



THIRTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
SUBORDINATE LEGISLATION
(2014-2016)**

TWENTY SECOND REPORT

(Presented on 15th July, 2014)

**on
The Maintenance and Welfare of Parents
and Senior Citizens Act, 2007
(Central Act 56 of 2007)**

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2014

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COMPOSITION OF THE COMMITTEE ON
SUBORDINATE LEGISLATION
(2014-2016)

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Smt. K. Radhamony, Joint Secretary
,, A. Shaila, Deputy Secretary
,, S. Remadevi Amma, Under Secretary.

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation having been authorised by the Committee, present this Twenty-second Report of the Committee (2014-2016) of the Thirteenth Kerala Legislative Assembly, on its behalf.

The Committee noticed the prevailing demographic trends and the ageing process of population in our State and decided to scrutinise the SROs issued under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Central Act 56 of 2007). Hence the Committee scrutinised the SROs issued under the Act in its meeting held on 17-7-2013 and understood that even though the Rules have been notified and Tribunals started functioning, the implementation of the Act in our State is in its initial stage and decided to study the matter in detail. The Committee followed the matter further in its next meeting held on 24-7-2013 and took evidence from the officials of Social Justice Department. In this connection, the Committee visited the old age homes in Kasaragod and Thrissur Districts, took evidence from the inmates of the old age homes and officials and also convened meetings at the District Headquarters and took evidence from the representatives of senior citizens and officials from various departments. This report contains the observations of the Committee on the subject and its suggestions/recommendations.

This report was finalised by the Committee in its meeting held on 10-7-2014.

Thiruvananthapuram,
15th July, 2014.

M. UMMER,
Chairman,
Committee on Subordinate Legislation.

REPORT

A community is known by the way it treats vulnerable sections of society such as the elderly. Traditionally, in India, it has been a part of our culture, for society and the family to take care of older persons. Senior Citizens were held in high esteem and were given priority and respect in all matters.

2. Rapid urbanization and the compulsions of modern working conditions have led to a breakdown of the traditional joint family system resulting in the growth of nuclear families. Better medical facilities have led to increased longevity. The number of Senior Citizens in the country has been steadily growing. In percentage terms, their population projected to about 12.4 per cent in 2026, doubling from 76.6 million in 2006 to 173.1 million in 2026.

3. As their children settled down in other cities, many parents, who had conventionally enjoyed a place of pride in the family, found themselves living alone. The frailty of old age combined with health problems, crimes by anti social elements and insufficient income has left them with a feeling of rising insecurity. Children, being busy with their new lives, are unable to visit them regularly. Parents have to cope single handedly, which is quite difficult considering their limited earnings.

4. The Government of India enacted the 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' as an answer to the insecurities faced by older persons of the country. This Act accords prime responsibility for the maintenance of parents on their children, grand children or even relatives who may possibly inherit the property of a Senior Citizen. It also calls upon the State to provide facilities for poor and destitute older persons. The Act provides more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognised under the constitution. The most important provision of the Act is to make the maintenance of parents by their family as a legal right.

5. Considering the State of Kerala, the effective implementation of the Act is a necessity since the percentage of elderly people is 10.3% of the total population as on 2001 and is projected to reach 18% by 2025. The scenario in Kerala is much different from that of the entire country that the implementation of the Act is more significant where fertility rates have been recorded as the lowest among states which lead to lesser number of young people and urbanisation and nuclear family system is rampant than the rest of the country.

6. In view of the above facts, the Committee on Subordinate Legislation (2011-14) considered to study the implementation of the Act in the State as well as to scrutinize the S.R.Os. issued based on this Act. The Committee observed that the Act which was passed in 2007 by the Parliament of India has been implemented in our State only on 24-9-2008 vide S.R.O. No. 999/2008. But it took more than 10 months to constitute the Maintenance Tribunals and to appoint Revenue Divisional Officers as Presiding Officers of such Tribunals vide S.R.O. No. 696/2009 dated 18-8-2009. The Appellate Tribunal for each district was constituted and the District Collectors were appointed as Presiding Officers of such Tribunal vide S.R.O. No. 697/2009. The Government also designated the District Social Welfare Officers as Maintenance Officers in their respective area of jurisdiction vide S.R.O. No. 698/2009 dated 18-8-2009. The rules relating to the Act were issued as S.R.O. No. 723/2009 dated 29-8-2009.

7. The Committee noticed that there is a delay of 11 months in the issuance of the Rules for the implementation of the Act in the State and enquired the reason for the delay in publishing the Rules in its meeting held on 17-7-2013. Expressing concern over the delay, the Committee observes that the Government frames an Act with a definite purpose and the effectiveness of the Act depends on the issuance of Rules and Orders to implement the Act and hence such delay will defeat the intention behind the Act and recommends that such kind of delay should be avoided.

8. The Committee understood from the reply of the witness that the State Council of Senior Citizens and District Committee of Senior Citizens have been constituted only with official members and the unofficial members have not been included. The Committee also noticed that even though the Maintenance Tribunal and Appellate Tribunal have been constituted and Maintenance Officers have been appointed, the other provisions of the Act are not being implemented. The Committee observed that the competent authority has not taken effective measures to implement the law even after 6 years. Even though the Rules were issued on 24-9-2008 based on Central Act, the Committee found that even the panel of conciliation officers were constituted only in 3 districts i.e., Kannur, Kottayam and Thrissur at the time of its first meeting.

9. The Committee is of the opinion that a section of the people are to be benefited by the Act and without the total implementation of the Act and Rules, the benefits envisaged by the Act will not reach the masses. Hence the Committee decided to study the implementation of the Act and Rules in the State along with the scrutiny of the Rules.

10. In its second meeting held on 24-7-2013, the Director of Social Welfare Department informed the Committee that the Maintenance Tribunals have been constituted in all the districts and out of the 931 cases referred to the Maintenance Tribunal all over the State, 63 cases have been settled through conciliation and order of maintenance have been awarded to 341 cases. To the query of the Committee about the present situation of those cases which have been issued order of maintenance, the witness was not in a position to give the details. The Committee noticed that many cases which deserves maintenance has not come before the Tribunal as the Tribunal has not acquired so much publicity. The Committee enquired about the publicity given to the Act and the involvement of Tribunals through the media. The officials of Social Justice Department informed that the State Government entrusted an efficient film Director to take up this matter and a documentary regarding this issue has been prepared and vide publicity has been given to this issue through Doordarshan and Printing Media.

11. In this connection, the Committee visited Kasaragod District on 24-9-2013 to ensure whether the purpose of the Act has been carried out properly and also to sort out the lapses occurred in implementing the rules. During the visit, the Committee took evidence from representatives of Senior Citizens and the officials from the concerned departments.

12. The District Collector, Kasaragod informed that 69 maintenance cases had been reported since 2009 and of these 55 cases were settled. The Committee appreciated the District Authorities for settling 55 cases and directs to submit a report regarding the progress achieved in these cases. But the Committee observed that follow-up action in these settled cases has not been taken by the authorities concerned. The witness informed the Committee that the amount for maintenance of Senior Citizens are distributed through the Office of District Social Welfare Officer.

13. While taking evidence, the District Secretary of Senior Citizens Forum informed the Committee that neither the conciliation officers nor the eminent senior citizens are aware of the rules and requested to take necessary steps to publish the details of this rule through books and through other sources. The Committee also observed that instructions regarding the Act has not been communicated to various Departments and the officers of Local Self Government.

14. The Committee also observed that the District Committee of Senior Citizens as per rule 22 has been constituted only in August 2013 after the meetings of the Committee held in Thiruvananthapuram on July 17 and 24, 2013. It was noticed by the Committee that the unofficial members are included in the District Committee for the first time as a result of the intervention of Subordinate Legislation Committee.

15. The Committee is aware of the fact that the officials are not able to produce the details of punishments awarded to persons who have abandoned the parents. The Committee also understands that medical officers attend the inmates of old age home twice a month.

16. The Committee visited the Government Old Age Home at Paravanadukka in Kasaragod District and the Committee noticed that ramp facility is not available in the old age home and hence the inmates are not provided with rooms in the first floor.

17. The Committee convened a meeting in this connection in Thrissur District on 17-12-2013 and took evidence from the concerned District authorities and representatives of Senior Citizens. During the meeting a representative of Senior Citizens informed the Committee that the District Court insists the assistance of legal practitioner for the respondent and appellants before the Tribunal. The Committee opined that if the respondent is represented by a legal practitioner and appellant lacks legal assistance, there is a chance for senior citizens not getting justice and the Committee recommends to provide legal assistance to the appellants, preferably the senior citizens.

18. Here too, the Committee noticed that the District Committee of Senior Citizens was constituted only after the Subordinate Legislation Committee's meeting held on July 2013. The Committee understands that the first meeting of the District Committee of Senior Citizens was held on 7-10-2013.

19. The Committee observes that Chapter IV of the Act ensures special queue for senior citizens in hospitals and the D.M.O., Thrissur informed that all hospitals follow Token System and provide seating arrangement. The District Collector, Thrissur promised to study this matter and furnish a report regarding the issue.

20. The Senior Citizens' representatives who attended the Committee's meeting informed that even though there are many projects to help senior citizens there was non-availability of application forms in the Government Offices. The Committee was also informed that the conciliation officers were not given adequate training. Here too the Committee noticed that the Act has not been given enough publicity through media and the common man is not aware of the provisions and benefits of the Act.

21. After the meeting, the Committee visited the Old Age Home under Social Justice Department at Ramavarmapuram and the Superintendent of the old age home informed that the home is providing accommodation to 77 persons which can accommodate only 50 persons and the concerned authorities

requested the Committee to create more vacancies in various posts for the proper functioning of these old age homes. The inmates of the old age home informed the Committee that the authorities were providing better facilities.

22. From the meetings of the Committee held in Thiruvananthapuram, Kasaragod and Thrissur, the Committee has reached the following conclusions and hence gives the following recommendations:

Conclusions and Recommendations

23. **The Committee finds that there is a delay of 10 months to constitute the Maintenance Tribunals in every district after the commencement of the Act in the State and also in the issuance of the Rules for the implementation of the Act. The Committee is of the opinion that such delay will defeat the intention behind the legislation and deprecates the delay in issuing statutory notifications. The Committee hopes that Government shall take note of this aspect and issue strict directions in the matter.**

24. **The Committee enquired whether every Tribunal prepares a panel of persons suitable for appointment as conciliation officers as per section 3(1) of the Rules. The Additional Secretary, Social Justice Department informed that the panel of conciliation officers has not been constituted in all Districts and the Maintenance Officer, i.e., the District Social Welfare Officer can function as conciliation officer. The Committee observed that the panel of conciliation officers were constituted only in Kannur, Kottayam and Thrissur. The Committee opines that R.D.Os. function as Chairman of Tribunals and enquired why a higher officer authorised to appoint conciliation officers fails to appoint them as per rule 3 since the Tribunals are under the direct control of Government and the Committee seeks explanation in this regard. The Committee recommends to constitute the Panel of Conciliation Officers without further delay. The Committee wants to be furnished with the details of Panel of Conciliation Officers constituted in every district within a period of one month.**

25. **The Committee observes that the State Government may establish a State Council of Senior Citizens to advise the State Government on effective implementation of the Act and the Rules and to perform such other functions in relation to senior citizens as the State Government may specify as per rule 21(1). The Additional Secretary, Social Welfare Department informed that the State Council of Senior Citizens as envisaged in the Rules has not been constituted yet and the one which already exists has been constituted before the commencement of the Act. The Committee opines that it is a serious lapse, i.e., dereliction of duty on the part of Social Justice Department. The Committee seeks explanation in this regard and recommends to constitute State Council**

of Senior Citizens without delay. The Committee also recommends to include non-official members such as specialists and activists working in the field of senior citizens and also eminent senior citizens in the State Council as prescribed in Rule 21 (2) (iii) and (iv).

26. The Committee noticed that the State Council has not convened meetings as per rule 21(3) till 24-7-2013. Hence the Committee recommends to organise meetings in time and take necessary steps to implement the rules and directs to submit periodical report to the concerned authorities based on the decision taken in these meetings.

27. The Committee enquired whether orders regarding the tenure of members of the State Council for Senior Citizens other than ex-officio members, rules of procedure of the State Council and other ancillary matters are issued. The Director, Social Justice Department informed that orders has not been issued in this regard, but a proposal for fixing the tenure of unofficial members as three years and also to give more than one chance to these members has been forwarded to Government for approval. The Committee recommends to amend the rules itself for fixing the tenure of unofficial members.

28. The Committee notices that the District Committee of Senior Citizens have been constituted since the first meeting of the Subordinate Legislation Committee on the subject and convened the first meeting of the District Committees after July 2013. The Committee notices that the District Committee of Senior Citizens shall meet three times a year as per rule 22(2) and also enquired the reason for not submitting the Annual Report. The Committee recommends the Department to convene meetings as per rule 22(2) and directs to furnish the details of the District Committees constituted and the meetings convened so far.

29. The Committee enquired whether the State Government established at least one old age home in every district as per section 19(1) of the Act. The Committee also enquired whether these old age homes function as per the standards prescribed in rule 18. The Director, Social Justice Department informed that 14 old age homes are established in 14 Districts and about 1110 inmates are accommodated in these old age homes and they have a capacity to accommodate 25 to 100 inmates. The Committee recommends to establish at least one old age home in every District which can accommodate 150 inmates as per section 19(1) of the Act in view of the demographic trend prevailing in our State.

30. The Committee enquired about the facilities provided for senior citizens in these old age homes. The Director, Social Justice Department informed that facilities like Television, Newspaper and Medical Assistance are provided to Senior Citizens. The Committee also enquired about the Medical allowance provided to the Senior Citizens. The Director, Social Justice Department informed that the Department provides a monthly allowance of ₹ 350 to Senior Citizens of these old age homes. The Committee notices that the senior citizens get medical assistance once or twice a month or only when they fell ill and vary through the districts. *The Committee recommends to provide necessary medical assistance to the inmates of these old age homes and also insists to provide consultation by doctors on specific days in a week.*

31. The Committee enquired whether the Presiding Officer of the Tribunal maintains a Register of Maintenance claim cases as per Rule 4 (2) (a) in such form as the State Government directs and also enquired the need to provide statutory form for Register of Maintenance cases along with the rules and sought clarification why the form is not included in the Rules. The Director of Social Justice Department informed that a Register is already maintained in all the District Maintenance Tribunals registering the details of Maintenance cases. The witness from the Law Department upheld the Committee's view of prescribing the form in the rules itself. *Hence the Committee recommends to incorporate a form titled "Register of Maintenance claim cases" as Appendix to the Rules to maintain uniformity throughout the State.*

32. The Committee notices that the "Form C" prescribes the notice to appear before the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is referred as that the Form C relates to rule 6(1) and (3). The Committee observes that 'Form C' relates to rule 9 (3) also. *Hence the Committee recommends to refer Rule 9(3) also in 'Form C'.*

33. As per rule 6(3), the applicants shall also be informed of the date of hearing mentioned in the notice to the opposite party. As per rule 9(1), the opposite party can seek to implead any child or relative of the applicant. The Committee observes that there is no provision in the rules that the date of hearing specified in the notice to the child or relative is made known to the applicants and the opposite party who seeks impleadment. *Hence the Committee recommends to add the following provision after rule 9(3) as "(4) Simultaneously with the issue of notice under sub-rules (2) and (3) of rule 9, the applicant(s) and the opposite party shall also be informed of the date mentioned in sub-rule (2) of rule 9 by notice issued in Form C".*

34. In the light of the above provision, *the Committee also recommends to incorporate the provision under rule 9(4) also in Form C.*

35. *The Committee recommends to delete the portion “and if they express their willingness in this behalf, the Tribunal shall ask them whether they would like the matter to be referred to a person” as it is the repetition of the clause mentioned just above and to correct the words “the panel prepared under the 3” as “the panel prepared under rule 3”.*

36. The Committee observes that the heading to Form D is ‘Maintenance Tribunal under the Maintenance of Welfare of Parents and Senior Citizens Act, 2007’ which is not specific. ‘Form D’ prescribed under rule 10(2) relates to reference to the Conciliation Officer for working out a settlement acceptable to both the applicant and the opposite party. *Hence the Committee recommends to correct the title of Form D as “Reference to Conciliation Officer under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007”.*

37. The Committee observes that rule 13(1) (iii) relates to the action by the Tribunal in case no report is received from conciliation officer within the stipulated time limit and section 6(6) of the Act provides that the conciliation officer shall submit his findings within one month. Rule 11(2) provides that the Conciliation Officer shall submit his findings within one month. Rule 11(3) also provides that the conciliation officer shall submit his report within one month even if he fails to arrive at settlement. The Committee observes that Rule 13(1) (iii) relates to action by Tribunal in case of non-receipt of report from a conciliation officer and opines that it will not sustain in the light of section 6(6) of the Act and Rule 11(2) and (3) makes it mandatory that the conciliation officer has to submit the report within the time limit. *Hence the Committee recommends to delete the sub-rule (iii) of Rule 13(1) and renumber the rest accordingly.*

38. The Committee observes that there is no provision for signature of conciliation officer in Form F and G in the rules and the Committee enquired whether the signature of conciliation officer is necessary in Form ‘F’ and ‘G’. The Director, Social Justice Department informed that the signature of the conciliation officer is necessary in Form ‘F’ and ‘G’. *Hence the Committee recommends to incorporate the provision for signature of the conciliation officer in Form ‘F’ and ‘G’.*

39. The Committee noticed that Rule 13(2) provides that an Order passed under Rule 7, Rule 8 or under sub-rule (1) of Rule 13 shall be a speaking one spelling out the facts of the case as ascertained by the Tribunal and the reasons of such order. Rule 7 relates to the procedure in case of

non-appearance by opposite party and rule 8 relates to procedure in case of admission of claim for maintenance. Sub-rule (1) of rule 13 relates to action by the Tribunal in cases other than those mentioned in rules 7 and 8. The Tribunal can pass an order under rule 12(2) also which relates to the final order in confirmation of the settlement before the conciliation officer. The Committee enquired whether rule 12(2) need be mentioned in rule 13(2), as this order should also be a speaking one spelling out the facts of the case. *Hence the Committee feels that it is necessary to include the provision of rule 12(2) also for issuing order under rule 13(2) and recommends to modify the rule accordingly.*

40. Rule 13(4) states that a copy of every order passed, whether final or interim on an application shall be given to the applicant(s) and the opposite party or their representatives, in person or shall be sent to them through a process server or by registered post. The Committee observes that this is a general provision and recommends not to limit this provision to rule 13 only. The Committee observes that the rule 13(3) provides that an order passed under sub-rule (1) shall take into account certain criteria such as amount needed by the applicant to meet his basic needs and income of the opposite party. Rule 7 relates to the procedure in case of ex-party order and rule 8 relates to the procedure in case of admission of claim of maintenance. Sub-rule (1) of rule 13 relates to action by Tribunal in cases other than those mentioned in rules 7 and 8. Hence the Committee enquired whether the conditions mentioned in 13(3) is made applicable to rules 7 and 8 and recommends to modify the rules accordingly. Thus the Committee is of the view that all the Orders for Maintenance issued under the rules 7, 8, 12(2), 13(1) shall be speaking one and the rules 13(2), 13(3) and 13(4) can be treated as general provision for all the cases and may not be limited to rule 13. *Hence the Committee recommends to treat them as general case and to modify them accordingly.*

41. *The Committee observes that the usage 'persons in the family' in rule 14 lacks clarity and recommends to change this usage as 'Members of the family'.*

42. The Committee notes that the word 'order' has not been defined either in the Act or in the Rules. *Hence the Committee recommends to replace the word "order" used in the rules as "order for maintenance".*

43. The Committee recommends to correct the word 'home' in rule 18(A) as 'old age home' as in Rule 18(E). The Committee observes that rule 18(E) deals with Management Committees of old age homes and *the Committee recommends to correct the usage 'on the Committee' in rule 18E as 'in the Committee'*.

44. The Committee is of the view that Management Committees for old age homes are constituted as per the orders and guidelines issued by State Government and the Committee noticed that inmates were not given suitable representation in these Committees. *Hence the Committee recommends to give suitable representation to the inmates in these Management Committees as per rule 18 (E).*

45. The Committee opines that sufficient publicity has not been given by District Magistrate about the provisions of the Act and the State and Central Government Programmes based on this Act. *Hence the Committee recommends to issue necessary publicity to the provisions of the Act as per rule 19(2) (iv).*

46. The Committee enquired about the availability of prescribed application forms for senior citizens in offices of common contact and finds that these forms are available in Collectorate, R.D.O. Office, Taluk Offices and Village Offices but these forms are not available in Block Development Offices and Panchayat Offices. During the visit of the Committee in Thrissur, it has come to the notice of the committee from the representatives of senior citizens that the application forms are not available in offices of common contact though the schemes for old age persons are there. *Hence the Committee urges the Department to take steps to ensure that the application forms are available in Government Offices of common contact.*

47. The Committee enquired whether the District Magistrate promote establishment of dedicated helplines for senior citizens at District Headquarters as per rule 19(2) (x) and the Social Justice Department informed that the helplines has not been started yet. *The Committee recommends to provide dedicated helplines at District Headquarters.*

48. The Committee observes that specific duties of the Police at various levels to ensure protection of life and property of senior citizens is provided by the concerned authorities as a separate chapter itself and details are mentioned in rule 20(2). The Committee noticed that even though elaborate provisions are included in the rules to ensure safety of senior citizens and the registers have been maintained in Police Stations for the purpose, a review regarding the implementation of the rules under 20(2) has not been done so far. The Committee finds that the Director General of Police shall cause the reports

submitted under clause (xii) of rule 20(2) to be compiled and submit them to the State Government once a quarter. *Hence the Committee recommends to review this matter in the State Council meetings of Senior Citizens. The Committee also urges the Government to furnish a report regarding this issue after the State Council's next meeting and also wants the details of the meeting held so far within the next three months.*

49. The Committee noticed that the Rules and S.R.Os. are issued in English. *Hence the Committee recommends to publish the Rules in Malayalam to make it more accessible to common man.*

50. During the meetings of the Committee in Kasaragod and Thrissur, the Committee observed that follow-up action in the settled cases in the Maintenance Tribunals have not been taken by the Authorities concerned. *Hence the Committee recommends to follow-up the settled maintenance cases to ensure whether maintenance has been awarded to them according to settlement.*

51. From the visit to the old age homes in Kasaragod and Thrissur Districts, the Committee notices that there is much need to improve the facilities in the old age homes such as ramp to the upper stairs, toilets, rooms etc. The Committee understands that there is shortage of funds with the Social Justice Department in providing more of the facilities. The Committee finds that every Local Self Government Institution such as Panchayats, Municipalities and Corporations can utilise 5% of its total fund allocation to the care of old age persons. Even though each such institution cannot by itself provide such facilities, a collective effort of the institutions can be utilised for improving the facilities of old age homes in districts. The Committee is of the opinion that if State Government has no adequate funds for the purpose, the R.D.O. can convene meetings participating members and officers of Village, Block and District Panchayats to urge them to earmark a fixed amount from their allotted funds for senior citizens and the same can be used for constructing ramps, bathrooms and other basic facilities for old age homes. *The Committee urges to consider the matter and give suitable directions to the concerned departments.*

52. The Committee notices that a separate chapter to provide medical care of senior citizens has been included in the Act itself. Clause 20(ii) of the Act states that the State Government shall ensure that separate queues are to be arranged for senior citizens in Government Hospitals. The Committee

expresses its displeasure over the matter that this provision has not been complied by the State authorities. *Hence the Committee urges the Health Department to issue directions in the matter and take necessary steps to provide bed for senior citizens as far as possible and to arrange separate queues for them in hospitals.*

53. The Committee views seriously the process of ageing in Kerala and calls attention of the Government to the matter. *The Committee is of the opinion that it is high time to consider the diseases connected with elderly persons and urges Government to enhance facilities related to geriatric care in Government Hospitals, at least in District Hospitals. The Committee also wants the Government to start specialised wing of Geriatric care considering the increase of elderly population in future.*

Thiruvananthapuram,
15th July, 2014.

M. UMMER,
Chairman,
Committee on Subordinate Legislation.