

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

FIRST REPORT

(Presented on the 16th July, 1977)



**LOK SABHA SECRETARIAT
NEW DELHI**

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Committee on Subordinate Legislation
(Sixth Lok Sabha)

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LEGISLATION (1977-78)**

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SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

REPORT

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their First Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation (1976-77) at their sittings held on the 12th October, 1976, 29th November, 1976 and the 21st December, 1976.

3. The Committee considered and adopted this Report at their sitting held on the 14th July, 1977.

The Minutes of the sitting which form part of the Report are appended to it.

4. A statement showing the summary of the recommendations/observations of the Committee is also appended to the Report (Appendix I).

II

PUBLICATION OF DRAFT RULES FOR INVITING PUBLIC COMMENTS/SUGGESTIONS

5. In para 31 of their Sixth Report (First Lok Sabha), the Committee on Subordinate Legislation had observed as follows:

"The Committee feel that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to them to study the draft rules and send their comments before they are finalised. The Committee are of the opinion that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette copies to various parts of the country, should be given to the public to send their comments on such draft rules."

In para 32 of their Fourth Report (Fifth Lok Sabha), the Committee re-stressed the above recommendation.

6. While examining the 'Orders' noted in Appendix II which, in terms of the relevant Acts were required to be pre-published in draft form, it was noticed that the time given to the public for sending comments/suggestions was less than 30 days.

7. The matter was taken up with the Ministries/Departments concerned in each case. A gist of their replies is given in col. 7 of Appendix II.

8. A perusal of the Appendix shows that in four cases out of 11, the Ministries/Departments had themselves given a period of less than 30 days for sending comments/suggestions. In S. No. 1, the Ministry of Shipping and Transport (Transport Wing) had given a period of only 12 days. On account of delay in supply of copies of the Gazette, the actual period allowed to the public was reduced to barely two days. In case of S. No. 2, that Ministry had allowed a period of only 9 days. In cases of S. Nos. 6-7, the Ministry of Labour had allowed a period of 22 days.

9. In the remaining 7 cases, the Ministries/Departments concerned had provided 30 or more than 30 days. But on account of delay in making the copies of the relevant Gazette available, the period actually allowed to the public was reduced to less than 30 days. In the case of the Insurance (Amendment) Rules, 1971 (S. No. 3), the Ministry had provided for a period of two months for sending comments/suggestions, but 45 days were taken in making the copies of the Gazette available to the public with the result that the net period actually allowed to the public was reduced to only 16 days. Even in case of Gazettes *Extraordinary* copies were made available to the public after an elapse of 7 days in one case (S. No. 8) and 10 days in another (S. No. 11).

10. The Ministry of Works and Housing with whom the question of delay in making the copies of Gazette available to the public was taken up have stated that normally in the case of ordinary Gazette the gap between printing and making it available to the public is 3 to 4 days. In the case of extraordinary Gazette the Press tries to execute the gazette within the barest minimum time. Copies can be made available to the public on the next day provided the volume of work is less or importance of the notification is communicated in writing or over telephone to the Press in advance.

11. The Committee have been repeatedly stressing that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to the public to study the draft rules and send their comments/sug-

gestions on their provisions. With this end in view, the Committee have desired that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the gazette and despatching the Gazette copies to various parts of the country, should be given to the public to send their comments on such draft rules. The Committee, however, regret to note that in the case of the 11 'Orders' enumerated in the Appendix, the net period allowed to the public to send their comments on the draft rules was less than 30 days. In one case, the net period available with the public was barely two days, and in two cases, 9 days. The Committee will once again like to emphasise that a period of not less than 30 clear days should invariably be given to the public to send their comments/suggestions on the draft rules.

12. The Committee note that while in four out of the 11 cases enumerated in the Appendix, the Ministries/Departments had themselves given a period of less than 30 days—9, 12 and 22 days (two cases)—for receipt of comments/suggestions from the public, in the remaining 7 cases the period available was reduced to less than 30 days as a result of delay in making available the copies of the Gazette containing the draft rules to the public. In one of these cases, as many as 45 days were taken in making the copies of the Gazette available to the public. Even in case of Gazette Extraordinary, copies were made available to the public after an elapse of 7 days in one case and 10 days in another. The Committee will like the Ministry of Works and Housing to evolve some procedure to ensure that the time-lag between the publication of a Gazette and making available its copies to the public is reduced to the barest minimum viz. 3 to 4 days in case of Ordinary Gazettes and one day in the case of Extraordinary Gazettes at the most.

13. Nevertheless, the Committee will like to make it clear that the onus to ensure that in no case the period allowed to the public for sending comments/suggestions is less than 30 clear days lies on the Ministries/Departments responsible for the administration of the rules. In case a Ministry/Department finds that in a particular case due to any reason the net period made available to the public works out to less than 30 days, they should extend the period for receipt of comments/suggestions so that the net period allowed to the public does not fall short of 30 clear days. The Committee desire the Department of Parliamentary Affairs to bring these observations to the notice of all Ministries/Departments for strict compliance in future.

III

THE MORAR CANTONMENT (REGISTRATION AND CLASSIFICATION OF CONTRACTORS) AMENDMENT BYE-LAWS, 1974 (S.R.O. 288 of 1974)

14. Bye-law 4 of the Morar Cantonment (Registration and Classification of Contractors) Bye-laws, 1969 as substituted by the above amending bye-laws, reads as under:

"4. Every contractor in Class A shall deposit a sum of Rs. 100|- and in Class B a sum of Rs. 50|- before his name is included in the list of approved contractors. This amount shall be refunded only when the contractor's name is removed from the list at his own request. In event of the death of any contractor, such amount shall be payable to his legal heirs. The amount so deposited shall be liable to be forfeited at the discretion of the Board, if he has failed to tender for works for more than one year."

15. There is no provision in the above bye-laws to indicate that an opportunity of being heard would be given to the contractor before forfeiting his deposit for failure to tender for more than a year. The Ministry of Defence with whom the matter was taken up have stated as under:

"...the Contractor's deposit for registration is liable to be forfeited at the discretion of the Board on the happening of both the following two contingencies:

- (i) Termination of the year during which he should have tendered; and
- (ii) Failure to tender during that year.

Both these are simple facts requiring verification from the Board's record. The Board does not need to hold an enquiry or seek the assistance of the contractors to ascertain them. Hence there is apparently no need for the Board to issue show cause notice to the contractor in order to find out whether these two contingencies under which the deposit is forfeited have occurred or not. The Board having been given the discretion to waive the forfeiture will obviously take into account any representation which the contractor makes."

16. The Committee note that the bye-law in question does not provide for giving an opportunity of being heard to a contractor, before

his deposit is forfeited on account of his failure to tender for works for more than one year. The Committee are not satisfied with the reply of the Ministry of Defence that the Cantonment Board having been given the discretion to waive the forfeiture would take into account any representation which the contractor might make against the forfeiture of his deposit. The Committee need hardly re-stress that giving of a reasonable opportunity of being heard to a person before the penal provisions of a law are invoked against him is one of the basic requirements of natural justice. The Committee desire the Ministry of Defence to amend the bye-law in question so as to provide therein for giving a reasonable opportunity of being heard to the contractor before his deposit is forfeited.

IV

THE FURNACE OIL (FIXATION OF CEILING PRICES AND DISTRIBUTION) ORDER, 1974 (G.S.R. 150-E of 1974).

17. Para 7 (1) of the Furnace Oil (Fixation of Ceiling Prices and Distribution) Order, 1974, provided as under:—

"7. Power of entry, search and seizure:

- (I) Any officer authorised in this behalf by the State Government in relation to a territory in a State or, as the case may be, by the Administrator, in relation to a territory in a Union territory, may, with a view to securing compliance with this Order or to satisfying himself that this Order has been complied with and with such assistance, if any, as he thinks fit—
 - (i) enter, inspect or break open and search any place or premises, vehicle or vessels which he has reason to believe has been or is being used for the contravention of this Order, and
 - (ii) search, seize and remove stocks of Furnace Oil and the animals, vehicles, vessels, or other conveyance used in carrying Furnace Oil in contravention of the provisions of this Order, and thereafter take or authorise the taking of all measures necessary for securing the production of the said stocks and the animals, vehicles, vessels or other conveyance so seized, in a court and for their safe custody pending such production."

18. It was noticed that the minimum status or rank of an officer who may be authorised to conduct searches/seizures under para 7(1) of the above Order had not been specified therein. The matter was taken up with the Ministry of Petroleum and Chemicals and their attention was drawn to an earlier recommendation of the Committee on Subordinate Legislation made in para 15 of their Fifth Report (Third Lok Sabha), wherein, while commenting upon a similar provision contained in para 4 of the Petroleum Products (Supply and Distribution) Order, 1965, they had urged Government to specifically state in the Order that a Government servant *not below the specified rank or equivalent officer* might be authorised to conduct searches and seizures, etc., under the aforesaid Order. It 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 powers of conducting searches and seizures under the aforesaid Order.

19. The Ministry were asked to state the reasons for not complying with the above recommendation of the Committee in the instant case, and whether they had any objection to specifying the minimum rank of 'any officer' in the Order, who might be authorised by the State Government/Union territory to conduct searches, seizures, etc.

20. In their reply, the Ministry stated that they had issued an amendment to the Orders substituting the words "any officer" appearing in para 7(1) by the words 'Any police officer not below the rank of a sub-Inspector or any other officer of Government of or above an equivalent rank'. Similar amendments had been made in the Orders relating to Kerosene and Light Diesel Oil.

21. The Committee note with satisfaction that the Ministry of Petroleum and Chemicals have amended para 7(1) of the Order so as to specify the minimum rank of the officers who might be authorised by the State Government/Union Territory to conduct searches/seizures etc. under the Order. The Committee also note that similar amendments have been made by the Ministry in the Kerosene (Fixation of Ceiling Prices) Order, 1970 and the, Light Diesel Oil (Fixation of Ceiling Prices) Order, 1973.

V

THE EXPORT OF LIGHT ENGINEERING PRODUCTS (INSPECTION) RULES, 1976 (S.O. 894 OF 1976)

22. Rule 3 of the above rules reads as under:

"Basis of Inspection—Inspection of light engineering products for export shall be carried out with a view to see-

ing that the light engineering products conform to the standard specifications recognised by the Central Government under section 6 of the Act. Sampling shall generally be done as per the Table mentioned in Schedule II or Schedule III to these rules. If, however, in the opinion of the Agency, the consignment is not of uniform quality the scale of sampling may be increased at the discretion of Agency."

23. The Committee on Subordinate Legislation which examined the matter at their sitting held on the 17th May, 1976 desired that for the convenience of general public and facility of tracing them reference may be made in the rule to the Gazette in which the standard specifications had been published.

24. The Ministry of Commerce with whom the matter was taken up have stated as under:

"...the Order under Section 6 specifying the standard specification in respect of the commodity brought, under quality control and the rules made thereon under section 17 of the Export (Quality Control and Inspection) Act, 1963 are issued simultaneously i.e. in the Gazette of the same date. In case of Light Engineering Products also, the Order under Section 6 and Rules under Section 17 were published simultaneously and published in the Gazette of India dated 28th February, 1976. Since both the Notifications relating to the particular commodity are issued in the Gazette of the same date, reference in the rule to the Gazette Notification specifying the standard specification was not considered necessary."

25. The Committee are not satisfied with the reply of the Ministry of Commerce that they do not consider it necessary to give a reference in the Rules to the Gazette Notification specifying the standard specification, as both the Rules and the Notification had been issued in the Gazette of the same date. The Committee feel that, for the convenience of the public, whenever a commodity is brought under quality control, reference should invariably be made in the Rules relating to its inspection to the notification giving the standard specification in respect of that commodity notwithstanding the fact that both the notifications are printed in the Gazette of the same date. The Committee desire that their recommendation in this regard should be brought to the notice of all the Ministries/Departments for compliance in future.

VI

THE KANDLA PORT PILOTAGE (FEES) ORDER, 1975 (G.S.R. 377-E OF 1975)

26. Rule 4(1) (iii) of the above Rules read as under:

“(iii) where a pilot goes out to pilot an incoming vessel at the Pilot Station in accordance with the requisition, full pilotage fee including night pilotage fee where the pilot boards at night hours, shall be recovered if the pilot has to return owing to:—

- (a) non-arrival or late arrival of that vessel;
- (b) refusal of the Master of that vessel to enter the Port;
- (c) non-cancellation of pilotage requisition before the pilot is despatched;
- (d) any other reasons.”

27. It was felt that in cases where the pilot had to return for reasons beyond the control of the Master of the ship, full pilotage fee should not be recovered. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under:

“the matter has been examined by this Ministry and the following comments are furnished:—

- (1) It will be observed that in terms of para 3(1) of the Kandla Port Pilotage (Fees) Order, 1975, the agents of vessels are given a normal time of 12 hours to requisition the services of a Pilot.
- (2) Again under Rule 4(i) and (ii) of the said rules, a pilotage requisition can be cancelled without any financial implications to agents if it is cancelled more than three hours before the time fixed for the Pilot launch to leave and if the notice period is less than three hours but more than one hour only fifty per cent of the pilotage fees is leviable and if the cancellation is made within less than one hour's notice, a cancellation fee equal to 75 per cent of the pilotage fees is levied.
- (3) In view of the above provisions, the pilotage Fees Rules in question provide ample opportunity to the agents to file a requisition anticipating the time of the arrival of

the ship at the Port and also to cancel it by payment of a part of the pilotage fees only if the cancellation period falls short of three hours before the pilot launch leaves.

- (4) Moreover, when the pilot returns from an idle trip in a port like Kandla where the number of pilots is limited, the non-utilisation of the pilot's service not only involves infructuous expenditure on the launch trip but also the pay and allowances of the Pilot and loss of revenue to the Port. However, in cases where the ship's arrival time is delayed due to exceptional circumstances like fire on board the vessel, grounding etc., special consideration can always be shown.

In view of the position explained, there does not appear to be any need to amend the existing Pilotage Fees Rules, 1975."

28. The Committee note the reply of the Ministry of Shipping and Transport (Transport Wing) that in cases where the ship's arrival time was delayed due to exceptional circumstances like fire on board the vessel, grounding etc., special consideration could always be shown. In view of this, the Committee feel that the Ministry should have no difficulty in amending the Order to provide that full pilotage fee would not be recovered in cases where the pilot had to return for reasons beyond the control of the Master of the ship. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

VII

THE CENTRAL EXCISE (FOURTEENTH AMENDMENT) RULES, 1975 (G.S.R. 2511 of 1976)

29. Rule 51 of the Central Excise Rules, 1944, as substituted by the above amending rules, *inter alia* provides that unless specifically exempted by the Collector by order in writing, every manufacturer shall, as soon as practicable, after any excisable goods are packed and weighed in the factory or otherwise made ready for removal from the factory (i) mark on each wholesale package batch No. (lot No.) etc. to which the goods pertain and (ii) deposit the goods in an approved store-room unless they are intended to be cleared on payment of duty, immediately after completion of manufacture.

30. As, in the absence of guidelines/criteria for grant of exemption from the purview of rule 51, different Collectors could act differently, resulting in differential treatment of parties similarly placed in

various areas, the Ministry of Finance (Department of Revenue) were asked whether any guidelines/criteria had been issued in the matter. The Ministry were also asked to state whether they had any objection to providing for recording in writing of reasons for grant of exemption by the Collector.

31. The Ministry of Finance (Department of Revenue and Banking) with whom the matter was taken up have stated as under:

"....no guidelines have been prescribed in the matter. However, the whole matter is being examined afresh in view of the many representations received. I am also directed to inform you that the observations made in your letter referred to above will be kept in view while making modifications in the rule, if any."

32. The Committee note that the Ministry of Finance (Department of Revenue and Banking) are examining the whole matter afresh in view of the many representations received in that regard. The Committee also note the assurance of the Ministry that the suggestions of the Committee in regard to (i) laying down of criteria/guidelines for grant of exemption from Rule 51; and (ii) recording of reasons in writing for granting exemption would be kept in view while making modifications in Rules, if any. The Committee desire the Ministry to amend the Rules on the suggested lines at an early date.

VIII

- (i) THE DELHI, MEERUT AND BULANDSHAHR MILK AND MILK PRODUCTS (EXPORT) CONTROL ORDER, 1974 (S.O. 457-E of 1974).
- (ii) THE DELHI, MEERUT AND BULANDSHAHR MILK AND MILK PRODUCTS (EXPORT) ORDER, 1975 (S.O. 331-E of 1975).

33. Paragraph 4(1) of the Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Control Order, 1974 reads as under:—

"Power of entry, search, seizure, etc.—(1) Any Magistrate or any police officer, not below the rank of a head constable may with a view to securing compliance with this Order or

to satisfying himself that this Order is being complied with,—

- (a) stop and search any person or any boat, motor or other vehicle or any receptacle or machinery used or intended to be used for export of milk or milk products;
- (b) seize or authorise the seizure of any milk or milk products in any place or premises together with packages, coverings, receptacles or machinery in which milk or milk products are found or the animals, vehicles, vessels, boats or other conveyances used in carrying milk or milk products for export and thereafter take all measures necessary for securing the production of the packages, coverings, receptacles, or machinery so seized in a court and for their safe custody pending such production.'

Similar provision was made in the Order issued in 1975.

34. Under the above provision any stipendiary Magistrate or any police officer not below the rank of a head constable could also authorise a person to seize milk or milk products. Minimum rank of the person to be so authorised was not indicated in the Order.

35. Attention of the Ministry of Agriculture and Irrigation (Department of Agriculture) was invited to the following recommendations of the Committee on Subordinate Legislation made in paras 21-22 of their First Report (Fifth Lok Sabha):

"The Committee on Subordinate Legislation have repeatedly stressed the need for indication of the minimum rank of the persons to be authorised by the Government to conduct searches/seizures. The underlying idea is that each and every Government officer may not be authorised to exercise the power of searches/seizures.

The Committee are of the view that the provision for further authorisation is as much against the spirit of the aforesaid recommendation of the Committee as non-indication of the minimum ranks of the persons initially authorised to exercise these powers. The Committee, therefore, desire that not only the minimum ranks of officers to be authorised by Central/State Governments to conduct searches/seizures should be specifically given in the Rules but the provision for further authorisation omitted therefrom".

36. In their reply dated 16-2-1976, the Ministry of Agriculture and Irrigation (Department of Agriculture) replied as under:

“The Ministry of Law and Justice has been consulted in the matter and this Ministry would consider incorporating the suggestion of the Committee on Subordinate Legislation in the Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Control Order which may be issued in the summer of 1976.”

37. In a similar Order issued in 1976, the provision for further authorisation to seize which has been objected to by the Committee has not been made.

38. The Committee note with satisfaction that, on the matter being taken up, the Ministry of Agriculture and Irrigation (Department of Agriculture) have not made a provision for further authorisation to seize, search, etc. in the Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Order issued in 1976.

IX

THE MARRIAGE LAWS (AMENDMENT) BILL, 1976 (AS PASSED BY RAJYA SABHA)—INSERTION OF PROVISION FOR LAYING OF RULES FRAMED UNDER SECTION 50(1) OF THE SPECIAL MARRIAGE ACT, 1954 BEFORE PARLIAMENT.

39. The Marriage Laws (Amendment) Bill, 1976, as passed by Rajya Sabha on the 12th May, 1976 was laid on the Table of Lok Sabha on 17th May, 1976. The Bill which sought further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, was examined under Direction 103(2) of the Directions by the Speaker. While examining the Special Marriage Act, 1954 in this connection, it was noticed that section 50(1) empowers the Central Government, in the case of officers of the Central Government, to make rules by notification in the Official Gazette, for carrying out the purposes of this Act. There is, however, no provision in the said section that rules framed thereunder will be laid before Parliament. The Committee on Subordinate Legislation had recommended in para 37 of their Third Report (First Lok Sabha), presented to the House on 3-4-1955, that in all future Bills which might seek to amend earlier Acts giving power to make rules, regulations, etc., suitable provisions to lay them on the Table should be included therein.

40. After the presentation of the above Report, the Special Marriage Act, 1954, had been amended, thrice—by Act No. 32 of 1963,

33 of 1969 and 29 of 1970, but no provision for laying the rules framed under section 50 had been made therein and even the amendment Bill under reference did not make any provision to this end.

41. The matter was taken up with the Ministry of Law, Justice and Company Affairs (Legislative Department) and their attention was drawn to the above recommendation of the Committee and also to paras 46—50 of their Ninth Report (Fifth Lok Sabha), presented to the House on the 19th November, 1973, wherein they had desired the Ministry of Law, Justice and Company Affairs (Legislative Department), in particular, to issue general instructions in this behalf to all Ministries/Departments so that inclusion of the laying provision, as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha), in original as well as amending Bills did not escape their attention in future. The Ministry were asked to state the special reasons, if any, for not complying with the aforesaid recommendations of the Committee when the parent Act was amended thrice, as well as in the present Bill, and whether they had any objection to making an amendment to the said Bill on the lines suggested above. In their reply, the Ministry while agreeing to the suggestion, have stated as under:—

“As pointed out by the Lok Sabha Secretariat... the Special Marriage Act has been amended by Act 32 of 1963, Act 33 of 1969 and Act 29 of 1970. No amendment to sub-section (1) of section 50 of the Act was proposed on those occasions. Similarly, this time also, in the Marriage Laws (Amendment) Act, which amends the Special Marriage Act also no such amendment was proposed. It may be mentioned in this connection that marriage is a subject in the Concurrent List and the administration of any law on the subject is normally vested in the State Government or the Union Territory Administration, as the case may be, vide definition of ‘State Government’ in section 2 (g) of the Act. The powers of the Central Government under sub-section (1) of section 50 are thus limited and have been exercised to frame rules in relation to Central Government functioning as Marriage Officers abroad. However, we have noted the point raised in the O.M. of the Lok Sabha Secretariat and on the next occasion when the Act is amended, we shall insert a suitable rule-laying formula.”

42. The Committee note the assurance given by the Ministry of Law, Justice and Company Affairs (Legislative Department) that

on the next occasion when the Special Marriage Act, 1954 is amended, they would insert a provision requiring the rules framed thereunder to be laid before Parliament.

X

THE ALLOTMENT OF GOVERNMENT RESIDENCES OUTSIDE THE CENTRAL POOL AND IN THE DIRECTORATE OF MARINE ENGINEERING TRAINING, CALCUTTA, RULES, 1975 (S.O. 884 OF 1975)

43. Supplementary Rule 317-A.O.17 of the above Rules reads as under:—

- “(1) If an officer to whom a residence has been allotted unauthorisedly sublets the residence or charges rent from the sharer at a rate which the Director considers excessive or erects any unauthorised structure in any part of the residence or uses the residence or any portion thereof for any purposes other than that for which it is meant or tampers with the electric or water connection or commits any other breach of the rules in this Division or of the terms and conditions of the allotment or uses the residence or premises or permits or suffers the residence or premises to be used for any purpose which the Director considers to be improper or conducts himself in a manner which in his opinion is prejudicial to the maintenance of harmonious relations with his neighbours or has knowingly furnished incorrect information in any application or written statement with a view to securing the allotment the Director may, without prejudice to any other disciplinary action that may be taken against him, cancel the allotment of the residence.

* * *

- (2) If an officer sublets a residence allotted to him or any portion thereof or any of the out-houses, garages or stables appurtenant thereto, in contravention of these rules, he may, without prejudice to any other action that may be taken against him be charged enhanced licence fee not exceeding four times the standard licence fee under Fundamental Rules 45-A. The quantum of licence fee to be recovered in each case will be decided by the Director on merits. In addition the officer may be debarred from shar-

ing the residence for a specified period in future as may be decided by the Director.

- (3) Where action to cancel the allotment is taken on account of unauthorised subletting of the premises by an officer, a period of sixty days shall be allowed to the officer, and any other person residing with him therein to vacate the premises. The allotment shall be cancelled with effect from the date of vacation of the premises or expiry of the period of sixty days from the date of the order for the cancellation of the allotment, whichever is earlier.
- (4) Where the allotment of a residence is cancelled for conduct prejudicial to the maintenance of harmonious relations with neighbours, the officer at the discretion of the Director may be allotted another residence in the same class at any other place."

44 There is no indication in the above Rules whether a reasonable opportunity of being heard will be given to the allottee before action is taken against him.

45. The Ministry of Shipping and Transport (Transport Wing) with whom the above matter was taken up have replied as under:

"...this Ministry has no objection to provide under S.R 317 A.O. 17 of the Allotment of Government Residences outside the Central Pool and in the Directorate of Marine Engineering Training, Calcutta Rules, 1975, a provision regarding giving of a reasonable opportunity to the allottee of being heard before any action is taken against him for breach of Rules and conditions of allotment. Necessary action for issuing a notification to this effect is being taken in consultation with the Ministry of Works and Housing (Directorate of Estates) and Ministry of Law and Justice, New Delhi."

46. The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have no objection to provide in S.R. 317 A.O.17 that a reasonable opportunity of being heard would be given to an allottee before any action is taken against him for breach of any rule or conditions of allotment. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

THE WOOL GRADING AND MARKING RULES, 1975
(S.O. 4096 OF 1975)

"15. Special conditions of authorisation:—

(1) $\quad \quad \quad \ast \quad \quad \quad \ast \quad \quad \quad \ast \quad \quad \quad \ast$

(2) In addition to the conditions prescribed in rule 5 of the General Grading and Marking Rules, 1937, the under-mentioned conditions shall be the conditions of every Certificate of Authorisation issued for the purpose of these rules, namely:—

(a) The premises of authorised wool merchants and baling presses shall be clean and tidy and shall provide adequate space facilities for cleaning, sorting, baling, weighing, storage, official inspection and marking of wool;

(b) All instructions, regarding method of sampling, testing, marking and inspection of wool before and after the pressing and maintenance of records thereof, issued by the Agricultural Marketing Adviser to the Government of India from time to time shall be observed strictly by all concerned."

48. As the conditions prescribed in the General Grading and Marking Rules, 1937, were also a part of the conditions of the above Rules, the attention of the Ministry of Agriculture and Irrigation was invited to the of-repeated recommendation of the Committee on Subordinate Legislation that Rules should be self-contained and legislation by reference should be avoided as far as possible. The Ministry were also requested to state whether they had any objection to incorporate the conditions contained in Rule 5 of the Grading and Marking Rules, 1937, in Rule 15(2) of the above Rules.

49. In their reply, the Ministry of Agriculture and Irrigation (Department of Rural Development) have stated as under:—

"....a mention has been made about Rule '5' of the General Grading and Marking Rules, 1937. It may be stated here that the figure '5' is typographical error for the figure '4'. In view of the recommendations of the Committee on

Subordinate Legislation this Ministry has no objection to incorporate in 'Rule 15(2)' of the said Rules, the conditions prescribed in Rule '4' of the General Grading and Marking Rules, 1937, or to append an extract of these conditions to the Rules.

The Agricultural Marketing Adviser to the Government of India is being requested to take necessary action in this regard."

50. The Committee note with satisfaction that the Ministry of Agriculture and Irrigation (Department of Rural Development) have agreed to incorporate the conditions prescribed in Rule 4 of the General Grading and Marking Rules, 1937 in rule 15(2) of the Wool Grading and Marking Rules, 1975, so as to make them self-contained. The Committee desire the Ministry to do the needful at an early date.

XII

THE BOMBAY FOODGRAIN HANDLING WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1975 (S.O. 2383 OF 1975)

51. Clause 43 of the above Scheme reads as under:

- "43. Disentitlement to payment.—(1) A registered dock worker who while in the reserve pool fails without adequate cause to comply with the provisions of clause 37 (4) (a) or (b), or fails to comply with any lawful order given to him by or on behalf of the Board, may be proceeded with in accordance with sub-clause (3).
- (2) A registered dock worker in the reserve pool, who, while in employment to which he has been allocated by the Administrative Body, fails without any adequate cause to comply with the provisions of clause 37(5) or fails to comply with any lawful orders given to him by his employer, may have his engagement terminated and may be returned to the reserve pool and whether or not he is so returned may be reported in writing to the Labour Officer. When a registered dock worker is so returned to the reserve pool, the Administrative Body shall endorse his Attendance Card accordingly.
- (3) The Labour Officer shall consider any matter arising under sub-clause (1) or (2) and if, after investigating the matter,

he notifies the registered dock worker that he is satisfied that the registered dock worker has failed to comply with a lawful order as aforesaid, the registered dock worker shall not be entitled to any payment, or to such part of any payment under clause 42 as the Labour Officer thinks fit in respect of the wage period in which such failure occurred or continues."

52. There was no provision in the above clause for giving an opportunity of being heard to a dock worker before action was taken against him under sub-clause (3).

53. The Ministry of Shipping and Transport, (Transport Wing), with whom the above matter was taken up, have stated as under in their reply:

"Clause 43(3)

There is already a provision in clauses 44 and 45 of the Scheme for a Show Cause Notice to be issued to the workers in the matter of certain disciplinary proceedings. However, clause 43 provides for wage cut for failure to perform the assigned duties by any worker. Such wage cut for non-performance of duties is a normal managerial function and it is considered that issue of a Show Cause Notice is not necessary in such cases. However, there is a provision in clause 47 for appeal to the Deputy Chairman against the orders passed under clause 43.

Notwithstanding the above position, the Labour Officer has been advised to issue a Show Cause Notice and give reasonable opportunity to the worker of being heard even in cases falling under clause 43(3). It is, however, felt that formal amendment of the Scheme to make it obligatory may not be appropriate."

54. The Committee note that the Labour Officer had been advised by the Ministry of Shipping and Transport (Transport Wing) to issue a show cause notice and give a reasonable opportunity of being heard to the worker even in cases falling under clause 43(3) of the Scheme. The Committee, however, do not agree with the contention of the Ministry that a formal amendment of the Scheme to make it obligatory on the Labour Officer to issue a notice may not be appropriate. As already observed by the Committee in para 25 of their First Report (Fifth Lok Sabha), a departmental instruction is no substitute for a built-in legal safeguard. The Committee, therefore,

desire the Ministry to put the above departmental instruction on a statutory footing by amending the Scheme suitably at an early date.

XIII

THE NAVY (DISCIPLINE AND MISCELLANEOUS PROVISIONS) AMENDMENT REGULATIONS, 1974 (S.R.O. 37 OF 1974) AND THE NAVAL CEREMONIAL, CONDITIONS OF SERVICE AND MISCELLANEOUS (AMENDMENT) REGULATIONS, 1974 (S.R.O. 113 OF 1974).

55. The above regulations framed under the Navy Act, 1957 (62 of 1957) were laid on the Table of Lok Sabha on the 25th April, 1974. During the course of their examination, it was observed that similar sets of regulations for Army and Air Force had not been framed. The matter was taken up with the Ministry of Defence and they were asked to state whether similar regulations had been framed for the other two forces; and if not, the reasons for not doing so.

The Ministry furnished the following reply:

“....Statutory Regulations pertaining to the Army and Air Force, similar to the ones for the Navy.... are in the process of formulation with the Ministry of Law, Justice & Company Affairs. It is expected that it will still take quite sometime, before these are finalised and issued. These will of course be laid on the Table of the Lok Sabha in the normal manner, when published.”

56. The matter was further pursued with the Ministry and it was pointed out to them that whereas, the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations and the Navy (Discipline and Miscellaneous Provisions) Regulations had been framed and issued by them in 1964 and 1965, respectively, similar regulations for the Army and Air Force were still in the process of formulation. They were asked to furnish their comments on the following points:—

- (a) reasons for not taking simultaneous action in 1964-65 for framing regulations for the Armed and Air Forces:
- (b) reasons for such a long delay running into 10/11 years in taking action in regard to framing regulations for these two forces;

- (c) in the absence of similar regulations for these Forces, how these Forces were/are being governed during all these years.
- (d) when the first reference in this regard was made to the Ministry of Law, Justice and Company Affairs and where the matter stands at present; and
- (e) tentative date by which these regulations were expected to be framed and published/laid before Parliament.

57. In their reply, the Ministry of Defence have explained the position as under:—

“...after Independence, the various regulations for the Army, Navy and Air Force which were in vogue before Independence, were adopted *en-bloc*. These all are of a non-statutory nature. As and when necessity arose, action was initiated to revise the Acts suitably to conform to the changed constitutional position and to formulate statutory Rules/Regulations thereunder: In the case of Navy, this work has already been completed and statutory Regulations published. However, in the case of the Army and Air Force which involved much more complicated and voluminous work, necessitating consultation with the law experts on the one side and the Service HQs on the other, action to formulate statutory rules/regulations could not be taken simultaneously. However, meanwhile it was decided to enact a Unified Code for the three services (Army, Navy and Air Force). This is expected to cover the Army and Air Force Acts, 1950, in their entirety. However, it is a time consuming process and despite the best of efforts, it has not been possible to complete this work so far. It is expected that it will take quite some time still to finalise the Unified Code. The Ministry of Law have been requested to give priority to this work by appointing a whole-time officer in the rank of Joint Secretary wholly to attend to this work. The framing of revised Rules/Regulations under the three Services Acts, to be brought into force simultaneously with the bringing into force of the Unified Code is in hand. A cell which was functioning earlier and was closed down has been revived in the JAG's Deptt. of the Air Hqrs., recently to attend, *inter alia*, to this work, on an inter-service basis.

Answer to the various points raised..... is given below: seriatim:—

- (a) The necessity was not felt at that time. However, as soon as the law experts advised that the Army and the Air Force regulations should, like the Navy, be also given statutory status, action was initiated to legislate a Unified Code which will cover all the provisions in the Army and Air Force Acts.
- (b) As already stated above, the finalisation of the Unified Code is a time-consuming process requiring critical examination, improvement in the light of experience gained, if necessary, and revision of each para of the existing Acts in consultation with the experts from the Law Ministry and representatives from concerned organisations. Moreover, the delay is due to the fact that there is no separate organisation to deal with this type of work and all concerned have to do it, in addition to their normal duties. A draft of this unified code has, however, been prepared in this Ministry and is now being vetted by the Ministry of Law, this process is being expedited as explained above.
- (c) Until the Unified Code and Statutory Rules/Regulations framed thereunder become available, the forces (Army and Air Force) will continue to be governed by the non-statutory rules/regulations which have withstood the test of time.
- (d) The first reference to formulate/legislate the Unified Code for the services was made to the Law Ministry in 1969. A Cell was created in Air HQ. (Armed Forces Unified Code Cell) subsequently to deal with the work. This functioned till 1974, when it was abolished, as a measure of economy. It has completed about 1/3rd of the work and approximately 2/3rd of the work still remains to be completed, it has been revived recently.
- (e) The work has now been entrusted to the Law Ministry who with the assistance of the JAG (Army) (and if necessary, the Air Force authorities too), have been requested to complete the residual work as early as possible. It is, however, not possible at this stage to indicate the time it will take to legislate Unified Code

and to formulate Army and Air Force Rules/Regulations thereunder. This Ministry has been requesting the Ministry of Law, at high level, to appoint a whole-time officer of the status of a joint Secretary, in order to complete this work expeditiously."

58. The Committee observe that while statutory regulations relating to Navy have been framed and published, similar regulations relating to the other two Services—Army and Air Force—are yet to be framed. The Committee are not satisfied with the explanation of the Ministry of Defence regarding inordinate delay in framing statutory regulations for these two Services.

59. The Committee note that the Ministry of Defence have now decided to have a Unified Code for all the three Services and the first reference in this connection was made to the Law Ministry in 1969. The Committee are not happy about the progress so far made in this direction for, as they observe, only 1/3rd of the work was completed upto 1974. The Committee desire the Ministry of Defence to accelerate their pace of work so that the whole work relating to Unified Code and the framing of statutory rules/regulations for the Army and Air Force is completed within the shortest possible time. The Committee need hardly point out that undue delay in this regard may defeat the very purpose of having a Unified Code by making it outdated.

XIV

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARA 50 OF THE FOURTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING DISPOSAL OF RECORDS (WIRELESS PLANNING AND CO-ORDINATION WING OF THE MINISTRY OF COMMUNICATIONS) RULES, 1973 (G.S.R. 131 OF 1973.

60. The Disposal of Records (Wireless Planning and Coordination Wing of the Ministry of Communications) Rules, 1973 were framed in exercise of the powers conferred by Section 3 of the Destruction of Records Act, 1917, which reads as under:— :

"3. (1) The authorities hereinafter specified may, from time to time, make rules for the disposal, by destruction or

otherwise, of such documents as are, in the opinion of the authority making the rules, not of sufficient public value to justify their preservation.

(2) The authorities shall be—

- (a) in the case of documents in the possession or custody of a High Court or of the Courts of Civil or Criminal jurisdiction subordinate thereto—the High Court;
- (b) in the case of documents in the possession or custody of Revenue Courts and Officers—the Chief Controlling Revenue authority; and
- (c) in the case of documents in the possession or custody of any other public officer,—the Local Government or any officer specially authorised in that behalf by the Local Government."

61. With a view to find out whether similar rules for disposal of records has been framed by all Ministries/Departments, the Department of Culture which is concerned with the administration of the Act was asked to:

- (i) submit a list showing rules framed by all the Ministries/Departments under the Destruction of Records Act, 1917;
- (ii) state how the destruction of records was being regulated in case such rules had not been framed.

62. According to the information received from the Department of Culture (National Archives of India), out of 38 Ministries/Departments who were addressed by them to supply information as to the framing of rules only the Office of Comptroller and Auditor General of India and the Department of Company Affairs (Office of the Registrar of Companies) had framed rules, under the Destruction of Records Act, 1917; others had not framed any rules under the Act. Instead they were following executive instructions issued by the Department of Personnel and Administrative Reforms on the record management.

63. The Committee, after considering the reply of the Department of Culture (National Archives of India) recommended in para 50 of their Fourteenth Report (Fifth Lok Sabha) as under:—

"The Committee are surprised to note that despite the existence of an Act of Parliament since 1917 to regulate the

destruction of records, there is no uniformity in the procedure being followed by the various Ministries/Departments. Only two offices have framed rules under the Destruction of Records Act, 1917; others are following executive instructions issued in this regard by the Department of Personnel and Administrative Reforms. It is not known under what circumstances and when the need arose for issue of executive instructions by the Department of Personnel when an Act on the subject already existed. If the Act did not meet the situation fully it should have been suitably amended. The Committee desire the Department of Culture to take up the matter with the Department of Personnel and Administrative Reforms with a view to see that the management of record is done by the Ministries/Departments in accordance with statutory rules and not on the basis of executive instructions."

64. In their action taken note on the above recommendation of the Committee, the Department of Culture stated as under:—

"As recommended by the Committee on Subordinate Legislation, the question regarding framing of Statutory Rules under the Destruction of Records Act, 1917, was taken up with the Department of Personnel and Administrative Reforms.

Subsequently the scope, applicability and the possible efficacy of the Destruction of Records Act has been examined by an Inter-Ministerial Group convened by the Department of Culture in which representatives of the Ministry of Law & Justice and Department of Personnel and Administrative Reforms were present. The view that emerged was that the existing Destruction of Records Act, 1917 was obsolete, did not definitely include the Central Government within its compass, was merely permissive and not mandatory and was generally inadequate to meet the present requirements of management of records. The Committee has, therefore, recommended that a comprehensive archival law should be framed which should include a clause enabling the various Departments of the Government of India to frame rules under it.

The Department of Culture is already seized of this matter about framing of Archival law. The position in this behalf is explained in the Archival Policy Resolution issued on 11th December, 1972, *vide* this Department Resolution No. F. 7-6/71-CAI(2) dated the 11th December 1971.

Keeping the facts mentioned above in view, it has been decided by the Government of India that subordinate legislation under the Destruction of Records Act, 1917, cannot properly regulate the destruction of records at least in so far as the Departments of the Central Government are concerned and that any rules under it, if framed, would not meet the present day archival needs. It is, therefore, proposed to eventually substitute the said Act by a comprehensive Archival law in the manner mentioned in the Archival Policy Resolution. Until such Comprehensive law is framed and passed by Parliament, the destruction of records of the Central Government should continue to be regulated by the Archival Policy Resolution of 11th December, 1972 and the executive instructions that have, and may be issued for this purpose."

65. From the material furnished by the Department of Culture, the Committee observe that the Committee on Archival Legislation had urged on Government to enact a comprehensive archival law in 1960, and Government had accepted this recommendation in their Archival Policy Resolution in December, 1972.

66. The Committee note from the reply of the Department of Culture that the Destruction of Records Act, 1917, was obsolete and inadequate to meet the present requirements of management of records, and that the destruction of records of Government was at present being regulated according to executive instructions without the due backing of law. The Committee are surprised that even though the Committee on Archival Legislation had urged on Government to

enact a comprehensive archival law as far back as in 1960 and Government had accepted this recommendation in their Archival Policy Resolution in December, 1972, the necessary legislation has not so far been brought forward. The Committee cannot help regretting the undue delay on the part of Government in this regard. The Committee now urge upon the Department of Culture to enact the contemplated archival law at an early date.

SOMNATH CHATTERJEE

NEW DELHI;

The 14th July, 1977.

Chairman,

Committee on Subordinate Legislation.

APPENDIX I

(Vide para 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1 (i)	11	The Committee have been repeatedly stressing that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to the public to study the draft rules and send their comments/suggestions on their provisions. With this end in view, the Committee have desired that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette copies to various parts of the country, should be given to the public to send their comments on such draft rules. The Committee, however, regret to note that in the case of the 11 'Orders' enumerated in Appendix II, the net period allowed to the public to send their comments on the draft rules was less than 30 days. In one case, the net period available with the public was barely two days, and in two cases, 9 days. The Committee will once again like to emphasise that a period of not less than 30 clear days should invariably be given to the public to send their comments/suggestions on the draft rules.
(ii)	12	The Committee note that while in four out of the 11 cases enumerated in the Appendix, the Ministries/Departments had themselves given a period of less than 30 days—9, 12 and 22 days

(1)

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(3)

(two cases)—for receipt of comments/suggestions from the public, in the remaining 7 cases the period available was reduced to less than 30 days as a result of delay in making available the copies of the Gazette containing the draft rules to the public. In one of these cases, as many as 45 days were taken in making the copies of the Gazette available to the public. Even in case of *Gazette Extraordinary*, copies were made available to the public after an elapse of 7 days in one case and 10 days in another. The Committee will like the Ministry of Works and Housing to evolve some procedure to ensure that the time lag between the publication of a Gazette and making available its copies to the public is reduced to the barest minimum, viz., 3 to 4 days in case of ordinary Gazettes and one day in the case of *Extraordinary* Gazettes at the most.

(iii)

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Nevertheless, the Committee will like to make it clear that the onus to ensure that in no case the period allowed to the public for sending comments/suggestions is less than 30 clear days lies on the Ministries/Departments responsible for the administration of the rules. In case a Ministry/Department finds that in a particular case due to any reason the net period made available to the public works out to less than 30 days, they should extend the period for receipt of comments/suggestions so that the net period allowed to the public does not fall short of 30 clear days. The Committee desire the Department of Parliamentary Affairs to bring these observations to the notice of all Ministries/Departments for strict compliance in future.

2.

16

The Committee note that Bye-law 4 of the Morar Cantonment (Registration and Classification of Contractors) Bye-laws, 1969, as substituted

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by S.R.O. 288 of 1974, does not provide for giving an opportunity of being heard to a contractor, before his deposit is forfeited on account of his failure to tender for works for more than one year. The Committee are not satisfied with the reply of the Ministry of Defence that the Cantonment Board having been given the discretion to waive the forfeiture would take into account any representation which the contractor might make against the forfeiture of his deposit. The Committee need hardly re-stress that giving of a reasonable opportunity of being heard to a person before the penal provisions of a law are invoked against him is one of the basic requirements of natural justice. The Committee desire the Ministry of Defence to amend the By-law in question so as to provide therein for giving a reasonable opportunity of being heard to the contractor before his deposit is forfeited.

3.

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The Committee note with satisfaction that the Ministry of Petroleum and Chemicals have amended para 7(1) of the Furnace Oil (Fixation of Ceiling Prices and Distribution) Order, 1974, so as to specify the minimum rank of the officers who might be authorised by the State Government/Union Territory to conduct searches/seizures, etc., under the Order. The Committee also note that similar amendments have been made by the Ministry in the Kerosene (Fixation of Ceiling Prices) Order, 1970 and the Light Diesel Oil (Fixation of Ceiling Prices) Order, 1973.

4.

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The Committee are not satisfied with the reply of the Ministry of Commerce that they do not consider it necessary to give a reference in the Export of Light Engineering Products (Inspection) Rules, 1976, to the Gazette Notification specifying the standard specifications, in respect of the products in question recognised by the

(1)	(2)	(3)
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Central Government, as both the Rules and the Notification had been issued in the Gazette of the same date. The Committee feel that, for the convenience of the public, whenever a commodity is brought under quality control, reference should invariably be made in the rules relating to its inspection to the notification giving the standard specification in respect of that commodity notwithstanding the fact that both the notifications are printed in the Gazette of the same date. The Committee desire that their recommendation in this regard should be brought to the notice of all the Ministries/Departments for compliance in future.

5.	28	<p>The Committee note the reply of the Ministry of Shipping and Transport (Transport Wing) that in cases where the ship's arrival time was delayed due to exceptional circumstances like fire on board the vessel, grounding, etc., special consideration could always be shown. In view of this, the Committee feel that the Ministry should have no difficulty in amending the Kandala Port Pilotage (Fees) Order, 1975 to provide that full pilotage fee would not be recovered in cases where the pilot had to return for reasons beyond the control of the Master of the ship. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.</p>
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6.	32	<p>The Committee note that the Ministry of Finance (Department of Revenue and Banking) are examining the whole matter afresh in view of the many representations received. The Committee also note the assurance of the Ministry that the suggestions of the Committee in regard to (i) laying down of criteria/guidelines for grant of exemption from Rule 51 of the Central Excise Rules, 1944; and (ii) recording of reasons in writing for granting exemption would be kept in view while making modifications in Rules, if any. The Committee desire the Ministry to amend the Rules on the suggested lines at an early date.</p>
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(1)	(2)	(3)
7.	38	The Committee note with satisfaction that, on the matter being taken up, the Ministry of Agriculture and Irrigation (Department of Agriculture) have not made a provision for further authorisation to seize, search, etc. in the Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Order issued in 1976.
8.	42	The Committee note the assurance given by the Ministry of Law, Justice and Company Affairs (Legislative Department) that on the next occasion when the Special Marriage Act, 1954 is amended, they would insert a provision requiring the rules framed thereunder to be laid before Parliament.
9.	46	The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have no objection to provide in S.R. 317 A.O. 17 of the Allotment of Government Residences outside the Central Pool and in the Directorate of Marine Engineering Training, Calcutta, Rules, 1975 that a reasonable opportunity of being heard would be given to an allottee before any action is taken against him for breach of any rule or conditions of allotment. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.
10.	50	The Committee note with satisfaction that the Ministry of Agriculture and Irrigation (Department of Rural Development) have agreed to incorporate the conditions prescribed in Rule 4 of the General Grading and Marking Rules, 1937, in rule 15 (2) of the Wool Grading and Marking Rules, 1975, so as to make them self-contained. The Committee desire the Ministry to do the needful at an early date.
11.	54	The Committee note that the Labour Officer had been advised by the Ministry of Shipping and Transport (Transport Wing) to issue a show

(1)	(2)	(3)
		<p>cause notice and give a reasonable opportunity of being heard to the worker even in cases falling under clause 43(3) of the Bombay Food-grain Handling Workers (Regulation of Employment) Scheme, 1975. The Committee, however, do not agree with the contention of the Ministry that a formal amendment of the Scheme to make it obligatory on the Labour Officer to issue a notice may not be appropriate. As already observed by the Committee in para 25 of their First Report (Fifth Lok Sabha), a departmental instruction is no substitute for a built-in legal safeguard. The Committee, therefore, desire the Ministry to put the above departmental instruction on a statutory footing by amending the Scheme suitably at an early date.</p>
12(i)	58	<p>The Committee observe that while statutory regulations relating to Navy have been framed and published similar regulations relating to the other two Services—Army and Air Force—are yet to be framed. The Committee are not satisfied with the explanation of the Ministry of Defence regarding inordinate delay in framing statutory regulations for these two Services.</p>
12(ii)	59	<p>The Committee note that the Ministry of Defence have now decided to have a Unified Code for all the three Services and the first reference in this connection was made to the Law Ministry in 1969. The Committee are not happy about the progress so far made in this direction for, as they observe, only 1/3rd of the work was completed upto 1974. The Committee desire the Ministry of Defence to accelerate their pace of work so that the whole work relating to Unified Code and the framing of statutory rules/regulations for the Army and Air Force is completed within the shortest possible time. The Committee need hardly point out that undue delay in this regard may defeat the very purpose of having a Unified Code by making it out-dated.</p>

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The Committee note from the reply of the Department of Culture that the Destruction of Records Act, 1917, was obsolete and inadequate to meet the present requirements of management of records, and that the destruction of records of Government was at present being regulated according to executive instructions without the due backing of law. The Committee are surprised that even though the Committee on Archival Legislation had urged on Government to enact a comprehensive archival law as far back as in 1960 and Government had accepted this recommendation in their Archival Policy Resolution in December, 1972, the necessary legislation has not so far been brought forward. The Committee cannot help regretting the undue delay on the part of Government in this regard. The Committee now urge upon the Department of Culture to enact the contemplated archival law at an early date.

APPENDIX II

(Vide para 7 of Report)

List of 'Orders' in respect of which the time given to the public for sending comments/ suggestions at the draft stage was less than 30 clear days

Sl. No.	Date & No. of Order	Min./Deptt.	Date of the Gazette in which the draft rules etc. published	Comments invited by
(1)	(2)	(3)	(4)	(5)
1.	The Motor Vehicles (Third Party Insurance) (Amdt.) Rules, 1970 (S.O. 1516 dt. 10-4-71)	Shipping & Transport (Transport Wing)	3-10-70	15-10-70
2.	The Harbour Craft Rules for the Port of Madras (Amdt.) Rules, 1971 (G.S.R. 90 dt. 8-1-72).		7-8-71	16-8-71
3.	The Insurance (Amdt.) Rules 1971 (G.S.R. 1051 dt. 21-7-71).	Finance (Deptt. of Revenue and Insurance).	28-12-70	27-2-71
4.	The Insurance (Amdt.) Rules 1972 (G. S. R. 960 dt. 12-8-72)		29-4-72	13-6-72 (within 45 days)
5.	The Contract Labour (Regulation and Abolition) Central (Amdt.) Rules, 1972 (G.S.R. 1649 of 1972)	Labour	27-5-72	26-6-72

Date on which copies were made available to the public	Gist of the reply received from the Ministry/Department	Remarks
(6)	(7)	(8)
13-10-70	The omission is sincerely regretted. The Ministry has since taken steps to see that parties likely to be affected get 30 days time to send their suggestions in future.	The net period allowed to the public works out to 2 days. A period of 10 days was taken in making the copies of the Gazette available to the public.
7-8-71	Do.	The period allowed to the public was 9 days.
11-2-71	The practice has been to provide in the draft notification a period of 45 days from the date of publication thereof, for a margin of 15 days for the press to make the publication available to the public is considered to be adequate. Where, however, the delay in the Press exceeds 15 days, the time allowed to the public gets correspondingly reduced, as had happened in the two instant cases.	The net period allowed to the public works out to 16 days. Although the Ministry had given a period of two months for sending comments/objections, a period of 45 days was taken in making the copies of the Gazette available to the public.
24-5-72	Do.	The net period allowed to the public works out to 20 days. A period of 25 days was taken in making the copies of the Gazette available to the public.
17-6-72	The draft rules were first published on 13th November, 1971, but due to delay in printing, sufficient time was not available to the public for giving comments/suggestions. The draft rules were again despatched to the Government of India Press	The net period allowed to the public works out to 9 days. A period of 21 days was taken in making the copies of the Gazette available to the public.

(1)	(2)	(3)	(4)	(5)
6 Explosives (2nd Amdt.) Rules, 1971 (G.S.R. 1076 dt. 24-7-71)	} Industry & Civil Supplies (Deptt. of Industrial Develop- ment)	[8-8-70	30-8-70	
7 Explosives (Amdt.) Rules, 1971 (G.S.R. 1077 dt. 24-7-71).				
8 The Textiles Committee (Cess) Rules 1975 (G.S.R. 172-E of 1975).	} Commerce	25-2-75	27-3-75	
9 The Registration and Licensing of Industrial Undertakings (2nd Amdt.) Rules 1974 (G.S.R. 274-E of 1974).				
10 The Registration and Licensing of Industrial Undertakings (4th Amdt.) Rules, 1974 (G.S.R. 369E of 1974)	} Industry and Civil Supplies (Deptt. of Industrial Develop- ment).	19-1-74	28-2-74	

(6)

(7)

(8)

on the 27th May, 1972 but the copies of the Gazette were made available on the 17th June to the public. The desirability of Publishing the draft amendment again for comments was considered but it was felt that as the proposed amendment was only for removing a printing error, it may not be necessary to give more time for inviting public comments.

- 8-8-70 Two notifications were sent for publication to the General Manager, Government of India Press, New Delhi, on 29-7-1970 and hence the last date of receiving objections was mentioned as the 30th August, 1970. Since these notifications were actually published on 8-8-1970, the required period of 30 days got reduced by seven days. *This is very much regretted. However, care will, now be taken to stipulate in such notifications 30 days from the date of publication of the notifications.*

A period of 22 days was allowed to the public for sending comments/objections etc.

8-8-70

Do

Do

- 4-3-75 The draft rules were sent to the Press on 25-2-75. The last date for inviting public comments was 27-3-75. The Gazette was made available to the public by the Press on 4-3-75. The lapse in giving insufficient time to the public for their comments is regretted and due precautions will be taken not to repeat similar lapse in future.

The net period allowed to the public for sending comments, etc. works out to 23 days. A period of 7 days was taken in making the copies of the Gazette-Extraordinary available to the public.

- 22-2-74 The draft rules were published in Extraordinary Gazette on 11-2-74. It was specified that these rules will be taken into consideration after the expiry of 30 days from the date of its publication under the reasonable belief that an extraordinary gazette is published on the same day and is also made available to the public on the same days. There was delay on the part of the press to make available copies of the Gazette Extraordinary to the public. To avoid the recurrence of such cases, the Ministry will hereafter specify a date for inviting suggestions/comments which shall fall on the expiry of 60 days from the date on which a draft notification is sent to the Press.

The net period allowed to the public for sending comments, etc. works out to 27 days. A period of 3 days was taken in making the copies of the Gazette Extraordinary available to the public.

- 14-2-74 The Controller of Publications took an unduly long time to make the copies of the gazette dated 19-1-74 available to the public on 14-2-75.

The net period allowed to the public works out to 14 days. A period of 26 days was taken in making the copies of the gazette available to the public.

(1)	(2)	(3)	(4)	(5)
11	The Registration and Licensing of Industrial Undertakings (3rd Amdt.) Rules, 1974 (G.S.R. 284-E of 1974).	Industry and Civil Supplies (Deptt. of Industrial Development).	5-4-74	6-5-74

(6)

(7)

(8)

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- 15-4-75 The draft rules were published in an Extraordinary Gazette on 5-4-74. It was specified that suggestions/comments from the public on the draft rules will be received upto 6-5-74 under the reasonable belief that an Extraordinary Gazette is published on the same day and is also made available to the public on the same day. There has been some delay on the part of the Press in making available copies of Gazette Extraordinary to the public.
- The net period allowed to the public works out to 21 days. A period of 10 days was taken in making the copies of the Gazette Extraordinary available to the public.
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MINUTES

APPENDIX III

CIV

MINUTES OF THE HUNDRED-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)

(1976-77)

The Committee met on Tuesday, the 12th October, 1976, from 15.00 to 15-30 hours.

PRESENT

Shri Annasaheb Gotkhinde—*In the Chair*

MEMBERS

2. Shri R. V. Bade
3. Shri Ram Singh Bhai
4. Shri Dinesh Joarder
5. Shri I. H. Khan
6. Shri H. M. Patel
7. Ch. Ram Prakash
8. Shri P. Ganga Reddy
9. Shri S. A. Shamin
10. Shri P. Ranganath Shenoy
11. Shri Satyendra Narayan Sinha
12. Shri Karan Singh Yadav

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. In the absence of the Chairman, Shri Annasaheb Gotkhinde was chosen to act as Chairman for the sitting in terms of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3.	*	*	*	*
4.	*	*	*	*

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

5. The Committee then considered Memorandum Nos. 389 to 393 on the following subjects :—

Sl. No.	Memo No.	Subject
1	389	The Kandla Port Pilotage (Fees) Order 1975 (G.S.R. 377-E of 1975).
2	390	The Allotment of Government Residences outside the Central Pool and in the Directorate of Marine Engineering Training, Calcutta, Rules, 1975 (S.O. 884 of 1975).
3	391	* * *
4	392	The Bombay Foodgrain Handling Workers (Regulation of Employment) Scheme, 1975 (S.O. 2383 of 1975).
5	393	The Wool Grading and Marking Rules, 1975 (S.O. 4069 of 1975).

(i) *The Kandla Port Pilotage (Fees) Order, 1975 (G.S.R. 377-E of 1975)—(Memorandum No. 389).*

6. The Committee considered the above Memorandum and noted that the Ministry of Shipping and Transport (Transport Wing) had in their reply stated that, while there was no need to amend the existing Pilotage Fees Order, 1975, in cases where the ship's arrival time was delayed due to exceptional circumstances like fire on board the vessel, grounding, etc., special consideration could always be shown. In view of this, the Committee felt that the Ministry of Shipping and Transport (Transport Wing) should have no difficulty in amending the above Order to provide that full pilotage fee would not be recovered in cases where the pilot had to return for reasons beyond the control of Master of the ship.

(ii) *The Allotment of Government Residences outside the Central Pool and in the Directorate of Marine Engineering Training) Calcutta, Rules, 1975 (S.O. 884 of 1975)—(Memorandum No. 390).*

7. The Committee considered the above Memorandum and noted that the Ministry of Shipping and Transport (Transport Wing) had

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

no objection to provide under S.R. 317.O.17 of the said rules that a reasonable opportunity of being heard would be given to the allottee before any action was taken against him for breach of any rule and conditions of allotment. The Committee desired that the Ministry might be asked to amend the rules suitably at an early date.

(iii) * * * * *

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(iv) *The Bombay Foodgrain Handling Workers (Regulation of Employment) Scheme, 1975* (S.O. 2383 of 1975) — (Memorandum No. 392).

9. The Committee considered the above Memorandum and noted the reply of the Ministry of Shipping and Transport (Transport Wing) that the Labour Officer had been advised to issue a show cause notice and give a reasonable opportunity of being heard to the Worker even in cases falling under clause 43(3) of the said scheme. They did not, however, agree with the contention of the Ministry that a formal amendment of the scheme to make it obligatory on the Labour Officer to issue such a notice might not be appropriate. The Committee were of the opinion that a departmental instruction was no substitute for a built-in legal safeguard. They, therefore, decided to ask the Ministry to bring the above departmental instruction on a statutory footing by amending the scheme suitably at an early date.

(v) *The Wool Grading and Marking Rules, 1975* (S.O. 4096 of 1975) — (Memorandum No. 393).

10. The Committee considered the above Memorandum and noted that the Ministry of Agriculture and Irrigation (Department of Rural Development) have agreed to incorporate the conditions prescribed in rule 4 of the General Grading and Marking Rules, 1937, in rule 15(2) of the Wool Grading and Marking Rules, 1975, so as to make them self-contained. The Committee decided to ask the Ministry to do the needful at an early date.

The Committee then adjourned.

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

MINUTES OF THE HUNDRED AND SIXTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (FOFTH
LOK SABHA

(1976-77)

The Committee met on Monday, the 29th November, 1976 from 11.00 to 11.45 hours.

PRESENT

Shri C. M. Stephen—*Chairman.*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri I. H. Khan
6. Shri H. M. Patel
7. Ch. Ram Prakash
8. Shri S. A. Shamim
9. Shri P. Ranganath Shenoy
10. Shri Karan Singh Yadav

SECRETARIAT

Shri H. S. Kohli—*Legislative Committee Officer.*

2. The Committee considered Memoranda on the following subjects:—

S.No.	Memo No.	Subject
1	2	3
1	394	The Morar Cantonment (Registration and Classification of Contractors) Amendment Bye-laws, 1974 (S.R.O. 288 of 1974).

1	2	3
2	395	Implementation of recommendations contained in para 50 of the Fourteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding disposal of Records (Wireless Planning and Co-ordination Wing of the Ministry of Communications) Rules, 1973 (G.S.R. 131 of 1973).
3	396	Publication of draft Rules for inviting public comments/suggestions.
4	397	The Export of Light Engineering Products (Inspection) Rules, 1976 (S.O. 894 of 1976).
5	398	* * * * *
6	399	The Central Excise (Fourteenth Amendment) Rules, 1975 (G.S.R. 2511 of 1976).
7	400	The Furnace Oil (Fixation of Ceiling Prices and Distribution) Order, 1974 (G.S.R. 150-E of 1974).
8	401	* * * * *

(i) *The Morar Cantonment (Registration and Classification of Contractors) Amendment Bye-laws, 1974 (S.R.O. 288 of 1974—Memo. No. 394).*

3. The Committee considered the above Memorandum and noted that Bye-law 4 of the above Bye-laws did not provide for giving an opportunity of being heard to a contractor, before his deposit was forfeited on account of his failure to tender for works for more than one year. They were not satisfied with the reply of the Ministry of Defence that the Cantonment Board having been given the discretion to waive the forfeiture would take into account any representation which the contractor might make. Averring that one of the basic requirements of natural justice was that before the penal provisions of a law were invoked against a person, he should be given a reasonable opportunity of being heard, the Committee decided to ask the Ministry of Defence to amend Bye-law 4 so as to provide therein or giving an opportunity of being heard to the contractor before his deposit was forfeited.

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

- (ii) *Implementation of recommendations contained in para 50 of the Fourteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Disposal of Records (Wireless Planning and Coordination Wing of the Ministry of Communications) Rules, 1973 (G.S.R. 131 of 1973) (Memorandum No. 395).*

4. The Committee considered the above Memorandum and noted from the reply of the Department of Culture that the Destruction of Records Act, 1917, was obsolete and inadequate to meet the present requirements of management of records. The Committee were surprised to note that even though the Committee on Archival Legislation had urged on Government to enact a comprehensive archival law in 1960, and Government had accepted this recommendation in their Archival Policy Resolution in December, 1972, the necessary legislation had not so far been brought forward. The Committee regretted the undue delay on the part of the Government in this regard. The Committee were also not happy that the destruction of records of the Government was at present being regulated according to executive instructions without the due authority of law. The Committee decided to urge upon the Department of Culture to enact the contemplated archival law at an early date.

- (iii) *Publication of draft Rules for inviting comments/suggestions. (Memorandum No. 396).*

5. The Committee considered the above Memorandum and noted that in four out of the 11 cases mentioned in the Memorandum, the Ministries/Departments had themselves given a period of less than 30 days for sending comments/suggestions on the draft rules. In the remaining 7 cases, the Ministries/Departments concerned had provided for 30 or more than 30 days, but on account of delay in making the copies of the relevant Gazettes available, the period actually allowed to the public was reduced to less than 30 days.

The Committee decided to re-emphasise their earlier recommendation made in para 31 of their Sixth Report (First Lok Sabha) that a period of not less than 30 clear days should be given to the public to send their comments/suggestions on the draft rules. With this end in view, the Committee felt that the Ministry of Works and Housing should evolve some procedure to ensure that the time-lag between the publication of a Gazette and making of its copies available to the public was reduced to the barest minimum. Nevertheless, the Committee emphasised, the onus to ensure that in no

case the period allowed to the public for sending comments/suggestions was less than 30 days lay on the Ministries/Departments responsible for the administration of the rules. The Committee decided to ask the Department of Parliamentary Affairs to bring their observations in this regard to the notice of all Ministries/Departments for strict compliance in future.

(iv) *The Export of Light Engineering Products (Inspection) Rules, 1976 (S.O. 894 of 1976). (Memorandum No. 397).*

6. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Commerce that it was not considered necessary to give a reference in the Rules in question to the Gazette Notification specifying the standard specification as both the Rules and the Notification specifying the standard specification had been issued in the Gazette of the same date. The Committee felt that, for the convenience of the public, whenever a commodity was brought under quality control, reference should invariably be made in the rules relating to its inspection to the notification giving the standard specification in respect of that commodity, notwithstanding the fact that both the notifications were printed in the Gazette of the same date. The Committee decided to urge that their recommendation in this regard should be brought to the notice of all the Ministries/Departments for compliance in future.

(v) * * * * *

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(vi) *The Central Excise (Fourteenth Amendment) Rules, 1975 (G.S.R. 2511 of 1976) (Memo. No. 399).*

8. The Committee considered the above Memorandum and noted that the Ministry was examining the whole matter afresh in view of the many representations received. They also noted the assurance of the Ministry that the suggestions of the Committee in regard to (i) laying down of criteria/guidelines for grant of exemption from Rule 51; and (ii) recording of reasons in writing for granting exemption would be kept in view while making modifications in the Rules, if any. The Committee decided to ask the Ministry to amend the rules on suggested lines at an early date.

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

(vii) *The Furnace Oil (Fixation of Ceiling Prices and Distribution) Order, 1974 (G.S.R. 150-E of 1974) (Memorandum No. 400).*

9. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out the Ministry of Petroleum and Chemicals had amended para 7(1) of the above Order so as to specify the minimum rank of the officer who might be authorised by the State Government/Union Territory to conduct searches and seizures etc. under the Order. The Committee also noted that similar amendments had been made by the Ministry in the following two 'Orders'.

(i) *The Kerosene (Fixation of Ceiling Prices) Order, 1970.*

(ii) *The Light Diesel Oil (Fixation of Ceiling Prices) Order, 1973.*

10.	*	*	*	*	*	*
11.	*		*	*		*
12.		*	*	*	*	

The Committee then adjourned

CVII

MINUTES OF THE HUNDRED AND SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

(1976-77)

The Committee met on Tuesday, the 21st December, 1976, from 11.00 to 12.15 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri S. A. Shamim
12. Shri P. Ranganath Shenoy
13. Shri Satyendra Narayan Sinha
14. Shri Karan Singh Yadav

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered Memoranda on the following subjects:—

S.No.	Memo. No.	Subject
(i)	398	* * *
(ii)	402	* * *
(iii)	403	The Marriage Laws (Amendment) Bill, 1976 (as passed by Rajya Sabha)—Insertion of provision for laying of rules framed under section 50(1) of the Special Marriage Act, 1954, before Parliament.
(iv)	404	* * *
(v)	405	(i) The Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Control Order, 1974 (S.O. 457-E of 1974). (ii) The Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Order, 1975 (S.O. 331-E of 1975).
(vi)	406	The Navy (Discipline and Miscellaneous Provisions) Amendment Regulations, 1974 (S.R.O. 37 of 1974); and the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1974 (S.R.O. 113 of 1974).
(vii)	407	* * *
(i)	*	* * *
3.	*	* * *
(ii)	*	* * *
4.	*	* * *
5.	*	* * *
(iii)	The Marriage Laws (Amendment) Bill, 1976 (as passed by Rajya Sabha).—Insertion of provision for laying of rules framed under section 50(1) of the Special Marriage Act, 1954, before Parliament.—(Memorandum No. 403).	

6. The Committee considered the above Memorandum and noted the assurance given by the Ministry of Law, Justice and Company

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

Affairs (Legislative Department) that on the next occasion when the Special Marriage Act, 1954, was amended they would insert a suitable rule-laying formula.

(iv) * * * * *

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- (v) *The Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Control Order, 1974 (S.O. 457-E of 1974) and the Delhi, Meerut and Bulandshahr Milk and Milk Products (Export) Order, 1975 (S.O. 331-E of 1975)—(Memorandum No. 405).*

8. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Agriculture and Irrigation (Department of Agriculture), in a similar Order, issued in 1976, did not make a provision for further authorisation to seize, search, etc., which had been objected to by the Committee.

- (vi) *The Navy (Discipline and Miscellaneous Provisions) Amendment Regulations, 1974 (S.R.O. 37 of 1974) and the Naval Ceremonial Conditions of Service and Miscellaneous (Amendment) Regulations, 1974 (S.R.O. 113 of 1974)—(Memo. No. 406).*

9. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Defence regarding inordinate delay in framing statutory regulations for the Armed and Air Forces. The Committee, however, noted that the Ministry had decided to have a Unified Code for all the three Services and first reference in this connection was made to Law Ministry in 1969. They were not happy about the progress so far made in this direction, as in 5 years, i.e. up to 1974, 1/3rd of the work could be completed and 2/3rd still remained to be done. The Committee desired that the Ministry of Defence should accelerate the pace of completion of the work relating to Unified Code and the framing of statutory rules/regulations thereunder for the Armed and Air Forces so that the whole work is finalised within the shortest possible time. The Committee felt that undue delay in this regard will defeat the very purpose of having a Unified Code by making it outdated.

(vii) * * * * *

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11. * * * *

The Committee then adjourned

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

I

MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

(1977-78)

The Committee met on Thursday, the 14th July, 1977 from 16.00 to 17.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Somjibhai Damor
3. Shri Durga Chand
4. Shri Santoshrao Gode
5. Chaudhary Hari Ram Makkasar Godara
6. Shri Tarun Gogoi
7. Shri Ram Sewak Hazari
8. Shri N. Sreekantan Nair
9. Shri Trepan Singh Negi
10. Kumari Maniben Vallabhbhai Patel
11. Shri Saeed Murtaza

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee (Annexure).

3. The Committee considered their draft First Report and adopted it.

4. The Committee authorised the Chairman and in his absence, Shri Tarun Gogoi to present the First Report to the House on their behalf on the 16th July, 1977.

The Committee then adjourned

ANNEXURE

(*vide* para 2 of the Minutes)

ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1977-78)

(14th July, 1977)

Friends,

It gives me great pleasure to welcome you to this first sitting of the Committee on Subordinate Legislation of Sixth Lok Sabha.

2. These days when in the context of the Welfare State, the nature and range of the functions of Government are fast changing, the responsibilities of the Legislatures are also getting not only increasingly larger but also onerous. There is hardly any walk of a citizen's life which is not regulated by the State in one way or the other. Over the years Parliament has passed an increasing volume of legislation, extending the activities of Government into a great number of fields and often involving provisions of considerable complexity. At the same time, it has become more important to lighten the load borne by the legislative machine. It has been recognized that greater the number of details of an essentially subsidiary or procedural character which can be withdrawn from the floors of both Houses, the more time will be available for the discussion of major matters of public concern. Consequently, legislative power is often conferred upon the executive by statute, and various arrangements are made for parliamentary scrutiny of its exercise. Apart from the pressure on parliamentary time, the technicality of the subject matter, the need to meet unforeseen contingencies, the requirement of flexibility etc., make delegated legislation a necessity. The justifications and advantages of delegated legislation in normal times arise from its speed, flexibility and adaptability. Once Parliament has by statute laid down (often in some detail) the principles of a new law, the executive may by means of delegated legislation work out the application of the law in greater detail within these principles, adapting it to fit changing circumstances. A principle enacted in a statute may be extended by delegated legislation in a cognate direction. The commencement of a statute may be provided for by delegated legislation.

3. Delegation of legislative power, 'inevitable and indispensable' as it is, has certain risks inherent in it. One of the risks pointed out is that the parliamentary statute may tend to be skeletal, containing only the barest general principles omitting matters of substance which may have a vital bearing on the life of the citizen. Another risk pointed out is that the powers delegated might be so wide as to subject the citizen to a harsh or unreasonable action by the administration. The third risk is that some powers may be so loosely defined that the areas they are intended to cover may not be clearly known. All these risks are there. Our job is to evolve safeguards against these risks.

4. One of the important safeguards against assumption of arbitrary powers by the Executive is that rules framed by the Executive in exercise of delegated powers should not only be required to be laid before the legislature but that the legislature should also have statutory right of annulling or modifying them. The Committee on Subordinate Legislation of Lok Sabha has approved the following provision for incorporation in Bills providing for rule-making power:—

"Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in Session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be...."

Every Bill introduced in the House or transmitted by Rajya Sabha is examined by the Committee to see whether it contains a provision for laying and modification on the lines approved by the Committee. In its Fourteenth Report (Fifth Lok Sabha), the Committee has desired that a provision for laying of rules should be incorporated even in old Acts providing for rule-making power which do not contain such a provision.

5. Under Direction 103A, the Speaker may refer a Bill containing provisions for delegation of legislative powers to the Committee on Subordinate Legislation. When a Bill is so referred, the Committee is required to examine, *inter alia*, the extent of the powers sought to

be delegated; and if the Committee is of opinion that the provisions contained in the Bill delegating legislative powers should be annulled in whole or in part, or should be amended in any respect, it may report that opinion and the grounds therefor to the House before the Bill is taken up for consideration in the House. The members of this Committee owe a special responsibility to see that full use is made of this Direction. For this, they will have to be ever-watchful. If they find that any Bill introduced in the House seeks to make excessive or abnormal delegation of powers, they may raise the matter in the House or approach the Hon'ble Speaker for referring it to our Committee under this Direction.

6. The broad principles which are to govern the work of the Committee in regard to examination of 'Orders' are enshrined in Rule 320. In addition, the Committee has over the years evolved some further guiding principles. To mention some of these:

- (i) It is a well-known maxim that no fee can be levied under a rule unless the parent Act expressly authorises such a levy. However, the Committee has from time to time come across cases where fees had been levied under the rules without an express authorisation in the parent law. In such cases, the Committee has invariably been insisting that either the provision for fee in the rules should be omitted or alternatively Government should come before Parliament for obtaining an express power for the levy of the fee through an amendment of the relevant Act.
- (ii) Sometimes for ensuring compliance with the provisions of the law, the power of search and seizure has to be vested in the Executive. The Committee has desired that in such cases, not only the minimum rank of the Government officer empowered to exercise the power should be specified but that such safeguards as presence of witnesses, preparation of inventories and giving a copy thereof to the persons concerned should be provided for in the Rules.
- (iii) There is another well-known maxim that a delegate cannot sub-delegate his legislative power unless there is an express authorisation to that effect in the parent law.

As we come across new problem, new solutions are to be found and new guidelines evolved; and this is a continuous process.

7. The root of abuse of subordinate legislation lies in unfettered, unguided discretionary powers. The principal function of the Com-

mittee is to see that adequate safeguards are provided against the possible abuse of such powers. The Committee has made a number of recommendations to this end. The following are some of the broad principles underlying the recommendations of the Committee:

- (i) As far as possible, guidelines/criteria to be followed by the authority vested with the discretionary powers should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm, it should be required to record in writing the reasons for such deviation.
- (iii) In order that the persons similarly placed are not treated differently, the powers of exemption/relaxation should be exercisable in respect of 'categories or classes of persons', as contra-distinguished from individuals.
- (iv) Before any adverse action is taken against a party, it should be given a reasonable opportunity of being heard, and after a decision adversely affecting a party has been taken, it should have the right of appeal or representation, as the case may be.
- (v) In cases where an authority is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (vi) The provisions of rules which may make a citizen liable to a penalty should be well-defined, and not worded vaguely. [The expressions such as 'reasonable distance', 'adequate space' and 'adequate height' contained in the Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970 were objected to by the Committee who insisted that the bye-laws should be amended to indicate precise measurements.]
- (vii) In cases of rules relating to disciplinary proceedings, not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority also laid down in the rules.

8. The Committee is concerned not merely with legality of rules. It bears in mind that the ultimate aim of all legislation (including subordinate legislation) is the larger public good. The Committee, therefore, sees that the subordinate legislation framed by the ex-

cutive not only does not transgress the limits laid down in the parent law but it also conforms to the canons of equity and natural justice and does not result in unnecessary harassment to the general public.

9. Now I will refer in passing to a few matters about which the Committee has felt strongly during recent years:

- (1) A matter which has all along agitated the Committee is delay in laying of 'Orders' on the Table of the House. In terms of the relevant provisions in the statutes, the rules are required to be laid on the Table 'as soon as possible' after they are made. The Committee had, in its Second Report (First Lok Sabha), presented to the House in September, 1954, recommended that, for its purposes, "as soon as possible" should be interpreted as not more than 7 days after the publication of the rules in the Gazette, if the House is in session and 7 days after the commencement of the next session, if the House is not then in session. Subsequently, at the request of Government, the Committee agreed to extend the time-limit for laying from 7 days to 15 days. It is, however, seen from the successive Reports of the Committee that in quite a number of cases, the prescribed time-limit is not adhered to by Government. In some cases, the Orders' are known to have been laid years after they were made. Even in the 15th session of Fifth Lok Sabha, four 'Orders' were laid over three years after their publication in the Gazette. As, in terms of the relevant Acts, the House can statutorily modify or annul rules normally only after these have been laid on the Table, the Parliament was precluded from exercising its statutory right of modification or annulment for long periods. This has been considered by the Committee to be against the spirit of the parent statutes. As remedial measure, the Committee started calling the Secretaries of the concerned Departments to orally explain the delay in cases where it exceeds six months. This has resulted in some improvement in position.
- (2) Another matter which has agitated the Committee is non-exercise/delay in exercise of rule-making power by Government under Acts of Parliament. Although the Committee had recommended as far back as May, 1959 that ordinarily rules under an Act should be framed within a

period of 6 months from the commencement of the Act, a study made by the Committee has revealed that in case of 22 Acts the rule-making power had not been exercised at all and in 43 cases there had been a delay ranging from over 6 months to over 12 years. Several other cases also came to notice where this power had been exercised only partly. In its Eighteenth Report, presented to the House on 12-1-1976 the Committee has re-stressed that ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed 6 months. In case, however, a Ministry/Department finds that for any unavoidable reasons, it is not possible for it to adhere to the prescribed time-limit in any exceptional case, it should, at the expiration of 6 months from the commencement of the relevant Act, explain the reasons to the Committee and seek a specific extension of time from the Committee.

- (3) The Committee has been equally concerned over non-framing/delay in framing of recruitment rules under proviso to article 309 of the Constitution. A study made by the Committee revealed that on 1-4-1973 recruitment rules in respect of over 3400 categories of services/posts covering over one lakh of persons were yet to be framed by the Central Government. It was noticed that some of the posts and services for which recruitment rules had not been framed had been in existence even before the commencement of the Constitution. The Committee has significantly noted in this regard that almost all the representatives of the Ministries who had appeared before the Committee had agreed that the finalisation of recruitment rules should not normally take more than one year.
- (4) One of the functions of the Committee is to examine whether a rule gives retrospective effect to any of the provisions in respect of which the parent law does not expressly give any such power. It is now well-understood that a law made by the legislature may itself empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect. In the opinion of the Committee, such retrospective effect is without due legal authority.

The Committee has also recommended that even in cases where Government has the power to give retrospective effect to subordinate legislation, such retrospective effect should be given only in unavoid-

able circumstances and, when given, it should be accompanied by an explanatory Memorandum affirming that no one is likely to be adversely affected as a result of retrospective effect.

10. I may also mention that although under the Directions of the Speaker, Lok Sabha Secretariat is to examine all 'Orders' and prepare memoranda for consideration by the Committee, it does not preclude the Members from examining the 'Orders' and giving suggestions on their own. For this purpose, copies of all the 'Orders' laid on the Table of the House are circulated to Members.

11. Another matter of great importance to which I will draw your attention is scrutiny of subordinate legislation framed by State Governments under Central Acts. As you are all aware, several important 'Orders' affecting the day-to-day life of the citizen in this country are issued by State Governments under Central enactments; as, for example, 'Orders' issued under the Essential Commodities Act, 1955. In order that such subordinate legislation framed by State Governments in pursuance of the powers conferred by Central enactments did not escape scrutiny, the matter has been agitating the Committee on Subordinate Legislation since 1959. The matter has also been raised in the House from time to time. It has also come up before the Conferences of the Chairmen of the Committees on Subordinate Legislation. There are certain important legal issues involved, and much headway has not yet been made. The matter will come before you in due course.

12. Before I conclude, I would like to stress that, in discharging our duties, we would not be acting in hostility to the Executive. Our job is the implementation of the will of Parliament and our efforts should be complementary.

13. It is the tradition of the Committee that all its decisions are arrived at unanimously and party considerations never affect our deliberations. I hope this tradition would be continued by us too.

Thank you.
