

# The Annual Survey of State Laws in India

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# KERALA

Noor Ameena<sup>1</sup>

## Introduction

State legislatures play an important role in law-making within the Indian constitutional framework. They enact laws related to the most crucial areas of a citizen's life, including agriculture, public health, education, labour and local government, spread across the state and concurrent lists in Schedule VII of the Constitution. Given the importance of state governments in the Indian federal system, it is crucial to evaluate their legislative performance. For this study, all bills, ordinances and resolutions issued in 2020, in Kerala, were examined.<sup>2</sup>

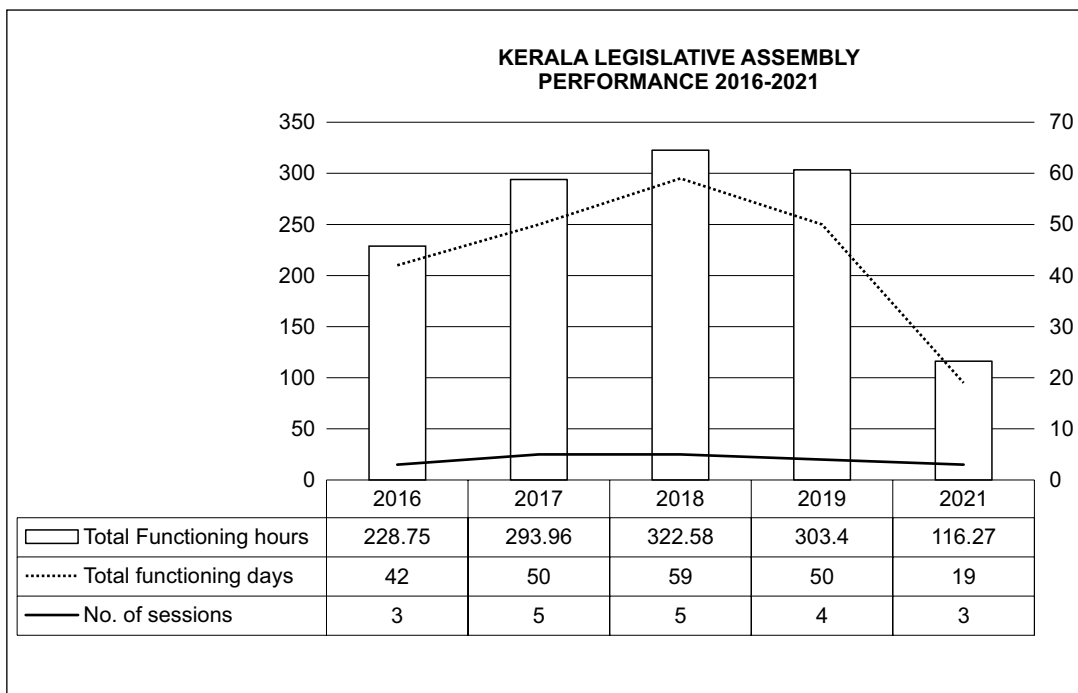
## Performance of Kerala Legislative Assembly: An Overview

In 2020, the Kerala Assembly had the lowest number of functioning days and hours. This can be partly attributed to the pandemic, which redefined the very idea of 'normal' at several levels. Data from 2017 to 2019 reveal that the number of functioning days of the Assembly was between 50 and 60, while the same for 2020 was just 19 days<sup>3</sup>. The total number of hours clocked was also only one-third compared to the previous three years. The average number of functioning hours for the same period was 306.64 as against 116.27 hours in 2020.

Figure 1 shows that the number of hours spent on legislative activity in 2020 was less than half that of the previous years. Only eight bills were passed in 2020, of which five were finance and appropriation bills. Of the remaining three, a couple were Municipality and Panchayat Raj (Amendment) Bills (in the light of upcoming local body elections) and one was the Kerala Christian Cemeteries (Right to Burial of Corpse) Bill, 2020. These three bills were sent to the subject committee and were passed after the committee submitted its report with comments.

Kerala has a robust committee system. A total of 655 reports were presented by different committees during the period of the fourteenth legislative assembly. The state has 14 subject committees, which have been constituted on different subjects like education, health and family welfare, water resources, land, revenue, tourism, etc. These committees submit periodical reports, scrutiny reports, action taken reports, general and special reports. Ad-hoc committees have also been constituted to understand a particular situation on the ground. For example, in 2020, an ad-hoc committee was constituted to study

1. Doctoral Fellow, NALSAR University of Law.
2. The official data released by the Kerala legislative assembly is available at: <http://niyamasabha.org/> (last visited on Dec. 16, 2021); <http://www.niyamasabha.nic.in/> (last visited on Dec. 16, 2021).
3. PRS Legislative Research, "Functioning of Kerala 14<sup>th</sup> Assembly (2016-2021)", available at: <https://prsindia.org/legislatures/states/functioning-of-kerala-14th-assembly-2016-2021> (last visited on Oct. 26, 2021).



**Figure 1: Performance of Kerala legislative assembly: 2016-2021.**

the situation that evolved with the introduction of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act in Kerala.

The legislative assembly also issued a resolution against the controversial Farmers Acts<sup>4</sup> passed by the union government in the light of the ongoing protests of farmers across India.<sup>5</sup> It pointed out that agriculture is a matter that falls within entry 14 of the state list and the union government do not have the legislative competence to legislate on this area without consulting the states or inter-state council, and called for the repeal of these Acts.

### **An Executive-Driven Year**

A further evaluation of the legislative time spent on bills shows that of the eight passed in 2020, all except one were passed before March 15, that is, before COVID-19 truly hit India. (The first COVID case was detected in India in the last week of January, in Kerala; this was followed by a country-wide lockdown in March as the number of cases increased manifold.) But 81 ordinances were promulgated in 2020. This clearly shows that 2020, particularly, was an executive-driven year. However, the nature

4. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act 2020, and the Essential Commodities (Amendment) Act, 2020.

5. In 2019, the resolution passed against the Citizenship Amendment Act and National Population Register by the Kerala assembly led to serious debates.

of legislative activity can only be understood if we study the issuance of ordinance versus bills over the past years.

**Table 1: Details of Bills and Ordinances passed by Kerala Assembly (2011-2020)**

Year	Bill	Ordinance	Ratio of Bills to Ordinance
2011*	18	60	0.3
2012	26	65	0.4
2013	25	56	0.446
2014	48	30	1.6
2015	23	18	1.27
2016*	5+10	6	2.5
2017	24	41	0.58
2018	38	59	0.64
2019	26	43	0.60
2020*	8	81	0.098 ^ 0.1

\* Election year

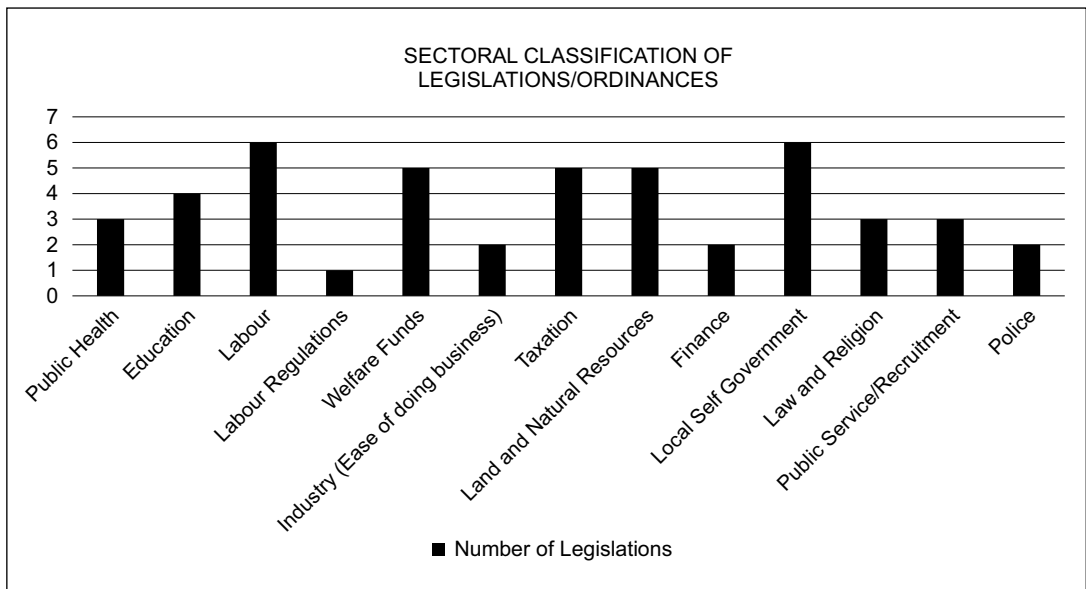
The data of the past three years (see Table 1) shows that the number of ordinances passed in proportion to bills has always been high; but the bill to ordinance ratio, which averaged at 0.6 in 2019, reduced to 0.1 in 2020. In other words, for every one ordinance passed in 2020, only 0.1 bill was passed. Further, the legislative performance in terms of bills versus ordinances ratio of the thirteenth legislative assembly was better than that of the next.

A further evaluation of ordinances in 2020 reveals that, of the 81 ordinances passed in the year, the number of ordinances re-promulgated was relatively high. One ordinance was re-promulgated five times, six ordinances were re-promulgated four times, three ordinances were re-promulgated thrice, and thirteen ordinances were re-promulgated twice. Multiple re-promulgation of ordinances is often referred to as 'ordinance raj'. It has been subjected to the criticism of the supreme court time and again as an attempt to bypass democratic processes and been referred to as governance by whim. In this context, a closer examination of the ordinances that were re-promulgated three or more times is warranted.

The one ordinance that was re-promulgated five times was the Kerala Goods and Services Taxation (Amendment) Ordinance, 2020. Of the ordinances which were re-promulgated four times, two pertained to welfare funds, two to education, one to land and natural resources and another to recruitment to public service/law and religious institutions (appointment to Devaswom Board). No particular pattern could be observed when it came to the ordinances which were promulgated multiple times, and the limited number of sittings could be attributed to the ongoing pandemic.

## Sectoral Classification of Ordinances

The ordinances issued in the year 2020 have been classified on the basis of sector—education, public health, labour, land and natural resources, police, taxation and local self government—for detailed evaluation.



**Figure 2: Sectoral classification of legislations passed in 2020.**

## Public Health

Kerala witnessed four outbreaks of deadly viruses, Nipah virus in 2018 and 2019—a deadly disease spread through air and supposedly transferred to man from bats (not confirmed till date)—and two waves of COVID-19 in 2020. In fact, the first COVID case in India<sup>6</sup> was reported from Kerala, with the government responding promptly through local shutdowns, contact tracing of patient and the issuance of strong safety protocols; this was even before the central government announced the lockdown. The state machinery was kicked into action by utilising the age-old Epidemic Diseases Act, 1897 (hereinafter referred to as Epidemics Act, 1897). The Act provides for the central and state governments to take measures to prevent the outbreak or spread of ‘any dangerous epidemic disease’ if they think that the existing laws are insufficient. The state government can issue temporary regulations to be followed by any person or class of persons to prevent the outbreak or spread of such disease, including inspection of persons travelling by the railways or other modes of transport, and segregation of those who are suspected to be infected in a hospital or any temporary accommodation. The central government can inspect ships or vessels or people arriving or leaving from such a port.

Later, the National Disaster Management Act (NDMA), 2005, though originally designed to manage natural disasters like floods and earthquakes served as a source of authority for state actions, when the union government declared COVID-19 as a ‘notified disaster’ under the Act.<sup>7</sup> However, it is evident that

6. M.A. Andrews, Binu Areekal, *et al.*, “First confirmed case of COVID-19 infection in India: A case report”, 151 *Indian Journal of Medical Research* 490–492 (2020).

7. Jitesh Vachhatani, “Home Ministry declares Coronavirus as ‘notified disaster’ to provide assistance under SDRF” *Republic World*, March 14, 2020, available at: <https://www.republicworld.com/india-news/politics/home-ministry-declares-coronavirus-as-notified-disaster-to-provide-s.html> (last visited on Mar.13, 2022).

both these legislations had their limitations. In April 2020, the central government amended the Epidemic Diseases Act by introducing an ordinance to protect the safety of healthcare workers during the pandemic, when acts of violence against health care personnel were rampant. Other provisions included inspection of buses, trains, ships, vessels, goods vehicles and aircraft; and travel restrictions and detention of people intending to travel by any of these means of transport.<sup>8</sup> During the debates, the members of parliament emphasised the role of state governments in combating an epidemic and expressed strong resentment against the unprecedented lockdown which was imposed without any consultation with the states. It was also proposed that a consultative process needs to be initiated with all major stakeholders, including the state governments, for a complete overhaul of the Epidemic Diseases Act.<sup>9</sup>

The Kerala Epidemic Diseases Ordinance 2020 seeks to repeal the earlier legislations, including the Epidemic Diseases Act, 1987, Cochin Epidemic Diseases Act 1072, and Travancore Epidemic Diseases Act 1072, and brings in a new legislation to handle epidemics in Kerala.<sup>10</sup> It gives power to the states to notify any disease as an epidemic and, if the state government is satisfied that the whole or a part of the state is threatened with the outbreak of an epidemic, it can issue temporary regulations on matters like sealing state borders, restricting public and private transport, inspecting and quarantining persons entering the state via air, rail, road or sea, restricting congregation of persons in public or religious spaces, and prohibiting or restricting the functioning of shops and commercial establishments, factories, workshops and godowns.

Along with the Epidemic Diseases Ordinance, the Kerala Disaster and Public Health Emergency (Special Provisions) Ordinance, 2020 was introduced to enable the state to defer the payments due to any person, institution or an employee of the government to the extent not exceeding one-fourth of the amount due or payable, for such period for the management of the situation arising out of a disaster or public health emergency or otherwise. This was preceded by a government order (GO) which proposed the deferment of six days salary of government servants for three months. However, the GO was struck down by high court for lack of legal authority.<sup>11</sup> This ordinance, again, was a special measure brought in to ease the financial hardship caused by COVID-19 and prolonged lockdowns and the increased budget allocation for public health and pandemic management. During this period, the salaries and allowances of the ministers, speaker, deputy speaker, leader of the opposition, chief whip and the members of the Kerala legislative assembly were reduced by 30 percent to raise extra resources for combating the pandemic and to provide expeditious relief and assistance to the people of the state.<sup>12</sup>

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8. The Epidemic Diseases (Amendment) Ordinance, 2020.

9. Rajya Sabha, Uncorrected Verbatim Debates (Session 252) Sept. 19, 2020, *available at*: <https://rajyasabha.nic.in/business/newshow.aspx> (last visited on Dec. 14, 2021).

10. After the outbreak of COVID-19, several states responded by amending or repealing the colonial legislation. For example, in the early days of COVID-19 itself, Odisha brought in amendments to raise the penalty of offences under the Epidemic Diseases Act. Karnataka also brought in Karnataka Epidemic Diseases Ordinance repealing the Epidemics Act 1897 in its application to state of Karnataka.

11. K.C. Gopakumar, "Covid 19: HC stays Kerala govt. order on employees' salary cut" *The Hindu*, April 28, 2020, *available at*: <https://www.thehindu.com/news/national/kerala/covid-19-hc-stays-kerala-govt-order-for-employees-salary-cut/article31453524.ece> (last visited on Dec. 15, 2021).

12. The Payment of Salaries and Allowances (Amendment) Ordinance, 2020.

## Education

Four ordinances were issued on education in 2020. The Sri Narayana Guru Open University Ordinance, 2020 was issued for the establishment of a state open university on the lines of the Indira Gandhi National Open University (IGNOU), which would become the exclusive distance education provider of the state. The ordinance prohibited the state universities that had been offering distance education courses till then from offering such courses. Each university had to get prior approval of the courses released under each academic stream from the University Grants Commission (UGC). Due to the bar created by this ordinance, of the three major state universities – Kerala University, Mahatma Gandhi University and Calicut University – only Kerala University applied for UGC approval.<sup>13</sup> At this time, the proposed open university was still in the offing, and the academic councils and board of studies were yet to be formed; further the approvals from the UGC was pending.<sup>14</sup> This created a situation wherein the newly proposed university was not in a position to offer the courses, and the state universities that were competent to offer the courses were barred by the ordinance, resulting in the loss of an academic year for the students. It must be noted that over two lakh students depend on private registration and distance education for their higher education in Kerala.<sup>15</sup> The high court of Kerala stayed the operation of the controversial clause pending final judgment and the state universities resumed their course via distance mode of education.<sup>16</sup>

The Kerala University of Digital Sciences, Innovation and Technology Ordinance, 2020 was issued to upgrade the Indian Institute of Information Technology and Management to the status of a digital university, to encourage growth of digital research and entrepreneurship and to promote linkages between industry and technological education. The aim was to generate human resources in the field of emerging areas like artificial intelligence, data analytics, block chain, and cognitive science.<sup>17</sup>

Another ordinance was issued to change the nomenclature of the Department of Education to the Department of General Education.<sup>18</sup> University laws were also amended allowing for affiliation of new courses in colleges of four major universities.<sup>19</sup>

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13. Sovi Vidyadharan, “Government allows Kerala University to offer distance education courses this year” *The New Indian Express*, Oct. 27, 2020, available at: <https://www.newindianexpress.com/states/kerala/2020/oct/27/government-allows-kerala-university-to-offer-distance-education-courses-this-year-2215393.html> (last visited on Oct. 27, 2021).
  14. Sovi Vidyadharan, “Kerala Open University mess a result of government’s lack of farsightedness: Academics” *The New Indian Express*, Nov. 1, 2020, available at: <https://www.newindianexpress.com/states/kerala/2020/nov/01/kerala-open-university-mess-a-result-of-governments-lack-of-farsightedness-academics-2217936.html> (last visited on Oct. 27, 2021).
  15. Fathimathu Zuhara K, R. K. Suresh Kumar and Shefeeque V., “Implementation Procedures for the Institution of Kerala Open University (Based on Ram Takwale Committee Report)” (Kerala State Higher Education Council, July 2018), available at: <https://kshhec.kerala.gov.in/images/pdf/combinepdf.pdf> (last visited on Mar. 13, 2022).
  16. Sarath Babu George, “Kerala universities to admit students to distance-education courses” *The Hindu*, Oct. 26, 2020, available at: <https://www.thehindu.com/news/national/kerala/kerala-universities-to-admit-students-to-distance-education-courses/article32945234.ece> (last visited on Dec. 13, 2021).
  17. “Kerala to form digital university” *The New Indian Express*, Jan. 16, 2020, available at: <https://www.newindianexpress.com/states/kerala/2020/jan/16/kerala-to-form-digital-university-2090078.html> (last visited on Oct. 27, 2021).
  18. Other changes in nomenclature include Director of Public Instruction to Director of General Education, Headmaster to Headmaster/ Headmistress or Vice Principal.
  19. The University Laws (Amendment) Ordinance, 2020.

## Labour

### *Conforming to International Conventions*

The Kerala Headload Workers (Amendment) Ordinance, 2020 is a new development in the labour rights jurisprudence. It calls for limiting the maximum weight an adult man can carry as headload from 75 kg to 55 kg, and for women and adolescent workers (15-18 years) to 35 kg in conformity with the international labour standards. International Labour Organisation Maximum Weight Convention No. 127 mandates that no worker shall be engaged in manual transport of a load in a manner detrimental to the health and safety of the individual, and set the maximum permissible weight at 55 kg. The ordinance also provides for the terms and conditions of service, including 'retirement benefits' of the officers and employees of the Headload Workers Board.

### *Welfare Funds*

Welfare funds are a social security mechanism widely used by the Kerala government. The concept of welfare funds, in general, is to create a fund with the contribution of employees, employers as well as the government. The government pools in select levies towards the fund. This is a robust initiative to provide some social security to the unorganised sector, which constitutes a major segment of the labour force. The year 2020 witnessed amendments in the welfare funds legislations for agricultural workers,<sup>20</sup> tailoring workers,<sup>21</sup> jewellery workers,<sup>22</sup> bamboo, kattuvalli and pandanus leaf workers, smack plantation workers,<sup>23</sup> factory and plantation workers and other establishments covered under the Kerala Labour Welfare Fund Act.<sup>24</sup> The broad objective of the ordinances is to raise the revenue of the welfare funds by altering the periodic contributions of employees, employers as well as the government.<sup>25</sup> The welfare boards introduce different schemes, including scholarships for higher education, health allowance, marriage allowance, accident claims, post-death allowance, and assistance for cremation among others.<sup>26</sup>

### *Ease of Doing Business*

Kerala is ranked 28 among the states in Ease of Doing Business according to the Reserve Bank of India ratings for the year 2019.<sup>27</sup> The state's ranking was 18, 20 and 21 respectively for 2015, 2016 and 2017.<sup>28</sup>

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20. The Kerala Agricultural Workers' (Amendment) Ordinance, 2020.

21. The Kerala Tailoring Workers' Welfare Fund (Amendment) Ordinance, 2020.

22. The Kerala Jewellery Workers' Welfare Fund (Amendment) Ordinance, 2020.

23. The Kerala Bamboo, Kattuvalli and Pandanus Leaf Workers' Welfare Fund (Ordinance), 2020.

24. The Kerala Labour Welfare Fund (Amendment) Ordinance, 2020.

25. *Supra* note 19, 20, 21, 22, 23.

26. For example, different schemes initiated by the Labour Welfare Fund Board include High School Education Grant, Higher Education Grant, ITI Training Programme, Computer Training Programme, Medical/Entrance Coaching Benefit for meritorious students (limited number), Library Grant for libraries run by trade unions or other establishments for the welfare of workers, Marriage Benefit (Rs.7500), Maternity Benefit (Rs.15,000), Financial assistance to differently abled children, assistance for medical treatment, financial aid to purchase artificial device, post-death benefit, assistance for accidental death, assistance for cremation and assistance for civil service coaching, Kerala Labour Welfare Fund Board, available at: <https://labourwelfarefund.in/scheme> (last visited on Nov. 6, 2021).

27. Reserve Bank of India, "State-wise Ease of Doing Business Rank" (Oct. 13, 2020) available at: <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=20117> (last visited on Nov. 8, 2021).

28. *Ibid.*

The Ease of Doing Business Index is based on the implementation of the Business Reform Action Plan (BRAP) recommended by the Department of Industrial Policy and Promotion (DIPP) to all states and union territories.<sup>29</sup> BRAP is an effort to create a conducive environment for the conduct of business by local firms. DIPP recommends that all states have a single-window system that provides all information on licences and permits necessary for starting a business. Other recommendations include automatic renewal of licences based on self-certification or third-party verification.

To execute its ease of business protocols, the government introduced a Labour Commissionerate Automation System. It allows for online registration of establishments in the Kerala Shops and Commercial Establishments Act, 1960, and its auto-renewal on payment of prescribed fee.<sup>30</sup>

The Kerala Micro Small Medium Enterprises Facilitation Act, 2019 was introduced with the specific objective to provide for exemption from certain approvals and inspections required for the establishment and operation of micro small and medium enterprises. In 2020, an amendment was issued to extend these exemptions to other enterprises under the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999. The Act was enacted to provide speedy clearances for all investments proposed to be made in areas designated as 'industrial areas' by the state, wherein any application filed shall be disposed of with recommendations to the concerned authorities approving/refusing the necessary licences within 30 days of application.<sup>31</sup> The Kerala Investment Promotion and Facilitation Cell (KIPFC)<sup>32</sup> has also been constituted to promote investments in the state and to ease the process of obtaining clearances/permits/licences necessary for establishment and operation of enterprises, and to monitor compliance of laws and regulations once the enterprise becomes operational.

## Land and Natural Resources

The Kerala Minerals (Vesting of Rights) Ordinance 2020 seeks to vest the rights of minerals in the soil and sub-soil of the land in the state, except for the land covered by the Travancore Proclamation 1881 and Cochin Proclamation 1905. As per these proclamations, the right of mineral wealth in the land in Cochin and Travancore is vested in the government. However, the position in respect to the erstwhile Malabar area was unclear. It was settled by the full bench of the Kerala high court by a judgment dated 2 August 1999, wherein it was held that as far as the jennom lands in the Malabar area are concerned, 'the minerals belonged to the government'. This judgment was reversed by the supreme court in 2013 in *Thressiamma Jacob v. Geologist, Department of Mining & Geology and others*.<sup>33</sup> The court examined the appeals arising out of this judgment and declared to the contrary: 'in relation to the ownership of rights over the mineral wealth in the land of the erstwhile Malabar area, ownership of mineral rights follows ownership of the land, unless owner of the land is deprived of the same by some valid process of law'. Hence, in the absence of a legislation for the aforementioned purpose, ownership of mineral wealth in the soil of the land in the Malabar area was vested in the owner of the property, unlike Cochin or Travancore, where the ownership of mineral wealth is vested in the government by proclamations.

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29. *Supra* note 27.

30. The Shops and Commercial Establishments (Amendment) Ordinance, 2020.

31. In the original Act, the number of days was set at 45, which was later reduced to 30 days by KISVCB (Amendment) Act, 2019.

32. Kerala Micro, Small and Medium Enterprises (Amendment) Ordinance, 2020.

33. 2013 (9) SCC 725.

The legality of the said ordinance has been challenged in *J & P Sand and Aggregates International Pvt. Ltd. v. State of Kerala and Ors.*<sup>34</sup>

The Kerala Private Forests (Vesting and Assignment) Act, 1971 was enacted in furtherance of the vision of land reforms to provide for vesting of private forests in the state and for the assignment of land to agriculturalists and agricultural labourers. The Act provides for a protection clause whereby if a person is in possession of the land as a cultivating tenant, such land shall be exempted from vesting. Section 72K of the Land Reforms Act (LRA), 1963 categorically states that a certificate of purchase issued under LRA is conclusive proof that such land is assigned to the tenant and all rights, title or interests of the landowners or intermediaries in such land shall be thereby extinguished. In a recent judgment, the supreme court went one step further and held that a certificate of purchase issued under LRA is conclusive proof that the respondent has been in possession of the land as a cultivating tenant and that such forests shall be exempted from vesting under the Private Forest (Vesting and Assignment) Act, 1971. This is a judgment with longstanding implications, amounting to heavy loss of pristine forests in the state. Further, there is every likelihood that 90 percent of the private forest litigation pending before the high court of Kerala shall be ruled against the state. To undo this situation created by the judiciary, an ordinance<sup>35</sup> was issued in 2020. It clarified that the certificate of purchase issued under LRA may be used as evidence but not as conclusive proof that the land is under personal cultivation.

In 2020, three ordinances were pronounced on fishing and marine regulation: the Kerala Fish Auctioning, Marketing and Maintenance of Quality Ordinance; the Marine Fishing Regulation (Amendment) Ordinance and the Kerala Inland Fishing and Aquaculture Ordinance.

## Cooperative Societies

Cooperatives is a subject in the state list. However, in the recent past, the union government has been increasingly trying to make forays into controlling cooperatives. The Banking Regulation (Amendment) Act, 2020 was introduced by the union government to bring the cooperative banks under the aegis of the Reserve Bank of India (RBI). The cooperative societies were brought under the aegis of RBI in 1965 for the first time, and, thereafter, they were under dual regulation – banking-related affairs were governed by the central government and the constitution and management of cooperative societies (including banks) by the state government. The recent amendments sought to extend the regulatory control of RBI over the cooperative banks in terms of management, capital, audit and liquidation. It intervenes in the internal management of cooperative banks by enabling RBI to prescribe conditions and qualifications for the Chairperson and Board of Directors, and to reconstitute Board of Directors if necessary, to ensure sufficient number of qualified members. The said amendment was proposed to reduce political interference in the appointment of officers of cooperative societies and improve the working style, reinstating the confidence of the public in the cooperative banking system in India. However, these amendments cut directly into the legislative powers of the state. The constitutional validity of these amendments has been challenged by the state government, and the matter is currently pending before the Kerala high court.<sup>36</sup>

34. WP (C) No. 26990 of 2020 (W).

35. Kerala Private Forests (Vesting and Assignment) (Amendment) Ordinance, 2020.

36. Hannah M. Varghese, "Kerala High Court Issues Notice To Centre, RBI On Plea Against Amendments To Banking Regulation Act (2021)", *Live Law*, Nov. 26, 2021, available at: <https://www.livelaw.in/news-updates/banking-regulation-amendmentact-2020-kerala-high-court-notice-to-centre-rbi-186378> (last visited on Dec 1, 2021).

There have been major changes in the rural cooperative credit structure across the world. A committee constituted to study the short-term cooperative credit structure in Kerala recommended that the three-tier cooperative credit system followed in the state with the State Cooperative Bank at the top, District Cooperative Banks in the middle and Primary Agricultural Credit Societies at the bottom needs restructuring. It observed that the existence of two higher levels in the structure added to the cost without bringing significant benefit to the lower level. Hence, it was proposed to re-frame the existing three-tier system into a two-tier system. Accordingly, the Kerala Cooperative Societies (Amendment) Act was passed in 2019 calling for the merger of the District Cooperative Banks with the State Cooperative Bank. Kerala Bank was constituted by merging 13 District Cooperative Banks into the Kerala State Cooperative Bank.<sup>37</sup> A few of the District Cooperative Banks refused to be part of this process; the original amendment required a two-third majority for the resolution on merger, which was not obtained. In 2020, the Kerala Cooperative Societies (Amendment) Ordinance was passed to forcefully merge those societies which had not passed a resolution for merger.

Another ordinance pronounced in the cooperative sector sought to regulate the dairy cooperative societies in the state.<sup>38</sup>

## Local Governance

A total of six ordinances were passed in the domain of local governance, three each with respect to panchayats and municipalities. The government altered the number of seats to be filled by direct elections in panchayats and municipalities by an ordinance, which was later passed as an Act<sup>39</sup>. Amendments were also made to facilitate postal and direct voting for persons affected by COVID-19 or those in quarantine for local self-government elections.<sup>40</sup>

## Taxation

Three major ordinances were issued in the domain of taxation by the Kerala legislative assembly in 2020. These ordinances sought to address the financial crisis that the state fell into consequent to the unexpected situation created by the first and second waves of COVID-19 and the prolonged shut down of the state. All economic activities, barring a few, had come to a halt and the state took on a welfare role, redirecting its energies to control the spread of the pandemic. The effect of this situation on the state's financial health was completely disastrous.

In response to the constant demand of the states, the union government granted an additional borrowing of Rs.1471 crores as a one-time dispensation in addition to the three percent fiscal deficit of the GSDP to the state during the financial year 2019-2020. Such borrowings in addition to the fiscal deficit statutorily capped at three percent could only be possible by an amendment to the Kerala Fiscal Responsibility Act, 2003, and therefore an ordinance was issued to that effect.<sup>41</sup>

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37. For more information, see the official website of the Kerala State Cooperative Bank, *available at*: <https://keralacobank.com/about-us/> (last visited on April 18, 2022).

38. The Kerala Cooperative Societies (Second) Amendment Ordinance, 2020.

39. The Kerala Panchayati Raj (Amendment) Ordinance, 2020, Kerala Municipalities (Amendment) Ordinance, 2020.

40. The Kerala Panchayati Raj (Third Amendment) Ordinance, 2020, Kerala Municipalities (Third Amendment) Ordinance, 2020.

41. The Kerala Fiscal Responsibility (Amendment) Ordinance, 2020.

In view of the lockdown imposed to prevent the spread of COVID-19, all revenue collections also came down sharply. A major portion of the revenue collected was utilised for preventing the spread of the pandemic. Additional revenue mobilisation was necessary to overcome this situation. To generate additional revenue, the government of Kerala increased the sales tax on sale of foreign liquor such as bottled wine, bottled foreign liquor other than the wine or imported beer, and beer and wine not covered in the above classification.

Amendments were made in the Kerala State GST Act corresponding to the amendments incorporated in the Central Goods and Services Act as per the Union Finance Act, 2021, which were made on the recommendation of the GST Council.<sup>42</sup> Other measures were also proposed to generate extra revenue to manage the situation created by COVID-19, including deferment and reduction of salaries of government employees and public servants.<sup>43</sup>

## Law and Religion

Another bill of serious socio-cultural implication that was passed was the Kerala Christian Cemeteries (Right to Burial of Corpse) Bill, 2020. It was enacted to put to rest the imbroglio created by the long-drawn land dispute between the Orthodox and Jacobite factions of the Christian community. In July 2017, the supreme court issued an order conferring the authority of around 1100 churches in Kerala on the Orthodox faction. Consequently, the churches, which were hitherto under the control of the Jacobite denomination, started to be taken over by the Orthodox denomination. This led to untoward events and disputes around who gets to be buried in a church cemetery: could a Jacobite person whose parish had now been taken over by the Orthodox faction get to be buried in the church cemetery where his/her family members had been buried? If yes, then will an Orthodox priest or a Jacobite priest conduct the funeral prayers? The situation escalated to such an extent that, in December 2019, the body of 92-year-old Mariamma was not buried for over six weeks. In the initial draft, the bill was extended to all Christians, but its operation was later restricted to the warring Jacobite and Orthodox factions as demanded by the opposition and recommended by the subject committee. The issue was debated in the Assembly for 4.43 hours.

As for other ordinances related to religion, an ordinance was promulgated to transfer the appointment of officers and employees in the Waqf Board to the State Public Service Commission. As per the Waqf Act, 1995 (Central Act), the authority to make recruitments is vested in the Waqf Board. A few years back, a move was made to transfer the appointments of the Devaswom Board to the Public Service Commission, which was met with severe resistance from the community. Thereafter the decision was taken to create the Special Recruitment Board for Devaswom Appointments.<sup>44</sup>

## Police

The Kerala Police (Amendment) Ordinance and the Kerala Police (Amendment) Withdrawal Ordinance are classic examples of a state legislature being responsive to public criticism. The ordinance

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42. The Kerala Goods and Services Tax (Amendment) Ordinance, 2020; the Kerala Goods and Services (Second Amendment) Ordinance, 2020.

43. Dealt with in detail under the Heading “Public Health” above.

44. The Kerala Devaswom Recruitment Board Act, 2015.

was notified by the government on November 21, 2020. It was severely criticised for violating the freedom of speech and expression and for its scary resemblance to the section 66A of the Information Technology Act, 2000, which had already been declared unconstitutional by the supreme court of India.<sup>45</sup> On November 23, 2020, the opposition as well as the active citizenry approached the high court of Kerala challenging the constitutional validity of the ordinance. The state government responded to the challenge by withdrawing the controversial ordinance on November 25, 2020.

## Conclusion

The legislative activity in the assembly was limited owing to the ongoing pandemic and the state was governed mostly through ordinances. An examination of the nature of the ordinances shows that a significant number of them were issued for advancement of the welfare of the people - related to education, health and labour welfare. One major reason for creation of laws happens to be to undo the effect of judicial pronouncements. A set of laws in the domain of local government, taxation and public health were issued to combat the ongoing pandemic. It can be concluded that the state government was responsive to public opinion, indicated by the repeal of the controversial police ordinance as soon as people protested against it.

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45. *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.