document under section 58;
- (e) any certificate, copy or extract under section 58;
- (f) the audit of any balance sheet and the issue of audit certificate; and
- (g) such other purposes as appear necessary to carry out the purposes of this Act.

(2) A table of fees payable under sub-section (1) shall be published in the Gazette.

CHAPTER 12

Miscellaneous

60. Penalty If The Foreman Is A Company :-

(1) If the foreman contravening any of the provisions of this Act is a company, every person who, at the time the contravention was committed, was in charge of and as responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where such contravention has been committed by a company and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, such director, manager, secretary or other officer, as the case may be,

shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against accordingly.

Explanation. -For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" , in relation to a firm, means a partner in the firm.

61. Application Of Fine :-

The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings.

62. Compounding Of Offences :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) any officer empowered by the Government in this behalf may, at any time, on receipt of such compensation as may be fixed by such officer, compound any offence punishable under the foregoing provisions of this Act.

(2) A composition under sub-section (1) shall have the effect of an acquittal of the accused.

63. Penalty For False Statement :-

Whoever in any document required by or for the purposes of any of the provisions of this Act, willfully makes a statement which is false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both.

64. Power To Enter And Search Any Place And To Seize Documents, Etc. :-

If the Registrar or the inspecting officer appointed under section 57 has reason to suspect that any person conducts, or is responsible for the conduct of, a chitty in contravention of the provisions of this Act, he may, for reasons to be recorded in writing, enter and search at any time between sunrise and sunset, any place, house, building, shed, enclosure or tent and may seize such books, registers, accounts or documents as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for the examination thereof or for a prosecution.

65. Interest At More Than 9 Per Cent Not To Be Allowed On Grain :-

No court shall award interest on claims for gain or any other commodity arising under this Act at more than nine per cent per annum.

66. Power Of Courts To Grant Relief In Certain Cases :-

Nothing contained in the foregoing provisions of this Act shall affect the powers vested in courts for granting relief against any of the provisions contained in the variola, if the same be unconscionable or opposed to the provisions of any law.

67. Protection Of Action Taken Under This Act :-

No suit, prosecution or other legal proceedings shall lie against the Government or the Registrar or any other person for anything which is in good faith done or intended to be done under this Act.

68. Power To Make Rules :-

(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect all or any of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, they may make rules-

(a) with reference to all matters expressly required or allowed by this Act to be prescribed;

(b) as to the procedure to be followed by the Registrar in registering a variola;

(c) as to the procedure to be followed for the substitution or part release of security under sub-section (6) of section 15;

(d) as to the procedure to be followed by the Registrar for the release of the property or of the cash security or of the cash security or Government securities furnished by the foreman under section 15;

(e) as to the safe custody of books, papers and documents in the office of the Registrar and also for the destruction of such books, papers and documents as need no longer be kept;

(f) as to the procedure to be followed for the winding up of a chitty under Part X;

(g) as to auditing of balance sheets and the issue of audit

certificates; and

(h) generally for the purpose of carrying into the effect the provisions of this Act.

(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 following, the Legislative Assembly agrees that the rule should be either modified or annulled, 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.

69. Recovery Of Amounts Due From Foreman :-

All amounts due from a foreman to the Government under this Act by way of any fee or as compensation for the composition of any offence against this Act shall be recoverable as arrears of revenue due on land.

70. Application Of Act To Certain Existing Chitties :-

The provisions of this Act save those contained in section 3, section 4, section 8, section 9 and section 15 shall, so far as may be, apply to chitties started before the commencement of this Act in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956).

70A. Power To Exempt :-

The Government may, by notification in the Gazette and for reasons to be specified in such notification, exempt any company owned by the Government of Kerala or any co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), from all or any of the provisions of this Act.

71. Power To Remove Difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order notified in the Gazette, do anything not inconsistent with such provisions, which appears to them to be necessary or expedient for the purpose of removing the difficulty.

(2) Every order proposed to be issued under sub-section (1) shall be laid in draft before the Legislative Assembly for a period of not less than fifteen days while it is in session and if within that period the Legislative Assembly disapprove of the issue of the order or approves of the order only with modifications, the order shall not be issued or, as the case may be, shall be issued only with such modifications as may be agreed on by the Legislative Assembly.