Chapter – III

DIMENSIONS OF LEGISLATIVE SCRUTINY

The value of a democratic order depends upon the quality of its institutions as well as concepts. Fullest realisation of these ends in a democratic order are attainable only through the legislative organ. At present as it is over burdened, the executive has taken precedence. It is to make the executive fenced in such a manner as to maintain its accountability to the legislative branch that legislature committees are devised. In this chapter two such committees are dealt with. The Committee on Government Assurances casts legislative accountability upon the executive right on the floor of the House and the Committee on Subordinate Legislation infuses this accountability at the output stage of executive rule making.

A. SCRUTINY ON THE FLOOR

In the wake of a preponderant executive, the legislature decided to tighten its grip over the executive on the floor of the legislature itself. Thus was born the Committee on Government Assurances. It scrutinises the assurances, promises and undertakings given by ministers from time to time on the floor of the House and reports whether these assurances have been implemented within a reasonable time. It was the result of the creative effort of the legislature to ensure that no room is practically left unattended to make the executive accountable to the legislature.
The Committee on Government Assurances is an original Indian contribution to the cause of parliamentary practice and procedure. It is true that we have inherited much of parliamentary practice and procedure from Britain. But, that doesn’t mean that everything we have is alien in source. On the genuineness of the origin of the Committee, it has been stated that it is “a unique committee of its type and has no parallel in other countries having parliamentary democracy. An Indian innovation, it has come to be appreciated over the years not only in India but in other parliamentary democracies of the world as well”.

Right from 1949 itself, the Union Government began to extract from the proceedings of the House the assurances, undertakings and promises of ministers made on the floor of the House and reported to the House the action taken on them. But, it was difficult for want of a proper machinery. The situation was overcome at the initiative of the first Speaker, Sri. G. Mavalankar by establishing a standing parliamentary committee on 1December 1953.

In the state of Kerala, its origin dates back to 1954. In that year a Committee on Government Assurances was constituted in the former Travancore-Cochin State. Rule 258 provides for a Committee on Government Assurances. The Committee is constituted by the speaker by nomination at the commencement of the Assembly or from time to time, as the case may be. It consists of not more than nine members. Ministership either prior to or after becoming a member of the Committee is forbidden.
During the tenure of the X KLA, the Committee presented 13 reports whereas in the I KLA, it presented only three reports (see Figure 3.1). In the first report submitted to the House for the period under study, the Committee concentrated on government lands leased out to private parties and revenue loss arising from them. On the basis of an assurance given at the fifth section of the IX KLA to the House to the effect that the government would look into the details of plantations under Forest Development Corporation, the Committee undertook an investigation. Quite unexpectedly the Committee found that (i) there was unauthorised tree felling from government leased out lands; and (ii) by virtue of the non-implementation of the provisions of Kerala Grants and Leases (Modification of Rights) Act, 1980, there was heavy loss to government which the Committee estimated Rs. 500 crores.

Fig. 3.1

Number of Reports Presented by the Committee on Government Assurances from I KLA to X KLA
Though the Act, 1980 was passed to raise revenue from leases, the government could effect its implementation only in 1990. Even when it was made, it was stayed by the Hon'ble High Court of Kerala at the instance of Kerala Planter's Association.

Therefore, the Committee recommended that (i) all agreements without any specification as to time should be declared illegal and void, (ii) initiate immediate steps to recover such lands, (iii) update lease deeds and recover lease lands wherever necessary and (iv) constitute a permanent panel of advocates to expedite legal process pending in courts.

Next, the Committee concentrated on an assurance given by the government on the floor of the House at the 13 session of the VIII KLA. In the said assurance, the government had clearly stated that it would fill up all vacant seats in schools promptly so as to avoid any disruption in academic activities. Despite this assurance, the Committee learned that there was undue delay in filling up vacancies in schools. It, therefore, decided to have thorough study; prepared a questionnaire and sent it to the government to ascertain its views and adduced evidence directly from the officers concerned including the Secretary, General Education Department.

On scrutiny, the Committee found that there were 4777 unfilled vacancies in schools during the year 1995-96. The government in its reply clarified the reason for delay as the mode of selection of candidates
by the PSC or the employment exchange. The Committee felt that very often vacant seats were filled only towards the close of academic year: also there were instances of vacancies left opened at the fag end of the academic year. Therefore in its report, the Committee recommended that the government should take every step to conduct regular classes right from the beginning of the academic year. Similarly, when teachers were deputed for training programmes, the authorities should ensure that it did not affect the conduct of classes.

The Khadi sector handicapped by multifarious evils attracted the mind of the Committee⁸. The study was conducted on the basis of 371st assurance given to the House at the 14th section of IV KLA⁹. Non receipt of rebate due to laxity on the part of both the central and state governments, decrease in working capital, lower production, non receipt of benefits of rebate by actual hands¹⁰, meagre wages and voluntary migration of labour force were the major problems unearthed by the Committee.

Upon consideration of the pros and cons of the problem, the Committee recommended production-linked rebate, increased wages and 10% incentive to the employees. It also wanted the Government to open more avenues for production as well as sales in the state. Moreover, making available rebate to the sector at the needy hour without fail was described as one of the major responsibilities of the government.
To make the conditions in jails in conformity with the principles of Reformative Theory, the Committee happened to concentrate its attention on conditions in jails\textsuperscript{11}. The scrutiny was done to ascertain the implementation of the undertaking given on the floor of the House during the tenure of VII KLA\textsuperscript{12}.

In the wake of the investigation, the Committee opined that though we do not have any inhuman system of punishment, conditions in our jails altogether make it feel that we do have such a system. Dilapidated buildings, lack of basic amenities, poor quality food and lack of proper health facilities constituted a partial picture of the inside of the jails. The Committee was astonished to see that even the existing health facilities were not available to the inmates during night. Therefore, it strongly recommended speedier steps to clear all these faults. Characterising the last point as an ‘inhuman practice’\textsuperscript{13}, the Committee recommended immediate steps to rectify it.

Unemployment especially of the educated is widely prevalent in Kerala. To tackle this social problem, the government introduced the Vocational Higher Secondary Education (VHSE) in the state in 1983 – 84. In an effort to make it more viable, the government gave certain promises to the House during the tenure of the IX KLA\textsuperscript{14}. Thus imbibing a spirit of social responsibility warranted by a democratic order, the Committee in its fifth report scrutinised the structural and institutional aspects of this sector in the state.
According to the Committee, the chief defects persisted in the sector were the prevalence of un-updated and obsolete syllabi and curriculum, lack of permanent teachers, absence of attractive working conditions and lack of special rules. It observed that even after long eleven years of its introduction, the syllabi were not renewed or revised. The most interesting factor which the legislature committee exposed was that to meet the need of a literate state like Kerala, it was prepared by an outside state agency \(^{15}\). Equally surprising was the case of special rules. Therefore, the Committee recommended that steps should be taken on a wartime basis to renew the syllabi and curriculum, to appoint permanent teachers, to provide attractive working conditions and to make special rules.

The Committee also took up for its study the Cultural Affairs Ministry. The government in an earnest attempt to promote Malayalam Language and Literature and various art and cultural forms brought all the institutions working in such allied fields under the Cultural Affairs Ministry. As on the date of scrutiny by this Committee, there were such thirty institutions under the Ministry; some were government departments, some in public sector and the rest were working as grant-in-aid institutions. But pension was given only to the employees of the departments and the staff of Kerala Kalamandalam.

All governments since 1980 accepted in principle the right to pension of these employees. On 19 March, 1997 while taking part in the budget discussion, the Hon’ble Minister for Finance stated on the floor
of the House that his government had set apart Rs. 10 lakhs in the budget for pension scheme. On July, 1997 the Hon’ble Minister for Cultural Affairs informed the House that steps for the introduction of pension scheme were being taken. But, the promises were not kept by the executive. Therefore, the Committee decided to conduct a scrutiny\textsuperscript{16}.

The Committee expressed its dissatisfaction on the laxity of the Cultural Affairs Ministry to obtain the allocated amount of Rs. 10 lakhs from the Department of Finance. Pension being recognised widely as a right of the employee shall not be denied. Therefore, it recommended that pension scheme should be implemented without any delay.

The seventeenth assurance given in the ninth session of VII KLA formed the subject matter of investigation and scrutiny by the Committee\textsuperscript{17} in this report. The assurance was related to forestland encroachments. The Committee on Government Assurances (1999-'00) had earlier taken a decision not to consider the remaining promises and assurances given during the tenure of the VII KLA and VIII KLA. But, in view of the continuance of forestland encroachments and the inadequacy of preventive steps adopted so far by the government, the Committee decided to have a detailed study.

Out of the total land area of 38,863 sq.kms, 24 percent ie., 9327.12 sq. kms form forest area in Kerala\textsuperscript{18}. Since nationalisation of forest lands on 10 June, 1971 encroachments became a regular feature. Moreover, absence of proper demarcation of forestlands enhanced the
prospects of the encroachers. As on 1 January, 1997 forestland measuring a total area of 28,588.19 hectares were encroached. In compliance with central direction, the government decided to evict all encroachments after 1 January, 1997. But, the government couldn’t successfully implement it. Consequently, the Committee recommended proper fencing, increasing punishment, steps for prevention of forest fire, formation of public bodies and schemes to create awareness in public mind regarding protection of forest land. Over and above all, the Committee recommended codification of forest laws.

Kerala has the largest number of unemployment. Therefore, it was no surprise that the Committee concentrated its attention on the functioning of employment exchanges. As on 31 December, 1999 the total number of registrants in all employment exchanges in the state were 390,064. More than 75 percent of them were matriculates and above. Next to the Public Service Commission, employment exchanges formed the key channel of recruitment to government, semi-government and public undertakings. The investigation was made in the wake of a reply by the minister concerned which was treated as an assurance.

But, there were allegations of corruption in the preparation of lists of candidates by the employment exchanges. According to the Committee, corruption arose out of the violation of the principle of seniority. Moreover, there was delay in the preparation of lists for selection.
In view of above defects, the Committee recommended the publication of seniority lists once in a year, most preferably before 30 January; renewal of list as and when necessary (before yearly publication of seniority list); strict observance of reservation principles and avoidance of delay in the publication of lists. As a remedy to avoid delay, the Committee suggested computerisation.

The next endeavour that the Committee made was an Action Taken Report (ATR) which it published as the Ninth Report. In this ATR, the Committee examined the responses of the Home Department to the recommendations contained in the fourth report.

The Committee found that many of its recommendations were not implemented. On certain matters, the department responded in the usual and customary manner—'being considered'.

Among those recommendations to which the government responded positively were: (i) repairing jail buildings; (ii) construction of new buildings to accommodate excess inmates in the jail; and (iii) providing amenities in proportion to the strength of inmates in the jail.

The Committee in another report concentrated on the action taken by the government in response to its recommendations in the first report relating to leased out government lands and unauthorised tree felling. Among the recommendations of the first report implemented by the department, the most important were: (a) the adoption of Kerala
Grants and Leases (Modification of Rights) Amendment Bill, 1999; (b) updating all lease deeds; (c) direction as to the preparation of detailed forest maps; (d) appointment of own pleaders in High Court and Forest Tribunals at Palakkad; (e) constitution of Flying Squads and Special Patrolling parties; and (f) opening new rounds of talks between Governments of Tamil Nadu and Kerala to recover Parambikulam forest land. It also pointed out the inability of the government even at this juncture to furnish information on the question of renewal of time expired leases.

Many instances of corruption and financial misappropriations were unearthed and recommendations made in the third report during 1995. The subject matter that the Committee dealt with was the Kerala State Road Transport Corporation (KSRTC). The study was made at the time of the IX KLA. In the eleventh report of the Committee of the X KLA, it wanted to ascertain the actions taken by the government on those recommendations contained in the third report of the IX KLA.

The Committee on Assurances of the IX KLA in its third report condemned the action of the KSRTC in not responding to AG’s letter. On this issue, the Managing Director, KSRTC had expressed his regrets and assured the Committee never to repeat the same. To the Committee’s query as to the details of bond executed between Mr. Vijayan, an employee and KSRTC, the corporation replied that disciplinary proceedings had already been initiated against those responsible. On the question of sanctioning an unlawful instance of non
refundable advance (NRA) to Mr. Vijayan from his provident fund, the
KSRTC replied that one increment of the person liable for sanctioning
NRA had been withheld\(^3\). At the instance of the Committee, the
department had also withheld one increment of Mr. Vijayan for
committing misappropriation.

The twelfth report of the Committee was based upon the
implementation of assurances and promises given on the floor of the
House at the first session of the IX KLA. The Committee as if fed up
with the response of the various departments, had now decided to see the
implementation of assurances given on the floor of the House during the
period between 9 July 1991 and 1 August 1991\(^3\). Therefore, it adopted a
comprehensive scrutiny of almost all departments like the Home, Health,
Co-operation, Education, Transport, Revenue, Industry, Food and Civil
Supplies, Finance, Irrigation, Public works, Fisheries, Electricity, Labour
etc. It is interesting to see that even after long nine years, in certain
cases, the department concerned had not sent their replies\(^3\).
Due to delay, certain assurances had become obsolete. Hence, the
Committee concluded that assurances shall never be allowed to lag in
time. Final reports with all necessary details should be made available to
the Committee within three months\(^3\).

Besides, the Committee found that the multifarious assurances
given in the IX and X KLA in regard to scarcity of drinking water had
not come up to expectations\(^3\). In its efforts to take up the issue once
again, the Committee convened a meeting of various heads of
departments apart from site inspection. In tune with the spirit of the slogan, "Drinking Water for Everybody by 2000", the government had planned divergent drinking water schemes. Some of them were partially implemented and lagging in time. Of the 97 centrally sponsored schemes, 57 could not be started either due to non-availability of land or scarcity of pipe. Of the five technology mission schemes, work had been started only on two projects. Further, work on all eight Netherland schemes were lagging.

On consideration, the Committee recommended that delay should be avoided at any cost. Therefore, it strongly advocated strict disciplinary proceedings against those who wilfully delayed the schemes. Ensuring quality of water, making of available necessary funds and filling necessary posts were the other major points of recommendations.

On the whole the Committee presented 13 reports during the period from 1996-2001. Of these, four reports were ATRs. The remaining nine reports related to leased out government lands and unauthorised tree felling, appointment of teachers in schools, Khadi sector, conditions in jails, VHSC, Cultural Affairs Ministry, forest land encroachment, employment exchanges and drinking water schemes.

The appreciability of the work done by the Committee is observable from: (i) the increase in reports since its inception in the state. At the time of I KLA, it presented three reports. When it came to the context of X KLA, there was an increase to thirteen (for details see table 3.1). In between stands II KLA with eight reports and VII KLA
with six reports. The lowest place goes to the VI KLA with one report only; (ii) the nature of study itself. In all the nine original reports the Committee undertook an indepth study, unearthing all causes, analysing the pros and cons and deducting factual inferences and (iii) the nature of recommendations made by the Committee.

As an example, to increase revenue from lease land, the government passed an Act in 1980. But, it could not be implemented till 1990 for want of Rules. Even when the rules were made, its operation was stayed by the High Court. Therefore, the Secretary ordered not to

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**Table 3.1**

**Particulars of the Reports of the Committee on Government Assurances from I KLA to X KLA**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Assembly</th>
<th>No. of reports presented</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I KLA</td>
<td>Three reports</td>
<td>Rank VI</td>
</tr>
<tr>
<td>2</td>
<td>II KLA</td>
<td>Eight reports</td>
<td>Rank II</td>
</tr>
<tr>
<td>3</td>
<td>III KLA</td>
<td>Three reports</td>
<td>Rank VI</td>
</tr>
<tr>
<td>4</td>
<td>IV KLA</td>
<td>Five reports</td>
<td>Rank IV</td>
</tr>
<tr>
<td>5</td>
<td>V KLA</td>
<td>Two reports</td>
<td>Rank VII</td>
</tr>
<tr>
<td>6</td>
<td>VI KLA</td>
<td>One report only</td>
<td>Lowest number of reports</td>
</tr>
<tr>
<td>7</td>
<td>VII KLA</td>
<td>Three reports</td>
<td>Rank VI</td>
</tr>
<tr>
<td>8</td>
<td>VIII KLA</td>
<td>Six reports</td>
<td>Rank III</td>
</tr>
<tr>
<td>9</td>
<td>IX KLA</td>
<td>Four reports</td>
<td>Rank V</td>
</tr>
<tr>
<td>10</td>
<td>X KLA</td>
<td>Thirteen reports</td>
<td>Highest number of reports</td>
</tr>
</tbody>
</table>

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38
implement it. To this factual situation, the Committee's response was: "those rules formed after ten prolonged years were ordered not to be implemented by reason of the complaint of the landlords was meant to help somebody." From this observation it was clear that the Committee could read the mind of the executive. Again, in the same report the Committee made it clear that since lease involves conditions, any going back or jumping out of this conditions would have prompted the government to cancel the lease. But, there was not even a single move on a part of the government which clearly showed the inefficiency and disorganised nature of the departmental hierarchy.

Similarly, when the Committee found disruption in academic work in schools due to lack of teachers, it recommended that the government should make immediate steps to fill in all vacancies right from the commencement of the academic year itself. But, a major breakthrough in its recommendations could be found in relation to the Khadi sector. The Committee found that the Khadi and Village Industries Board under which the Khadi sector works did not include any employee of this sector. Therefore, it strongly felt the need to induct employees in the Board. Thus, the work done by the Committee was commendable from its stand point.

The Committee's studies, scrutinies and investigations were made on the basis of executive's assurances on the floor of the House. Consequently, whatever recommendations it arrived were found based upon such assurances. Table 3.2 shows the details of assurances and their reports.
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>No. of Report</th>
<th>KLA</th>
<th>Session</th>
<th>Assurance</th>
<th>Subject</th>
<th>Whether ATR or Not</th>
<th>ATR Source</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>First</td>
<td>IX</td>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
<td>Reply to Qtn. No.17</td>
<td>Govt. Lands on Lease</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Second</td>
<td>VIII</td>
<td>13&lt;sup&gt;th&lt;/sup&gt;</td>
<td>* P.U.</td>
<td>Vacancies in Schools</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Third</td>
<td>IV</td>
<td>14&lt;sup&gt;th&lt;/sup&gt;</td>
<td>371&lt;sup&gt;st&lt;/sup&gt; Assurance</td>
<td>Khadi Sector</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Fourth</td>
<td>VIII</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; and 13&lt;sup&gt;th&lt;/sup&gt;</td>
<td>53 and 65</td>
<td>Conditions in Jails</td>
<td>No</td>
<td></td>
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<tr>
<td>5</td>
<td>Fifth</td>
<td>IX</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>P.U.</td>
<td>V.H.S.C.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Sixth</td>
<td>X</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; and 5&lt;sup&gt;th&lt;/sup&gt;</td>
<td>Submission</td>
<td>Granting Pension to Employees of Cultural Affairs Ministry</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Seventh</td>
<td>VII</td>
<td>9&lt;sup&gt;th&lt;/sup&gt;</td>
<td>P.U.</td>
<td>Forest Land Encroachment</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Eighth</td>
<td>IX</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>P.U.</td>
<td>Employment Exchanges</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Ninth</td>
<td>IX</td>
<td></td>
<td></td>
<td></td>
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<td>Action Taken Report</td>
</tr>
<tr>
<td>10</td>
<td>Tenth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1&lt;sup&gt;st&lt;/sup&gt; Report (X KLA)</td>
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<td>11</td>
<td>Eleventh</td>
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<td></td>
<td>3&lt;sup&gt;rd&lt;/sup&gt; Report (IX KLA)</td>
</tr>
<tr>
<td>12</td>
<td>Twelveth</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Thirteenth</td>
<td>IX and X</td>
<td>Various Sessions</td>
<td>P.U.</td>
<td>Drinking Water</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

* Promises and Undertakings constituting Assurance  Action Taken Report
As stated at the outset itself, the Committee on Government Assurances, a major break through among the Committee constellation, is meant to check and control the executive through the Committee mechanism right on the floor of the House. In the various reports cited and analysed, the Committee sought to ascertain for and on behalf of the legislature, whether the assurances given by the executive were implemented or not. Consequently, a perusal of those reports showed many instances of non-implementation, partial implementation and delay in implementation.

Despite the assurance and subsequent submission in the 4th and 5th sessions respectively of the X KLA, the Committee found that all employees of the Cultural Affairs Ministry were not given pension. Similarly, even though VII KLA was assured of filling all vacancies in schools, as on the date of Committee scrutiny(second report), it found that only 1060 vacancies out of 4777 were filled. Besides, at the particular point of time there were 295 vacancies also to be filled in through employment exchanges. Again, there was 10 years delay in bringing an Act in to operation for want of rules.

The major reasons for this state of affairs were executive lapses, executive irresponsibility and adamant attitude of the executive. As a general rule, replies to committee queries should be submitted to the legislature secretariat within three months. But, there was an instance of 9 years delay in getting replies by the Committee. On many occasions, the Committee received the conventional reply,
being considered\textsuperscript{46}. All these show clear instances of executive lapse of unprecedented level. Again, certain irregularities, for example, were found in the KSRTC\textsuperscript{47}. Mr. Vijayan, an employee of the KSRTC had availed a car loan without executing proper bonds and availed NRA without proper sanction. When the Committee directed the KSRTC to produce his NRA files, the corporation answered that they were found missing\textsuperscript{48}. This ‘exemplary’ reply is truly indicative of the adamant attitude of the executive.

In the survey conducted among legislators, to the question- ‘whether reports of committees especially scrutiny committees are given due weight by the executive’- out of a total of 30 participants about 26 constituting 86.67\% responded in the negative. Similarly, on the question of executive lapse impairing committees efficiency, 83.34 percent responded positively.

Thus, when the contextual factors discussed above are brought in relation with the findings of empirical data, it is found that operationally, the Committee on Government Assurances, which the investigator selected as one of the models of scrutiny committees, (the other being the Committee on Subordinate Legislation), doesn’t conform to standards of efficiency. But in terms of composition, what is there at present is felt satisfactory only. In an effort to increase structural efficiency certain changes are desirable.
B. LEGISLATIVE SCRUTINY AT THE OUTPUT STAGE

An executive with overwhelming powers, that too legislative and quasi-judicial, is a hard reality in all parliamentary countries. It can neither be allowed as such nor avoided. The via-media or the parliamentary balance is effected, at least in the matter of legislation, by the Committee on Subordinate Legislation. Thus under circumstantial pressures, the rule application agency is permitted to exercise rule making power. But the Committee avoids the factual situation of the executive subjugating the legislature.

Rule making power “...is the distinguishing badge of the sovereignty of a legislature”\(^49\). In the contemporary world, delegated legislation is a common phenomenon. “With the growing range and complexity of governmental activities in the present day, legislation is no longer the simple affair that it used to be”\(^50\). Complex and technical nature of modern administration altogether make it difficult for the legislature, as a body of professional politicians, to concentrate on all aspects carefully and clearly. There has been a tremendous change in the sphere of state activity. The legislature, therefore, found it practically impossible to concentrate on all items in detail. Thus “... it really is impossible in modern conditions for Parliament to set out in an Act all the details of administration for legislation...”\(^51\). Similarly, a crisis
situation may call for immediate and timely response which the legislature can neither anticipate nor respond quickly. Here also delegated legislation is preferable. Moreover, a statute is not susceptible to adaptation as an executive order. On that score too delegated legislation has come to stay. Legislatures all over the world are thus compelled to lay down the broad principles and leave the details to be supplied by the executive. This has come to be referred by the nomenclature-delegated legislation or subordinate legislation. It is known to have merits and prone to vices. Flexibility, as stated, is its greatest merit. Further, members of the executive being professionals, possess more expertise than the legislators.

The chief risk associated with delegated legislation is that the legislature under constraints makes only the skeleton, leaving wide discretion "...not only to work out matters in detail, but also to regulate matters of substanting nature which may closely affect the rights and interests of citizens". Secondly, officials in their enthusiasm to achieve a definite goal may ignore the human element. But the worst thing arises from the absence of a precise definition of the power delegated with the result that the executive may stretch beyond the legislative imagination. At this juncture the Committee on Subordinate Legislation comes in for help. In India, its antecedents dates back to 1 December 1953. So far as the State of Kerala is concerned, it was established for the first time in 1954 in the former state of Travancore – Cochin.
A Committee on Subordinate Legislation is provided by Rules of Procedure of the Kerala Legislative Assembly. Institutionally a nominated committee, it consists of not more than nine members. The speaker constitutes the Committee at the commencement of the Assembly or from time to time as the case may be. No minister can be a member of the Committee. If any member of the Committee is appointed a minister, he ceases to be a member of the Committee.

The task for which the committee is constituted is to exercise an element of inflexible and steady control over the executive. Therefore, it is called upon to scrutinise and report to the assembly whether the power to make rules, regulations, sub rules etc. conferred by the Constitution or delegated by the legislature or by the Parliament on the State government are being properly exercised. In view of the particular nature of work, sometimes an epithet - 'the legal committee' - is attributed to it which it truly deserves. To speak precisely, its duties are to see:

(a) Whether the rule made by the executive is in agreement with the parent statute;

(b) Whether they directly or indirectly bar the jurisdiction of the courts;

(c) Whether they give retrospective effect to any of the provisions in respect of which the statute does not give express authority;

(d) Whether they contain provisions for imposition of tax;
(c) Whether they involve expenditure from the Consolidated Fund or Public Revenues; and

(f) Whether there is unjustifiable delay in the publication of rules or laying them before the assembly.

Right from the time of the I KLA down to the days of the X KLA, it presented a total of 88 reports ⁵⁹ (see Figure 3.2). For the period under study, the Committee on Delegated Legislation, for the first time,

Fig. 3.2.
concentrated on an instance in which the rule made by the executive was found to be inconsistent with the parent Act. As per Sections 203, 208 and 254 of the Kerala Panchayath Raj Act (Act 13 of 1994), the Government of Kerala made the Panchayath Raj (Building Taxes and Surcharge thereon) Rules, 1996. It was published in the gazette as G.O.P. No. 73/96, Local Self Government, Trivandrum dated 28 March 1996. Rule 6(2) of this 1996 Rules was found inconsistent with the parent Act. This rule made it mandatory on the part of tax payers to pay the tax assessed thereon in full on or before 31 October every year. Those who failed to comply with this rule was liable to pay interest @ 2 percent on the defaulted payment.

Therefore, the Committee decided to elicit explanation from the Secretary, Local Self Government. He explained that the Rules were made under the impression that the bill seeking to collect interest on defaulted payments were passed. The Committee therefore, recommended that Rule 6(2) of the Kerala Panchayath Raj Act, since contrary to the provisions of the Act itself and opposed to the principles and objectives of the Kerala Legislative Assembly should be deleted.

The second instance on which the Committee concentrated its attention was an ‘executive drama’ in which the villain, the Personnel and Administrative Reforms Department (P and ARD) usurped the powers of the hero, the Tourism Department. While on routine scrutiny, the Committee was struck by Rule No. 380/93 of the P and ARD, as per which appointments to the Kerala House was set apart from the purview of the Kerala Public Service Commission (KPSC). Moreover, there was
no stipulation as to any alternate arrangement in the order. As if a blessing in disguise at this material time, employees of the Kerala House, Delhi preferred a petition to the Committee on the question of their conditions of service.

In his reply to the Committee the Joint Secretary, P and ARD stated as follows: (i) appointments in the Kerala House were made by the Delhi Employment Exchange; (ii) reservation rules existing in the capital city of Delhi might have been followed; and (iii) there was no more vacancies in the Kerala House in the near future. But, against evidence adduced as point number three, the Mathrubhumi Daily dt 2nd November, 1996 carried an advertisement inviting applications for certain posts in the Kerala House.

After careful scrutiny, the Committee recommended that:

(a) Since the P and ARD had neither any authority nor any role to play in relation to the Kerala House, the concerned officer of the Department had no authority to invite application to fill in vacancies in the Kerala House; (b) As per the existing rules and procedure, appointment, control and overall administration of the Kerala House is vested with the Tourism Department. But, allotment of rooms was the responsibility of the Pand ARD. The Committee stood for the abolition of this practice and strongly recommended that the Kerala House in respect of its entire administration, should be brought under the Tourism Department; (c) Appointments should be entrusted to Delhi Employment Exchange, but subject to observance of reservation rules as existing in Kerala; and (d) All those appointments made during the 1981 should be regularised.
The subject matter of the third report of the Committee was both unique and novel. It not only reminded us but also reinforced in our minds the role of the legislature as the ventilator of public grievances and that of the Committee’s status as the arbiter of the rights of the people.

The contextual situation was offered by the petition which the non-teaching staff of certain corporate colleges preferred before the Hon’ble speaker and his reference to the Committee. The whole issue arose out of an interpretation given to the Rule: “The provisions of this Chapter shall, so far as may be, apply to the non-teaching staff of the private colleges.” The government gave an interpretation in such a way as to help the managers.

After adducing evidence from different sources whose interests were affected, the Committee concluded that in all such instances an interpretation beneficial to those whose interests were involved should be adopted. Consequently it recommended the government to interpret the rule in question to the benefit of the employees.

Executive caused delay in the implementation of its own recommendations for a period of 7 years was traced out by the Committee in its fourth report. To give effect to the provisions of the Plantation Labour Act (Central) 1951, the Government of Kerala made the Plantation Rules. The then committee undertook a scrutiny of this rule and submitted its report to the VIII KLA. The X KLA Committee on Subordinate Legislation convened a meeting of the Labour Department
to discuss the reason why the recommendations were not implemented even after seven years. Therefore, the Committee decided to have a second scrutiny.

In pursuance to the study the Committee recommended that since the plantation labourers were not educated and they did not know English, the rules should be translated in their vernacular and made available to the Legislature Secretariat within 3 months. The Committee also urged the government to take immediate steps to ensure the quality of pesticides and insecticides used in plantations. It should be eco-friendly and free from any health hazard. To assess and fix the minimum health hazard level, the Committee directed the government to spare the service of chemists. Besides, medical benefits to the labourers and educational benefits to their children were directed to be provided by the Committee.

In this report, the Committee concentrated on a lengthy scrutiny covering Standing Rules and Orders (SROs) issued under the various Acts during 1993, 1994 and 1995. After scrutiny of 1993 SROs, the Committee issued two general directions and sought further explanation from the government on four SROs. Firstly the Committee concentrated on the mode of SROs. With respect to this the Committee directed that the explanatory note should clearly state whether the draft rules had been placed before the Subject Committee concerned and their approval obtained. Secondly, it urged the government to initiate steps to compile all SROs issued during a year and make it available to important libraries.
for the information of the public. The major SROs on which the Committee sought further explanation from the government were SRO No. 37, SRO No. 622, SRO No. 796 and SRO No. 1720.

The legal question that arose in the contest of SRO No. 37 was whether a preliminary notification can be published as SRO. The Committee answered in the negative and directed the government to issue the final notification at the earliest. The second SRO published during 1993 was related to acquisition of land for the Kayanna Post Office. In the explanatory note, it was stated that the acquisition was withdrawn for the time being at the request of the Postal Department. Naturally, the government is to compensate the land owner for default as per section 48(2) of the Land Acquisition Act. Therefore, the Committee sought information as to (i) whether any compensation had been paid and (ii) whether the proceedings were resumed later. The government replied that they had neither compensated nor resumed the proceedings.

SRO No. 796 was in relation to the acquisition of land for a drainage cum irrigation project in Malapuram District. In the explanatory note, it was stated that the said land was no more required and the project was withdrawn. The Committee sought information on the following points:

(a) The circumstances under which the notification was issued and later dropped;
(b) Whether the project had been completed or abandoned; and
(c) Whether the government had incurred any loss by way of compensation.

The government in their reply pleaded that acquisition proceedings were dropped because of a change in alignment proposed by requisitioning authority. Therefore, the project would be implemented on a revised alignment. Further, the Committee was informed that there was no loss to government.

The reason for which the Committee sought an explanation from the government in relation to SRO No. 1720 was the absence of proper clarification in the explanatory note. This SRO was issued by the government in suppression of SRO No. 1400 by which Shri Mathew Idikkula, Advocate, Kollam, was appointed as Special Public Prosecutor in Crime No. 317/CR/92 of the Crime Branch, Kollam. Vide SRO No. 1720, Shri. Mathew Idikkula’s services were terminated and Sree Sastamangalam G.Gopalakrishnan Nair was appointed in his place. But the reasons were not setforth in the explanatory note.

For scrutinising the SROs issued during 1994, the Committee held eight sittings. Some of the major SROs, SRO No. 1554 and 1569, in respect of which the Committee undertook scrutiny related to the amendment of the Pharmacy Act, 1948 (Central Act 8 of 1948). Therefore, the Committee recommended that the department should take special care to avoid duplication in future.
To complete the 1995 scrutiny of SROs, the Committee held six sittings. While examining the SROs issued in relation to the Commission of Enquiry Act, 1952, the Committee expressed their dissatisfaction on the practice of extending the term of enquiry commissions. The Committee condemned this practice and said: "...this should be resorted to only on special circumstances." It further emphasised the need to set forth the reasons for such extensions in the explanatory note itself.

In a letter to the Secretary, Kerala Legislative Assembly, Trivandrum, Shri. Jose Thomas Padinjarakara, Municipal Chairman, Palai, requested the attention of the legislature to SRO No. 901 of 1997 which stipulated that while fixing tenders at PWD rate, contractor's profit should be excluded. In his letter, he explained that since contractor's profit was excluded no one was willing to take up work. While deposing before the Committee, the Additional Secretary, Local Self Government, informed it that necessary changes were made in this regard and notification issued in March 1999 itself.

In another instance, the Committee examined the SROs issued during 1996 under various Acts. The Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, Commission of Inquiry Act 1952, Kerala Toddy Workers Welfare Fund Act, 1969 etc. are some of the examples which the Committee scrutinised. Apart from making certain specific recommendations in relation to certain specific Acts and SROs made under them, the Committee placed two worthy recommendations
before the Assembly: (i) As required by Rule 238\textsuperscript{75} all rules shall be placed before the appropriate subject committee in draft form itself; (ii) Wherever it is not possible, the Committee strongly recommended that the reasons which compelled the issuance of the rule without prior scrutiny should be mentioned in the explanatory note itself\textsuperscript{76}. In the light of large number of spelling mistakes in different SROs the Committee urged the government to take special care to avoid such mistakes.

The Government of Kerala, in exercise of power conferred on them under sections 229, 230 and 231 read with section 254 of the Kerala Panchayath Raj Act, 1994 made the Kerala Panchayath Raj (Slaughter Houses and Meat Shops) Rules, 1996 and notified it as SROs NO. 289/96. Accordingly, both permission and control of slaughter Houses and meat shops came to be vested with the local bodies. Regulation in this field came in the form of licensing. But, the Committee found that this rule was more flouted than observed\textsuperscript{77}. This has resulted in environmental problems and health hazards\textsuperscript{78}. Therefore, the Committee recommended that authorised slaughter Houses and meat shops should be established as visualised by the Animal Husbandry Department in conjunction with the Agricultural University.

The Committee also found certain shortcomings in the above Rules. For example, the Rules practically kept its mouth closed in relation to disposal of wastes and preventing environmental pollution. So it urged the government to work in conjunction with the local bodies in this direction.
Next, the Committee in the wake of liquor tragedies, especially at the gravity of the last one in this series at Kalluvathukkal, felt the necessity to regulate the sale and possession of poisons particularly, those which are used as adulterants in liquor. Upon scrutiny, what the Committee found to its utter surprise was a legal-vacuum created by the Hon'ble High Court of Kerala at its intervention and delay contributed by it. Both methyl alcohol and chloral hydrate, major adulterants, were included in the Kerala Poison Rules, 1996, which were issued as SRO No. 270/96. Consequently, the sale as well as possession for sale of these two poisons in the state were controlled by the Kerala Poison Rules, 1996.

On an Original Petition (OP) filed by the professionals and private medical practitioners, the Hon'ble High Court of Kerala stayed its implementation by an order dated 15 October, 1996. The initial stay of one month was subsequently extended until further orders. As such, at the material time there was no law to regulate and control the sale, possession etc of these two items. The Committee expressed grave concern at this situation and said: "... such a grave situation cannot be allowed to continue". Hence it recommended that the Health and Family Welfare Department should pursue steps to dispose off the original petition at the earliest.

The Committee's choice of scrutiny next was on SROs issued during 1998 under various Acts. The scrutiny mainly concentrated on the SROs issued in relation to the Abkari Act, 1077(ME), Bonded

In respect of the Commission of Inquiry Act, 1952, the Committee reiterated its earlier recommendation that the term of the Commission of Inquiry in no case be extended beyond one year\textsuperscript{83}. While scrutinising the SROs, it noticed that Sree Sankaracharya University’s First Statute, 1997 was published by the Registrar of the University instead of government vide notification no. Regr/stat/5/97 dt. 15 May 1997 without assigning SRO number. In this regard the Committee took evidence from the Principal Secretary, Higher Education Department and Secretary, Law Department.

The Principal Secretary informed the Committee of a 1995 decision of the Hon’ble Supreme Court which laid down that “whenever the syndicate of a University has been constituted, thereafter the syndicate is the competent authority to make the First Statute in respect of that university and not government”\textsuperscript{84}. On the material question of not assigning number to the SRO, the Law Secretary stated that since the notification was caused to be published by the Registrar, no number had been assigned to it. Finally, the Committee concluded in favour of the inclusion of a provision for covering the Supreme Court Judgement in the various university statutes.
From 1996 to 2001, the Committee on Subordinate Legislation had presented 11 reports. Four of such reports dealt exclusively with SROs. The increasing relevance of the Committee is visible from the number of reports that it presented to the House. From a bare three reports at the time of the I KLA, the Committee was called upon to submit 11 reports during the tenure of the X KLA.

Some of the common problems that the Committee identified in its scrutinies in the midst of executive riddles in administration were:

(i) Inconsistency between the SRO and Parent Act,

(ii) Inconsistency in the format of the SROs,

(iii) Absence of proper clarification in the explanatory notes,

(iv) Duplication of SROs and

(v) Omission of allied and urgent matters.

Firstly, the Committee pointed out a very serious instance of arbitrary conduct of the executive. That is, in exercising the rule making power, the executive far exceeded the limits of delegation in respect of the Kerala Panchayath Raj(Building Taxes and Surcharge thereon)Rules, 1996. Hence the Committee recommended to delete Rule 6(2)\textsuperscript{85} of Panchayath Raj (Building Taxes and Surcharge thereon) Rules, 1996.

The second major executive evil that the Committee projected was inconsistency in the format of SROs. Therefore, it directed the departments to set forth in the explanatory note the fact as to the
submission of the draft rule before the subject committee concerned and whether their approval obtained. In regard to SRO number 37/93, the Committee found that the government violated the procedure. It made a preliminary notification only under the Kerala Ancient Monuments and Archaeological Sites and Remains Act, 1968, so as to declare the cave at Pilicode Village in Kasaragode District a protected monument. This was found against the normal procedure. Therefore, the Committee directed the department to publish a final notification\(^6\).

Thus understood, the various reports of the Committee bear evidence to the effect that there were lapse on many occasions on the part of the executive. While scrutinising the SROs, the Committee on more than one occasion, directed the executive not to resort to the routine practice of extending the term of the commissions of inquiry constituted under the Commission of Inquiry Act, 1952. Similarly, the lapse was visibly manifested in the context of absence of proper clarification in the explanatory notes of the SROs. Despite the Committee’s recommendations in the fifth report in relation to SRO No. 1720/93 towards this effect, the same fault was repeated in the context of SRO No. 915/96, i.e., even after three years. But the gravest instance of lapse was related to the publication of a number of SROs coming under various Acts under a single notification. This lapse even assumed the form of omission of certain primary factors from the SRO itself. When the government made the Kerala Panchayath Raj (Slaughter House and Meat Shops) Rules 1996, the department omitted to specify disposal of wastes and environmental problems that it may cause. The subject matter dealt with by the Committee in its first report itself is more than enough to prove the irresponsible nature of the executive action.
Certain facts acknowledged from the survey reports are also validating this fact. On the question as to the weight attached to scrutiny committees' reports by the executive, 86.67 percent of the sample opined that the executive didn't confer the deserving importance to the reports. Only 13.33 percent spoke favourably. Similarly, on the question of executive lapse affecting committees' efficiency, the survey revealed that 83.34 percent responded positively while the percentage of negative respondents was 13.33 only (see Table 3.3).

Table 3.3

Response on the Effectiveness of Reports of Committee on Subordinate legislation

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Response</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Effective</td>
<td>4</td>
<td>13.33</td>
</tr>
<tr>
<td>2.</td>
<td>Not Effective</td>
<td>25</td>
<td>83.34</td>
</tr>
<tr>
<td>3.</td>
<td>No Answer</td>
<td>1</td>
<td>3.33</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>30</td>
<td>100</td>
</tr>
</tbody>
</table>

When these facts and figures deduced from the survey are applied in the individual context of the Committee on Subordinate Legislation, it is found that cumulatively all these causes are found to reduce the standard of efficiency of this committee as expected at the operational level. Organisational pattern is comparatively satisfactory, though not up to the standards of efficiency. A committee like this cannot contend itself with its nominated status. It should be made an exact replica of the House. All these are necessary to make it a viable check in the context of a preponderant executive.
Notes and References


5. Ibid, Rule 259.


7. Ibid, Second Report, p. 1: Of this total, 1060 vacancies had been filled by the PSC. Also, there were 295 vacancies to be filled in by the employment exchanges.


10. Ibid, p. 2: Since rebate was determined in proportion to sales output, the benefits of rebates actually went to the hands of outside state agencies and private agencies operating in this field.
15. See Ibid, p.2., The syllabi and curriculum were prepared by an outside agency at Bhopal.
20. Ibid: Total forest land area encroached after 1 January, 1997 was 6218 hectares. Of this 1625 encroachments were evicted and 4593 hectares still remain to be evicted.
21. See Ibid, p.7: Punishment awarded as on date of this Report was imprisonment up to one year not exceeding five years and fine up to Rs. 1,000 not exceeding Rs. 5,000.

26. See Ibid, pp.17-18: Three replies given by the department were found unsatisfactory to the Committee. Hence, the Committee sought further explanation.


28. The recommendations of the Committee on this point were incorporated in the Third Report of the IX KLA. This Report is not discussed in the chapter since it formed the subject matter of investigation prior to the period of study.

29. The Third Report of the Committee on government Assurances, IX KLA was based upon an assurance evolved out of a reply to a question at the ninth session of IX KLA.

30. Ibid, Eleventh Report, p.3.


32. Ibid.

33. Ibid, p.2.


35. Ibid, Introduction: on 17 April, 2000, the Committee met at Trivandrum, in which Secretary, Department of Irrigation, Managing Director, Kerala Water Authority and Director, Ground Water Department appeared and adduced evidence.


37. Ibid, p.11.
38. See Supracited Note 3, p.276.
39. Supracited Note 6, p.2.
41. Supracited Note 8, pp. 4-5.
42. Supracited Note 7, p.1.
43. Supracited Note 6, p.2.
45. Ibid.
46. Ibid, p.2.
47. See Supracited Note 30, pp.1-5.
48. Ibid, p.3.
53. Supracited Note 4, Rule, 253.
54. Ibid, Rule, 254.
55. Ibid.
56. Ibid, Proviso

59. See Supracited Note 3, p.276.

60. See X KLA;*, *Committee on Subordinate Legislation*, First Report, pp.3-4, Appendix .1.

61. See Ibid, pp.5-17, Appendix.2.


68. See Ibid,pp.6-7.


71. Ibid, p.35.

72. See Ibid, Sixth Report,pp.5-6, Appendix.1.


75. Supracited Note 4, Rule, 238.


77. Ibid, Eighth Report, p.3.

78. Ibid, p.3.


80. See Ibid, p.5.: Professionals and Private Medical Practitioners challenged it on the ground that the provision in Rule, 7 of the 1996 Rules, if implemented would adversely affect their bonafide professional interest.


83. Ibid, p.12.

84. Ibid, p.22.


86. See Supracited Note 22.