



**THIRTEENTH KERALA LEGISLATIVE ASSEMBLY**

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

**THIRTY FIRST REPORT**  
(Presented on 15th December, 2015)

**on**

**SROs issued under the Commissions for Protection of  
Child Rights Act, 2005**

SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM  
2015

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

*Chairman:*

Shri M. Ummer

*Members:*

Shri V. Chenthamarakshan

Shri Chittayam Gopakumar

Shri Hibi Eden

Shri Ludy Luiz

Shri N. A. Nellikkunnu

Shri Saju Paul

Shri A. K. Saseendran

Shri V. Sivankutty.

*Legislature Secretariat :*

Shri P. D. Sarangadharan, Secretary

Shri S. Thulaseedharan, Additional Secretary

Smt. A. Shaila, Deputy Secretary

Shri D. D. Godfree, Under Secretary.

## INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation (2014-2016) having been authorised by the Committee, present this Thirty First Report of the Committee on its behalf.

This report contains the observations, comments and recommendations of the Committee on Scrutiny of SROs issued under The Commissions for Protection of Child Rights Act, 2005 (Central Act 4 of 2006) on the basis of scrutiny and evidence from the officials of Law and Social Justice Department on 16-9-2015. The list of SROs considered by the Committee is given as Annexure.

This Report was finalised by the Committee at its meeting held on 14th December, 2015.

Thiruvananthapuram,  
15th December, 2015.

M. UMMER,  
*Chairman,*  
*Committee on Subordinate Legislation.*

**REPORT ON THE SCRUTINY OF SROs 700/2012, 162/2012,  
428/2013, 66/2014, 67/2014 AND 514/2014 ISSUED  
UNDER THE COMMISSIONS FOR PROTECTION  
OF CHILD RIGHTS ACT, 2005  
(CENTRAL ACT 4 OF 2006)**

The Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006) was passed to provide for the Constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

**SRO No. 700/2012 dated 4-10-2012**

**[G.O. (P) No. 59/2012/SWD dated 4-10-2012]**

2. By this SRO, Government have formulated rules, "The Kerala State Commissions for Protection of Child Rights Rules, 2012", in exercise of the powers conferred by section 36 of the Commissions for Protection of Child Rights Act, 2005 (Central Act 4 of 2006).

3. The Committee notices that the Act came into force on 15-2-2007 and the rules were issued only on 4-10-2012. During witness examination, the Committee enquired the reason for the delay of more than 5 years in framing rules. The witness replied that the delay was noticed by the Supreme Court while considering a PIL and as ordered by the Supreme Court the rules were issued in 2012. *The Committee observes that even if a law is passed by the Parliament or the Legislature there is a general tendency on the part of the executive to issue statutory rules. The Committee is distressed to note the delay on the part of the executive and urges the Government to pay more attention in issuing rules as soon as an Act is published in the Gazette.*

4. *The Committee notices that in the 2nd line of the preamble, name of the Act is wrongly written as "the Commissions for the Protection of Child Rights Act, 2005" and suggests to correct it as "the Commissions for Protection of Child Rights Act, 2005".*

5. The Committee observes that rule 2 contains sub-clauses and hence recommends to insert '(1)' between the words "2. Definitions" and "In".

6. The Committee notices that as per rule 2(a) "Act" is defined as "the Commissioner for Protection of Child Rights Act, 2005 (Central Act 4 of 2006)." The Committee wants to correct the word "Commissioner" as "Commissions".

7. As per Rule 2(f) "Division" means and includes different sections of the Administration Division, Complaints Division, Research Division and such other Divisions in the Commission as may be constituted by the Chairperson. The Committee takes strong exception for using the words "such other Divisions" and wants to delete the words "and such other Divisions" from rule 2(f).

8. Chapter 2 deals with the procedure for appointment and terms and conditions of service of Chairperson, Members and other Staffs including Secretary of the Commission. The Committee observes that heading of the chapter is "procedure for appointment and terms and conditions of service of Chairperson and members" and recommends to correct it as "Procedure for appointment and terms and conditions of service of Chairperson, Members and Staff of the Commission".

9. The proviso of Rule 5(4) states that "Provided that a person who has hold an office of Chairperson or Member for two terms in any capacity shall not be eligible for reappointment as a Member of Chairperson". The Committee suggests to correct the words "who has hold an office" as "who has held the office" and the word "of" in between the words "Member" and "Chairperson" as "or".

10. The Committee recommends to correct the words "shall cause submitted" in the second line of Rule 8(v) as "shall submit".

11. Rule 9(1) states that "Chairperson or members shall receive a fixed honorarium as allowances as prescribed by Government from time to time". The Committee wants to use the word 'and' instead of 'or' between the words "Chairperson" and "Members".

12. Section 20 of the Act states that the salaries and allowances payable to and other terms and conditions of service of the Chairperson and members shall be as such as may be prescribed by the State Government. In Rule 9(1), it is stated that the Chairperson or members shall receive a fixed honorarium as allowances as prescribed by Government from time to time. From the witness examination the Committee understands that at present salaries and allowances of the Chairman and members are as in the case of Secretary to Government. *The Committee observes that even though it is mentioned in the Act that allowances shall be payable as prescribed by the State Government, the Government has not prescribed the allowances but have again put a provision to prescribe further as and when it requires. The Committee apprehends that keeping open the provision to decide at a later stage will lead to a situation that will demand hike in salary and allowances since definite rules have not been prescribed here. The Committee is of the opinion that the statutory rules need to be specific and definite and hence recommends to fix the salaries and allowances payable to Chairperson and Members.*

13. In this context, the Committee also notices that in Rule 9(2) it is stated that salary and allowances payable to Secretary and other officers appointed for the purpose of the Commission shall be as such as may be determined by the Government from time to time and the provision "as may be decided by the Government from time to time" in the case of method of appointment and scale of pay for the staff in rule 7(4). *The Committee deprecates the manner in which the rule is framed in these cases. The Committee is of the opinion that by revising the method of appointment and salary and allowances for the secretary and other staff each time without having a definite condition prescribed in the rule it will lead to a situation that the executive orders would not come to the notice of the Legislature at all. Here the delegated power to the executive has not been exercised within its limit. A delegate can exercise only within the framework of the delegation and have to exercise delegation conceding to the norms delegated by the legislation. The Committee is of the opinion that keeping open the provisions of the executive*



*to make a decision later is an encroachment upon the powers of the Legislature. Hence the Committee wants the Government to take immediate steps to fix the norms for conditions of service and salary and allowances in rule 9(2) and 7(4). The Committee recommends to delete "and or as may be decided by the Government from time to time." in rule 7(4). The Committee also recommends to amend the rule 9(2) accordingly.*

14. *The Committee recommends to delete the word "that" in between the words "considers" and "it necessary" in the last sentence of Rule 18(1).*

15. The Committee observes that rule 18(8)(i) states that "The Secretary along with such officers as the Chairperson may direct, shall attend the meetings of the Commission" and rule 19 states that "The Secretary and other officer or officers of the Commission, if so, required by the chairperson shall attend the meetings of the Commission" and that rule 19 is the repetition of Rule 18(8)(i). *Hence the Committee recommends to delete rule 18(8)(i) and rearrange rest of the rules accordingly.*

16. Rule 27(d) states that "take statement of the complainant by issuing Commission for that purpose or by any other means considered necessary". The Committee sought clarification for the above rule from the Administrative Department and the witness replied that as in the case of Civil Courts if the complainant is bedridden then a commission is appointed to record statement of facts. *Hence the Committee is of the opinion that for the words "by issuing Commission" the words "by appointing Commission" has to be replaced and "record statement" is the correct usage instead of "take statement". Hence the Committee recommends to correct it accordingly.*

17. *The Committee recommends to correct the word "relates" in Rule 28(d) as "related." and wants to insert the word "that" in between the words "allegations" and "do not" in Rule 28(e). Also the Committee wants to correct the word 'Chairman' in Rule 29 and Rule 33 as "Chairperson". And the word "sort out" in the second line of Rule 31 as "sorted out".*

18. Rule 29 states that "Tapal, by whatsoever mode received addressed, to the Commission, its Chairman, Members or Officers of the Commission, either by name or by designations .....Commission". *The Committee wants to change the place of comma after the word "addressed" and use in between the words "received" and "addressed".*

19. *The Committee recommends the department to submit annual report and Special report as per rule 62 before the table of the House.*

20. The Committee enquired whether reports are submitted as per rule 17(c) to the State Government, National Commission for the Protection of Child Rights and other State Commissions annually. The witness replied that the Commission has not furnished such reports so far. *The Committee urges the Government to see that reports are furnished at such intervals as stipulated in the rule.*

21. The Committee appreciates the Social Justice Department for taking timely action in introducing chapters related to child rights and printing directions related to child rights in the last page of School text books.

22. The Committee wants the Commission to examine the utilisation of the funds earmarked by each local body institution for the purpose of the welfare of children and report the matter to the Government.

23. *The Committee directs the department to change the words "See Rule 55" instead of "See Rule 57" in Form I, II, III and IV of Schedule I.*

24. *The Committee recommends the department to correct "Assistant Grade I" as "Assistant" in Serial No. 7 and "Peons" as "Office Attendant" in Serial No. 10.*

25. *The Committee directs the department to insert a comma after the words "date of occurrence" in the 6th line of rule 36.*

**SRO No. 428/2013 dated 27-5-2013**

**[G.O.(P) No. 44/2013/SJD. dated 23-5-2013]**

26. By this SRO, in exercise of the powers conferred by sub-section (1) of Section 17 and Section 18 of the Commissions for protection of Child Rights Act, 2005 Government have decided to constitute the Kerala State Commission for Protection of Child Rights and to appoint Smt. Neela Gangadharan, IAS (Rtd.) as Chairperson of the said Commission.

27. The Committee notices that in the preamble of the SRO it is stated that "In exercise of the powers conferred by sub-section (1) of section 17 and section 18 .....said commission. The Headquarters of the Commission shall be at Thiruvananthapuram". The Committee finds that sub- section 17(1) deals with the constitution of the Commission, 17(2) deals with the Chairperson and members of the Commission, 17(3) deals with the notification of headquarters of the Commission. Section 18 deals with the appointment of Chairperson. *Hence the Committee recommends the department to delete the words "sub-section (1)" from the preamble.*

28. The Committee observes that in the preamble of the SRO, name of the Act is written as "the Commission for the Protection of Child Rights Act, 2005 and in the explanatory note, it is written as "the Commission for Protection of Child Rights Act, 2005". *Hence the Committee recommends to correct the name of the Act as "The Commissions for Protection of Child Rights Act, 2005."*

**SRO No. 66/2014 dated 27-1-2014**

**[G.O.(P) No. 06/2014/SJD. dated 23-1-2014]**

29. By this SRO, Government have appointed members of the Kerala State Commission for Protection of Child Rights, in exercise of the powers conferred by sub-section (2) of section 17 and section 18 of the Commissions for Protection of Child Rights Act, 2005.

30. The Committee finds that in the preamble of the SRO, name of the Act is written as "the Commission for the Protection of Child Rights Act, 2005". *Hence the Committee recommends to correct it as "The Commissions for Protection of Child Rights Act, 2005".*

**SRO No. 67/2014 dated 27-1-2014**  
**[G.O. (P) No. 07/2014/SJD. dated 23-1-2014]**

**SRO No. 514/2014 dated 25-8-2014**  
**[G.O. (P) No. 73/2014/SJD. dated 23-8-2014]**

31. SRO 67/2014 is meant for appointing Secretary to the State Commission and SRO 514/2014 is meant for amending the Kerala State Commission for Protection of Child Right Rules, 2012.

32. The Committee observes that in the preamble and explanatory note of the SRO, name of the Act is written as "the Commission for the Protection of Child Rights Act, 2005". Hence the Committee recommends to correct it as "The Commissions for Protection of Child Rights Act, 2005".

Thiruvananthapuram,  
15th December, 2015.

M. UMMER,  
Chairman,  
Committee on Subordinate Legislation.

ANNEXURE

**List of SROs considered by the Committee**

SROs Nos. 162/2012, 700/2012, 428/2013, 66/2014, 67/2014, 514/2014.

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