

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FOURTH LOK SABHA)

SEVENTH REPORT

(Presented on the 16th December, 1970)



**LOK SABHA SECRETARIAT
NEW DELHI**

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LOK SABHA SECRETARIAT

Corrigenda to the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha).

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1970-71)

Shri Anand Narain Mulla—*Chairman*

2. Shri J. B. S. Bist
3. Shri Krishna Kumar Chatterji
4. Shri N. T. Das
5. Shri Tukaram Hurji Gavit
6. Shri Shri Chand Goyal
7. Shri K. M. Koushik
8. Shri V. Krishnamoorthi
- *9. Shri Vikram Chand Mahajan
10. Shri M. Meghachandra
11. Shri V. Viswanatha Menon
12. Shri N. K. Sanghi
13. Shri Shantilal Shah
14. Shri B. Shankaranand
15. Shri Ram Sewak Yadav.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

* Nominated by the Speaker on the 31st July, 1970 *vice* Shri Bishwanath Roy
ceased to be a member of the Committee on his appointment as a Deputy Minister.

SEVENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on its behalf, present its Seventh Report.

2. The Committee held two sittings on the 26th November and 15th December, 1970 and considered several 'Orders'. Observations of the Committee on the following matters, which require to be brought to the notice of the House, are embodied in this Report:

- (i) The Law Officers (Conditions of Service) Rules, 1967.
- (ii) Engineering Supervisors (Recruitment and Training) Rules, 1966 (G.S.R. 1264 of 1966).
- (iii) The Indian Standards Institution (Certification Marks) Amendment Regulations, 1968 (S. O. 3111 of 1968).
- (iv) Rules for the custody and handling of exhibits in the Salar Jung Museum and Library, Hyderabad.
- (v) Central Water Engineering (Class I) Service Rules, 1965 and Central Power Engineering (Class I) Service Rules, 1965 (G.S.Rs. 1596 and 1597 of 1965).
- (vi) Bye-laws for the regulation and control of loud-speakers in Dagshai Cantonment (S.R.O. 271 of 1967).
- (vii) Bye-laws for regulating the registration and classification of contractors to carry out Cantonment Board Works in Ambala Cantonment (S.R.O. 47 of 1968).
- (viii) Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 (S.O. 2560 of 1967).
- (ix) Amendments to the Exports (Control) Order, 1968 (S.Os. 3717 and 3726 of 1968).
- (x) Giving of Retrospective Effect to 'Orders'.
- (xi) Disparities in Cantonment Board Bye-laws.

- (xii) Action taken or proposed to be taken by Government on various recommendations of, and assurances given to, the Committee on Subordinate Legislation.

3. The Committee considered and adopted this Report at its sitting held on the 15th December, 1970.

II

THE LAW OFFICERS (CONDITIONS OF SERVICE) RULES, 1967

4. Article 76 of the Constitution of India provides for the appointment of Attorney-General for India to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. It further provides that the Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

5. The rules for regulating the remuneration and duties of the Attorney-General of India were first issued in 1950 (*vide* Ministry of Law Notification No. F.43/50-C, dated the 26th January, 1950, published in the Gazette of India, Extraordinary, dated the 28th January, 1950). The authority under which these Rules were framed (*viz.* Article 76) was duly quoted in the preamble. Subsequently, the offices of the Solicitor-General of India and the Additional Solicitor-General of India were created. Separate sets of terms and conditions were formulated in relation to these offices which were only Executive offices *vis-a-vis* the office of the Attorney General of India, which was a Constitutional office.

In 1961, the Rules for regulating the duties, remuneration and other conditions of service of all the three Law Officers, namely, the Attorney-General, the Solicitor-General and the Additional Solicitor-General were consolidated. These were revised from time to time; the last set of these Rules was issued in September, 1967, in supersession of the earlier Rules.

6. During the course of examination of these Rules, the Committee noticed that:

- (i) except the original notification which was published in the Gazette of India in 1950, no Rules framed subsequently had been published in the Gazette; nor had any G.S.R. number been given to them; and

- (ii) The authority under which these rules had been framed was not quoted in any of the subsequent Rules, as had been done in the original notification of 1950.

7. The Ministry of Law (Department of Legal Affairs), to whom the above points were referred for elucidation, *inter alia*, stated as follows:

"...in 1961 it was considered better to consolidate the terms and conditions of appointment of all the three Law Officers, namely, the Attorney-General, the Solicitor-General and the Additional Solicitor-General. Such terms and conditions were, therefore, consolidated for the three officers and after approval by the Cabinet the incumbents of these three posts were appointed on the basis of such terms and conditions. It was not considered necessary to publish these terms and conditions as there is no requirement of law in this regard.

There could possibly be no reference to Article 76 of the Constitution in relation to the terms and conditions of the three Law Officers because the Solicitor-General and the Additional Solicitor General were not appointed under that Article. That Article applied only to one of the three Law Officers, namely, the Attorney General but the fact that the terms and conditions did not specifically refer to that Article is of no consequence because so long as power is available under that Article to appoint the Attorney-General and prescribe his terms and conditions it is unnecessary to quote that Article."

8. The Committee has been repeatedly stressing* the need for citation of exact statutory authority in the preamble to the 'Orders'. One of the arguments put forth by the Ministry of Law for not giving effect to the above recommendation of the Committee in this case is that so long as the power to make appointment and to prescribe terms and conditions is available, it is unnecessary to quote the relevant Article. The Committee is unable to accept this argument. It would like to re-stress that citation of exact Constitutional/statutory authority is necessary for enabling the Committee to examine whether an 'Order' has been made under due legal authority and within the limits laid down in the parent law.

* See para 76 of Sixth Report (First Lok Sabha), para 76 of First Report (Second Lok Sabha), para 8 of Second Report (Second Lok Sabha) and paras 37 and 38 of Third Report (Third Lok Sabha).

9. Another argument advanced by the Ministry of Law for not citing the statutory authority in this case is that while the terms and conditions of the Attorney-General derive authority from Article 76 of the Constitution, the terms and conditions of the other two Law Officers (viz., the Solicitor-General and the Additional Solicitor-General) do not derive authority from that Article. There is thus no single authority in regard to the terms and conditions of all the there Law Officers. To meet this difficulty, the Committee suggests that separate rules should be framed by the Ministry of Law (Department of Legal Affairs) for regulating the terms and conditions of service of (i) the Attorney-General of India, and (ii) other Law Officers—the former under Article 76 and the latter under Article 309, as is being done by Government in respect of other executive appointments. In the preamble to the Rules so framed, the exact statutory authority should be cited.

10. The Committee observes that except the original Rules regulating the remuneration and duties of the Attorney-General, which were published in the Gazette in 1950, none of the Rules relating to the terms and conditions of the three Law Officers framed subsequently by Government had been published in the Gazette. The explanation of the Ministry of Law for this is that there was no requirement of law in this regard. The Committee is surprised at this explanation. It is inexplicable that, while rules regulating the recruitment and conditions of service of all categories of Government employees (including the lowest one) framed by Government under the proviso to Article 309 of the Constitution are published in the Gazette, rules relating to the terms and conditions of the highest Law Officers of Government should not have been published by Government for public information on a technical plea of absence of legal requirement. It is unnecessary for the Committee to point out that so far as the question of legal requirement for publication is concerned, there is hardly any difference between the Rules framed under Article 76 and those framed under proviso to Article 309. The Committee desires that all Rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for public information.

III

ENGINEERING SUPERVISORS (RECRUITMENT AND TRAINING) RULES, 1966 (G.S.R. 1264 of 1966)

11. Dr. G. S. Melkote, M.P. brought to the notice of the Committee the following issues regarding modifications made in the rules relat-

ing to recruitment to the Cadre of Engineering Supervisors in the P. & T. Department:

- (i) the old Rules in force before the promulgation of the Engineering Supervisors (Recruitment and Training) Rules, 1966 provided that officials who had rendered 3 years' continuous service in their respective cadres were eligible to appear as Departmental candidates in the competitive examination for appointment to the Cadre of Engineering Supervisors. The amended Rules raised the limit of 3 years' service to 5 years' service. This had denied the opportunity of appearing in the examination to some of those who were eligible under the old Rules;
- (ii) any amendments to Rules, having a restrictive effect, might be made applicable to those employees who were recruited after the date of the amendment but not to those who were already in service. The original conditions of eligibility should, therefore, be restored in case of those employees who were already in service on the date of the amendment; and
- (iii) amendments to the Engineering Supervisors (Recruitment and Training) Rules, 1966 had not been notified in the Gazette.

12. The Committee considered the following reply of the Directorate General of Posts & Telegraphs to whom the matter was referred for comments:

"... the point about reduction in service limit as prescribed in Rule 16 of Engineering Supervisors (Recruitment and Training) Rules, 1966 referred to by Dr. G. S. Melkote, M.P., is not a new one and has been considered a number of times at the initiative of the staff representatives either in correspondence or in interviews granted to them by the Chairman, P. & T. Board and other senior officers of the Board.....

... As per Engineering Supervisors (Recruitment and Training) Rules, 1959, officials who had rendered not less than three years' continuous service and had not more than nine years' permanent service in one or more of the eligible grades/cadres could compete in the departmental examination for appointment to the cadre of Engineering Supervisors. In 1962 when the question of reviewing the Rules was under consideration, the All India Telegraph

Engineering Employees Union, Class III in their letter dated 26th May, 1962 proposed as under:

'eligibility to appear in examination should have the condition of five years of service as in vogue now so as to avoid unfair competition between the 'young' and senior officials'

In support of the above proposal they put forward the following arguments:

'We do not find it advantageous to allow persons with 3-4 years of service to appear in examination as they do not acquire even an *aptitude towards the services* within such a short period. These officials, because of less or no family responsibilities in comparison to older officials, are always busy in pursuing studies 'in their own interest' by habitual absenteeism and deprive the Department to utilise them for the purpose for which they are employed. It was in fact in partial recognition of this situation that orders were issued to refuse permission for joining academical institutions in the first three years of service.'

The above proposal which had originated from the representatives themselves, was given due consideration of the Department by the P&T Board and was approved as there were merits in the arguments. In the new Rules when finalised, provision to this effect was given to in Rules, 16 and 17. . . . The service limit of 5 years has been laid down by us to ensure that the officials do work in these grades for some time with a sense of stability and continuity.

Dr. Melkote has referred to amendments issued in October, 1966 and in November, 1968. It will be seen from October, 1966 letter that it contained certain concessions in relaxation of Rules 16 and 17 of the Engineering Supervisors (Recruitment and Training) Rules, 1966, which had been arrived at in consultation with the staff representatives themselves. The decisions contained in November, 1968 letter are based on the unanimous views of the staff representatives and the Departmental representatives in the P&T Department Council (J.C.M.). . . It is, however, a fact that decisions contained in the two letters referred to above could not be notified in the Official Gazette yet.

A draft notification incorporating all amendments is already under finalisation in consultation with the Ministry of Home Affairs and the Ministry of Law for some time past and a copy of the same would be forwarded to the Lok Sabha Secretariat in due course for perusal of the Committee on Subordinate Legislation'.

The P&T Board has since published these amendments (*vide* G.S.R. 124 of 1970, dated 24th January, 1970).

13. The Committee observes that, as a result of certain modifications in the Engineering Supervisors (Recruitment and Training) Rules, 1959 made by the P&T Department, some employees of that Department, who were initially eligible to appear as departmental candidates in the competitive examination for appointment to the Cadre of Engineering Supervisors, had been rendered ineligible. The reasons adduced by the P&T Department for making these modifications are hardly convincing. The Committee feels that amendments to Rules, which are likely to have the effect of denying or curtailing the existing opportunities available to employees, should not be brought forward, save for compelling reasons.

14. The Committee regrets to note that amendments to the Engineering Supervisors (Recruitment and Training) Rules, 1966 made in October, 1966 and in November, 1968, were not published in the Gazette till January, 1970 and that too, only after the matter had been taken up by the Committee with the Department. The Committee need hardly point out that unconscionable delays in publication, as in the present case, defeat the very object of publication. The Committee trusts that the P&T Department will take care to avoid such delays in future.

IV

THE INDIAN STANDARDS INSTITUTION (CERTIFICATION MARKS) AMENDMENT REGULATIONS, 1968 (S.O. 3111 OF 1968)

15. During the course of examination of the Indian Standards Institution (Certification Marks) Amendment Regulations, 1968 (S.O. 3111 of 1968), the Committee noticed that:

- (i) the fees for grant of licence, renewal of licence and annual licence fee under regulation 7 of the I.S.I. (Certification Marks) Regulation, 1955, as amended from time to time, had been increased by 100 per cent *vide* S.O. 3111 of 1968;
- (ii) Clause (e) of sub-section (2) of Section 20 of the I.S.I. (Certification Marks) Act, 1952 lays down that the levy

of fees for the grant or renewal of any licence may be provided for in the rules to be framed by the Central Government under that Act; and

- (iii) sub-section (1) of Section 21 of the aforesaid Act also confers power on the Indian Standards Institution to make regulations, not inconsistent with the provisions of the Act and the rules made thereunder. Sub-section (2) thereof further lays down that in particular all or any of the matters specified in clauses (a), (aa), (b) and (f) of sub-section (2) of Section 20 may be provided for in the regulations. Sub-section (2) of Section 21 does not make any mention of matters specified in clause (e) of sub-section (2) of section 20 (i.e. those relating to levy of fee).

It was, therefore, felt that the provision in Rule 6 delegating the power to prescribe fees in regulations and Regulation 7 prescribing such fees, were inconsistent with the provisions of the principal Act.

16. In this connection, the Committee considered the following reply furnished by the Ministry of Industrial Development, Internal Trade and Company Affairs (Department of Industrial Development), to whom the matter was referred for comments:

- (i) "To augment the financial resources of the ISI for the operation of the Scheme, particularly in view of the assurance given to the Parliament at the time of enactment of the Indian Standards Institution (Certification Marks) Act, 1952 about the self-supporting base of the Scheme, it was felt that rising expenditure in every sphere demanded a general rise in some of the fees prescribed in Regulation 7 of the ISI (Certification Marks) Regulations, 1955. The main reasons for increasing these fees had been the overall increase in the expenditure during the last 14 years since the enactment of Regulations in 1955. It may be stated that the unit value which was Rs. 943.00 in 1955-56 has steadily increased to Rs. 1550.00 in 1967-68. The unit value for 1969-70 has been estimated at Rs. 1725.00. This means that for giving the same services, which were offered at that time, the ISI has now to spend almost double. It was due to the above reasons that the application fees had to be raised from Rs. 50.00 to 100.00, renewal application fee from Rs. 25.00 to Rs. 50.00 and licence fee from Rs. 100.00 to Rs. 200.00.

It may also be mentioned that no increase is being contemplated in the rate of marking fees which are fixed and

gazetted for each item, and according to which licensees pay the marking fee to the Indian Standards Institution based on the quantum of annual production marked under the Scheme. Marking fee comprises the major part of the financial obligation of the licensees under the scheme. The acceptance of the increase in the application and licence fees by almost all the licensees justifies that this increase is negligible and commensurate to the services rendered under the Scheme."

- (ii) and (iii) "The points have been examined in consultation with the Ministry of Law who have expressed the view that the levy of fees has been left to be prescribed by the Indian Standards Institution, and that under the Indian Standards Institution (Certification Marks) Act, and the Indian Standards Institution Rules and Regulations made thereunder, the scheme of granting licence entertaining applications on proper forms alongwith prescribed fees shows that the Institution had to perform the functions independent of the Central Government. Keeping in view the advice given by the Ministry of Law in the matter, it is considered that there is no inconsistency in the operation of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations."

17. As regards the Regulation-making power of the Institution, the Committee notes that sub-section (1) of Section 21 confers general power on the ISI to make regulations, not inconsistent with the provisions of the Act and the Rules made thereunder. Sub-section (2) of that Section lays down the particular matters in respect of which regulations may be made by the Institution. These relate to (i) the procedure and manner in which a 'Standard' in relation to any article or process may be established and published, (ii) the procedure and manner in which any standard established by any institution other than the ISI in India or elsewhere may be recognised, (iii) the design of the Standard Mark in relation to each Standard and the particulars which a Standard Mark may contain, (iv) the mode of inspection by the Institution and the manner in which samples may be taken by it. This would indicate that under the scheme of Section 21, the Regulations to be framed by the Institution are generally to pertain to matters of detailed procedure.

18. The Committee has considered the matter in all its aspects. It feels that, even though, as held by the Ministry of Law, the Institution is not precluded from making regulations for prescribing fees, such Regulations are not in consonance with the spirit and

scheme of Section 21 of the principal Act. Even otherwise, the Committee feels that fees for grant of licences which have the effect of imposing a financial burden should be regulated through Rules, which are laid on the Table of the House rather than Regulations, which are not so laid. The Committee, therefore, desires that Government should consider the matter in the light of its foregoing observation.

V

RULES FOR THE CUSTODY AND HANDLING OF EXHIBITS IN THE SALAR JUNG MUSEUM AND LIBRARY, HYDERABAD

19. The Study Group of the Committee on Subordinate Legislation at its sitting held on the 21st September, 1968 had directed that an enquiry be made from the Ministry of Education whether there were any rules, bye-laws, etc. relating to the preservation and safe custody of antiquities and rare exhibits, precious jewellery, etc. in national museums.

20. The Ministry of Education who was asked to furnish the necessary information forwarded a copy of 'comprehensive rules' for the custody and handling of exhibits in the Salar Jung Museum and Library, Hyderabad. On examination of the above-mentioned 'comprehensive rules', the Committee noticed that they did not bear any short title; nor did they cite the authority under which they were framed.

21. The Ministry of Education to whom the matter was referred, *inter alia*, stated as under:

"The above quoted comprehensive rules are framed by the Salar Jung Museum Board under Regulation 33 of the Salar Jung Museum Regulations, 1962. These comprehensive Rules for the custody and handling of exhibits in the Salar Jung Museum and Library are not required to be published in the Gazette of India."

22. Regulation 33 of the Salar Jung Museum Regulations, 1962 under which the above quoted "comprehennsive rules" are stated to have been framed by the Board, reads as follows:

"The Director shall take such steps as may be deemed necessary for preparing scientific catalogues and inventories of books, manuscripts and other articles and things in the Museum and also for the proper preservation, subject to the general approval of the Board."

23. It was pointed out to the Ministry of Education that Regulation 33, as worded, did not provide for framing of "comprehensive rules". In this connection, the Committee considered the following reply of the Ministry of Education and Youth Services:

"Regulation 33 authorises the Director to take such steps as may be deemed necessary for preparing scientific catalogues and inventories of books, manuscripts and other articles and things in the Museum and also for their proper preservation, subject to general approval of the Board. The 'comprehensive rules' for the custody and handling of exhibits in the Salar Jung Museum have been framed under this Regulation by the Director with the approval of the Board. As these 'rules' for the custody and handling of exhibits are matters of detail and require frequent changes, it is not considered desirable that they be incorporated as such in the Regulations because otherwise any changes in these 'rules' will require amendment of Regulations which in turn will require frequent references to the Central Government. It is true that these 'rules' for the custody and handling of the exhibits are strictly speaking not rules but form part of the steps taken by the Director in accordance with and under Regulation 33 of the Salar Jung Museum Regulations, 1962. If it is considered desirable another suitable name such as 'directions' can be given to these 'comprehensive rules'."

24. The Committee notes that, as conceded by the Ministry of Education and Youth Services, strictly speaking the so-called "comprehensive rules for the custody and handling of exhibits in the Salar Jung Museum & Library" are not rules, but form part of the steps taken by the Director in accordance with and under Regulation 33 of the Salar Jung Museum Regulations, 1962. The Committee, therefore, feels that the naming of these "steps" as "Rules" is inappropriate, particularly as Section 27 of the principal Act provides for framing of Rules by the Central Government, in consultation with the Board, in respect of certain other matters.

25. Apart from the question of inappropriate expression, there is a more basic aspect of the matter involved. Sub-section (2) of Section 28 specifies the particular matters in respect of which Regulations may be made by the Board. The particular matters listed in the Sub-section include "steps to be taken for the preservation of the books, manuscripts and other articles and things in the museum". Under Section 28(1) of the principal Act, the Regulations to be

made by the Board require not only the previous approval of the Central Government, but are also required to be published in the Gazette of India. By specifying the "steps for the preservation of books, etc." in the directions (termed as 'Comprehensive Rules'), instead of in the Regulations, as envisaged in Section 28(2)(j), the Salar Jung Museum Board had not only circumvented the condition of prior approval of the Central Government but also done away with the statutory requirement of their publication in the Gazette of India. The Committee, therefore, desires that the matters specified in clause (j) of sub-section (2) of Section 28 of the Salar Jung Museum Act, 1961, should be regulated through Regulations rather than be left to be regulated by the Board of the Director through directions.

VI

CENTRAL WATER ENGINEERING (CLASS I) SERVICE RULES, 1965 AND CENTRAL POWER ENGINEERING (CLASS I) SERVICE RULES, 1965 (G. S. Rs. 1596 and 1597 of 1965)

(A)

26. The Committee noticed that rule 15 of the Central Water Engineering (Class I) Service Rules, 1965 provided as follows:

"If any question arises relating to the interpretation of these rules, the decision of the Government thereon shall be final."

The wording of rule 15 of the Central Power Engineering (Class I) Service Rules, 1965 was also the same.

27. The attention of the Ministry of Irrigation and Power was drawn to the following recommendation of the Committee on Subordinate Legislation contained in para 18 of its Fourth Report (Third Lok Sabha):

"18. The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulation, 1964, which reads as under:

"24. Interpretation of regulations.—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board'."

28. It was pointed out to the Ministry of Irrigation and Power that the Rules, as worded, were not in consonance with the aforementioned recommendation of the Committee on Subordinate Legislation, in that they gave an impression that the right of interpretation of Rules which should normally be vested in Courts had been taken away by the Executive. The Ministry of Irrigation and Power amended the above mentioned Rules (*vide* G.S.Rs. 489 and 490 of 1968) to read as follows:

"If any question arises relating to the interpretation of these rules, it shall be decided by the Government."

29. The Committee is glad to note that the Ministry of Irrigation and Power has accepted the suggestion made by the Committee and amended the Rules in question omitting the provision that the decision of Government on questions relating to the interpretation of the Rules shall be final.

(B)

30. Clause 6 of Schedule II appended to the Central Water Engineering (Class I) Service Rules, 1965 provided as follows:

"The Service Commission will summon at their discretion only those candidates whom they consider suitable for interview for the Personality Test."

The wording of clause 5 of Schedule II appended to the Central Power Engineering Rules, 1965 was also the same.

31. It was pointed out to the Ministry that the clauses, as worded, gave an impression that a candidate could be ignored for interview even if he had done very well in the written test. It was reasonable that all candidates, who secured prescribed quota of minimum marks, should invariably be called for interview for the Personality Test unless they were found to have violated or failed to have fulfilled some prescribed condition or conditions, which might be prescribed by the Union Public Service Commission in their discretion. The Ministry of Irrigation and Power amended the clauses in question (*vide* G. S. Rs. 489 and 490 of 1968) to read as follows:

"Candidates who obtain such minimum qualifying marks in the written examination as may be fixed by the Ser-

vice Commission at their discretion shall be summoned by them for an interview for a personality test."

32. The Committee is glad to note that the Ministry of Irrigation and Power has amended the clauses in question on the lines suggested by the Committee.

(C)

33. Clause 8 of Schedule II appended to the Central Water Engineering (Class I) Service Rules, 1965 reads as follows:

"From the marks assigned to candidates in each subject, such deduction will be made as the Service Commission may consider necessary in order to secure that no credit is allowed for merely superficial knowledge."

The wording of clause 7 of Schedule II appended to the Central Power Engineering (Class I) Service Rules, 1965 was also the same.

34. Attention of the Ministry of Irrigation and Power was invited to a similar provision occurring in paragraph 8 of Appendix II of the Mechanical Engineering and Transportation (Power) Department Recruitment Rules on which the Committee on Subordinate Legislation had commented as follows in paragraph 12 of its Fourth Report (Third Lok Sabha):

"...The Committee feel that the U.P.S.C. should not have the power to deduct marks arbitrarily after answer papers of a candidate have been assessed by the examiner, who is expected naturally to take all factors into account while assessing the answer papers."

35. The Ministry of Irrigation and Power amended the clauses in question (*vide* G.S.Rs. 489 and 490 of 1968) to read as follows:

"Marks will not be allotted for mere superficial knowledge."

36. The Committee is glad to note that the Ministry of Irrigation and Power has accepted the suggestion made by the Committee and suitably amended the clauses in question.

VII

BYE-LAWS FOR THE REGULATION AND CONTROL OF LOUD-SPEAKERS IN DAGSHAI CANTONMENT (S.R.O. 271 of 1967)

37. Bye-law 2 of the Bye-laws for the regulation and control of loud speakers in Dagshai Cantonment framed by the Cantonment

Board, Dagshai, under clauses (28), (38) and (39) of Section 282 and Section 283 of the Cantonments Act, 1924 read as follows:

"No person shall, except with the previous permission in writing of the Cantonment Executive Officer and on payment of the requisite fee and on such conditions as may be imposed under these bye-laws, make use of any loud speaker, whether stationary or fitted to any moving vehicle, within the limits of Dhagshai Cantonment."

38. The Committee noticed that the requisite fee which the above bye-law sought to impose had not been defined anywhere in the bye-laws. The basis on which the fee was to be imposed was also not mentioned in the bye-laws. Further, Section 282(28), (38), (39) and Section 283 of the Cantonments Act, 1924 under which the bye-laws had been framed did not authorise imposition of such fee. The attention of the Ministry of Defence was drawn to these facts. It was also pointed out in this connection that the bye-laws for regulation and control of loud speakers framed by other Cantonment Boards, such as Ahmednagar, Barrackpore and Jhansi did not contain any provision for imposition of fee for the use of loud speakers in the jurisdiction of those Cantonment Boards.

39. The Committee notes that the Ministry of Defence has since amended the aforesaid bye-laws omitting the provision relating to the payment of the fee (vide S.R.O. 126 of 1969).

VIII

BYE-LAWS FOR REGULATING THE REGISTRATION AND CLASSIFICATION OF CONTRACTORS TO CARRY OUT CANTONMENT BOARD WORKS IN AMBALA CANTONMENT (S.R.O. 47 of 1968)

40. The Committee noticed that under bye-law 5 of the bye-laws for regulating the registration and classification of contractors to carry out Cantonment Board works in Ambala Cantonment, framed by the Cantonment Board, Ambala, under Section 282(39) of the Cantonments Act, 1924, each contractor to whom a tender notice was issued was required to deposit with the tender an earnest money equal to 2 per cent of the estimated cost of work. There was, however, no provision in the bye-laws for the refund of the earnest money if the contract was not awarded to the tenderer. Also, the bye-laws did not bear any short or long title.

41. The Committee notes that the Ministry of Defence, to whom the matter was referred, has issued general instructions to all the Cantonment Boards to give suitable titles to rules and bye-laws and to number the amendments. It also notes that the Cantonment Board, Ambala, has been advised to amend bye-law 5 relating to deposit of earnest money by contractors, so as to permit refunds in the case of tenderers whose offers are not accepted.

IX

TAX CREDIT CERTIFICATE (SHIFTING OF INDUSTRIAL UNDERTAKINGS) SCHEME, 1967 (S.O. 2560 of 1967)

42. The Committee noticed that paragraph 4(3) of the Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 framed under Section 280ZE read with Section 280ZA of the Income-tax Act, 1961, provided that if the Board, after making such enquiry as it deemed fit, was satisfied that a company was prevented by sufficient cause from proceeding with acquisition of lands or construction of buildings for the purpose of its business in the area to which the undertaking was proposed to be shifted or from shifting its machinery, plant and other effects to such area within a period of three years from the date of approval, it might by order allow to the Company such further period as might be considered by the Board to be reasonable under the particular circumstances of the case. But paragraph 4(4) thereof provided that where the Board was not so satisfied, it "shall by order reject the application and forward a copy of such order to the company".

It was felt that before an order under paragraph 4(4), *ibid* was passed by the Board, the aggrieved company might be given an opportunity of being heard.

43. The Committee notes that the Ministry of Finance (Department of Revenue and Insurance), with whom the matter was taken up, has amended paragraph 4(4), *ibid* to provide that an order rejecting the application of the company under that paragraph will not be passed by the Board unless the applicant company has been given an opportunity of being heard (*vide* S.O. 2447 of 1969).

X

AMENDMENTS TO THE EXPORTS (CONTROL) ORDER, 1968 (S.Os. 3717 and 3728 of 1968)

44. During the course of examination of the above Orders the Committee noticed that neither of them bore any short title or serial number of the amendments made to it.

45. Attention of the Ministry of Foreign Trade and Supply (Department of Foreign Trade) was invited to the following observations of the Committee on Subordinate Legislation contained in paragraph 21 of its Second Report (Fourth Lok Sabha):

“....The Committee would like to emphasise that giving of short titles, to all rules, whether principal or amending, is essential for facility of reference and tracing by all concerned....”

46. In this connection, the Committee considered the following reply of the Ministry of Foreign Trade and Supply (Department of Foreign Trade):

“....the above noted S.Os. were issued by the office of the Chief Controller of Imports and Exports, an attached office of this Ministry. That office has stated that the instructions regarding short titles to amendments had not been received by them. As the above mentioned S.Os. were issued about a year back, it is regretted that it will not be possible to rectify the omission at this stage. Nevertheless, the omission is regretted. Further that office has hereafter undertaken to give short titles to amendments....”

47. The Committee would like to re-stress upon all the Ministries|Departments and their attached and subordinate offices the need for giving short titles to all ‘Orders’, whether principal or amending, for facility of reference.

XI

GIVING OF RETROSPECTIVE EFFECT TO ‘ORDERS’

48. The following ‘Orders’ were given retrospective effect from dates shown against each in column 4 of the Table below:

S. No.	Short Title and No. of ‘Order’	Date of Publication in the Gazette	Effective date of ‘Order’
1	2	3	4
1	Goa, Daman and Diu Civil Service (Amendment) Rules, 1968 (G.S.R. 98 of 1968)	20-1-68	11-3-67

1	2	3	4
2	Ministry of Defence, Historical Section (Post of Research Assistant) Recruitment Rules 1967 (S.R.O. 232 of 1968)	29-7-68	30-3-66
3	Indian Ordnance Factories (Recruitment and Conditions of Service of Class IV Non-Industrial Personnel) Amendment Rules, 1968 (S.R.O. 297 of 1968)	12-10-68	28-5-68
4	Amendments to Schedule III of the Indian Forest Service (Pay) Rules, 1968 (G.S.R. 1830-31 of 1968)	12-10-68	1-10-66
5	Manipur Employees (Revision of Pay) Amendment Rules, 1968 (S.O. 3533 of 1968)	12-10-68	1-4-64
6	The Indian Railway Medical Service (District Medical Officer) Recruitment Rules, 1968 (G.S.R. 1855 of 1968)	19-10-68	1-4-68
7	The Central Warehousing Corporation Employees' Provident Fund (Amendment) Regulations, 1968 (S.O. 3666 of 1968)	19-10-68	1-11-67
8	The Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Amendment Rules, 1968 (G.S.R. 1933 of 1968)	2-11-68	11-5-68
9	The Department of Agriculture (Deputy Commissioners Poultry and Livestock Health) Recruitment Rules, 1968 (G.S.R. 1973 of 1968)	9-11-68	29-6-67
10	The Indian Forest Service (Released Emergency Commissioned and Short (Service Commissioned Officers) (Appointment by Competitive Examination) Amendment Regulations, 1968 (G.S.R. 2031 of 1968)	23-11-68	1-1-68
11	(i) The Class I Posts (Tripura Administration) Recruitment Amendment Rules, 1968 (G.S.R. 2032 of 1968) and (ii) The Class I Posts (Manipur Administration) Recruitment Amendment Rules, 1968 (G.S.R. 2033 of 1968)	23-11-68	1-1-68

In all the above cases, the Ministries concerned stated that no one was adversely affected as a result of retrospective effect.

49. The Committee notes the following observations of the Attorney-General made in connection with Exemption Notifications

issued under the Central Excises and Salt Act, 1944 and the rules framed thereunder:

“The Legislature may make a law with retrospective effect.

A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to operative retrospectively. Without such a law no subordinate legislation can have any retrospective effect....”

[Para 1.14 of the 11th Report of the PAC (1970-71)].

50. The Committee also notes that out of the eleven ‘Orders’ mentioned in paragraph 48 above, eight (S. Nos. 1-3, 5-6, 8-9 and 11) had been issued under proviso to Article 309, two (S. Nos. 4 and 10) under Rules framed under the All India Services Act, 1951 and one (S. No. 7) under the Warehousing Corporation Act, 1962. The Committee also notes in this regard that neither Article 309 of the Constitution nor the relevant sections of the other enactments appear to confer express power on Government to give retrospective effect to the rules framed thereunder.

51. In view of the foregoing, the Committee desires that the Ministry of Home Affairs should examine, in consultation with the Ministry of Law, whether retrospective effect to the ‘Orders’ listed in paragraph 48 above has been given under due legal authority.

XII

DISPARITIES IN CANTONMENT BOARD BYE-LAWS

52. The Committee had sometime back desired to undertake an examination of the existing bye-laws of the various Cantonments in the country, some of which were framed about a century or half a century ago, with a view to finding out the disparities in their pattern and to suggest the evolution of a uniform set of bye-laws in consonance with the letter and spirit of the present democratic set-up in the country, subject, however to the exigencies of the Army needs and local conditions.

53. The Ministry of Defence was requested to furnish an up-to-date copy each of the existing bye-laws issued under the Cantonment Act, 1924 by the various Cantonment Boards along with a statement showing in juxtaposition the disparities and dissimilarities in the respective sets of bye-laws under various heads. Subse-

quently, at the request of the Ministry, a specimen of a proforma, in which the information was required to be furnished, duly approved by the Committee, was also sent. The matter, however, continued to remain under active consideration of the Committee.

54. In a D.O. letter dated the 22nd October, 1970, received from the Ministry of Defence, it was *inter alia* stated as follows:

"I had....explained the practical difficulties that have come up with regard to the preparation of comparative statements of existing Bye-laws for all the Cantonment Boards which total to 62. As a sample, we have prepared comparative statements of one clause only relating to a few Cantonments and this statement runs into scores of pages. The point we wish to stress is that if such a tabulation is to be resorted to, it will not only involve indefinite time and very considerable labour but it will also become almost impossible for the Committee to form any tangible impression out of such voluminous statements. I had, therefore, suggested that we might be permitted to draw up Model Bye-laws by incorporating those that are existing and other clauses that would be useful and are presently incorporated in the Bye-laws of the municipalities adjoining Cantonments in different areas of the country."

55. The Committee observes that the question of review of the existing bye-laws of the various Cantonment Boards in the country, some of which were framed more than half a century back, is long overdue. The Committee desires that Model Cantonment Board Bye-laws, on the lines indicated by the Ministry, should now be drawn up and placed before the Committee at an early date for its consideration.

XIII

ACTION TAKEN OR PROPOSED TO BE TAKEN BY GOVERNMENT ON VARIOUS RECOMMENDATIONS OF, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION

56. The Committee notes the progress of action taken or proposed to be taken by Government on various recommendations of,

or assurances given to, the Committee on Subordinate Legislation
as indicated in Appendix I.

ANAND NARAIN MULLA,

Chairman,

Committee on Subordinate Legislation.

NEW DELHI;

The 15th December, 1970.

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**SUMMARY OF MAIN RECOMMENDATIONS/OBSERVATIONS
MADE BY THE COMMITTEE**

S.No.	Para numbers	Summary
1	2	3
1	8	<p>(i) The Committee has been repeatedly stressing the need for citation of exact statutory authority in the preamble to the 'Orders'. One of the arguments put forth by the Ministry of Law for not giving effect to the above recommendation of the Committee in the case of the Rules regulating the duties, remuneration, etc. of the Attorney-General for India, the Solicitor-General and the Additional Solicitor-General is that so long as the power to make appointment and to prescribe terms and conditions is available, it is unnecessary to quote the relevant Article. The Committee is unable to accept this argument. It would like to re-stress that citation of exact Constitutional/statutory authority is necessary for enabling the Committee to examine whether an 'Order' has been made under due legal authority and within the limits laid down in the parent law.</p>
9		<p>(ii) Another argument advanced by the Ministry of Law for not citing the statutory authority in this case is that while the terms and conditions of the Attorney-General derive authority from Article 76 of the Constitution, the terms and conditions of the other two Law Officers (viz., the Solicitor-General and the Additional Solicitor-General) do not derive authority from that Article. There is thus no single authority in regard to the terms and conditions of all the three law officers. To meet this difficulty,</p>

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the Committee suggests that separate rules should be framed by the Ministry of Law (Department of Legal Affairs) for regulating the terms and conditions of service of (a) the Attorney-General of India, and (b) other Law Officers—the former under Article 76 and the latter under Article 309, as is being done by Government in respect of other executive appointments. In the preamble to the Rules so framed, the exact statutory authority should be cited.

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(iii) The Committee has noted that except the original Rules regulating the remuneration and duties of the Attorney-General, which were published in the Gazette in 1950, none of the Rules relating to the terms and conditions of the three Law Officers framed subsequently by Government had been published in the Gazette. The explanation of the Ministry of Law for the non-publication of the Rules in the Gazette is that there was no requirement of law in this regard. The Committee is surprised at this explanation. It is inexplicable that while rules regulating the recruitment and conditions of service of all categories of Government employees (including the lowest one) framed by Government under the proviso to Article 309 of the Constitution are published in the Gazette, rules relating to the terms and conditions of the highest Law Officers of Government should not have been published by Government for public information on a technical plea of absence of legal requirement. It is unnecessary for the Committee to point out that so far as the question of legal requirement for publication is concerned, there is hardly any difference between the Rules framed under Article 76 and those framed under proviso to Article 309. The Committee desires that all Rules framed by Government, pursuant to Constitu-

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tional or statutory provisions, should invariably be published in the Gazette for public information.

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(i) The Committee observes that, as a result of certain modifications in the Engineering Supervisors (Recruitment and Training) Rules, 1959 made by the P&T Department, some employees of that Department, who were initially eligible to appear as departmental candidates in the competitive examination for appointment to the cadre of Engineering Supervisors, had been rendered ineligible. The reasons adduced by the P&T Department for making these modifications are hardly convincing. The Committee feels that amendments to Rules, which are likely to have the effect of denying or curtailing the existing opportunities available to employees, should not be brought forward, save for compelling reasons.

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(ii) The Committee regrets to note that amendments to the Engineering Supervisors (Recruitment and Training) Rules, 1966 made in October, 1966 and in November, 1968, were not published in the Gazette till January, 1970 and that too, only after the matter had been taken up by the Committee with the Department. The Committee need hardly point out that unconscionable delays in publication, as in the present case, defeat the very object of publication. The Committee trusts that the P&T Department will take care to avoid such delays in future.

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The Committee has considered the matter in all its aspects. It feels that, even though, as stated by the Ministry of Law, the Institution is not precluded from making regulations for prescribing fees, such Regulations are not in consonance with the spirit and scheme of Section 21 of the principal Act. Even otherwise, the Committee feels that fees for grant of licences which

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have the effect of imposing a financial burden should be regulated through Rules, which are laid on the Table of the House rather than Regulations, which are not so laid. The Committee, therefore, desires that Government should reconsider the matter in the light of its foregoing observation.

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(i) The Committee notes that, as conceded by the Ministry of Education and Youth Services, strictly speaking the so-called "comprehensive rules for the custody and handling of exhibits in the Salar Jung Museum and Library" are not rules, but form part of the steps taken by the Director in accordance with and under Regulation 33 of the Salar Jung Museum Regulations, 1962. The Committee, therefore, feels that the naming of these "steps" as "Rules" is inappropriate, particularly as Section 27 of the principal Act provides for framing of Rules by the Central Government, in consultation with the Board, in respect of certain other matters.

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(ii) Apart from the question of inappropriate expression, there is a more basic aspect of the matter involved. By specifying the "steps for the preservation of books etc." in the directions (termed as 'Comprehensive Rules'), instead of in the Regulations, as envisaged in Section 28(2) (j), the Salar Jung Museum Board had not only circumvented the condition of prior approval of the Central Government but also done away with the statutory requirement of their publication in the Gazette of India. The Committee, therefore, desires that the matters specified in clause (j) of sub-section (2) of Section 28 of the Salar Jung Museum Act, 1961, should be regulated through Regulations rather than the left to be regulated by the Board or the Director through directions.

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(i) The Committee is glad to note that the Ministry of Irrigation & Power has accepted the

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suggestion made by the Committee and amended rule 15 of the Central Water Engineering (Class I) Service Rules, 1965 and rule 15 of the Central Power Engineering (Class I) Service Rules, 1965, omitting the provision that the decision of Government on questions relating to the interpretation of the Rules shall be final.

32 (ii) The Committee is glad to note that the Ministry of Irrigation and Power has amended clause 6 of Schedule II to the Central Water Engineering (Class I) Service Rules, 1965 and clause 5 of Schedule II to the Central Power Engineering (Class I) Service Rules, 1965, on the lines suggested by the Committee.

36 (iii) The Committee is glad to note that the Ministry of Irrigation and Power has suitably amended clause 8 of Schedule II to the Central Water Engineering (Class I) Service Rules, 1965 and Clause 7 of the Central Power Engineering (Class I) Service Rules, 1965.

6. 39 The Committee notes that the Ministry of Defence has since amended bye-law 2 of the Bye-laws for the Regulation and Control of Loud-speakers in Dagshai Cantonment, omitting the provision relating to the payment of fee for the use of loud-speakers.

7. 41 The Committee notes that the Ministry of Defence has issued general instructions to all the Cantonment Boards to give suitable titles to rules and bye-laws and to number the amendments. It also notes that the Cantonment Board, Ambala, has been advised to amend bye-law 5 relating to deposit of earnest money by contractors so as to permit refunds in the case of tenderers whose offers are not accepted.

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8.	43	The Committee notes that the Ministry of Finance (Department of Revenue and Insurance) has amended paragraph 4(4) of the Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 to provide that an order rejecting the application of the company under that paragraph will not be passed by the Board unless the applicant company has been given an opportunity of being heard.
9.	47	The Committee would like to re-stress upon all the Ministries Departments and their attached and subordinate offices the need for giving short titles to all 'Orders', whether principal or amending for facility of reference.
10.	51	In view of what has been stated in paras 49 and 50 of the Report, the Committee desires that the Ministry of Home Affairs should examine, in consultation with the Ministry of Law, whether retrospective effect to the 'Orders' listed in para 48 has been given under due legal authority.
11.	55	The Committee observes that the question of review of the existing bye-laws of the various Cantonment Boards in the country, some of which were framed more than half a century back, is long overdue. The Committee desires that Model Cantonment Board Bye-laws, on the lines indicated by the Ministry of Defence, should now be drawn up and placed before the Committee at an early date for its consideration.

APPENDIX I

(See para 56 of the Report)

Statements showing the progress of action taken or proposed to be taken by Government on various recommendations and assurances given to the Committee on Subordinate Legislation

S. No	Reference to Para No. of Report	Summary of Recommendations/ assurances	Gist of Government's reply
1	2	3	4
1.	Fourth Report (Third Lok Sabha) 46	The Booklet entitled "Vizagapatam Port Rules & Scale of Rates" should be reissued in a proper and cogent form by the concerned Port authorities at an early date.	The booklet has since been republished [vide D.P.A. O.M. No. SRIV (44-46) III/CB/ 65. dt. 14-12-1968].
2.	Fifth Report (Third Lok Sabha) 11	The words "in their discretion" occurring in regulations 7 (1) and 8 (5) of the Central Secretariat Service Assistants' Grade (Competitive Examination) Regulations, 1965 (G.S.R. 1151 of 1965) which are likely to cause an impression that the Union Public Service Commission exercise their discretion even otherwise than on the results of the examination should be omitted.	This has since been done (See G.S.R. 539 of 1967 dt. 22-4-1967).
3.	Fifth Report (Third Lok Sabha) 15	It should specifically be stated in the Petroleum Products (Supply and distribution) Order, 1965 that a Government servant not below a specified rank or equivalent officer might be authorised to conduct searches and seizures etc. under that Order. Clause 4 thereof should not be left worded in a manner which would give the Executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the Order.	This has since been done. (See GSR 163 of 1967 dt. 11-2-1967)
4.	Sixth Report (Third Lok Sabha) 9	A specific provision should be made in Regulations 6(2) and 13(2) of the Food Corporations Regulations, 1965 as amended by the Food Corporation of India Notifications No. PCR 1 of 1965 dated the 6th August,	This has since been done. (See PCR 4 of 1967 dt. 12-7-1967)

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1965 (published in the Government of India Gazette, Part III, Section 4 dated the 25th Sept. 1965) for intimating the fact of adjournment to the absentee directors/members on the same day by post or telegram or by special messenger as the needs of the case may require.

5. Sixth Report
(Third Lok
Sabha)
34

There should be a specific provision in the Bye-laws Regulating Water Connection in Kanpur Cantonment for giving an opportunity of being heard to the concerned plumber before the Executive Officer exercised his discretion to cancel his licence or imposed a fine under bye-laws 46 (c) & (d) thereof.

This has since been done (See S.R.O. 343 of 1957 dt. 11-11-1957).

6. First Report
(Fourth Lok
Sabha)
28

It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft Rules for inviting comments suggestions for the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee therefore recommended that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this Government may perhaps do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the Preamble to the final rules.

This has since been brought to the notice of all Ministers/Departments of the Government of India by D.P.A. vide their Circular No. SRI (22-28) IV/68-CB. dt. 19-4-1968.

5. First Report,
(Fourth Lok
Sabha)
41

The Committee feel that it would not be proper to leave the uncanalised and unregulated power to the Executive to pick and choose an cater-

This has since been done. (See S.O. 1600 of 1969, dt. 3-5-1969)

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Steel Controller. The Committee therefore recommended that it should be specially laid down in the Iron and Steel (Control) Order itself that no Government servant below a particular rank or its equivalent specified therein would be authorised to conduct searches and seizures etc.

8. First Report
(Fourth Lok
Sabha) 72

The Committee reiterate the recommendation made by their Predecessors that delay in laying of the 'Orders' before the House should be avoided.

(i) Suitable instructions in this regard have since been issued. [vide D.P.A.O.M. No. SRI (69-72) IV/68-CB, dt. 9-5-1968]

(ii) Noted for future guidance [vide Ministry of Railways Railway Board) O.M. No. 68/Parl/21, dt. 9-9-1968].

(iii) Noted. [vide Ministry of Commerce O.M. No. Parl. 5 (26) 68, dt. 9-9-1968].

✓ 9. Second Report
(Fourth Lok
Sabha) 10

Normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.

(i) Noted for future guidance [Vide Ministry of Defence u/o No.F.6(6)/68/D(Parl), dt. 29-1-69].

(ii) Noted for future guidance and compliance. (Vide Ministry of Home Affairs, O.M. No. 1/1/66-A, 1S(1), 1 dt. 17-1-1969.

10. Fourth Report
(Fourth Lok
Sabha) 24

The Committee is surprised at the continuance of an incorrect scale of pay of Secretary, Food Corporation of India, provided in the Food Corporation Rules, 1965, for about two years which was not a standard scale and was also irregular. The Committee feels that the Government should be very circumspect and vigilant in future in regard to such matters.

Noted for future guidance [Vide Ministry of Food, Agriculture, Community Development and Co-operation (Deptt. of Food) O.M. No.7-6/65-FCC, dated 2-5-1970].

11. Fourth Report
(Fourth Lok Sabha)
28

The Committee would like to reiterate that all the Ministries/Departments of the Government of India should strictly follow the recommendation already made

(i) Noted. [Vide Ministry of Home Affairs O.M. No. 22/40/68-AIS(I), dt. 23-4-1970]

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by the Committee in Para 44 of its Third Report (First Lok Sabha) and should adopt the procedure suggested therein also in respect of all amendments to rules (including amendments to Schedules to the rules), as giving of Short titles and number of amendments are absolutely necessary for reference and tracing of the rules, etc. and the amendments thereto.

(ii) Noted for future guidance and implementation. [Vide Ministry of Defence, U.O. No. F.3(2)/70/D(Parl), dt. 12-5-70.]

- ✓
12. Fourth Report (Fourth Lok Sabha) 32
- The Committee reiterates its earlier recommendation made in para 10 of its Second Report (Fourth Lok Sabha) that if due to any unavoidable reasons, it becomes absolutely necessary to give retrospective effect to any rules [which does not appear to apply to the Ministry of Defence, Directorate General National Cadet Corps (Class I Gazetted) Lady Staff Officer (Grade I) Recruitment Rules, 1968 and the Ministry of Defence Armed Forces Headquarters (Class III Non-Gazetted Posts of Librarians) Recruitment Rules, 1968 (SROs. 110 and 115 of 1968)], the fact that no one will be adversely affected by giving retrospective effect to such rules should be specifically stated by way of an Explanatory Note appended to such rules.
- Noted for future guidance and implementation. [Vide Ministry of Defence U.O. No. 3(2)70/D (Parl.), dt. 12-5-1970.]
13. Fourth Report (Fourth Lok Sabha) 52
- The Committee notes that the Ministry of Home Affairs has accepted its recommendation made in para 10 of its Second Report (Fourth Lok Sabha) and has further enquired whether the Indian Police Service/Indian Administrative Service (Amendment) Rules, 1968 (G.S. Rs. 1520 and 1521 of 1968) with the necessary explanatory foot-notes are required to be placed on the Table of the House again. The Committee is of the opinion that these rules should be relaid on the Table of the House with the requisite explanatory foot-notes.
- This has since been done. [See G.S.Rs. 1743 and 1744 of 1969, dt. 26-7-1969].
14. Fifth Report (Fourth Lok Sabha) 14
- The Committee desires that Government should take early steps to amend the Representation of the People Act, 1950, as recommended by the Election Commission, so that the Registration of Electors Rules, 1960, could also be amended suitably to enable the Indian Merchant Navy Officers and Crew to exercise the right to vote.
- Consolidated proposals for amendment of Election Laws are under consideration and steps will be taken to include necessary amendment to the Representation of the People Act, 1950, as recommended by the Election Commission.

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[Vide Ministry of Law
(Legislative Department) O.M. No.
(27)/68- Leg. II, dt
2-6-1970.]

J 15. Fifth Report
(Fourth Lok Sabha)
22

The Committee reiterates its earlier recommendation made in para 10 of its Second Report (Fourth Lok Sabha) that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication in the Gazette. If, however, due to certain unavoidable reasons, it becomes absolutely necessary to give retrospective effect to any rule, the fact that no one will be adversely affected by such retrospective effect, should always be stated by way of an explanatory note appended to such rules. The Committee also desires that the Ministry of Law to whom 'Orders' are sent by the Ministries of Home Affairs, etc., for vetting before their publication in the Gazette, should ensure that the aforesaid recommendation is followed in future.

(i) Noted for compliance.
[Vide Ministry of Home
Affairs O.M. No. H-
11013/3/70-Parl., dt.
22-7-1970.]

(ii) Watch will be kept
by Ministry of Law
and in cases of omission,
attention of administrative
Ministries would
be drawn. [Vide Ministry of Law (Legislative Department) O.M.
No. F.4(3)/70-LI, dt.
19/20-8-1970.]

16. Sixth Report
(Fourth Lok Sabha)
22

The Committee agrees that it may not be possible to entrust always inquiries against delinquent officers to Gazetted Officers under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as the Department of Communications has under its employment a large number of persons spread over the entire country. But the Committee strongly feels that the enquiries should be conducted by an Officer who is sufficiently senior to the officer whose conduct is being inquired into. Inquiry by a junior officer, the Committee feels cannot command confidence which it deserves.

Necessary instructions
have since been issued
(vide Department of
Communications (PT
Board) Memorandum
No. 6/17/69-Disc. dt.
15-10-1970)

APPENDIX II
MINUTES OF THE COMMITTEE
XXXV

MINUTES OF THE THIRTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Thursday, the 26th November, 1970 from 15.30 to 16.30 hours.

PRESENT

Shri Anand Narain Mulla—*Chairman*.

MEMBERS

2. Shri N. T. Das
3. Shri Tukaram Hurji Gavit
4. Shri Shri Chand Goyal
5. Shri V. Krishnamoorthi.

* * * * *

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

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3. The Committee then considered Memoranda Nos. 93 to 103 on the following subjects and 'Orders':—

S. No.	Memorandum No.	Subject
(i)	93	Rules for regulating the duties, remuneration and other conditions of service of the Law Officers of the Government of India.
(ii)	94	Engineering Supervisors (Recruitment and Training) Rules, 1966 (G.S.R. 1264 of 1966).

*Omitted portions of the Minutes are not covered by the Seventh Report.

1	2	3
(iii)	95	Central Water Engineering (Class I) Service Rules, 1965 and Central Power Engineering (Class I) Service Rules, 1965 (G.S.Rs. 1596 & 1597 of 1965).
(iv)	96	Bye-laws for the regulation and control of loud speakers in Dagahai Cantonment (S.R.O. 271 of 1967).
(v)	97	Bye-laws for regulating the registration and classification of contractors to carry out Cantonment Board works in Ambala Cantonment (S.R.O. 47 of 1968).
(vi)	98	Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 (S.O. 2560 of 1967).
(vii)	99	Amendments to the Exports (Control) Order, 1968 (S.Os. 3717 and 3726 of 1968).
(viii)	100	The Indian Standards Institution (Certification Marks) Amendment Regulations, 1968 (S.O. 3111 of 1968).
(ix)	101	Rules for the custody and handling of exhibits in the Salar Jung Museum and Library, Hyderabad.
(x)	102	Giving of Retrospective Effect to 'Orders'.
(xi)	103	Action taken or proposed to be taken by Government on various recommendations of, and assurances given to, the committee on subordinate Legislation.

(i) Rules for regulating the duties, remuneration and other conditions of service of the Law Officers of the Government of India (Memorandum No. 93)

4. Article 76 of the Constitution of India provides for the appointment of Attorney-General for India to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. It further provides that the Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

5. The rules for regulating the remuneration and duties of the Attorney-General of India were first issued in 1950 (*Vide* Ministry of Law Notification No. F. 43/50-C, dated the 26th January, 1950, published in the Gazette of India, Extraordinary, dated the 28th January, 1950. The authority under which these Rules were framed (*viz.* Article 76) was duly quoted in the Preamble. Subsequently the offices of the Solicitor-General of India and the Additional Solicitor-General of India were created. Separate sets of terms and conditions were formulated in relation to these offices which were only Executive Offices *vis-a-vis* the office of the Attorney-General of India, which was a Constitutional Office.

In 1961, the Rules for regulating the duties, remuneration and other conditions of service of all the three Law Officers, namely, the Attorney-General, the Solicitor-General and the Additional Solicitor-General were consolidated. These were revised from time to time; the last set of these Rules was issued in September 1967, in supersession of the earlier Rules.

6. During the course of examination of these Rules, it was noticed that:

- (i) except the original notification which was published in the Gazette of India in 1950, no Rules framed subsequently had been published in the Gazette; nor had any G.S.R. number been given to them;
- (ii) the authority under which these rules had been framed was not quoted in any of the subsequent Rules, as had been done in the original notification of 1950.

7. In this connection, the Committee perused the following explanation furnished by the Ministry of Law (Department of Legal Affairs), to whom the above points were referred for elucidation:—

“...in 1961 it was considered better to consolidate the terms and conditions of appointment of all the three Law Officers, namely, the Attorney-General, the Solicitor-General and the Additional Solicitor-General. Such terms and conditions were, therefore, consolidated for the three officers and after approval by the Cabinet the incumbents of these three posts were appointed on the basis of such terms and conditions. It was not considered necessary to publish these terms and conditions as there is no requirement of law in this regard.

There could possibly be no reference to Article 76 of the Constitution in relation to the terms and conditions of the three Law Officers because the Solicitor-General and the Additional Solicitor-General were not appointed under that Article. That Article applied only to one of the three Law Officers, namely, the Attorney-General but the fact that the terms and conditions did not specifically refer to that Article is of no consequence because so long as power is available under that Article to appoint the Attorney-General and prescribe his terms and conditions it is unnecessary to quote that Article.”

8. The Committee noted that it had repeatedly stressed the need for citation of exact statutory authority in the Preamble to the 'Orders' [Vide para 76 of the 8th Report (First Lok Sabha), para 76 of the First Report (Second Lok Sabha), para 8 of the Second Report (Second Lok Sabha) and paras 37 & 38 of the Third Report (Third Lok Sabha)]

9. The Committee decided that—

- (1) (a) separate rules should be framed by the Ministry of Law (Department of Legal Affairs) for regulating the terms and conditions of service of (i) the Attorney-General of India and (ii) other law officers—the former under Article 76 and the latter under Article 309, as was being done by Government in respect of other executive appointments;
- (b) the exact statutory authority should be cited in the Preamble to the Rules.
- (2) The rules so framed should be given G.S.R. numbers and published in the Gazette of India for general information, as was being done in the case of all other recruitment rules framed under the provisions of Article 309 of the Constitution.

(ii) *Engineering Supervisors (Recruitment and Training Rules, 1966 (G.S.R. 1264 of 1966) (Memorandum No. 94)*

10. Dr. G. S. Melkote, M.P. had brought to the notice of the Committee the following issues regarding modifications made in the rules relating to recruitment to the Cadre of Engineering Supervisors in the P&T Department:

- (i) the old Rules in force before the promulgation of the Engineering Supervisors (Recruitment and Training) Rules, 1966 provided that officials who had rendered 3 years' continuous service in their respective cadres were eligible to appear as Departmental candidates in the competitive examination for appointment to the Cadre of Engineering Supervisors. The amendment Rules raised the limit of 3 years service to 5 years service. This had denied the opportunity of appearing in the examination to some of those who were eligible under the old Rules;
- (ii) any amendment to Rules, having a restrictive effect, might be made applicable to those employees who were recruited after the date of the amendment but not to

those who were already in service. The original conditions of eligibility should therefore, be restored in case of those employees who were already in service on the date of the amendment; and

- (iii) amendments to the Engineering Supervisors (Recruitment and Training) Rules, 1966 had not been notified in the Gazette.

11. The Committee perused the following reply of the Directorate General of Posts and Telegraphs, to whom the matter was referred for comments:

"...the point about reduction in service limit as prescribed in Rule 16 of Engineering Supervisors (Recruitment and Training) Rules, 1966 referred to by Dr. G. S. Melkote, M.P., is not a new one and has been considered a number of times at the initiative of the staff representatives either in correspondence or in interviews granted to them by the Chairman, P&T Board and other senior officers of the Board.....

....As per Engineering Supervisors (Recruitment and Training) Rules, 1959; officials who had rendered not less than three years continuous service and had not more than nine years permanent service in one or more of the eligible grades/cadres could compete in the departmental examination for appointment to the cadre of Engineering Supervisors. In 1962 when the question of reviewing the Rules was under consideration, the All India Telegraph Engineering Employees Union, Class III in their letter dated 26th May, 1962 proposed as under:—

'eligibility to appear in examination should have the condition of five years of service as in vogue now so as to avoid unfair competition between the 'young and senior officials.....'

In support of the above proposal they put forward the following arguments:

'We do not find it advantageous to allow persons with 3-4 years of service to appear in examination as they do not acquire even an *aptitude towards the services* within such a short period. These officials, because of less or no family responsibilities in comparison to older officials,

are always busy in pursuing studies 'in their own interest' by habitual absenteeism and deprive the Department to utilise them for the purpose for which they are employed. It was in fact in partial recognition of this situation that orders were issued to refuse permission for joining academical institutions in the first three years of service.'

The above proposal which had originated from the staff representatives themselves, was given due consideration of the Department by the P&T Board and was approved as there were merits in the arguments. In the new Rules when finalised, provision to this effect was given to in Rules 16 and 17.... The service limit of 5 years has been laid down by us to ensure that the officials do work in these grades for some time with a sense of stability and continuity.

Dr. Melkote has referred to amendments issued in October, 1966 and in November, 1968....it will be seen from October, 1966 letter that it contained certain concessions in relaxation of Rules 16 and 17 of the Engineering Supervisors (Recruitment and Training) Rules, 1966, which had been arrived at in consultation with the staff representatives themselves. The decisions contained in November, 1968 letter are based on the unanimous views of the staff representatives and the Departmental representatives in the P&T Department Council (J.C.M.)....It is, however, a fact that decisions contained in the two letters referred to above could not be notified in the Official Gazette yet. A draft notification incorporating all amendments is already under finalisation in consultation with the Ministry of Home Affairs and the Ministry of Law for some time past and a copy of the same would be forwarded to the Lok Sabha Secretariat in due course for perusal of the Committee on Subordinate Legislation."

12. The Committee noted that as a result of the amendments to the Rules made by the P & T Department some employees of that Department, who were initially eligible to appear as Departmental candidates in the Competitive examination for appointment to the Cadre of Engineering Supervisors, had been rendered ineligible.

13. The Committee took a serious note of the delay on the part of the P&T Department in publishing the amendments to Rules made in October, 1966 and November, 1968.

(iii) *Central Water Engineering (Class I) Service Rules, 1965 and Central Power Engineering (Class I) Service Rules, 1965* (G.S.R. 596 and 1597 of 1965) (Memorandum No. 95)

PART I

14. The Committee had noticed that rule 15 of the Central Water Engineering (Class I) Service Rules, 1965 provided as follows:—

‘If any question arises relating to the interpretation of these rules, the decision of the Government thereon shall be final.’

The wording of rule 15 of the Central Power Engineering (Class I) Service Rules, 1965 was also the same.

15. The attention of the Ministry of Irrigation and Power was drawn to the following recommendation of the Committee on Subordinate Legislation contained in paragraph 18 of its 4th Report (3rd Lok Sabha):

“18. The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts yet the rules should not be worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964, which reads as under:

‘24. Interpretation of regulations.—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board.’”

16. It was pointed out to the Ministry of Irrigation and Power that the Rules, as worded, were not in consonance with the aforementioned recommendation of the Committee on Subordinate Legis-

lation, in that they gave an impression that the right of interpretation of Rules which should normally be vested in Courts had been taken away by the Executive.

17. The Committee noted that the Ministry of Irrigation and Power had amended the above mentioned Rules (*Vide* G.S.Rs. 489 and 490 of 1968) to read as follows:

"If any question arises relating to the interpretation of these rules, it shall be decided by the Government".

PART II

18. Clause 6 of Schedule II appended to the Central Water Engineering (Class I) Service Rules, 1965 provided as follows:

"The Service Commission will summon at their discretion only those candidates whom they consider suitable for interview for the Personality Test."

The wording of clause 5 of Schedule II appended to the Central Power Engineering Rules, 1965 was also the same.

19. It was pointed out to the Ministry that the clauses, as worded, gave an impression that a candidate could be ignored for interview even if he had done very well in the written test. It was reasonable that all candidates, who secured prescribed quota of minimum marks, should invariably be called for interview for the Personality Test unless they were found to have violated or failed to have fulfilled some prescribed condition or conditions, which might be prescribed by the Union Public Service Commission in their discretion.

20. The Committee noted that the Ministry of Irrigation and Power had amended the clauses in question (*vide* G.S.Rs. 489 and 490 of 1968) to read as follows:

"Candidates who obtain such minimum qualifying marks in the written examination as may be fixed by the Service Commission at their discretion shall be summoned by them for an interview for a personality test."

PART III

21. Clause 8 of Schedule II appended to the Central Water Engineering (Class I) Service Rules, 1965 read as follows:

"From the marks assigned to candidates in each subject, such deduction will be made as the Service Commission may

consider necessary in order to secure that no credit is allowed for merely superficial knowledge."

The wording of clause 7 of Schedule II appended to the Central Power Engineering (Class I) Service Rules, 1965 was also the same.

22. Attention of the Ministry of Irrigation and Power was invited to a similar provision occurring in paragraph 8 of Appendix II of the Mechanical Engineering and Transportation (Power) Department Recruitment Rules on which the Committee on Subordinate Legislation had commented as follows in paragraph 12 of its 4th Report (Third Lok Sabha):

"...The Committee feel that the U.P.S.C. should not have the power to deduct marks arbitrarily after answer papers of a candidate have been assessed by the examiner, who is expected naturally to take all factors into account while assessing the answer papers."

23. The Committee noted that the Ministry of Irrigation and Power had amended the clauses in question (Vide G.S.Rs. 489 and 490 of 1968) to read as follows:

"Marks will not be allotted for mere superficial knowledge."

(iv) *Bye-laws for the regulation and control of loud-speakers in Dagshai Cantonment (S.R.O. 271 of 1967) (Memorandum No. 96)*

24. Bye-law 2 of the Bye-laws for the regulation and control of loud-speakers in Dagshai Cantonment framed by the Cantonment Board, Dagshai, under clauses (28), (38) and (39) of Section 282 and Section 283 of the Cantonments Act, 1924 read as follows:—

"No person shall, except with the previous permission in writing of the Cantonment Executive Officer and on payment of the requisite fee and on such conditions as may be imposed under these bye-laws, make use of any loud-speaker, whether stationary or fitted to any moving vehicle, within the limits of Dagshai Cantonment."

25. The Committee had noticed that the requisite fee which the Bye-law sought to impose had not been defined anywhere in the Bye-laws. The basis on which the fee was to be imposed was also not mentioned in the Bye-laws. Further, Section 282(28), (38), (39) and section 283 of the Cantonments Act, 1924 under which the Bye-laws had been framed did not authorise imposition of such fee. The attention of the Ministry of Defence was drawn to these facts.

It was also pointed out in this connection that the Bye-laws for regulation and control of loud-speakers framed by other Cantonment Boards, such as Ahmednagar, Barrackpore and Jhansi did not contain any provision for imposition of fee for the use of loud-speakers in the jurisdiction of those Cantonment Boards.

26. The Committee noted that the Ministry of Defence had since amended the aforesaid Bye-laws omitting the provision relating to the payment of the fee (*vide* S.R.O. 126 of 1969).

(v) *Bye-laws for regulating the registration and classification of contractors to carry out Cantonment Board Works in Ambala Cantonment (S.R.O. 47 of 1968) (Memorandum No. 97)*

27. Under bye-law 5 of the Bye-laws for regulating the registration and classification of contractors to carry out Cantonment Board works in Ambala Cantonment framed by the Cantonment Board, Ambala, under Section 282(39) of the Cantonments Act, 1924, each contractor to whom a tender notice was issued was required to deposit with the tender an earnest money equal to 2 per cent of the estimated cost of work. There was, however, no provision in the Bye-laws for the refund of the earnest money if the contract was not awarded to the tenderer. Also, the Bye-laws did not bear any short or long title.

28. The Committee noted that the Ministry of Defence, to whom the matter was referred had issued general instructions to all the Cantonment Boards to give suitable titles to rules and bye-laws and to number the amendments. It also noted that the Cantonment Board, Ambala, had been advised to amend bye-law 5 relating to deposit of earnest money by contractors, so as to permit refunds in the case of tenderers whose offers were not accepted.

(vi) *Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 (S.O. 2560 of 1967) (Memorandum No. 98)*

29. The Committee had noted that paragraph 4(3) of the Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967 framed under Section 280ZE read with Section 280ZA of the Income-tax Act, 1961, provided that if the Board, after making such enquiry as it deemed fit, was satisfied that a company was prevented by sufficient cause from proceeding with acquisition of lands or construction of buildings for the purpose of its business in the area to which the undertaking is proposed to be shifted or from shifting its machinery, plant and other effects to such area within a period of three years from the date of approval, it may by order allow to the

Company such further period as may be considered by the Board to be reasonable under the particular circumstances of the case. But para 4(4) thereof provided that where the Board was not so satisfied, it "shall by order reject the application and forward a copy of such order to the company".

It was felt that before an order under para 4(4), *ibid.* was passed by the Board, the aggrieved company might be given an opportunity of being heard.

30. The Committee noted that the Ministry of Finance (Department of Revenue and Insurance) with whom the matter was taken up had amended paragraph 4(4), *ibid.* to provide that an order rejecting the application of the company under that paragraph would not be passed by the Board unless the applicant company had been given an opportunity of being heard (*vide* S.O. 2447 of 1969).

(vii) *Amendments to the Export (Control) Order, 1968* (S.Os. 3717 and 3726 of 1968) (Memorandum No. 99)

31. During the course of examination of the above Orders it was noticed that neither of them bore any short title or serial number of the amendments made to it.

32. Attention of the Ministry of Foreign Trade and Supply (Department of Foreign Trade) was invited to the following observations of the Committee on Subordinate Legislation contained in paragraph 21 of its Second Report (Fourth Lok Sabha):

"...The Committee would like to emphasise that giving of short titles, to all rules, whether principal or amending, is essential for facility of reference and tracing by all concerned...."

33. The Committee perused the following reply of the Ministry of Foreign Trade and Supply (Department of Foreign Trade):

"...the above noted S.Os. were issued by the office of the Chief Controller of Imports and Exports, an attached office of this Ministry. That office has stated that the instructions regarding short titles to amendments had not been received by them. As the above-mentioned C.Os. were issued about a year back, it is regretted that it will not be possible to rectify the omission at this stage. Nevertheless, the omission is regretted. Further that office has hereafter undertaken to give short titles to amendments...."

34. The Committee noted the Ministry's reply and decided to emphasise on all the Ministries|Departments and their attached and subordinate offices the need for strict compliance with the earlier recommendation of the Committee contained in para 21 of its Second Report (Fourth Lok Sabha).

(viii) *The Indian Standards Institution .(Certification Marks) Amendment Regulations, 1968* (S.O. 3111 of 1968) (Memorandum No. 100).

35. During the course of examination of the Indian Standards Institution (Certification Marks) Amendment Regulations, 1968 (S.O. 3111 of 1968), it was noticed that:—

- (i) the fees for grant of licence, renewal of licence and annual licence fee under regulation 7 of the I.I. (Certification Marks) Regulations, 1965, as amended from time to time, had been increased by 100 per cent *vide* S.O. 3111 of 1968;
- (ii) Clause (e) of sub-section (2) of Section 20 of the I.S.I. (Certification Marks) Act, 1952 lays down that the levy of fees for the grant or renewal of any licence may be provided for in the rules to be framed by the Central Government under that Act; and
- (iii) sub-section (1) of Section 21 of the aforesaid Act also confers power on the Indian Standards Institution to make regulations, not inconsistent with the provisions of the Act and the rules made thereunder. Sub-section (2) thereof further lays down that in particular all or any of the matters specified in clauses (a), (aa), (b) and (f) of sub-section (2) of Section 20 may be provided for in the regulations. Sub-section (2) of Section 21 does not make any mention of matters specified in clause (e) of sub-section (2) of Section 20 (*i.e.* those relating to levy of fee).

It was, therefore, felt that the provision in Rule 6 delegating the power to prescribe fees in regulations and Regulation 7 prescribing such fees, were inconsistent with the provisions of the principal Act.

36. The Committee perused the following reply furnished by the Ministry of Industrial Development, Internal Trade and Company

Affairs (Department of Industrial Development), to whom the matter was referred for comments:—

- (i) "To augment the financial resources of the ISI for the operation of the Scheme, particularly in view of the assurance given to the Parliament at the time of enactment of the Indian Standards Institution (Certification Marks) Act, 1952 about the self-supporting base of the Scheme, it was felt that rising expenditure in every sphere demanded a general rise in some of the fees prescribed in Regulation 7 of the ISI (Certification Marks) Regulations, 1955. The main reasons for increasing these fees had been the overall increase in the expenditure during the last 14 years since the enactment of Regulations in 1955. It may be stated that the unit value which was Rs. 943.00 in 1955-56 has steadily increased to Rs. 1550.00 in 1967-68. The unit value for 1969-70 has been estimated at Rs. 1725.00. This means that for giving the same services, which were offered at that time, the ISI has now to spend almost double; it was due to the above reasons that the application fees had to be raised from Rs. 50.00 to 100.00, renewal application fee from Rs. 25.00 to Rs. 50.00, and licence fee from Rs. 100.00 to Rs. 200.00.

It may also be mentioned that no increase is being contemplated in the rate of marking fees which are fixed and gazetted for each item, and according to which licensees pay the marking fee to the Indian Standards Institution based on the quantum of annual production marked under the Scheme. Marking fee comprises the major part of the financial obligation of the licensees under the scheme. The acceptance of the increase in the application and licence fees by almost all the licensees justifies that this increase is negligible and commensurate to the services rendered under the Scheme."

- (ii) and (iii) "The points raised in para 1(ii) and (iii) of the Lok Sabha Secretariat Office Memorandum (dated 24th February, 1969) regarding the inconsistency in the application of Regulation 7 of the Indian Standards Institution 6 of the Indian Standards Institution (Certification Marks) Rules, and the Indian Standards Institution (Certification Marks) Regulation, made under

(Certification Marks) Act have been examined in consultation with the Ministry of Law who have expressed the view that the levy of fees has been left to be prescribed by the Indian Standards Institution, and that under the Indian Standards Institution (Certification Marks) Act, and the Indian Standards Institution Rules and Regulations made thereunder, the scheme of granting licence entertaining applications on proper forms alongwith prescribed fees shows that the Institution had to perform the functions independent of the Central Government. Keeping in view the advice given by the Ministry of Law in the matter, it is considered that there is no inconsistency in the operation of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations."

37. The Committee observed that under the scheme of Section 21, the Regulations to be framed by the Institution were to pertain to matters of detailed procedure. It, therefore, felt that, even though, as held by the Ministry of Law, the Institution was not precluded from making regulations for prescribing fees, such Regulations were not in consonance with the spirit and scheme of Section 21.

38. Even otherwise, the Committee felt that fees for grant of licences which had the effect of imposing a financial burden should be regulated through the Indian Standards Institution (Certification Marks) Rules, 1955, which were laid on the Table of the House rather than Regulations, which were not so laid. The Committee desired that Government should reconsider the matter in the light of its foregoing observation.

(ix) Rules for the custody and handling of exhibits in the Salar Jung Museum and Library, Hyderabad (Memorandum No. 101)

39. The Study Group of the Committee on Subordinate Legislation at its sitting held on the 21st September, 1968 had directed that an enquiry be made from the Ministry of Education whether there were any rules, bye-laws, etc. relating to the preservation and safe custody of antiquities and rare exhibits, precious jewellery etc. in national museums.

40. The Ministry of Education who was asked to furnish the necessary information forwarded a copy of 'comprehensive rules' for the custody and handling of exhibits in the Salar Jung Museum and Library, Hyderabad. On examination of above-mentioned

'comprehensive rules', it was found that these did not bear any short title; nor did they cite the authority under which they had been framed.

41. The Ministry of Education to whom the matter was referred, *inter alia*, stated as under:

"The above quoted comprehensive rules are framed by the Salar Jung Museum Board under Regulation 33 of the Salar Jung Museum Regulations, 1962. These comprehensive Rules for the custody and handling of exhibits in the Salar Jung Museum and Library are not required to be published in the Gazette of India."

42. Regulation 33 of the Salar Jung Museum Regulations, 1962 under which the above quoted "comprehensive rules" were stated to have been framed by the Board, read as follows:

"The Director shall take such steps as may be deemed necessary for preparing scientific catalogues and inventories of books, manuscripts and other articles and things in the Museum and also for the proper preservation, subject to the general approval of the Board."

43. It was pointed out to the Ministry of Education that Regulation 33, as worded, did not provide for framing of "comprehensive rules". In this connection, the Committee perused the following reply of the Ministry of Education and Youth Services:—

"Regulation 33 authorises the Director to take such steps as may be deemed necessary for preparing scientific catalogues and inventories of books, manuscripts and other articles and things in the Museum and also for their proper preservation, subject to general approval of the Board. The 'comprehensive rules' for the custody and handling of exhibits in the Salar Jung Museum have been framed under this Regulation by the Director with the approval of the Board. As these 'rules' for the custody and handling of exhibits are matters of detail and require frequent changes, it is not considered desirable that they be incorporated as such in the Regulations because otherwise any changes in these 'rules' will require amendment of Regulations which in turn will require frequent references to the Central Government. It is true that these 'rules' for the custody and handling of the exhibits are strictly speaking not rules but form part of the steps taken by the

Director in accordance with and under Regulation 33 of the Salar Jung Museum Regulations, 1962. If it is considered desirable another suitable name such as 'directions, can be given to these 'comprehensive rules'."

44. The Committee note that it had been conceded by the Ministry of Education and Youth Services that strictly speaking the so-called "comprehensive rules for the custody and handling of exhibits in the Salar Jung Museum & Library" were not rules, but formed part of the steps taken by the Director in accordance with and under Regulation 33 of the Salar Jung Museum Regulations, 1962. The naming of these "steps" as "Rules" was, therefore, inappropriate, particularly as Section 27 of the principal Act provided for framing of Rules by the Central Government, in consultation with the Board, in respect of certain other matters.

45. Apart from the question of inappropriate expression, the Committee noted that the particular matters listed in sub-section (2) of Section 28, in respect of which Regulations might be made by the Board, included "steps to be taken for the preservation of the books, manuscripts and other articles and things in the museum". Under Section 28(1) of the principal Act, the Regulations to be made by the Board required not only the previous approval of the Central Government, but were also required to be published in the Gazette of India. By specifying the "steps for the preservation of books, etc." in the directions termed as "Comprehensive Rules", instead of in the Regulations, as envisaged in Section 28(2)(g), not only the condition of prior approval of the Central Government had been obviated but also the statutory requirement of its publication in the Gazette of India done away with.

(x) *Giving of Retrospective Effect to 'Orders' (Memo No. 102)*

46. The Committee had noticed that the following 'Orders' were given retrospective effect from the date shown against each in column 4 of the Table below:

S. No.	Short title and No. of 'Order'	Date of Publication in the Gazette	Effective date of 'Order'
1	2	3	4
1.	Goa, Daman and Diu Civil Service (Amendment) Rules, 1968 (G.S.R. 98 of 1968)	20-1-68	11-3-67
2.	Ministry of Defence, Historical Section (Post of Research Assistant) Recruitment Rules, 1967 (S.R.O. 232 of 1968)	20-7-68	30-3-66

1	2	3	4
3.	Indian Ordnance Factories (Recruitment and Conditions of Service of class IV non-Industrial Personnel) Amendment Rules, 1968 (S.R.O. 297 of 1968).	12-10-68	28-5-68
4.	Amendments to Schedule III of the Indian forest Service (Pay) Rules, 1968 (G.S.R. 1830-1831 of 1968).	12-10-68	1-10-66
5.	Manipur Employees (Revision of Pay) Amendment Rules, 1968 (S.O. 3533 of 1968).	12-10-68	1-4-64
6.	The Indian Railway Medical Service (District Medical Officer) Recruitment (second Amendment) Rules, 1968 (G.S.R. 1855 of 1968).	19-10-68	1-4-68
7.	The Central Warehousing Corporation Employees' Provident Fund (Amendment) Regulations 1968 (S.O. 3666 of 1968).	19-10-68	1-11-67
8.	The Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of vacancies) Amendment Rules 1968 (G.S.R. 1933 of 1968).	2-11-68	11-5-68
9.	The Department of Agriculture (Deputy Commissioners, Poultry and Live-stock Health) Recruitment Rules, 1968 (G.S.R. 1973 of 1968).	9-11-68	29-6-67
10.	The Indian Forest Service (Released Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Amendment Regulations, 1968 (G.S.R. 2031 of 1968).	23-11-68	1-1-68
11.	(i) The Class I Posts (Tripura Administration) Recruitment Amendment Rules, 1968 (G.S.R. 2032 of 1968) and (ii) The Class I Posts (Manipur Administration) Recruitment Amendment Rules, 1968 (G.S.R. 2033 of 1968).	23-11-68	1-1-68

47. The Committee noted that in all the above cases, the Ministries concerned had stated that no one was adversely affected as a result of retrospective effect. The Committee also noted the following observations of the Attorney-General made in connection with Exemption Notifications issued under the Central Excises and Salt Act, 1944 and the rules framed thereunder:

"The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to operate retrospectively. Without such a law no subordinate legislation can have any retrospective effect....."
[Para 1.14 of the 111th Report of the P.A.C. (1970)].

48. The Committee also noted that out of the 11, 'Orders' mentioned in paragraph 46 above, eight (S. Nos. 1-3, 5-6, 8-9 and 11) had been issued under proviso to Article 309, two (S. Nos. 4 and 10) under Rules framed under the All India Services Act, 1951 and one (S. No. 7) under the Warehousing Corporation Act, 1962. Neither Article 309 of the Constitution nor the relevant sections of the other enactments appeared to have conferred express power on Government to give retrospective effect to the rules framed thereunder.

49. The Committee desired that the Ministry of Home Affairs might be asked to examine, in consultation with the Ministry of Law, whether retrospective effect to the 'Orders' listed in para 46 above had been given under due legal authority.

(xi) *Action taken or proposed to be taken by Government on various recommendations of, and assurances given to, the Committee on Subordinate Legislation (Memorandum No. 103)*

50. The Committee noted the progress of action taken or proposed to be taken by the Government on various recommendations of, or assurances given to, the Committee on Subordinate Legislation as indicated in Appendix I (page 28 ante).

The Committee then adjourned.

XXXVI

MINUTES OF THE THIRTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Tuesday, the 15th December, 1970 from 15.00 to 16.00 hours.

PRESENT

Shri Anand Narain Mulla—*Chairman*

MEMBERS

2. Shri Tukaram Hurji Gavit
3. Shri Vikram Chand Mahajan
4. Shri M. Meghachandra
5. Shri N. K. Sanghi
6. Shri B. Shankaranand

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee considered its draft Seventh Report and adopted it .

3. The Committee authorised the Chairman and, in his absence, Shri N. K. Sanghi to present the Report to the House on its behalf on the 16th December, 1970.

The Committee then adjourned.

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