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Subordinate Legislation

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## KERALA LEGISLATIVE ASSEMBLY.

### COMMITTEE ON SUBORDINATE LEGISLATION.

As members are aware, a Committee on Subordinate Legislation has been constituted as contemplated in the Rules of Procedure and Conduct of Business in the Assembly. A brief note on the scope and functions of the Committee is given below for information :—

#### Brief Note.

With the growth of Parliamentary Democracy the need for legislation has become so prominent that every question of policy has to be regulated by statute so that the people's voice may prevail. Naturally therefore there has been a considerable increase in the quantum of legislation. As the Executive is concerned with the carrying out of the provisions of the statutes, generally in almost all the enactments provision is included giving power to the Executive to devise suitable rules consistent with the provisions contained in the statutes. In so conferring this power on the Executive, the Legislature presumes that the Executive will act within the ambit of the statutes and that matters extraneous to the scheme of the statutes will not be brought in. It is therefore taken for granted that the Executive will reflect only the will of the Legislature in the detailed working of the laws passed by it.

This will be so where Parliamentary Democracy prevails. Otherwise it will amount to a flouting of the Legislature. However, when cases arise where

consistent with the welfare of the State a particular measure passed by the Legislature requires modifications, it is open to the Executive to come to the forum of the Legislature to get their sanction. Such a procedure involving amendments of statutes will have relation only to questions of policy. But in the ordinary administration of statutes, minor matters may have to be left to the Executive to be regulated by rules for which specific power is given. In order to see that the power so given has been properly exercised, provision is also included in the statute in the generality of cases requiring the rules so made being placed before the Legislature as soon as may be after they are issued, for a stipulated number of days for scrutiny by the Legislature. The rules may or may not be modified; but an occasion has been provided by the Legislature for itself to go through these rules in order to see that the power given has not been exceeded in any particular respect. This is called delegated legislation or subordinate legislation.

As a matter of practice, it has been found that it may not be possible for members with their multifarious duties to give to these minor matters that amount of attention they give to legislation proper. To help the members in this regard, a Committee on subordinate legislation has been constituted to scrutinise and report to the Assembly from time to time whether the powers delegated by the Assembly have been properly exercised within the framework of the statutes delegating such powers. The detailed rules in respect of the Committee are dealt with in Chapter XVIII of the Rules of Procedure.

The duties of the Committee are in particular to consider—

- (i) whether the rules made by the Executive are in accordance with the general objects of the statute pursuant to which it is made ;

- (ii) whether the rules contain matter which in the opinion of the Committee should more properly be dealt with in a statute ;
- (iii) whether they contain imposition of taxation;
- (iv) whether they directly or indirectly bar the jurisdiction of courts ;
- (v) whether they give retrospective effect to any of the provisions in respect of which the statute does not give expressly any such power ;
- (vi) whether they involve expenditure from the Consolidated Fund or the Public Revenues ;
- (vii) whether they appear to make some unusual or unexpected use of the powers conferred by the statute pursuant to which it is made ;
- (viii) whether there appears to have been unjustifiable delay in the publication of the rules or laying them before the Assembly ;
- (ix) whether for any reason their form and purport call for any elucidation.

If the Committee is of opinion that any rules should be annulled wholly or in part or should be amended in any respect it shall report that opinion and grounds thereof to the Assembly. The Committee may also bring to the notice of the Assembly any other matter relating to the rules if it considers necessary. The regulation of procedure is vested in the Speaker.

The Committee is appointed to examine the rules made by the Executive pursuant to powers conferred by Acts of Legislature and report to the House. Where it was felt that in any particular case the limits set by the statute have been exceeded, the members of the Committee might formulate questions which could be consolidated

and a questionnaire prepared. The Committee would also if considered necessary examine the representatives of the departments of the Government concerned. In order to help the members in studying the rules the departments of the Government concerned will furnish a memoranda in respect of all pending Bills containing rule making power.

The Committee would appear in effect to be a 'Miniature Assembly' sitting as it were to consider the matter before them from the point of view of the House as a whole. Statutory rules have also the force of law once they are issued. As these are concerned with details, they have to be framed with greater care and minuteness. They may be elaborate in certain cases. Legislation proper need not recite all these details lest it will be cumbersome and unwieldy. In a Parliamentary Democracy, the party in majority runs the Government generally and the Executive will always carry out the mandate of the Legislature according to its intentions.

The following reference books on the subject are available in the Legislature Library:—

1. A Treatise on Constitutional Limitations—by Thomas Cooley.
  2. Government by Decree—by Marguerite A. Sieghart.
  3. Comparative Administration Law—by Frank Goodnow.
  4. The Law and the Executive in Britain—by Schewarts Bernard.
  5. Constitutional Law and its Administration—by Samuel P. Weaver.
  6. Administrative Law, Cases and Comments—by Walter Gelhorn, and
  7. Government by Committee—by K.C. Wheare.
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(Extracts from the Rules of Procedure and  
Conduct of Business in the Assembly.)

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## CHAPTER XVIII.

### SUBORDINATE LEGISLATION.

178. *Committee on Subordinate Legislation and its functions.*—Subject to the provisions of these Rules, a Committee on Subordinate Legislation may be constituted to scrutinize and report to the Assembly whether the powers delegated by the Assembly have been properly exercised within the framework of the statute delegating such powers.

179. *Constitution of the Committee on Subordinate Legislation*—(1) The Committee shall consist of seven members who shall be nominated by the Speaker.

(2) The term of office of the members of the Committee shall be one year.

(3) The Speaker may, if he thinks fit, discharge a member from the Committee, if such member is absent from two or more consecutive meetings thereof, without the permission of the Chairman of the Committee.

(4) Casual vacancies in the Committee shall be filled by the Speaker and any member nominated to fill such a vacancy shall hold office for the period for which the member in whose place he is nominated would under the provisions of sub-rule (2) have held office.

180. *Chairman of Committee on Subordinate Legislation.*—(1) The Chairman of the Committee shall be appointed by the Speaker from amongst the members of the Committee.

(2) If the Chairman of the Committee is for any reason unable to act the Speaker may similarly appoint another Chairman of the Committee in his place.

(3) If the Chairman of the Committee is absent from any meeting, the Committee shall choose another member to act as Chairman for that meeting.

181. *Quorum of Committee.*—In order to constitute a meeting of the Committee the quorum shall be four.

182. *Chairman's casting vote.*—In the case of an equality of votes on any matter, the Chairman of the Committee shall have a second or casting vote.

183. *Appointment of sub-committees.*—The Committee may appoint one or more sub-committees each having the powers of the undivided Committee, to examine any matters that may be referred to them, and the reports of such sub-committees shall be deemed to be the reports of the whole Committee, if they are approved at a meeting of the whole Committee.

184. *Evidence before Committee on Subordinate Legislation*—(1) The committee on Subordinate Legislation shall have power to require the attendance of persons or the production of papers or records, if such a course is considered necessary for the discharge of its duties:

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker, whose decision shall be final:

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

(2) Subject to the provisions of this Rule, a witness may be summoned by an order signed by the Chairman of the Committee and shall produce such documents as are required for the use of the Committee.

(3) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.

(4) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee.

185. *Numbering and publication of 'Regulation', 'rule', 'sub-rule', etc.*—Each "Regulation", "rule", "sub-rule", "bye-law", etc., framed in pursuance of the legislative functions delegated by the Assembly to a subordinate authority and which is required to be laid before the Assembly, hereinafter referred to as "order" shall subject to such rules as the Speaker may in consultation with the Leader of the House prescribe, be numbered and published in the Gazette immediately after they are promulgated.

186. *Duties of the Committee.*—It shall be the duty of the Committee in particular, to consider—

(i) whether the order is in accord with the general objects of the Act pursuant to which it is made ;

(ii) whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of the Legislature ;

(iii) whether it contains imposition of taxation ;

(iv) whether it directly or indirectly bars the jurisdiction of the courts ;

(v) whether it gives retrospective effect to any of the provisions in respect of which the Act does not expressly give any such power ;



(vi) whether it involves expenditure from the Consolidated Fund or the Public Revenues ;

(vii) whether it appears to make some unusual or unexpected use of the powers conferred by the Act pursuant to which it is made ;

(viii) whether there appears to have been unjustifiable delay in the publication or laying it before the Assembly ;

(ix) whether for any reason its form or purport calls for any elucidation.

187. *Report of the Committee.*—(1) If the Committee is of opinion that any order should be annulled wholly or in part, or should be amended in any respect, it shall report that opinion and the grounds thereof to the Assembly within one month of the commencement of a session of the Assembly after the promulgation of such orders or within such earlier or later period which an Act of the Legislature may have fixed for any specified case.

(2) If the Committee is of opinion that any other matter relating to any orders should be brought to the notice of the Assembly, it may report that opinion and matter to the Assembly.

188. *Presentation of the report.*—The report of the Committee shall be presented to the Assembly signed by the Chairman of the Committee or, in his absence by any member of the Committee.

189. *Regulation of procedure.*—The Speaker may issue such directions as he may consider necessary for regulating the procedure in connection with all matters connected with the consideration of any question of subordinate legislation either in the Committee or in the Assembly.

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**Rules of Procedure for regulating day-to-day  
working of the Committee on  
Subordinate Legislation.**

1. The Committee will from time to time scrutinise the Statutory Rules, Orders, Notifications, etc., issued by Government in pursuance of the power delegated to them in this behalf under the various enactments.

2. Where the Committee is of opinion that action has to be taken under Rule 178 or 186 of the Rules of Procedure and Conduct of Business in the Assembly, Members might formulate questions requiring necessary details, which would be consolidated into a questionnaire. The Department/Departments of the Government Secretariat will be asked in writing by the Secretary of the Committee to furnish necessary replies in respect of the questionnaire so prepared.

3. The Department/Departments of the Secretariat concerned will furnish 15 copies of the replies to the questionnaire, together with an equal number of any further statements, memoranda notes, etc., that may be considered necessary.

4. As soon as the papers are received in the Legislature Secretariat, they will be circulated to the Members.

5. The Members may send their suggestions, if any, for the consideration of the Committee three days in advance of the meeting of the Committee.

6. The Committee, if considered necessary, would also examine the Secretaries to Government concerned with the particular 'Rule', 'Order', etc.

7. The Secretary shall note the points on which further information is required by the Committee and under the direction of the Chairman take such action as may be necessary, in regard thereto.

8. A record of the proceedings of each meeting of the Committee shall be kept by the Secretary.

9. The proceedings will be treated as confidential. The verbatim proceedings will not be shown to any one who is not a member of the Committee. Only such papers as have been laid on the Table of the House will be available for distribution or for reference outside the Committee.

10. Where the Committee decides to make a report under Rule 187 of Rules of Procedure and Conduct of Business in the Assembly, the draft report or part thereof will be considered at a meeting of the Committee and will embody the decisions of the majority of the members present and voting.

11. In the case of equality of votes the Chairman shall decide the issue by a casting vote.

12. The Chairman will sign the reports on behalf of the Committee, provided that any member of the Committee, who does not agree with the majority report, shall be entitled to append a minute of dissent.

13. As soon as each report has been completed, it will be printed for presentation to the Legislature. In case, due to unforeseen circumstances, printed copies are not available by the scheduled date of presentation, a typewritten copy of the report will be presented to the Legislature and printed copies supplied to Members later.

14. The Committee shall meet at such time and for such period as the Chairman may determine from time to time.

15. If the Committee is divided into sub-committees, the procedure of each sub-committee shall be the same as that of the whole Committee.

16. Under the direction of the Chairman, the Secretary may arrange for publishing the activities of the Committee for the information of the public.

17. The Secretary will keep an account of the expenses incurred on the meetings of the Committee.

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