

REPORT ON ELECTRONIC FILING RULES FOR COURTS
(KERALA) 2021

The Hon'ble High Court in exercise of the powers conferred under Articles 225 and 227 of the Constitution of India and under Sub Rule 2 of Rule 1 of the Electronic Filing Rules for Courts (Kerala),2021(hereinafter referred to as 'E-filing Rules') has notified that the e-filing rules except Sub Rules (1) and (3) of Rule 8 thereof shall come into force with effect from 12.5.2021. However, at the request of the Kerala High Court Advocates Association, the Honourable High Court issued Notice No A7-28644/2021 dated 18/5/2021 and Corrigendum No 28644/2021 dated 19/5/2021 restoring the physical mode of filing and has agreed to review the system of filing after fifteen days or lifting of the lockdown whichever is earlier. But no review has taken place and thereupon, the Executive Committee decided to appoint this committee to look into the legal infirmities in the E-filing rules. We point out our objections to the Rules as follows:

1. The Electronic Filing Rules for Courts (Kerala) 2021 will and is causing undue real hardship to the lawyer community and it obstructs the speedy and effective administration of justice. This rule is not proper and valid.The Rule makes legal practice difficult resulting in denial of access to justice.The Rule is keeping the Lawyer in defense. It will cause incurable hurdles to the lawyers and litigants while filing any case/application before the court. Instead of enabling speedy justice, the Rule is resulting in delaying justice. The Rule has been framed without considering the practical difficulties of the lawyers and litigants in the matter of filing of applications in courts. It is not proper to blindly adopt the E Filing system all on a sudden and implement it in courts immediately without any regard for

the inadequate computer literacy among our lawyers. Moreover, in most of the places especially in mofussil court areas internet access is very poor and unstable. As per the Rules, the entire burden to ensure that the e-filing is proper and effective is put on the Advocates and litigants. Lawyers and litigants who have no control or access to the intranet of the High court except for online filing will not be able to ensure proper and effective e-filing with the equal unmitigated cooperation of the Registry of the High Court who is in complete control of the intranet system of the High Court. New liabilities have been cast on the Advocates which will haunt them even after the disposal of the case. This Honourable Court in **Prathap P Vs. State of Kerala & Others reported in 2019(2) KHC 581** has held that the Advocates Clerks are integral and indispensable part of the judicial system and in order to carry out day-to-day works of the courts, Advocate Clerks are part and parcel of the legal frame work. E-filing Rules will virtually push them to the brink of unemployment.

2. **Article 225** of the Constitution cannot be resorted to for making and notifying the E-filing Rules. Article 225 applies only to High Court which exists at the time of coming into force of the Constitution of India. Article 225 of the Constitution only saves the High Court's jurisdiction and powers, including any power to make rules of Court, as it existed immediately before the commencement of the Constitution. The pre-Constitution power of the High Courts to make rules of the Court, which is saved under Article 225 of the Constitution, is traceable to Section 122 of the Code of Civil Procedure, 1908. Even if it is conceded that the Kerala High Court can exercise the power under Article 225 of the Constitution of India, the same is subject to the provisions in

Section 122 of the Code of Civil Procedure, 1908. As per Section 122 of Code of Civil Procedure, 1908, previous publication is mandatory for making the rules. E-filing Rules were made and notified without previous publication.

3. Similarly, **Article 227** cannot be pressed into operation for regulating the practice before the High Court. Art.227 can be applied only for regulating the practice before the Subordinate Courts since Article 227(2)(b) empowers the High Court to make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts. But such rules shall not be inconsistent with the provision of any law. Since the E-filing Rules deals with the filing procedure of the High Court as well as the Subordinate Courts, that portion of the E-filing Rules governing the filing procedure in High Courts is ultra vires.
4. **Part-X, Section 122 of the Code of Civil Procedure** governs the powers of the High Court to make Rules for practice before the High Court and before the Civil Courts subject to the superintendence of the High Court. The Honourable High Court of Kerala is governed by a special statutory power under Section 122 CPC enabling the High Court to frame rules of practice before the High court and subordinate courts. Part-X deals with the procedures to be adopted for framing rules relating to practice before the High Court in civil cases. As per Section 122 of CPC, previous publication is necessary for framing the rules. The mode of previous publication is not mentioned in Section 122 of CPC. However, Section 23 of General Clauses Act provides that when a Central statute provides for prior publication before framing Rules, the draft of the Rules should be published in such manner the authority may deem fit.

5. **The Kerala High Court Rules, 1971** has been framed in exercise of the powers under Article 225 of the Constitution of India and under Section 122 of CPC. E-filing Rules make extensive changes in the existing filing procedure under the High Court Rules. However, while framing the e-filing Rules, the High Court had duty to comply the mandatory provisions in Section 122 CPC. The Rules therefore suffers from procedural impropriety and therefore invalid. It is a settled position of law that the inherent powers shall not be exercised when there is a specific provision in the statute for dealing with an issue. Article 225 of the Constitution saves the inherent powers of the High Courts as it existed at the time of the commencement of the Constitution. The said powers can be exercised for framing subordinate legislation only in the absence of enabling provision. In other words, the E-filing Rules, framed under the powers vested in the High Court under Article 225 of the Constitution of India, cannot govern the procedure for filing of cases in the High Court when a prior legally valid subordinate legislation, that is, the Kerala High Court Rules governs the field. It is pertinent to note that there is no amendment to the Kerala High Court Rules and the E-filing Rules are introduced in addition to the procedure contemplated in the Kerala High Court Rules.
6. **The Civil Rules of Practice, Kerala** is another subordinate legislation created in exercise of the powers conferred by Section 122 CPC. Therefore, any change to the filing and other procedures relating to the civil courts can only be through an amendment of the Civil Rules of Practice or through the framing of a proper legislation in exercise of powers under Section 122 of the Code of Civil Procedure, 1908. In E-filing Rules, no reference is made to the power

under Section 122 of the Code of Civil Procedure. E-filing Rules framed by the Hon'ble High Court without invoking the power under Section 122 of the Code of Civil Procedure cannot in any manner regulate the procedure in Civil Courts with an overriding effect on the Civil Rules of Practice.

7. The Criminal Rules of Practice is framed in exercise of the powers conferred by Article 227 of the Constitution of India and under Section 477 of the Code of Criminal Procedure. Though the authority of the Honourable High Court to frame Rules for regulating the procedure of Criminal Courts cannot be disputed, several provisions of the E-filing Rules are in conflict with the provisions of the Criminal Rules of Practice in supersession or abrogation of the already existing rules of practice.

8. In short, the E-filing Rules, now framed, cannot regulate the procedure of the High Court as well as that of the Civil Courts.

9. The E-filing Rules are framed without following the Pre Legislative Consultation Policy (PLCP). PLCP is a constructive discourse through which the citizen or the stake holders engaged in the Government for providing feedback before chalking out the intended policy into a bill or act. This is a minimum requirement of deliberative democracy. None of the stake holders, that is, the Lawyers, Advocate clerks and litigants were allowed to partake in the deliberation before the e-filing rules are framed. As such, the E-filing Rules falls short of that cardinal requirement of democratic process. It is undemocratic and unfair not to consult the stake holders before e-filing rules were framed. This is unconstitutional and is in violation of Article 14 of the Constitution of India.

Defects and illegalities of Electronic Filing Rules.

10. Rule 2(a) 'Advocate'

Under Section 30 of Advocates act, every Advocate enrolled is entitled as of right to practice throughout the territories to which the Advocates Act, 1971 extends. But, in Rule 2(a) of the Rules, an Advocate is equated with officers of the prosecuting agencies. Officers of the prosecuting agencies are not defined. A prosecuting officer cannot be equated with an Advocate. This is inconsistent with section 30 of the Advocates Act by including the officers of prosecuting agencies within the definition of 'Advocate'.

11. Rule 2(f) 'Court'

The Court is defined by including Tribunals also. High Court under Article 227 (1) of the Constitution of India has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. But, under Article 227 (2) of the Constitution of India, the power of the High Court to make general rules and prescribe forms for regulating the practice and proceedings is confined to the courts and not for the Tribunals. High Court has no jurisdiction to make rules and forms regulating Tribunals especially Tribunals like Central Administrative Tribunals and Tribunals constituted by or under any law relating to the armed Forces. The power to frame rules of practice before these Tribunals are provided under special Statutes under which these Tribunals have been created. The Rule making power of the Tribunal under those statutes is provided only to the Government. The Government may make Rules to carry on the business in a Tribunal. High Court cannot assume the jurisdiction of the Government. Hence the definition of the Court by including Tribunals is also inconsistent with the rule making power under Article 227 of the Constitution of India.

In the decision reported in (1995) 5 SCC 5, the hon'ble Supreme Court held that Constitution has provided for setting up of tribunals for settlement of disputes and adjudication of matters specified therein. In **Durga Shanker Mehata Vs. Raghuraj Singh, AIR 1954 SC 520** the apex court elucidated the nature and scope of tribunals in these words, "The expression 'Tribunal' as used in Art 136 of the Constitution, does not mean the same thing as 'court' but includes within its ambit, all adjudicating bodies, provided they are constituted by the State and invested with judicial powers, as distinguished from administrative or executive functions". Status of a Tribunal is recognized by the Constitution, as an adjudicatory body vested with judicial power of the State under a Statute or Statutory rule [**AllParty Hill Leader's Conference Vs. Capt W.A. Sangma (1977)4 SCC 161**]. The power to adjudicate is derived from Statute. But they are not 'courts'. Therefore, separate Rules are to be made for the Tribunals as provided under the Statutes under which these Tribunals are created. For example in the case of Kerala Administrative Tribunal, under Rule 150(a) of Kerala Administrative Tribunal Rules of Practice 2011, the Chairman may issue orders or directions as may be necessary for complying with relevant rules of Practice with the aid of the computer and for effective use of the computer facility as and when introduced. Under Rule 150(b) of Kerala Administrative Tribunal Rules of Practice 2011, compliance with such orders or directions issued by the Chairman from time to time shall be deemed to be due compliance of the provisions of the relevant Rules of Practice. The Central Administrative Tribunal (Procedure) Rules, 1987 was enacted by the Parliament in exercise of the powers conferred by the clauses (d), (e) and (f) of sub-section (2) of section 35 and clause (c) of section 36 of the Administrative Tribunals Act, 1985 (Act No 13 of 1985). In the

case of DRT, in exercise of the powers conferred by sub-sections (1) and (2) of section 36 of the Recovery of Debts Due to Banks and Financial Institution Ordinance, 1993 (25 of 1993), the Central Government has enacted Debts Recovery Tribunal (Procedure) Rules, 1993. When there are special statutory provisions governing the rules of practice in these Tribunals, the High Court cannot exercise power under Article 227 to frame rules of practice for these Tribunals bringing them under the definition of Court.

12. **Rule 2(g) 'Designated Counters'**

The E-filing rules provide for 'designated counters' which may be provided in the website of the High Court, Subordinate Courts or Tribunals. The designated counters are not manned by any High Court personnel or by any outside professional agency. It is only a helpline portal provided in the website of the High Court and other Courts. The duties and responsibilities of the designated counter are not mentioned anywhere in the Rules. The definition of 'designated counters' is vague and uncertain. Rule 2(k) mentions about electronic filing through intranet at Designated Counters, which implies that Designated Counter works within the premises of the High Court. Apart from that, since as per the e-filing rules all documents exceeding size of 100 MB can be uploaded only through 'designated counters', it is impossible for the lawyers and litigants to file cases having size of more than 100 mb in the absence of clear definition of 'designated counters' and in the absence of details as to how and where they can have access to the Designated Counters.

13. **Rule 2(h) and (o) 'Digital Signature and Electronic Signature'**

Section 4 of the Information Technology Act 2000 provides as follows:

“Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.

Section 2(1) (t) of the IT Act 2000, define electronic record as follows :

- (t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

When the IT Act 2000, a special Act governing Electronic Records provides that the rules shall stand complied by rendering the document in electronic form, it is not legal or proper for the High Court to insist that the rendering of electronic record in singular type of electronic form only. It is practically impossible to upload all the documents with digital signature and to upload the filing papers with electronic signature as stipulated. An ordinary litigant may not be conversant with the affixture of digital signature/electronic signature in the documents and the filing sheets, which makes the process of filing cases cumbersome.

14. **Rule 2(j) "E-filer"**

The definition of e-filer does not include Law Firms and there is no provision for multiple login IDs and passwords in the case of LLP and firms.

15. **Rule 2(r) 'Objection'**

'Objection' is defined as deficiency and errors in relation to pleadings or **documents**. Once the pleadings and documents are uploaded online complying the requirements of existing rules, the pleadings and documents shall be deemed to have been properly filed. Any other deficiency or defect in the pleadings or documents is not a matter for the Registry to object. Such defects or deficiencies in pleadings and documents are matters for adjudication by the Court and not by the Registry. This rule is to be read along with Rule 5(7). The jurisdiction given to the registry to adjudicate and ensure that pleadings are in accordance with Rule 5(7) is beyond the powers conferred on the High Court under Articles 225, 227 of Constitution and Section 122 of CPC.

16. **Rule 2(zb) 'Technical Failure'**

The definition of 'Technical failure' fully protects the officers of the "Courts" in the event of any failure of hardware, software etc. But the lawyer is made liable for themalfunctioning, if any, of the server or the system/equipment of the service provider. The malfunctioning of the system/equipment of the service provider is treated as defect on the part of the Advocate/Litigant. As per the e-filing rules, lawyers will not get any protection if there be any technical failure of their system, even if it is due to natural calamity or causes. If the lawyer is not able to submit a file electronically due to the malfunctioning of server/data base, he will be liable for the malfunctioning. For example, a person can file a petition on the last date of the

permissible time without attracting the disadvantage of limitation. If he is not able to file it due to the malfunctioning of the server or data base, he will not be saved from the law of limitation. At the same time if there is any defect in the system of Court, the officers of the Registry will not be blamed. This is discriminatory, unfair and unreasonable.

17. Rule 3(3): 'Electronic Filing'

This rule deals with the filing of all Actions whether in fresh, pending and disposed of cases by the e-filer in the manner provided in the e-filing Rules. The said Rule is opposed to the proviso to Article 227(3) of the Constitution as well as the provisions contained in the Code of Civil Procedure. Order 7 Rule 14 of the Code stipulates that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the documents and a copy thereof to be filed with the plaint. Order 13 Rule 1 contemplates that the documentary evidence in original shall be produced on or before the settlement of issues and Order 13 Rule 2 stipulates that the Court shall receive the documents so produced. Thus, on an evaluation of the provisions of the CPC and the newly introduced e-filing Rules, it can be seen that the e-filing Rules framed in exercise of the powers under Article 227(2) (b) of the Constitution is inconsistent with the provisions of the Code of Civil Procedure. Moreover Rule 3(3) demanding the production of documents through E-filing is against Sections 61 to 65 of the Indian Evidence Act. Section 61 contemplates that the contents of documents may be proved either by primary or by secondary evidence. Section 62 says that primary evidence means the document itself is produced for the inspection of the Court. Thus

for giving primary evidence the documents should be produced before the court. Rule 3(3) of the E-filing Rules is inconsistent with the provisions of the Indian Evidence Act.

18. Rule 3(4) and (5): 'Service from Designated Counter'

Rule 3(4) is silent about the quantum of Charges to be paid to access E Filing Portal at the Designated Counter. For accessing E Filing portal at Designated Counters, payment of charges is mandatory. The rate of payment of charges is not provided in the rules. The stipulation that any person who is unable to access the Electronic Filing portal would be entitled to make use of the facilities provided at the designated counters on payment of charges is highly onerous and cast additional financial burden on the litigant. The stipulation that the file should not exceed 100 MB is also improper. There are some writ petitions, appeals etc which would exceed 100MB. This amounts to denial of access to justice. The stipulation that files exceeding 100MB shall be filed only through Designated Counters on payment of fee is highly discriminatory. There is no reason as to why lawyers should not be allowed access to intranet without resort to Designated Courts for limited purpose of filing applications exceeding 100MB. This is highly arbitrary and unreasonable.

19. Rule 3(7): 'Transfer of data'

This rule deals with the transferring of the data. It is not clear as to what procedure is to be adopted when an existing lawyer relinquishes his vakalath or when an existing lawyer breath his last without divulging the user account and password.

20. Rule 4(4): 'Obligation of Registry'

The Registry is to be held responsible if an E-filer does not receive notifications from the e-filing system as the same would amount to abdication of his duties. The intimation from the

registry is imperative since the e-filer will not be able to resubmit/refile his application after curing the defects within the stipulated time prescribed by the law, unless the lawyer/litigant is informed about the defect.

21. Rule 4(8); 'Obligation of E-filer'

Most of the lawyers seek the assistance of external agencies/experts for uploading the data as they are not conversant with the cumbersome intricacies of E-filing as they may not be having a stable internet connection. As such E-filer cannot be expected to ensure that the pleadings and the documents filed by him do not contain any malware or virus that might be harmful to the e-filing system. Moreover, since lawyers/litigants have no control over the computers of designated counters, they cannot ensure that these computers are free from malware or virus. Rule 4(8) is unworkable and is highly discriminatory.

22. Rule 4(9); 'Disciplinary power against the e-filer'

This Rule will drag the E Filer into insurmountable difficulty and trouble. This is a penal provision. It visits the E Filer with penal provision. By introducing penal provision, Court has usurped the power of the Disciplinary Committee of Bar Council under Section 35 of the Advocates Act. In the matter of professional misconduct or other misconduct, the power to discipline an Advocate is vested only in the Bar Council. By introducing penal provision under Rule 4(9), the Court has the power to suspend a lawyers' account and to initiate strict action for the alleged "inappropriate conduct". When account of a lawyer is suspended, the lawyer will not be able to file cases, unless the lawyers are allowed to file cases resorting to conventional method as of right. There is no provision in the Rules to enable

an Advocate whose account is suspended to file cases resorting to conventional method of offline filing. If somebody hacks the User ID of an e-filer and commits any mischief behind the back of the e-filer, the penal provision enables the court to suspend the Account of the Advocate immediately without an enquiry and without giving reasonable opportunity to defend the charge against the Advocate. It is improper and illegal for the High Court to step into the shoes of Bar Council.

23. Rule 5(4): 'Uploading of documents, video and audio files'

This rule deals with uploading of video or audio files. The impact of Section 65B of Evidence Act has not been considered by the High Court while framing this Rule. The stipulation in Rule 5 of the Rules that all pleadings and documents produced in support of the same shall be converted into Optical Character Recognition is impossible to be complied. OCR devices cannot convert exhibits which are pictures and symbols in searchable form. What are the devices mandated by the Rules for converting the documents to OCR is not clear. Moreover, all exhibits are certified by the Advocate concerned that it is true copy of its original and therefore only true copies of exhibits can be produced as per Rules. As per the rules, it is not permissible to alter or amend the exhibits in any manner. That apart all such documents as per Sub Rule 5 of Rule 5 required to be accurate representation of the document and shall be complete and readable. This provision adds heavy burden on lawyers. This is highly unfair and unreasonable.

24. Rule 5(7): 'Judicial power of the Registry'

Rule 5(7) enables the Registry to act as a Judge. The Registry is given power to raise objection under rule 2(r)

pointing out that the pleadings are not in conformity with relevant acts and rules. Once the pleadings and documents are uploaded in the requisite format and containing requisite contents, there is no legal provision for the Registry to object to the pleadings and documents. Both these provisions are illegal and cloth the registry with judicial power which is not permissible under law. It is not proper for the Court to delegate its judicial power to the Registry. Registry has no power to adjudicate questions of admissibility of documents and the maintainability of applications.

25. Rule 5(8); 'Defective electronic filing'

This Rule grants to the Registry uncanalised and unbridled power to change the method of filing and to the Court power to prescribe the method of filing from time to time. Evidently, there is no consistency in the e-filing rules framed by the High Court even now. This rule empowers the Registry to alter or change the method of filing in any manner at any time without prior notification in accordance with law and also without amending the existing Rules. A new definition has also been given to "defective electronic filing" in the last line.

26. Rule 6: 'Digital Signature'

Since as per rules all documents are to be affixed with electronic signature/digital signature, approaching designated counters will adversely affect the privacy of the Advocates who have a statutory duty to safeguard privacy of their digital/electronic signature under Section 42 of the Information Technology Act 2000. Under Section 42 of the said Act, every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure

to a person not authorized to affix the digital signature of the subscriber. This also violates their right to privacy and is in violation of Article 21 of the Constitution of India.

27. Rule 7: 'Payment of Court Fees'

There is no protection ensuring the Security of the remittance of the Court Fee paid to the Registry. If the Court fee remitted electronically is not digitally received or acknowledged/if there is any defect in the system or server of the concerned banks, there won't be any evidence to show the payment of Court Fee and other charges payable under the Act. If the server of the Bank through which the e-filer has transferred the amount is down, the e-filer/litigant will not be able to remit Court Fee Act. There is no provision enabling the Advocate concerned to remit the court fee by his client either from the account of the client or by any other method. The e-filing rules necessitates transfer of amount from the account of the Advocate and the Advocate is required to remit the amount of court fee to the Court from his account. This casts uncalled for unwarranted income tax burden on the Advocate in respect of an amount for which is not accountable.

28. Rule 8: 'Retention of Original Documents'

Rule 8 is highly prejudicial and cast heavy burden on the lawyers. It takes away the right of the client to get back the original of the document entrusted to the lawyer for filing a suit. A lawyer cannot refuse the return of the documents of the client stating that he is liable to retain the original of all documents of the litigant/client even after the disposal of the case for a further period of 3 years. That means an e-filer will have to retain the original documents for long periods till the matter is finally disposed of by Supreme Court. Normally civil cases are property

or land disputes. As per Rule 8, the e-filer will have to retain the original of documents relating to the landed property till the disposal of SLP if any by the Apex Court and further a period of 3 years. Thus, a person who approaches the Court will be prevented from transferring, mortgaging or alienating his property. It violates the Fundamental Right of a citizen guaranteed under the Constitution of India. Even a student who approaches the High Court in connection with his degree will also have to surrender his certificates, Birth Certificates etc in the lawyer Office. In disputes involving passport, the unfortunate e-filer will have to retain the passport of the litigant. In short, Rule 8 discourage and threaten litigants from filing cases in the Court of Law where his important documents like title deed, passport, certificates etc are involved. A lawyer cannot be held responsible for not retaining the documents of the client after the disposal of the case. The intention of Rule 8 is to drag the e-filer into unnecessary litigations in future. This rule imposes a new liability on the Advocate creation of which is beyond the power of the High Court.

29. Rule 10: 'Exemption from Electronic Filing'

Rule 10 is highly vague and subjective. Under the Rule, whether online electronic filing is feasible or not etc are matters for adjudication of the Court. This amounts to denial of access to justice. The proper way is to make online filing optional to the lawyer/litigant. Most of the High Courts like Madras High Court, Andhra Pradesh High Court, and Bombay High Court have made e-filing optional allowing the litigants and lawyers to choose either conventional method or e-filing as per their convenience. Lawyers are entitled to opt for filing cases in conventional mode as of right.

30. Rule 12: 'Proof of Electronic Filing'

Even though in Rule 12 it is provided that the proof of e-filing shall be informed to the e-filer, through electronic modes, Rule 4(4) nullifies the effect of Rule 12. As per Rule 4(4), Registry shall not be responsible for not communicating notification from the e-filing system through email or SMS.

31. Rule 13(5): 'Limitation'

This rule says that e-filer shall not be entitled to claim exemption from the period of limitation on the ground that there was failure of electronic filing facility. If the lawyer is not able to submit a file electronically due to the malfunctioning of server/data base, he will be liable for the same. For example, a person can file a petition on the last date of the permissible time without attracting the disadvantage of limitation. If he is not able to file it due to the malfunctioning of the server or data base, he will not get the benefit of period of limitation. In order to avoid such a contingency, lawyers should be allowed to file cases in conventional mode of physical filing as of right.

32. Rule 17(1) and (2): 'Notification of Defects'

The time frame for the scrutiny of the pleadings and the noting of the objections is not mentioned. Thus, the Registry is given its own discretion to scrutinize the pleadings at any time at their own leisure.

33. Rule 17(10): 'Operation of subsisting rules'

The present Rule is framed in addition to the Rules under the Criminal Rules of Practice, Civil Rules of Practice and the Rules of High Court of Kerala. That means different legal procedures are provided in these statutory documents. As the existing rules not repealed, the question is whether a lawyer can opt for filing cases resorting to proceedings hitherto existing while filing a matter under different enactments. The present E-Filing Rule does not say that it will come into force notwithstanding

anything contained in any other law for the time being in force. Under Rule 16 of the Rules of High Court of Kerala certain power is conferred on the Registrar. There is apparent conflict between High Court of Kerala Rules and present E Filing Rules. Chapter III of the Rules of High Court of Kerala deals with Form and Institution of proceedings. Rules 32 to 50 are still in force. Unfortunately it contradicts the present E- Filing Rules. Chapter IV of the Rules of High Court deals with manner of issue of Notice. Present Rules prescribe another method. Almost all the provisions in the E-Filing rules are contradictory to the Rules of High Court of Kerala 1971. In so far as the existing rules are not amended or repealed, the Advocates are not prevented from invoking existing High Court Rules and they are entitled to have an option to file cases resorting to conventional mode of physical filing as a matter of right. As per Rule 17 (10), the Rules shall be in addition to the **Rules** contained in the Criminal Rules of Practice, Kerala, Civil Rules of Practice Kerala and the Rules of the High Court of Kerala, 1971. It would imply that the said three Rules, in so far as it relates to institution of proceedings or filing of cases, would continue to operate without any change or modification and e-filing rules would apply only to those who resort to electronic filing as their option. But Rule 3(4) mandates that except as provided in the Rules, all actions whether in fresh, pending and disposed of cases shall be filed electronically in the manner provided in the Rules. Thus, instead of the physical filing as provided in Criminal Rules of Practice, Civil Rules of Practice and the Rules of the High Court of Kerala, electronic filing has been made mandatory in all types of cases before the High Court and Subordinate Courts. Exemption from electronic filing can be claimed only on any of the grounds enumerated in Rule 10 of e-filing rules. This is arbitrary and unreasonable.

34. The provisions in the rules regarding electronic filing are inconsistent with provisions in Criminal Rules of Practice, Civil Rules of Practice and the Rules of the High Court of Kerala. The paradigm shift in filing of cases from physical to electronic mode, without any *non-obstante* clause in the e-filing rules or consequential amendments in Criminal Rules of Practice, Civil Rules of Practice and the Rules of the High Court of Kerala, suffers from patent and latent invalidity. The power of the High Court to frame rules for subordinate court is provided in Article 227 (2) of the Constitution. The rules framed under Article **227(2)** of the Constitution are in the nature of subordinate legislation. The proviso to Article 227 (3) of the Constitution explicitly states that any rule made under Article 227 (2) of the Constitution shall not be inconsistent with the provisions of any law for the time being in force. The expression "any law for the time being in force" occurring in the proviso to Article 227 (3) of the Constitution is wide enough to include subordinate legislations as well. Since the Electronic Filing Rules, 2021 are directly in conflict to and inconsistent with the provisions of the High Court Rules, Civil Rules of Practice and Criminal Rules of Practice, the Electronic Filing Rules, 2021 are void *ab initio* and invalid.

35. It is trite that Lawyers are integral component of the justice delivery system. The Advocate Clerks also make significant contributions in the functioning of Courts. But when the established filing system, which has been in place for several decades, was entirely replaced with an altogether new one, the Advocates and their Clerks were not even informed well in advance. The Honourable Governor approved the Electronic Filing Rules as per G.O.(Rt) No.1350/2021/Home dated 07.05.2021. The Honourable High Court notified the Electronic Filing Rules on 12.05.2021 and the same was brought into force

with effect from that date itself. We are cognizant of the settled legal position that legislative action, plenary or subordinate, is not normally subject to rules of natural justice. But, the consultation with stakeholders will always ensure transparency and openness as held by the hon'ble Supreme Court in **Cellular Operators Association of India Vs. TRAI (2016) 7 SCC 703.**

E-Filing Rules, which was framed beyond the rule making powers conferred under Articles 225 and 227 of the Constitution of India and without following due procedure as mandated in Section 122 of the Code of Civil Procedure, 1908, are void, manifestly arbitrary and unreasonable. Apart from the same, the Rules also suffers from apparent legal infirmities which have been detailed above. Hence, the same is liable to be withdrawn by the Hon'ble High Court.

Dated this the 21st day of June, 2021

Adv. M.P. Asok Kumar (Chairman)



Adv. S. Mohammed Al Rafi (Convenor)

S. Mohammed Al Rafi

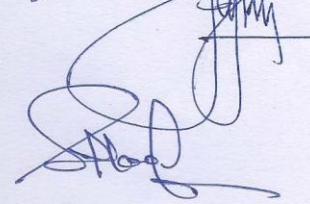


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