

COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

SECOND REPORT

(Presented on 18 November, 1980)



**LOK SABHA SECRETARIAT
NEW DELHI**

November, 1980/Kartika, 1902 (Saka)

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CORRIGENDA TO THE SECOND REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (PRESENTED ON 18
NOVEMBER, 1980)

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
(i)	-	4	COMPOSITION OF THE COMMITTEE REPORT	COMPOSITION OF THE COMMITTEE
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25	-	5 (from bottom)	Registrations,	Regulations
28	against item No. 9 in Col. 4	4	Vide SL.No.	Vide S.O.No.
37	against item No. 23 in Col. 3	7	possiblel	possible
40	against item No. 24 in Col. 3	15	elements1.	elements
40 40	against item No. 29 in Col. 3	8	to so	to do so
48	against item No. 52 in Col. 3	1	Committeeenot'	Committee not
65	-	7	prempitory	peremptory

CONTENTS

	PARA No.	PAGE No.
COMPOSITION OF THE COMMITTEE REPORT		(iii)
I INTRODUCTION	1-4	1
II The Indian Foreign Service Branch 'B' (Qualifying examination for the appointment of Telephone Operators to • Grade (VI) Regulations, 1975 (G.S.R. 616 of 1976)	5-9	1
III The Central Excise (Seventeenth Amendment) Rules, 1978 (G.S.R. 473 of 1978)	10-12	2
IV The Gresham and Graven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 (S.O. 253-E of 1978)	13-16	4
V The Directorate of Plant Protection, Quarantine and Storage (Assistant-cum-Superintendent) Recruitment Rules, 1978 (G.S.R. 564 of 1979)	17-19	5
VI The Cement Control (Fourth Amendment) Order, 1977 (S.O. 703-E of 1977)	20-23	6
VII The Mizoram Civil Service Rules, 1977 (G.S.R. 771 of 1977)	24-26	8
VIII The Central Water Commission (Class II Posts) Recruitment (Amendment) Rules, 1977 (G.S.R. 1442 of 1977)	27-30	8
IX The National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, 1977 (G.S.R. 201 of 1977)	31-34	10
X Implementation of recommendations contained in paras 42 and 43 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) re : The Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Limited Amalgamation Order, 1974 (G.S.R. 155-E of 1975)	35-42	11
XI Action taken by Government on the Recommendations made by, and Assurances given to, the Committee on Subordinate Legislation	43	14

PARLIAMENT LIBRARY

(ii)

APPENDICES

	PAGE No.
I Summary of main Recommendations/Observations made by the Committee	17
II A copy of the Notification published in the Gazette of India, Extraordinary dated 9 January, 1979	23
III Statement showing the action taken by Government on the Recommendations made by and Assurances given to the Committee on Subordinate Legislation	24
IV Minutes of the Third, Fourth and Eleventh sittings of the Committee	63

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1980-81)

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3. Shri T. V. Chandrashekharappa
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15. Shri R. S. Sparrow

SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

REPORT

I

INTRODUCTION

1. 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 Second Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 27 and 28 August, 1980.

3. The Committee considered and adopted this Report at their sitting held on 11 November, 1980. The Minutes of the sittings, which form part of the Report are appended to it.

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

II

THE INDIAN FOREIGN SERVICE BRANCH 'B' (QUALIFYING EXAMINATION FOR THE APPOINTMENT OF TELEPHONE OPERATORS TO GRADE VI) REGULATIONS, 1975 (G.S.R. 616 OF 1976)

5. Regulation 5 of the Indian foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975 provides that a candidate shall pay the fee specified for the said examination.

6. It was felt that the precise amount of fee which a Candidate has to pay should be indicated in the regulations in order to make them self contained and for the information of all concerned.

7. The Ministry of External Affairs to whom the matter was referred have in their reply dated the 19th April, 1977, stated as under:—

“...this Ministry would not like to amend the above mentioned Regulations so as to specify the precise amount of fee which a candidate has to pay.

The Ministry holds the view that it will not be in the interest of efficiency of the Administration if the Regulations are amended as per the suggestion of the Lok Sabha Secretariat as they will need to be amended every time the amount of fee, payable by the candidate, is altered."

8. The Committee note that in a similar case regarding the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, the Committee was not satisfied with the reply of the Department of Personnel and Administrative Reforms that in case the amount of fee was mentioned in the regulations, those might had to be amended from time to time with every variation in the rate of fee. The Committee in para 51 of their Sixteenth Report (Sixth Lok Sabha) desired the Department of Personnel and Administrative Reforms to amend the regulations to indicate therein the precise amount of fee which a candidate had to pay. The Committee, therefore, desire the Ministry of External Affairs to incorporate in the Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975, the precise amount of fee which a candidate has to pay. The Committee feel that the difficulty pointed out by the Ministry in regard to amending the regulations every time the amount of fee, payable by candidates, was altered, could be resolved by putting an asterisk on the amount of fee in the regulations and to indicate in a foot-note that it was subject to variation.

9. The Committee are also unhappy over the peremptory language used by the Ministry of External Affairs in their reply. The Committee observe that the very first sentence of the reply viz., 'this Ministry would not like to amend the above-mentioned Regulations', only reflects a closed mind on the part of the Ministry in the matter. The Committee feel that the Ministry's view as to what is in the 'interest of efficiency of Administration' is not final. They desire the Ministry to be more courteous and discreet while attending to references sent by a Parliamentary Committee.

III

THE CENTRAL EXCISE (SEVENTH AMENDMENT) RULES, 1978 (G.S.R. 473 OF 1978)

10. During scrutiny of the Central Excise (Seventh Amendment) Rules, 1978, it was observed that rule 1 of these Rules did not specifically mention that "they shall come into force from the date of their publication in the Official Gazette" which is usually done.

11. The matter was taken up with the Ministry of Finance (Department of Revenue). The Ministry examined the point raised in consultation with the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) whose opinion is reproduced below:—

“The Central Excise (Seventh Amendment) Rules, 1978 whereunder rule 12 of the Central Excise Rules was amended, were made in pursuance of the powers conferred on the Central Government under Section 37 of the Central Excise and Salt Act, 1944. Section 38(1) of the aforesaid Act lays down that all rules made and notifications issued under the Act shall be published in the Official Gazette. The general legal position with respect to coming into force of the statutory Rules is that these will come into force on the date of their publication in the official Gazette unless it is expressly provided that these will come into force with effect from a particular date.

In view of the foregoing, even though the Rules in question do not specifically mention that these shall come into force on the date of their publication in the Official Gazette, these will be deemed to have come into force only on the date of such publication. Accordingly, it does not appear to be legally necessary to insert such a sub-clause in the relevant Rules.

Legislative Department which had vetted these Rules may, however, see for comments. It would be noticed that even in the case of Central Excise (Fourth Amendment) Rules, 1976, the Central Excise (Ninth Amendment) Rules, 1976 published as G.S.R. 35-E and G.S.R. 100-E respectively, the particular sub-clause as to coming into force of the Rules with effect from the date of their publication in the Official Gazette were not there, which it is presumed was on the basis of the legal position explained in paras.above.”

The Legislative Department of the Ministry of Law also agreed with the views of the Department of Legal Affairs, as stated above.

12. The Committee agree with the above opinion expressed by the Ministry of Law, Justice and Company Affairs (Department of

Legal Affairs) as duly supported by their Legislative Department. The Committee, however, feel that a uniform practice should be followed in this regard i.e. either there should invariably be a sub-rule in all statutory rules, etc. specifically providing that those rules would come into force from the date of their publication in Official Gazette or such a sub-rule should not be at all included in any rules, etc., and automatically it should be presumed that they would become operative from the date of their notification in the official gazette. As, the Committee has found that in the majority of statutory rules already notified such a sub-rule had been included in the rules the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should always be included in rules in future. However, no action need be taken at this stage to insert the sub-rule in the rules already notified.

IV

THE GRESHAM AND CRAVEN OF INDIA (PRIVATE) LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) RULES, 1978 (S.O. 253-E OF 1978).

13. Rule 3 of the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 reads as under:—

"Time-limit for intimation:—Every mortgages of any property which has vested under the Act in the Central Government or in the Braithwaite and Company Limited or in a Government Company, as the case may be, and every person holding any charge, lien or other interest in, or in relation to, any such property, shall give intimation of such mortgage, charge, lien or other interest to the Commissioner within a period of thirty days from such date as may be specified by the Central Government under Section 17.

Provided that if the Commissioner is satisfied that the mortgage or the person holding any charge, lien or other interest was prevented by sufficient cause from giving the intimation within the said period of thirty days, he may receive the intimation within a further period of thirty days and not thereafter."

14. It was felt that the reasons for receiving the intimation within a further extended period of thirty days should be recorded in writing by the Commissioner with a view to obviating any scope of discrimination.

15. The matter was taken up with the Ministry of Industry (Department of Heavy Industry) who in their reply dated the 25th July, 1979, intimated that the requisite amendment to the proviso to rule 3 had been notified in the Gazette of India Extraordinary, Section 3(ii), dated the 12th July, 1979 *vide* S.O. 395-E.

16. The Committee note, that on being pointed out, the Ministry of Industry (Department of Heavy Industry) have amended the proviso to Rule 3 of the Gresham and Craven of India (Private) Limited (Acquisition and transfer of Undertakings) Rules, 1978 so as to provide for recording of reasons in writing by the Commissioner for receiving the intimation within a further extended period of thirty days.

..

V

THE DIRECTORATE OF PLANT PROTECTION, QUARANTINE & STORAGE (ACCOUNTANT-CUM-SUPERINTENDENT) RECRUITMENT RULES, 1978 (G.S.R. 564 OF 1979).

17. Column 11 of the Schedule to the Directorate of Plant Protection, Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 provides that appointment to the post of Accountant-cum-Superintendent will be made by transfer on deputation basis of Assistants (Central Secretariat Service Grade IV) in the Ministries/Departments of the Central Government possessing the prescribed qualifications. However, the period of such deputation has not been specified in that column of the schedule which is invariably done.

18. The Ministry of Agriculture (Department of Agriculture) with whom the matter was taken have amended col. 11 of the schedule to the rules by specifying the period of deputation.

19. The Committee note that, on being pointed out, the Ministry of Agriculture (Department of Agriculture) have amended column 11 of the Schedule to the Directorate of Plant Protection Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 *vide* G.S.R. 996 of 1979 by laying down that 'period of deputation shall ordinarily not exceed three years'.

VI

THE CEMENT CONTROL (FOURTH AMENDMENT) ORDER, 1977 (S.O. 703-E OF 1977)

20. While examining the Cement Control (Fourth Amendment) Order, 1977, it was noticed that the Industries (Development and Regulation) Act, 1951 under which the above Order had been framed did not contain a provision regarding laying of Orders framed under section 18G thereof before each House of Parliament.

21. The Ministry of Industry (Department of Industrial Development) were asked to state whether they had any objection to amend the Industries (Development and Regulation) Act, 1951 so as to provide for the laying of Orders issued thereunder before Parliament on the lines of the provisions in the Essential Commodities Act. In their reply dated the 16th August, 1978, the Ministry have stated as under:—

“.....Section 30(4) of the IDR Act provides that ‘all rules made under the Section shall be laid for not less’ than seven days before Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the Sessions in which they are so laid or the Session immediately following.’ In accordance with this provision all rules made under Section 30 of the IDR Act are laid before Parliament. Under the various Sections of the IDR Act, a very large number of notified orders are issued by the various Departments of the Government and it will be administratively difficult to lay all such orders issued for appointment of various Development Councils, Central Advisory Councils of Industries, investigation into the working of any constitution of the Councils/Teams etc.

The provisions of the Essential Commodities Act have been gone through in this Ministry. As in the case of the IDR Act where power to make rules has been specifically provided in the Act itself, there are no such provisions in the Essential Commodities Act. Whereas IDR Act provides for such rules framed under Section 30 of the Act to be laid before Parliament, Essential Commodities Act does not provide for the rules framed under that Act to be laid before Parliament.

For the reasons stated above, this Ministry are not in favour of a provision being made in the IDR Act to lay all the orders issued under the provisions of Section 18(G) or other Sections of the Act to be laid before Parliament."

22. The Committee are not convinced by the reply of the Ministry of Industry (Department of Industrial Development) for not favouring a provision being made in the Industries (Development and Regulations) Act, 1951, for laying on the Table of each House of Parliament of all Orders issued under the provisions of Section 18-G or other sections of the Act. The Committee are of the view that laying on the Table of all 'Orders' in pursuance of powers delegated by Parliament, is very significant as it affords an opportunity to the Members of Parliament, if they so desire to move any amendment or modification to such Orders including a motion for their annulment. The Committee, therefore, recommend that the Industries (Development and Regulations) Act, 1951 should be amended at an early date to provide that all rules/regulations/orders framed by the Central Government under the Industries (Development and Regulations) Act, 1951, are laid before each House of Parliament in accordance with the following laying formula as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha):—

"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; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

23. After due consideration of the plea of administrative difficulty taken by the Ministry of Industry (Department of Industrial Development) in laying a number of executive orders before Parliament, the Committee are of the view that Orders which are of legislative nature and which are framed under the powers delegated by an Act of Parliament or Constitution are required to be laid before Parliament and not the Orders which are of executive nature.

VII

THE MIZORAM CIVIL SERVICE RULES, 1977 (G.S.R. 771 OF 1977)

24. Under rule 29 of the Mizoram Civil Service Rules, 1977, the administrator may make regulations not inconsistent with these rules, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to these rules.

25. The Ministry of Home Affairs who were asked to clarify whether the regulations to be framed under the above rule would be published in the Gozette for general information have agreed to publish the same in the official gazette of Mizoram.

26. The Committee note that, on being pointed out, the Ministry of Home Affairs have agreed to publish the regulations to be framed by the Administrator of Mizoram under rule 29 of the Mizoram Civil Service Rules, 1977, in the Official Gazette for the information of all concerned.

VIII

THE CENTRAL WATER COMMISSION (CLASS II POSTS) RECRUITMENT (AMENDMENT) RULES, 1977 (G.S.R. 1442 OF 1977)

27. In column 13 of the schedule appended to the Central Water Commission (Class II Posts) Recruitment (Amendment) Rules, 1977, under the heading 'circumstances in which Union Public Service Commission is to be consulted in making recruitment' it is stated that it would be 'as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958'. This entry did not appear to be correct as the expression 'Union Public Service Commission (Exemption from Consultation) Regulations' enumerate only those matters in regard to which Government are exempted from consulting the Union Public Service Commission.

28. In this connection, attention of the Ministry of Agriculture and Irrigation (Department of Irrigation) Was invited to an earlier recommendation of the Committee on Subordinate Legislation contained in para 13 of their Seventeenth Report (Fifth Lok Sabha) which reads as follows:—

"The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the expression 'as required under the Union Public

Service Commission (Exemption from Consultation) Regulations, 1958' in column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary it provides for cases where consultation with the Commission is not necessary. Even so, the Ministry of Law have pleaded for the retention of this expression in column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the Department of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action in the matter as the expression objected to in this case occurs in a large number of Recruitment Rules."

29. Subsequently, the Ministry *vide* their Notification No. 1/79-F. 39/39/3/75-Adm. I. dated the 9th February, 1979 have since amended the entry under column 13 to read as follows:

* * * * *

"(ii) In the Schedule against serial number 5 relating to the post of Assistant Editor (Bhagirath-Hindi). under Column 13, for the entries, the following shall be substituted, namely:—

Consultation with the Union Public Service Commission
necessary while making direct recruitment."

30. The Committee note that, on being pointed out, the erstwhile Ministry of Agriculture & Irrigation (Department of Irrigation) and now Ministry of Irrigation have since amended the Central Water Commission (Class II Posts) Recruitment Rules, 1975 *vide* G.S.R. No. 336 dated the 3rd March, 1979, so as to provide for consultation with the Union Public Service Commission while making direct recruitment to the post of Assistant Editor.

IX

THE NATIONAL BUILDINGS ORGANISATION (HINDI OFFICER) (GROUP 'B') RECRUITMENT RULES, 1977 (G.S.R. 201 OF 1977)

31. Entry under column 13 of the schedule appended to the National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, 1977 did not make it clear whether the Union Public Service Commission would be consulted in the recruitment to the post of Hindi Officer, a gazetted post.

32. Normally, rule 5 of the recruitment rules pertaining to the gazetted posts provides for the relaxation of those rules in consultation with the Union Public Service Commission with respect to any class or category of persons.

33. The Ministry of Works & Housing with whom the matter was taken up, in their reply dated the 1st October, 1977 stated as under:—

".....the matter was referred to the Department of Personnel and Administrative Reforms who have amplified that since the recruitment rules for group 'A' and 'B' posts are framed in consultation with the UPSC and that Department, no provision thereof can be amended, modified or relaxed, unless the Department of Personnel and Administrative Reforms and UPSC are consulted.

In view of the above and the fact that the post of Hindi Officer in question is a Group 'B' post it is, as advised by the Department of Personnel and Administrative Reforms, not necessary to make a provision as suggested by the Lok Sabha Secretariat in the recruitment rules, which are statutory rules."

34. The Committee are not inclined to agree with the argument for not incorporating a provision regarding consultation with the U.P.S.C. advanced by the Ministry of Works and Housing that since the recruitment rules for Group 'A' and 'B' posts are framed in consultation with the Union Public Service Commission and the Department of Personnel and Administrative Reforms, no provision thereof could be amended, modified or relaxed without prior consultation with them. The Committee feel that in order to obviate any scope for speculation, it is but proper to incorporate the provision regarding consultation with the Union Public Service Commission expressly in the rules. The Committee, therefore, desire the Ministry to amend the National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, so as to provide for prior consultation with the Union Public Service Commission before relaxing any of the provisions of these rules with respect to any class or category of persons.

**IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN
PARAS 42 AND 43 OF THE NINTH REPORT OF THE COM-
MITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK
SABHA) RE: THE INDIAN CONSORTIUM FOR POWER
PROJECTS PRIVATE LTD. AND THE BHARAT HEAVY
ELECTRICALS LIMITED AMALGAMATION ORDER, 1974
(G.S.R. 155-E OF 1975)**

35. Paragraph 11 (b) of the Indian Consortium for Power Projects Private Limited and the Bharat Heavy Electricals Limited Amalgamation Order, 1974 reads as under:—

“Dissolution of the Indian Consortium for Power Projects Private Limited,—Subject to the other provisions of this order, as from the appointed day:—

.. (a) * * * *

(b) the right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceedings in respect of any such share.”

36. The wording of the above provision was such that it appeared to bar the jurisdiction of Courts. It was also felt that there should be an express provision in the parent Act empowering the executive to extinguish the right of partners by delegated legislation.

37. The Ministry of Law, Justice and Company Affairs with whom the matter was taken up, in their reply dated the 9th August, 1976, stated as under:—

“Paragraph 11(b) of the Order has the effect of extinguishing the rights of the shareholders of the dissolved company and of preventing such shareholders from asserting or taking any claim or making any demand or proceedings in respect of any share held by them in the dissolved com-

pany. Under paragraph 7 of the Order, every shareholder of a dissolved company is entitled to be paid in cash, by the company resulting from the amalgamation the face value of the shares held by him in the dissolved company. In view of this categorical provision of the Order, paragraph 11(b) does not appear to take away any substantial right of the shareholder. In any case, that paragraph, as it stands, takes away the right of the shareholder and not the power of the court."

38. After considering the matter at their sitting held on the 7th January, 1978 and hearing oral evidence of the representatives of the Ministry on the 31st March, 1978, the Committee in para 42-43 of their Ninth Report (Sixth Lok Sabha) recommended as under:

"The Committee note that in their evidence before the Committee, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have conceded that although para 11 (b) of the Amalgamation Order provides that 'the right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceedings in respect of any such share' no citizen is barred from going to a court of law. It has also been conceded by the Department of Company Affairs during evidence that the Company Law Board cannot take away the right of a citizen to go to a court of law when the parent law does not provide for it. In view of this, the Committee desire that the Department of Company Affairs should amend the Order in question so as not to give an impression that it seeks to take away the right of a shareholder to go to a court of law.

The Committee also feel that, apart from courts, there should be some sort of revisionary or appellate authority for the redressal of any grievance of a person who might feel aggrieved by any action taken under the Amalgamation Order. The Committee desire the Department to examine whether the provisions of the existing law empower Government to provide for such an authority or an amendment of the parent law is necessary for this purpose. The Committee will like the Department of Company Affairs to take necessary action to this and without any loss of time."

39 In their action taken note dated the 7th September, 1978, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have stated as under:—

“It is proposed to frame rules under Section 396 of the Companies Act, 1956 and to prescribe an authority envisaged in sub-section (3) of the said Section to determine whether the right or other interest of the member or creditor (including a debenture holder) is less than his rights in the company of which he was a member/creditor earlier. The Company Law Board which will pass the final order after hearing the aggrieved party, if need be, and after perusing the order of the prescribed authority will again examine the reasons furnished and pass such further orders as the Board may think fit. Thus the aggrieved party will have two opportunities, once before the prescribed authority and again before the Company Law Board to ventilate his objections.

However, no amendment of para 11 of this Amalgamation Order appears necessary in view of the provisions of para 7 of the order according to which every person registered as a shareholder in the dissolved company shall be entitled to be paid, in cash, by the company resulting from the amalgamation, the face value of the shares held by him in the dissolved company.”

40. In their further reply dated the 8th January, 1979, the Ministry stated as under:—

“.....the matter of providing for a revisionary of appellate authority through rules proposed to be framed under section 396 of the Companies Act, 1956 has been further examined by the Department in consultation with the Legislative Department of this Ministry and the Department has been advised that such a provision, being of a substantive nature, can be made only by amendment of the Companies Act suitably.

However, the Central Government has amended the Companies (Central Government's) General Rules and Forms, 1956 so as to provide an authority for assessing the compensation payable to a member or creditor of each of the companies amalgamated pursuant to sub-section (3) of

section 396 of the Companies Act, 1956 by inserting a new Rule 12A in the said Rules and Forms. A copy of the Notification*, which has been published in the Gazette of India Extra-ordinary dated the 9th January, 1979, is enclosed for information."

41. The Committee note that the Ministry of Law, Justice and Company Affairs (Legislative Department) have conceded that provision of revisionary or appellate authority is of a substantive nature which could be made only by an amendment of the Companies Act, 1956. The Committee regret that, despite the above advice of the Legislative Department, the Department of Company Affairs have simply amended the Companies (Central Government's) General Rules and Forms, 1956, to provide that Joint Director (Accounts) in the Department of Company Affairs shall be the authority to assess the compensation payable to a member or creditor (including a debenture holder) of each of the companies amalgamating under sub-section (3) of Section 396 of the Companies Act, 1956. The Committee desire the Ministry to amend the Companies Act, 1956 in order to provide for revisionary or appellate authority for redressal of grievances of a person aggrieved by any action taken under the Amalgamation Order.

42. As regards recommendation contained in para 42 of their Ninth Report (Sixth Lok Sabha), the Committee agree with the views of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that although para 11(b) of the Amalgamation Order provides that the 'right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceeding in respect of any share', yet no citizen is barred from going to a court of law. The Committee, therefore, do not desire to pursue this matter further.

XI

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS MADE BY, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION

43. The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix III.

NEW DELHI;
November 11, 1980

MOOL CHAND DAGA,
Chairman,
Committee on Subordinate Legislation.

*Appendix II.

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APPENDICES

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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)	8	The Committee note that in the case of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, the Committee were not satisfied with the reply of the Department of Personnel and Administrative Reforms that in case the amount of fee was mentioned in the regulations, those might have to be amended from time to time with every variation in the rate of fee. The Committee in para 51 of their Sixteenth Report (Sixth Lok Sabha) desired the Department of Personnel and Administrative Reforms to amend the regulations to indicate therein the precise amount of fee which a candidate had to pay. The Committee, therefore, desire the Ministry of External Affairs to incorporate in the Indian Foreign Service Branch 'B' (Qualifying Examination for the appointment of Telephone Operators to Grade VI) Regulations, 1975, the precise amount of fee which a candidate has to pay. The Committee feel that the difficulty pointed out by the Ministry in regard to amending the regulations every time the amount of fee, payable by candidates, was altered, could be resolved by putting an asterisk on the amount of fee in the regulations and to indicate in a foot-note that it was subject to variation.

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The Committee are also unhappy over the peremptory language used by the Ministry of External Affairs in their reply. The Committee observe that the very first sentence of the reply viz., 'this Ministry would not like to amend the above-mentioned Regulations,' only reflects a closed mind on the part of the Ministry in the matter. The Committee feel that the Ministry's view as to what is in the 'interest of efficiency of Administration' is not final. They desire the Ministry to be more courteous and discreet while attending to references sent by a Parliamentary Committee.

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The Committee agree with the opinion expressed by the Ministry of Law, Justice, and Company Affairs (Department of Legal Affairs) as duly supported by their Legislative Department. The Committee, however, feel that a uniform practice should be followed in this regard i.e. either there should invariably be a sub-rule in all statutory rules, etc. specifically providing that those rules would come into force from the date of their publication in Official Gazette or such a sub-rule should not be at all included in any rules, etc., and automatically it should be presumed that they would become operative from the date of their notification in the official gazette. As the Committee have found that in the majority of statutory rules already notified such a sub-rule had been included in the rules, the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should invariably be included in rules in future. However, no action need be taken at this stage to insert the sub-rule in the rules already notified.

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3	16	The Committee note that, on being pointed out, the Ministry of Industry (Department of Heavy Industry) have amended the proviso to Rule 3 of the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 so as to provide for recording of reasons in writing by the Commissioner for receiving the intimation within a further extended period of thirty days.
4	19	The Committee note that, on being pointed out, the Ministry of Agriculture (Department of Agriculture) have amended column 11 of the Schedule to the Directorate of Plant Protection Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 <i>vide</i> G.S.R. 996 of 1979 by laying down that 'period of deputation shall ordinarily not exceed three years'.
5 (i)	22	The Committee are not convinced by the reply of the Ministry of Industry (Department of Industrial Development) for not favouring a provision being made in the Industries (Development and Regulations) Act, 1951, for laying on the Table of each House of Parliament of all Orders issued under the provisions of Section 18-G or other sections of the Act. The Committee are of the view that laying on the Table of all 'Orders' in pursuance of powers delegated by Parliament, is very significant as it affords an opportunity to the Members of Parliament, if they so desire to move any amendment or modification to such Orders including a motion for their annulment. The Committee, therefore, recommend that the Industries (Development and Regulations) Act, 1951 should be amended at an early date to provide that all rules/regulations/orders framed by the Central Government under the Industries (Development and Regulations) Act, 1951, are laid before each House of Parliament in accordance with the following

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laying formula as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha):—

“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; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

5(ii)

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After due consideration of the plea of administrative difficulty taken by the Ministry of Industry (Department of Industrial Development) in laying a number of executive orders before Parliament, the Committee are of the view that Orders which are of legislative nature and which are framed under the powers delegated by an Act of Parliament or Constitution are required to be laid before Parliament and not the Orders which are of executive nature.

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The Committee note that, on being pointed out, the Ministry of Home Affairs have agreed to publish the regulations to be framed by the Administrator of Mizoram under rule 29 of the Mizoram Civil Service Rules, 1977, in the Official Gazette for the information of all concerned.

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7	30	The Committee note that, on being pointed out, the erstwhile Ministry of Agriculture & Irrigation (Department of Irrigation) and now Ministry of Irrigation have since amended the Central Water Commission (Class II Posts) Recruitment Rules, 1975 <i>vide</i> G.S.R. No. 336 dated the 3rd March, 1979, so as to provide for consultation with the Union Public Service Commission while making direct recruitment to the post of Assistant Editor.
8	34	The Committee are not inclined to agree with the argument for not incorporating a provision regarding consultation with the Union Public Service Commission advanced by the Ministry of Works and Housing that since the recruitment rules for Group 'A' and 'B' posts are framed in consultation with the Union Public Service Commission and the Department of Personnel and Administrative Reforms, no provision thereof could be amended, modified or relaxed without prior consultation with them. The Committee feel that in order to obviate any scope for speculation, it is but proper to incorporate the provision regarding consultation with the Union Public Service Commission expressly in the rules. The Committee, therefore, desire the Ministry of Works and Housing to amend the National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, so as to provide for prior consultation with the Union Public Service Commission before relaxing any of the provisions of these rules with respect to any class or category of persons.
9(i)	41	The Committee note that the Ministry of Law, Justice and Company Affairs (Legislative Department) have conceded that provision of revisionary or appellate authority is of a substantive nature which could be made only by an amendment of the Companies Act, 1956. The

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		Committee regret that, despite the above advice of the Legislative Department, the Department of Company Affairs have simply amended the Companies (Central Government's) General Rules, and Forms, 1956, to provide that Joint Director (Accounts) in the Department of Company Affairs shall be the authority to assess the compensation payable to a member or creditor (including a debenture holder) of each of the companies amalgamating under sub-section (3) of Section 396 of the Companies Act, 1956. The Committee desire the Ministry to amend the Companies Act, 1956 in order to provide for revisionary or appellate authority for redressal of grievances of a person aggrieved by any action taken under the Amalgamation Order.
9 (ii)	42	As regards recommendation contained in para 42 of their Ninth Report (Sixth Lok Sabha), the Committee agree with the views of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that although para 11 (b) of the Amalgamation Order provides that the 'right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceeding in respect of any share', yet no citizen is barred from going to a court of law. The Committee therefore, do not desire to pursue this matter further.
10	43	The Committee note, with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix III.

APPENDIX II

(Vide para 40 of the Report)

*Copy of Notification published in the Gazette of India, Extraordinary
dated 9 January, 1979*

G.S.R. 24(E).—

1. (1) These rules may be called the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 1979.

2. In the Companies (Central Government's) General Rules and Forms, 1956, after rule 12, the following rule shall be inserted, namely:—

“12A. Section 396(3).—For the purpose of sub-section (3) of section 396, the Joint Director (Accounts) in the Department of Company Affairs at New Delhi shall be the authority to assess the compensation payable to a member or creditor (including a debenture holder) of each of the companies amalgamating, under that sub-section.”

APPENDIX III

(Vide para 43 of the Report)

Statement showing the action taken by Government on the Recommendations made by and Assurances given to the Committee on Subordinate Legislation

Sl. No.	Reference to para Nos. of Report	Summary of Recommendations/ Assurances	Gist of Government's reply
1	2	3	4

1 Fourteenth Report
(Fifth Lok Sabha)
97

The Committee are not satisfied with the reply of the Ministry of Health and Family Planning (Department of Health) that provisos to rule 1 (3) and rule 2 of the Central Government Health Scheme (Kanpur) Rules, 1972 do not involve sub-delegation of legislative power. They feel that it is not necessary to incorporate above provisos in the rules as the President who has framed the health scheme under the proviso to Article 309 could also modify the scheme by issuing amendment to the rules. The Central Government should not have been empowered to modify the scheme by order. The Committee desire the Ministry of Health and Family Planning (Department of Health) to delete the above provisos from the rules.

The Ministry of Health and Family Welfare (Department of Health) have amended the Central Government Health Scheme (Kanpur) Rules, 1972, vide S.O. No. 1511 dated 31-5-80.

2 Fourteenth Report
(Fifth Lok Sabha)
147

The Committee in para 13 of their Twelfth Report (Second Lok Sabha) had recommended that amendments to the same rules should be published in the Gazette bearing the Order number in the same sequence as signed to the amendments so that the persons concerned would know that there are no intervening amendments published. While the Committee note that the Department of Personnel and Administrative Reforms and the Ministry of Defence, on being pointed out, have agreed to issue amendments to the short titles of the rules mentioned at S. Nos. 1 and 2 of Appendix VIII. They desire the Ministries of Labour and Home Affairs also to issue necessary amendments to the rules mentioned at S. Nos. 3 and 4 of Appendix VIII.

The Ministry of Defence have stated that necessary measures are being taken to avoid such mistakes in future [*vide* U.O. No. 19(4)/74/D (Civ.-II) dated 11-2-75].

3 Fourteenth Report
(Fifth Lok Sabha)
148

The Committee desire that all Ministries/Departments should take steps to avoid such mistakes in future and should assign amendment number in the short title of the rules at the time of the issue of final notifications.

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4 Seventeenth Report
(Fifth Lok Sabha)
13

The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the expression as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958' in column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary, it provides for cases where con-

The Department of Personnel and Administrative Reforms have issued necessary instructions to all Ministries/Departments *vide* para 3.15 of their O.M.No. 14017/24/76-Estt.(RR) dated 22-5-79.

sultation with the Commission is not necessary. Even so the Ministry of Law have pleaded for the retention of this expression in column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the Department of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action in the matter as the expression objected to in this case occurs in a large number of Recruitment Rules.

5 Seventeenth Report
(Fifth Lok Sabha)
59

The Committee are not satisfied with the argument advanced by the Ministry of Labour that as direct recruitment is always done through the Union Public Service Commission, there is no necessity to stipulate in the rules that direct recruitment will be made by Union Public Service Commission. The Committee are of the view that the language of the rules should be such as not to give a wrong impression on the mind of the general public.

The Ministry of Labour have issued
new set of Rules *vide* G.S.R. 276
dated 26-2-1977.

6 Seventeenth Report
(Fifth Lok Sabha)
60

The Committee, therefore, desire the Ministry of Labour to amend Col. 11 of the Schedule to the Mica Mines Labour Welfare Fund Organisation (Class I & II Posts) Recruitment Rules, so as not to give an impression that direct recruitment could be made without the consultation of the Union Public Service Commission. They also desire that the Ministry of Law, Justice and Company Affairs (Legislative Department) while vetting such rules in future should ensure that the rules, as drafted, clearly spell out the intention of Government and do not give a wrong impression.

7 Twentieth Report
(Fifth Lok Sabha)
31

The Committee are not happy over the working of Rule 7 (3) of the Water (Prevention and Control of Pollution) Rules, 1975 which in the absence of rules under section 12 (3) of the Act, appears to confer unguided power on the Chairman in matters of promotion, confirmation, transfer and termination of service of the employees of the Board. The Committee take a serious note of the fact that rules relating to conditions of service of the employees of the Board under section 12 (3) of the Act, which should have been framed within a period of six months from the commencement of the Act, have not yet been framed. They desire the Ministry of Works and Housing to frame these rules without any further delay.

The Ministry of Works and Housing have amended the Water (Prevention and Control of Pollution) Act, 1974 suitably (*Vide* Act, No. 44 of 1978).

8
 Twentieth Report
 (Fifth Lok Sabha)
 30

The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend the Water (Prevention and Control of Pollution) Act, 1974, at the earliest opportunity to specifically provide therein for making of rules in regard to the payment of allowances to persons associated with the Central Board.

9
 Twentieth Report
 (Fifth Lok Sabha)
 45

The Committee note with satisfaction that, on being pointed out ; the Ministry of Health and Family Planning (Department of Health) have agreed to amend rule 13 (4) of the Homocopathy Central Council (Election) Rules, 1975, to provide that election papers, will be sent to the electors by registered post, instead of under certificate of posting as at present. The Ministry have also agreed to so amend Rule 14 that voting papers received by unregistered post will not be rejected. The Committee desired that amendments to the above effect should be issued at an early date.

The Ministry of Health and Family Welfare have suitably amended the Homocopathy Central Council (Election) Rules, 1975 (*Vide* Sl. No. 725 dt. 11-3-78).

10
 Twentieth Report
 (Fifth Lok Sabha)
 56

The Committee note with satisfaction that, on being pointed out, the Delhi Administration have agreed to prescribe the fees to be charged by the Driving Training Schools for giving instructions in training by rules, instead of through executive orders, as at present. The Committee desire the Delhi Administration to amend the Delhi Motor Vehicle Rules accordingly at an early date.

The Ministry of Shipping and Transport have intimated that Delhi Administration have suitably amended the Delhi Motor Vehicles Rules *vide* Notification No. SECE. 3 (45)/74/TPT dated November, 1978.

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The Committee have repeatedly stressed that if in a particular case the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effects being to such rules. The Committee are distressed to note that despite their repeated recommendation, the requisite clarification was not given in as many as 29 cases listed in Appendix III. The Committee take a serious view of non-compliance with an of repeated recommendation of the Committee in such a large number of cases. The Committee re-stress their earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha) and desire the Department of Parliamentary Affairs to bring this recommendation to the notice of all the Ministries/Departments of Government of India for strict compliance in future.

- (i) The Ministries of Finance (Department of Expenditure), (Defence Division), Labour, Works and Housing (Directorate of Estates) & Shipping and Transport (Roads wing) have noted the observations of the Committee for compliance in future (Vide O.M. No. F. 12 (49)-E (Coord.) 76 dated the 17-1-77, 223(1)/76/2289-BII dt. 12-8-77, H. 11013/12/76-PII dated 12-8-77, 12033 (14)/76-Pol.II dated 27-11-76 and A-23(103)/76 dated the 29-12-76)
- (ii) The Department of Parliamentary Affairs have circulated the observations of the Committee to all Ministries/Departments for information Vide their O.M. No. F. 32 (1)/76-R&C dt. 31-1-77

The Committee are not satisfied with the explanation of the Ministry of Finance (Department of Expenditure) that the requisite explanatory memorandum was added to the Supplementary (Second

- (iii) The Ministry of Defence have notified the explanatory memorandum to S.R.O. No. 292 of 1971 Vide S.R.O. 411 dt. 17-12-1977.

- (iv) The Ministry of Health and Family Welfare have intimated that the Central Food Laboratory Calcutta (Class III) Posts of Technical Assistant and Stenographer (Junior) Recruit-

Amendment) Rules, 1972, while sending them to the Press, but it was not printed along with the rules in the Gazette. The Committee need hardly re-emphasise their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department does not cease with their sending an 'Order' to the Press. After an 'Order' has been published in the Gazette, the Ministry/Department concerned should take immediate steps to examine whether it has been correctly printed, and, if necessary, to issue a corrigendum thereto.

ment Rules, 1972 (G.S.R. 745 of 1972) which were made applicable retrospectively had not affected adversely anybody (*Vide* their O.M. No. Z. 28015/1/77-Cordin (DMS& PFA) dated the 28th June, 1980.

13 Twentieth Report
(Fifth Lok Sabha)

93

The Committee regret to note that neither the Department of Personnel and Administrative Reforms nor the Ministry of Shipping and Transport (Transport Wing) had taken any action to rectify the printing errors in their respective notifications till the Committee took up the matter with them. The Committee have repeatedly stressed that the responsibility of a Ministry/Department does not cease with the sending of a notification to the press; after the rules, regulations, etc. have

(i) The Department of Personnel and Administrative Reforms have suitably amended the Central Secretariat Stenographers' Service (First Amendment) Rules, 1974, *Vide* G.S.R. 1040 dated 28-9-74.

They have also noted the observations of the Committee for strict compliance in future (*Vide* O.M. No. 8769/76-G.II) dt. 27-12-76.

been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto. The Committee are constrained to observe that a serious view will have to be taken of such lapses in future. The Committee would also like the Department of Parliamentary Affairs to bring the observations of the Committee made in this paragraph to the notice of all the Ministries/Department of Government for strict compliance in future.

14 Twentieth Report
(Fifth Lok Sabha) 94

The Committee cannot help expressing regret over the negligence shown by the Ministry of Energy in the publication of the Central Power Engineering (Class I) Service (Second Amendment) Rules, 1974. Before sending the notification to the Press, the Ministry had failed to ensure that it was complete in all respects and subsequently, they had not cared to see whether it had been properly published. The Committee would like the Ministry of Energy to take care to avoid such lapses in future.

15 Twentieth Report
(Fifth Lok Sabha) 95

The Committee note that while the Department of Personnel and Administrative Reforms and the Ministry of Shipping and Transport (Transport Wing) have either initiated or are initiating corrective action by issuing a corrigendum/addendum, the Ministry of Energy (Department of Power) have not given any indication in this regard. The Committee desire the Ministry of Energy (Department of Power) to take necessary corrective action without any further delay.

(ii) The Ministry of Shipping and Transport (Transport Wing) have suitably amended the Andaman Lakshadweep Harbour Works (Chief Engineer) Recruitment Rules, 1974 *Vide* G.S.R. No. 84 dt. 12-7-75.

They have also noted the observations of the Committee for compliance in future (*Vide* O.M. No. 5-C (23)/76 dated 14-4-1978).

(iii) The Ministry of Energy (Department of Power) have suitably amended the Central Power Engineering (Class-I) Service (Second Amendment) Rules, 1974 (*Vide* G.S.R. 149 dt. 29-1-77).

They have also noted the observations of the Committee and circulated it to all concerned in the Department and its attached and Subordinate Offices for strict compliance [*Vide* O.M. No. 40 (16)/76-Coord.) dt. 15-7-78].

(iv) The Department of Parliamentary Affairs have circulated the observations of the Committee to all Ministries/Departments for information and compliance *Vide* their O.M. No. F. 32 (1)/76-R&C dt. 31-1-77.

16 Second Report
(Sixth Lok Sabha) 27

As regards the proposal of the Ministry to omit a reference to "terms and conditions" from clause 10(1) of the order, the Committee observe that this deletion will give greater latitude to the controlling authorities concerned in that after this amendment there will be no obligation on them to lay down conditions for re-sale. The Committee, therefore, desire the Ministry of Industry (Department of Heavy Industry) to amend the order in question laying down therein the "terms and conditions" for resale of tractors, or, in the alternative, issue suitable guidelines to all State Government regarding circumstances in which permission for re-sale of tractors, still under statutory control, should be granted. The Committee feel that this is all the more necessary to ensure that there are no variations in the "terms and conditions" from State to State. The Committee also feel that to check profiteering, one of the prescribed conditions for re-sale of tractors could be that the re-sale price should not exceed the price at which the tractor was originally purchased.

The Ministry of Industry (Department of Heavy Industry) have issued the necessary guidelines to all State Controllers of Tractors as recommended by Committee. These guidelines *inter-alia* provide that where a permission is granted, a condition should be invariably stipulated that the resale price of the tractor would not exceed the price at which the tractor was originally purchased [*Vide* their circular letter No. 12(14)/76-AEI(11) dt. 15th March, 1978]

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17 Second Report
(Sixth Lok Sabha) 20

The Committee note that sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations, 1973 which empowers the

The Ministry of Defence have amended the Indian Naval Auxiliary Service Regulations, 1973 and the Naval

Central Government to impose a fine on an employer who fails to re-employ a person belonging to the Indian Naval Auxiliary Service on his termination from this Service, is beyond the scope of the Navy Act, 1957. The Ministry of Defence with whom the matter was taken up have no objection to omit sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations and to incorporate its provisions in the Navy Act, 1957. The Committee desire the Ministry to take necessary action in this direction at a very early date.

Ceremonial Conditions of Service and Miscellaneous Regulations, 1963 *vide* S.R.O. No. 151 dated 24-4-78 and S.R.O. No. 237 dated 26-7-80 respectively

18 Second Report
(Sixth Lok Sabha)

37

The Committee note the assurance of the Ministry of Defence that the two safeguards suggested by the Committee, viz., (i) the reasons to be recorded in writing; and (ii) relaxation to be made in respect of only classes or categories of persons, will be complied with, before the Chief of the Naval Staff relaxes the rules of the initial and obligatory training under proviso (d) to Regulation 350 of the Naval Ceremonial conditions of Service and Miscellaneous Regulations. If so, the Committee feel, the Ministry of Defence should have no difficulty in putting the above safeguards on a statutory footing by incorporating them in the Regulations. The Committee desire the Ministry to do this at an early date.

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19 Second Report
(Sixth Lok Sabha)
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The Committee are not convinced by the reply of the Ministry of Energy that circumstances may arise where in the public interest, it may be considered necessary to terminate the appointment of the Chairman or a whole-time member of the Bhakra Management Board before the prescribed period of 3 years and hence it is not advisable to make a provision in the Rules for recording the reasons in writing. The Committee fail to understand how the Ministry would initiate action to terminate the term of the Chairman or a whole-time member without putting anything in writing on record. After all, there must be something on record which may lead to the issue of the notice and the termination of the appointment. The Committee desire the Ministry of Energy to amend the rules so as to provide for recording of reasons in writing before a notice of termination of the term of office of the Chairman or a whole-time member is issued.

The Ministry of Energy (Department of Power) have suitably amended the Bhakra Management Board Rules, 1974 *vide* G.S.R. No. 556, dt. 29-4-1978.

20 Second Report
(Sixth Lok Sabha)
60

The Committee are not convinced by the reasons advanced by the Ministry of Labour for the delay of over 2 years in the final publication of the

(i) The Ministry of Labour have noted the recommendation of the Committee for future compliance [*Vide* their

The Committee are unhappy to note that even after the final batch of comments had been received in the Ministry in August, 1973, it took them over one year and 11 months to examine comments and sort out legal issues involved therein with the Ministry of Law. The Committee will like to reiterate their earlier recommendation made in para 13 of the Fifteenth Report (Fifth Lok Sabha) that if a Ministry feel need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for inordinately long periods.

O.M. No.] 11013/1/77/DI(A) dated 19-12-77]

(ii) The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments for guidance and strict compliance (*vide*) their O.M. No. F. 32(8)/77-R&C dt. 19-1-1978]

21 Second
(Sixth
64

Report The Committee are not satisfied with the explanation of the Ministry of Defence for not incorporating criteria for determining seniority in the Defence Science Service Rules, 1967. The Committee feel that the criteria for determining seniority, being a basic ingredient of the recruitment rules, should be incorporated in the rules and not left to be determined through executive instructions, as the executive instructions issued by Government are not published in the Gazette, and therefore, their reasonableness or fairness cannot be judged by the Committee. The Committee note in this connection that criteria for determining

The Ministry of Defence have the Defence Science Service Rules, 1967 have since been superseded by the Defence Research and Development Service Rules, 1978 (*Vide* No. 92283/O.M. RD-21(a)/2065/D(R&D) dated 21-4-80)

seniority have been laid down in a number of Rules including the Indian Economic/Statistical Service Rules, 1961. The Committee, therefore, desire the Ministry of Defence to amend the Defence Service Rules to incorporate there in the criteria for determining seniority.

22 Second Report
(Sixth Lok Sabha)
72

The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms has decided to delete the word 'thoroughly' from sub-rule (2) of Rule 20 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. The Committee desire the Department to issue the necessary amendment to the Rules in this regard at an early date.

The Department of Personnel and Administrative Reforms have issued necessary amendment to the All India Services (Death-cum-Retirement Benefits) Rules *Vide* GSR No 1182 dt. 14-8-76.

36

23 Second Report
(Sixth Lok Sabha)
104

The Committee note the reply of the Ministry of Health and Family Welfare (Department of Health) that the proceedings and formalities involved in finalising draft amendments to Drugs and Cosmetics Rules, are time-consuming and a period of one year is regarded essential for the purpose. However, the Ministry have assured

The Ministry of Health and Family Welfare have noted the observations of the Committee for compliance (*Vide* their O.M. No. H. 11013/3/77-DMS&PFA dated the 20th January, 1978)

that efforts will continue to be made to finalise amendments as early as possible, especially in cases where no controversies or further technical consultations are involved. The Committee trust that the Ministry will keep their assurance, and make every effort to finalise amendments to rules in the minimum period possible.

24 **Second Report**
 (Sixth Lok Sabha)
 105

The Committee also note the reply of the Ministry that Drugs and Cosmetics Rules are being constantly reviewed and suitably amended, whenever necessary, for plugging loopholes as and when noticed ; and at present there are no loopholes which can be taken advantage of by unscrupulous elements. According to the Ministry, what is required is a more rigorous and effective enforcement of the existing provisions of the Drugs and Cosmetics Act and the Drugs and Cosmetics Rules by the State. The Committee trust that constant vigilance will be exercised by Government to ensure that the provisions of the Act and the Rules are not evaded by unscrupulous elements.

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25 **Sixth Report**
 (6th Lok Sabha)
 66

The Committee are not satisfied with the reply of the Ministry of Labour that as the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974, are being replaced by the new rules under the new Act, there is no need to issue a corrigendum to Sub-rule (2) of rule 1 correcting the date of its

The Ministry of Labour have issued necessary corrigendum *Vide* G.S.R. 890 dated 8-7-78.

coming into force from 15-6-74 to 1-10-74. The Committee feel that as the retrospective effect in this case, although erroneously given, was without due legal authority, the Ministry should have at their earliest issued a corrigendum correcting the date of effect of the rules. This, unfortunately, was not done. The Committee desire the Ministry of Labour to issue the necessary corrigendum without any further delay as it may take time to issue the new rules under the new Act.

26 Sixth Report
(Sixth Lok Sabha)
74

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The Committee will like the Ministries/Departments to ensure that any rule, regulation, etc., providing for recovery as an arrear of land revenue, which is in the nature of an extreme step, should invariably be backed by an express authorisation to this effect from the parent statute.

The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments for guidance and strict compliance *Vide* their O.M. No. 32 (5)/78-R&C dt. 5-5-1978.

27 Sixth Report
(Sixth Lok Sabha)
83

The Committee are unhappy to note that the Ministry of Industry (Department of Industrial Development) who were asked to give their comments on certain points arising out of the Salt (Assam Reserve Stock) Order, 1973 on the 29th August, 1974, had sent their final reply on the 25th May, 1977, i.e. after a lapse of nearly three years during which period the Order in question has been rescinded. The Committee need hardly point out that such delays not only hamper the work of the

The Ministry of Industry (Deptt. of Industrial Development) have noted the paras for compliance (*Vide* their O.M. No. 2015/4/79-Salt dt. 4-9-79).

Committee but also result in unnecessary prolongation of infirmities in Orders. The Committee, therefore, desire that any communication addressed to a Ministry/Department of the Government of India by a Parliamentary Committee should be promptly attended to and reply thereto sent quickly.

As the Order in question has already been rescinded there is now no question of amending the Order on the lines suggested by the Committee. The Committee, however, desire that in case the Ministry of Industry (Department of Industrial Development) have to issue such an order in future, they should bear the following points in mind :

- (i) As repeatedly stressed by the Committee, the minimum rank of officers empowered to conduct searches, seizures, etc. should be specified in the Order.
- (ii) No charges should be levied unless there is express authorisation therefor in the parent law.
- (iii) To avoid any scope for discriminatory treatment, the conditions subject to which an exemption may be given should be specified in the Order.

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Ninth Report
(Sixth Lok Sabha)
63

The Committee will also like the Ministry of law, Justice and Company Affairs (Legislative Department) to issue instructions to all the Ministries/Departments as not to so frame their rules as to give an impression to the layman that they seek to oust the jurisdiction of courts or that no further legal remedy is available, unless the parent Act expressly empowers them to so.

The Ministry of Law, Justice & Company Affairs (Legislative Department) have circulated the observation of the Committee to all Ministries/Departments *Vide* their O.M.No. 4(4)/78-L.I. dt. 5-6-1978.

Eleventh Report
(Sixth Lok Sabha)
16

The Committee note that the Regulations framed under Rule 5 of the Department of Electronics (Group 'B' and 'C' Posts) Recruitment Rules, 1977 have been circulated to the candidates and the employees in the Department. Copies of the Regulations have also been displayed on the Notice Board and they are also proposed to be included in the Administration Manual of the Department presently under compilation.

Eleventh Report
(Sixth Lok Sabha)
17

The Committee feel that though the purpose of the publicity of the regulations made under rule 5 is being served to a great extent by the various methods adopted or proposed to be adopted by the Department of Electronics in this regard, yet such regulations do not come to the notice of the Committee on Subordinate Legislation to judge their fairness. Under Rules 317 of the Rules of Procedure and conduct of Business in Lok Sabha, the Committee are required to report to the House whether the power

The Department of Electronics have notified the Competitive Examination Regulations *Vide* their notification No. 6 (23)/76 Adm. II dt. 28-10-78.

to make regulations under the power conferred by the Constitution or delegated by Parliament is being properly exercised within such delegation. In order to enable the Committee to scrutinise and comment upon any inequitous provision in the regulations, it is necessary to publish them in the Gazette of India.

32. Eleventh Report
(Sixth Lok Sabha)
18

The Committee note that regulations relating to limited Departmental competitive examinations framed under certain Central Services have been published in the Gazette and scrutinised by the Committee in the past. In paras 14—18 of their First Report (Fourth Lok Sabha) the Committee have commented upon the Central Secretariat Clerical Service (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966.

33. Eleventh Report
(Sixth Lok Sabha)
19

The Committee, therefore, desire the Department of Electronics to take necessary steps to publish these regulations in the official Gazette at an early date.

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34. Eleventh Report
(Sixth Lok Sabha)
33

The Committee are amazed to observe that the Department of Social Welfare was not aware of the Printing error in the rules till it was brought to their notice by the Committee. The Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the Ministries/Departments concerned

(i) The Department of Social Welfare have suitably amended the Department of Social Welfare (Statistician) Recruitment Rule, 1977 (*Vide* G.S.R. No. 1730 dated 30-12-77). They have also noted the observations of the Committee for observance.

should take immediate steps to examine them whether they have been correctly printed and if necessary, to issue a corrigendum thereto *Swamato* without waiting for the Committee to point it out.

(*Vide* their O.M. No. 42/39/78-Estt dt. 26-12-78).

35. Eleventh Report
(Sixth Lok Sabha)
34

The Committee desire to emphasise in this connection that it is the responsibility of the Ministry/Department concerned to arrange for obtaining a copy of the Gazette containing their notification immediately after its publication for verifying that it has been correctly printed.

(ii) The Department of Parliamentary Affairs have circulated the observations of the Committee to all Ministries/Departments for their information and compliance (*Vide* their O.M. No. 32(13)/78-R&C dt. 13-12-78).

36. Eleventh Report
(Sixth Lok Sabha)
35

In para 93 of the Twentieth Report (Fifth Lok Sabha) presented to the House on the 3rd November, 1976 the Committee have observed that henceforth serious view will be taken of such lapses. The Department of Parliamentary Affairs brought it to the notice of all Ministries/

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Departments *vide* their O.M. No. F. 32(1)/76-R & C dated the 31st January 1977. The Committee are constrained to observe that the Department of Social Welfare have paid no heed to above recommendation of the Committee even after it was brought to their notice by the Department of Parliamentary Affairs.

37. Eleventh Report
(Sixth Lok Sabha)
36

The Committee take serious note of the fact that Ministries/Departments concerned do not take care to keep in mind and pay heed to the recommendations of the Committee on Subordinate Legislation and often take the plea of inadvertent omission etc. when the mistakes are brought to their notice by the Committee. The Committee desire the Department of Parliamentary Affairs to bring to the notice of all Ministries/Departments that due care should be taken and suitable procedure evolved to see that recommendations of the Committee are taken note of and implemented quickly.

38. Eleventh Report
(Sixth Lok Sabha)
37

The Committee reiterate their earlier recommendation made in para 93 of their Twentieth Report (Fifth Lok Sabha) and desire the Department of Social Welfare to issue necessary corrigendum to the above rules at an early date.

39. Eleventh Report
(Sixth Lok Sabha)
41

The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules so as to specify that the inquiry contemplated thereunder relates to the character and antecedents of the candidate. The Committee desire the Ministry to issue the necessary amendment at an early date.

The Ministry of Finance (Department of Expenditure) have amended Rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 *vide* G.S.R. No. 746 dated 2-6-1979.

40. Eleventh Report
(Sixth Lok Sabha)
45

The Committee agree with the contention of the Ministry of Finance (Department of Expenditure) that recruitment rules and guidelines for promo-

The Department of Personnel and Administrative Reforms have agreed that as and when there is any change

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tion are two different things and it would not be appropriate to include the guidelines in the recruitment rules. The Committee, therefore, do not insist upon incorporating the guidelines regarding promotion and selection of officers on merit in the Civil Accounts Service (Group A) Recruitment Rules, 1977. The Committee however, desire that if any change is effected in these guidelines the Department of Personnel & A.R. should bring them immediately to the notice of the Committee.

41. Eleventh Report
(Sixth Lok Sabha)

55

The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 31 so as to provide therein for relaxation of any provision of the rules *ibid.*, 'with respect to any class or category of persons or posts'. The Committee desire the Ministry to issue the necessary amendment at an early date.

The Ministry of Finance (Department of Expenditure) have amended Rules 31 of the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977 *vide* G.S. No. 746 dated 2-6-1979.

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42. Eleventh Report
(Sixth Lok Sabha)

58

The Committee note that on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to reprint for the present, only English version of the General Provident Fund (Central Services) Rules, 1960 as these have been extensively amended since their issue. The Committee desire the Ministry to print the rules at an early date and also to expedite the work relating to the printing of Hindi version of the Rules.

in the guidelines for promotion to selection post a copy of those instructions would be endorsed to the Committee.

43. Eleventh Report
(Sixth Lok Sabha)

59

Reprinting of rules with all amendments incorporated therein is necessary to facilitate easy reference. The Committee, therefore, desire all Ministries Departments of Government to examine the rules/regulations/orders etc. with which they are administratively concerned and take immediate steps for reprinting of those rules etc. in which extensive amendments have been made since their last publication.

44. Eleventh Report
(Sixth Lok Sabha)

60

The Committee further desire that the Ministries/Departments should initiate action suo moto for reprinting of the rules etc. wherever it becomes necessary rather than leaving it to the Committee to point out such cases. Normally it should be the endeavour of the Ministries/Departments to see that the rules are reprinted both in English and Hindi versions simultaneously. However, in cases where there is any likelihood of delay in finalisation of Hindi version, English version thereof may be reprinted first and Hindi version reprinted later at the earliest possible time.

45. Eleventh Report
(Sixth Lok Sabha)

87

In para 11 of their Fourteenth Report (Fifth Lok Sabha) the Committee had desired all Ministries/Departments to undertake examination of all Acts with which they were administratively concerned to find out which of them did not contain a provision for laying of rules before Parliament and to incorporate such a provision in the Acts at their earliest. The intention underlying their recommendation is that the provision for laying of rules

The Department of Parliamentary Affairs have circulated the recommendations of the Committee to all Ministries/Departments. *Vide* their O.M. No. 32(13) 78-R&C dt. the 13th November, 1978.

on the Table, when incorporated in the relevant Act, should have prospective and not retrospective effect, so that any rules, whether original or amending, framed there after be laid before Parliament. The Committee, therefore, desire the Ministry of Education and Social Welfare (Department of Education) to bring suitable legislation to amend the Institutes of Technology Act, 1961 with a view to provide for laying of rules hereafter.

46. Eleventh Report
(Sixth Lok Sabha)
88

The Committee also desire the Department of Parliamentary Affairs to bring the above clarification to the notice of all Ministries/Departments of Government of India for removal of doubts, if any, in this regard.

47. Eleventh Report
(Sixth Lok Sabha)
104

The Committee have time and again recommended that the responsibility of the Ministry/Department does not cease with sending the notification to the Press. After the rules/regulations etc. are published in the Gazette the Ministry/Department concerned should verify whether these have been correctly printed and, if necessary, issue corrigendum thereto.

48. Eleventh Report
(Sixth Lok Sabha)
105

The Committee are of the view that the explanatory memoranda regarding retrospective effect, if not published along with the relevant Notification due to any reason, should be got published in the

The Department of Parliamentary Affairs have circulated the recommendations of the Committee to all Ministries/Departments *Vide* their O.M. No. 32(19) 78-R&C dt. the 13th November, 1978.

Gazette as soon as the omission comes to notice. This is necessary to enable a person who feels adversely affected, due to retrospective effect to take up the matter with the concerned authorities. The Committee, therefore, desire the Ministry of Agriculture and irrigation (Department of Food) to publish the requisite explanatory memoranda in the Gazette at an early date. The Committee also desire the Ministry of Agriculture and Irrigation (Department of Food) to make adequate arrangements for scrutinising the notifications soon after they are published in the Gazette and take steps to rectify immediately the errors, if any.

49 **Eleventh Report**
(Sixth Lok Sabha)
117

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The Committee desire to point out in this regard that the Cement Control (Second Amendment) Order, 1973 was issued under the Industries (Development and Regulations) Act, 1951 which does not contain any provision for giving retrospective effect to Orders issued thereunder. In the absence of such a provision in the Act, retrospective effect given to the above Order would not have become valid even if an explanatory note regarding the same might have been appended thereto. The Committee had clarified this position in para 8 of their Nineteenth Report (Fifth Lok Sabha) which had been brought to the notice of all Ministries/Departments of Government by the Department of Parliamentary Affairs. The Committee desire the Ministries/Departments to keep the observations of the Committee in view while giving retrospective effect to Orders.

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50 Eleventh Report
(Sixth Lok Sabha)
70

The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend rule 7 of the Port of New Mangalore (Goods in Transit) Rules, so as to clarify therein that the transit fees for unclaimed goods would be charged from the Masters of the Ship or the steamer agents if the goods are not cleared within two months from the date of complete discharge of the vessel. The Committee desire the Ministry to issue the necessary amendment at an early date.

51 Eleventh Report
(Sixth Lok Sabha)
74

The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend rule 18 of making a provision for asking the owner or consignee to remove the goods within a specified period when there is apprehension of a serious congestion in the transit sheds of the Port. The Committee desire the Ministry to issue the necessary amendment at an early date.

52 Eleventh Report
(Sixth Lok Sabha)
78

The Committee not with satisfaction that on being pointed out, the Ministry of Commerce have agreed to amend rule 3 of the Export of Common Salt (Quality Control and Inspection) Rules, 1977 so as to indicate therein the particulars of

The Ministry of Shipping and Transport (Transport Wing) have suitably amended Rules 7 and 18 of the Port of New Mangalore (Goods in Transit) Rules, 1976 *vide* G.S.R. No. 89, dt. 20-1-79.

The Ministry of Commerce have suitably amended the export of Common Salt (Quality Control & Inspection) Rules, 1977 *vide* S.O. No. 1921 dt. 1-7-78.

the Gazette Notification in which the specifications for common salt recognised by Government under Section 6 of the Export (Quality Control and Inspection) Act, 1963 had been published. The Committee desire the Ministry to issue the requisite amendment at an early date.

53 • Eleventh Report
(Sixth Lok Sabha)
94

The Committee ~~do~~ with satisfaction that, on being pointed out, the Ministry of Commerce have agreed to delete rule 14-A (v) of the Export (Quality Control and Inspection) Rules, 1964 regarding power to issue directions in writing to the agencies in regard to their proper functioning, as there is no express provision in the Export (Quality Control and Inspection) Act, 1963, empowering the Government to confer such power on the Director. The Committee desire the Ministry of Commerce to issue the necessary amendment at an early date.

54 • Eleventh Report
(Sixth Lok Sabha)
97

The Committee do not agree with the observation of the Ministry of Law as conveyed to the Ministry of Commerce that being amending rules only section 17 has been referred to in the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 on the pattern of the original rules.

55 • Eleventh Report
(Sixth Lok Sabha)
98

In paras 27 and 29 of their Fourteenth Report (Fifth Lok Sabha), the Committee have clearly recommended that either the rule-making section

The Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) have suitably amended the Export (Quality Control and Inspection) Rules, 1964 *vide* S.O. No. 2745 dt. 23-9-78 and S. O. No. 783 dt. 3-3-79.

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of an Act should enumerate all matters on which rules have to be framed under various sections of the statute and quote the section to which that matter relates or in the alternative, the preamble to the rules should refer not only to the general rule-making power Section of the Act but also other Sections under which the rules have been framed.

56 Eleventh Report
(Sixth Lok Sabha)

99

The Ministry of Commerce, Civil Supplies of Cooperation (Department of Commerce) have suitably amended the Export (Quality Control and Inspection) Rules, 1964 *vide* S.O. No. 2745 dt. 23-9-78 and S.O. No. 783 dt. 3-3-79.

The Committee feel that giving a reference to all the relevant Sections of the Act in the preamble to the rules is necessary to ascertain whether the authority for framing of the rules flows from the parent Statute. The same principle is equally applicable to amending rules. The Committee, therefore, desire the Ministry of Commerce to amend the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 so as to refer therein Sections 4, 7(1) and 13 also of the parent Act as the authority for framing of the rules.

57 Eleventh Report
(Sixth Lok Sabha)

102

The Committee note that the explanatory memorandum regarding retrospective effect given to the Directorate of Sugar (Class I, II & III Posts) Recruitment Rules, 1977 had been sent by the Ministry to the Government of India Press along with the notifications but the Press had not

published them due to oversight. The Committee observe that the Ministry of Agriculture and Irrigation (Department of Food) have failed to check the notifications after these were published in the Gazette to verify whether they had been correctly printed.

58 Eleventh Report
(Sixth Lok Sabha)
103

The Committee are not satisfied with the explanation of the Ministry that the omission had come to their notice very late because of a complete change in the set up and staff of the concerned Division of the Department of Food. Even after the omission came to their notice, the Department of Food had taken no steps to publish the explanatory memoranda till the Committee brought it to their notice. It seems that there are no satisfactory arrangements in the Ministry to ensure that the notifications sent to the Press have been correctly printed in the Gazette.

59 Eleventh Report
(Sixth Lok Sabha)
104

The Committee have time and again recommended that the responsibility of the Ministry/Department does cease with sending the notification to the Press. After the rules/regulations etc. are published in the Gazette the Ministry/Department concerned should verify whether these have been correctly printed and, if necessary, issue corrigendum thereto.

60 Eleventh Report
(Sixth Lok Sabha)
105

The Committee are of the view that the explanatory memoranda regarding retrospective effect, if not published along with the relevant Notification due to any reason, should be got published in the

Gazette as soon as the omission comes to notice. This is necessary to enable a person who feels adversely affected, due to retrospective effect to take up the matter with the concerned authorities. The Committee, therefore, desire the Ministry of Agriculture and Irrigation (Department of Food) to publish the requisite explanatory memoranda in the Gazette at an early date. The Committee also desire the Ministry of Agriculture and Irrigation (Department of Food) to make adequate arrangements for scrutinizing the notifications soon after they are published in the Gazette and take steps to rectify immediately the errors, if any.

61 Eleventh Report
(Sixth Lok Sabha)
110

The Committee note that the Motor Cars (Distribution and Sale) Control Order, 1959 has been rescinded with effect from the 10th February, 1976 before any action could be taken by the Ministry of Industry (Department of Heavy Industry) for amending the same. The Committee, however, desire that whenever such an order is issued in future it should be in accordance with the recommendation of the Committee contained in para 21 of their Seventeenth Report (Fifth Lok Sabha).

The Ministry of Industry (Department of Heavy Industry) have noted the recommendation of the Committee for compliance (*Vide* their O.M. No. 1910/78-AEI (III) dt. 4th September, 1978.

62 Sixteenth Report
(Sixth Lok Sabha)

9

The Committee are surprised to note that the Ministries/Departments are not showing all draft Recruitment Rules and Amendment Rules to the Department of Personnel and Administrative Reforms before their publication in the Gazette. The Committee feel that the Department of Personnel and Administrative Reforms in such matter should be consulted or their approval be taken in order to maintain uniformity in the Recruitment Rules.

63 Sixteenth Report
(Sixth Lok Sabha)

10

The Committee note with satisfaction that the Department of Personnel and Administrative Reforms have issued instructions to all Ministries/Departments *vide* their O. M. No. 14017/48/77-Est (D) cell dated the 29th June, 1977 that all notifications relating to the Recruitment Rules should invariably be shown to that Department before they are finalised so that these are duly scrutinised before their publication in the Gazette. The Committee desire all Ministries/Departments to follow the instructions of the Department of Personnel and Administrative Reforms in letter and spirit.

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64 Sixteenth Report
(Sixth Lok Sabha)

27

The Committee are unhappy to note that the usual saving clause regarding concessions to persons belonging to Schedule Castes/Tribes and other special categories has not been included in the Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977, due to oversight. In this connection the Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the

The Department of Parliamentary Affairs have circulated the recommendations of the committee to all Ministries/Departments for guidance and strict compliance *vide* their O.M. No. F. 32 (4)/79-RC dated 22-3-79.

The Ministry of Health and Family Welfare (Department of Health) have noted the observations of the Committee (*Vide* their O.M. No. S. 22011/33/78-MS dt. 14-6-79.)

Ministry/Department concerned should take immediate steps to examine them and if necessary, issue a corrigendum or an amendment thereto *suo moto* without waiting for the Committee to point out.

65 Sixteenth Report
(Sixth Lok Sabha)
28

In the present case the Ministry of Health and Family Welfare (Department of Health) have failed to take the necessary steps to amend the Rules till it was brought to their notice by the Committee. The Committee desire the Ministry to be careful in such matter in future and to expedite the notification of the amendment to the Rules, in the Gazette, if it has not already been issued so far.

The Ministry of Health and Family Welfare (Department of Health) have noted the observations of the Committee (*Kide* their O. M. No. S. 22011/33/78-M.S. dt. 14-6-79)

66 Sixteenth Report
(Sixth Lok Sabha)
29

The Committee take serious note of the fact that the communications addressed to the Ministry are not paid due attention and the replies are not sent promptly. Almost nine months have passed but so far there has been no response from the Ministry to a simple enquiry whether the said notification has been issued or not. This lack daical attitude of the Ministry is deplorable and should be looked into.

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67 Sixteenth Report
(Sixth Lok Sabha)
51

The Committee are not inclined to agree with the reply of the Department of Personnel and Administrative Reforms that in case the amount of

The department of Personnel and Administrative Reforms have abolished the provision for the Limited

fee is mentioned in the Central Secretariat Services Assistant's Grade (Limited Departmental Competitive Examination) Regulations, these may have to be amended from time to time with every variation in the rate of fee and inclusion or exclusion of any category of candidates that may be allowed concession, in the rate of fee. The Committee are of the view that normally the amount of fee to be paid by the candidates is not changed frequently and in such matters the Department of Personnel and Administrative Reforms should keep in mind the convenience of the candidates who are to appear in the examination and for whose use and information the regulations are published. The Committee, therefore, reiterate their earlier recommendation made in para 35 of their Seventeenth Report (Fifth Lok Sabha) and desire the Department of Personnel and Administrative Reforms to amend the Central Secretariat Service Assistant's Grade (Limited Departmental Competitive Examination) Regulations so as to indicate therein the precise amount of fee which a candidate has to pay.

68 Sixteenth Report (Sixth Lok Sabha)
56

Departmental Competitive Examination for promotion to the Grade of Assistant *Vide* G.S.R. 578 d.. 4-5-77.

The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have amended the cost Accounting Records (Tractors) Rules, 1971 and made them effective from the date of their publication (*Vide* G.S.R. No. 660 dt. 12-5-79).

taken of the companies which failed to comply with the rules during their retrospective effect yet the fact remain on record that retrospective effect had been given to the rules. The Committee desire the Ministry either to give effect to rules from date of their publication in the Gazette or steps should be taken to amend the Companies Act to empower the Government for giving retrospective effect to the rules. Although the error of failure to indicate the correct year in the short-titles to the Rules has since been rectified yet the Committee regret to observe that the Ministries concerned did not care to verify after the publication of rules that their short titles bore the correct year of Publication. The Committee have time and again emphasised that responsibility of the Ministry/Department does not cease with the sending of notifications to the press. After the same are published in the Gazette it is the duty of the Ministry/Department concerned to examine whether these have been correctly printed and, if necessary, to issue corrigendum thereto *suo moto* without waiting for the Committee to point it out.

69 Nineteenth Report (Sixth Lok Sabha).

29

- (i) The Ministry of Finance (Department of Economic Affairs (Banking Division)) have noted the observation of the Committee for future guidance and compliance (*Vide* their O. No.M.A. 120-18/2/Admn. 3170 (Vol. II) dt. 5-9-79.
- (ii) The Ministry of Shipping & Transport (Ports Wing) have brought observations of the Committee to the notice of all concerned in the Ministry (*Vide* their O. M. No. PW-PGL-21/80 dated 9-5-80).

- (iii) The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Department of the Government of India for guidance and compliance *Vide* their O.M. No. F. 32(8)/79-R&C dated 23-5-1979.

The Committee observe that the error in the present case is of a minor nature but all the same it can cause considerable inconvenience to the public in locating the Rules. The Committee desire all the Ministries/Departments to be careful in such matter in future.

70 Nineteenth Report (Sixth Lok Sabha)

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71 Nineteenth Report (Sixth Lok Sabha)

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The Committee feel that the incorporation of a provision regarding laying of rules, regulations etc. framed under the Act before parliament is very important. It provides an opportunity to the Members to suggest amendments to the Rules, Regulations, etc. laid on the Table, if they contain any lacuna. The Committee desire the Ministries of Labour and Communications (P & T Board) to bring the necessary amending legislation at an early date. If some other proposed amendments to the Act are likely to take further time, they may bring amending legislation exclusively for the laying provision as early as possible but in no case later than the Monsoon Session, 1979.

The Ministry of Labour introduced the Mica Mines Labour Welfare Fund (Amendment) Bill, 1980 (Bill No. 74 of 1980) in the Lok Sabha on 26-3-1980.

72 Nineteenth Report (Sixth Lok Sabha)

51

The Committee observe that the replies furnished by the Ministry of Communications (P & T Board) and the Department of Personnel and Administrative Reforms are contradictory to each other. The Ministry of Communications have, in their reply, stated that Department of Personnel and Administrative Reforms have accepted their contention for not giving the number of posts in the recruitment rules where as the Department of Personnel and Administrative Reforms in their reply have stated that as far as possible it is insisted upon Ministries/Departments to indicate the number of posts in the recruitment rules and no deviation in this regard is made unless there are exceptional reasons therefor. However, the Committee would like to accept the suggestion of the Department of Personnel and Adminis-

The Ministry of Communications (D. G. P & T) have amended the Posts and Telegraphs Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 (*Vide* Notification No. 64/5/75-CWG dt. 5-4-80).

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trative Reforms regarding indicating the number of posts in the recruitment rules with an asterisk to say that these are subject to variation.

73 Nineteenth Report (Sixth Lok Sabha)
52

The Committee desire the Ministry of Communications (P&T Board) to amend the Posts and Telegraphs Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 by indicating the number of posts with an asterisk and a foot-note thereto saying that these are subject to variation and the Department of Personnel and Administrative Reforms to amend the Central Vigilance Commission (Staff) Rules, 1964 to specify therein the various categories of the posts in the Central Vigilance Commission as also the number of posts in each category with an asterisk and a foot-note as suggested by them. The Committee further desire the Department of Personnel and Administrative Reforms to issue the necessary instructions to all Ministries/Departments in this regard for compliance.

The Ministry of Communication (D. G. P&T) have amended the Posts and Telegraphs Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 (*Vide* Notification No. 64/5/75-CWG dt. 5-4-80).

74 Nineteenth Report
(Sixth Lok Sabha)
74

The Committee observe that the Ministry of Law have taken too legalistic and narrow a view of the recommendation of the Committee that the term 'Rule' does not include 'Order.' The intention behind the recommendation of the

The Ministry of Defence have circulated recommendation in the Ministry for strict compliance in future by all concerned (*Vide* their U.O. No. 88(9)/79/D (Parl.) dated 17-3-79).

Committee as contained in para 21 of their Second Report (Fourth Lok Sabha) is that all Rules, Regulations, Orders, Bye-laws, etc. which are published in the Gazette should bear the short titles for reference and tracing by all concerned.

75 Nineteenth Report
(Sixth Lok Sabha)

75

The Committee do not insist upon the giving of short titles to the Bye-Laws in the present case as no useful purpose will be served by amending the Bye-laws of 1971. However, they desire the Ministry of Defence to invariably give the short titles to all Statutory Rules, Regulations, Orders and Bye-laws published in the Gazette of India henceforth.

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MINUTES

APPENDIX IV

(Vide para 3 of the Report)

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1980-81)

The Committee met on Wednesday, the 27th August, 1980 from
15.00 to 17.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Eduardo Faleiro
4. Shri Harish Kumar Gangawar
5. Shri Jaipal Singh Kashyap
6. Shri K. Lakkappa
7. Shri T. Nagaratnam
8. Shri Balasaheb Vikhe Patil
9. Shri Ratansinh Rajda
10. Shri Ajit Pratap Singh
11. Shri Chandra Shekhar Singh
12. Shri R. S. Sparrow

SECRETARIAT

Shri H. L. Malhotra—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 1—8 on the following subjects:—

S.No.	Memorandum No.	Subject
1	2	3
(i)	1	The Indian Foreign Service Branch 'B' (Qualifying Examination for the appointment of Telephone Operators to Grade VI) Regulations, 1975 [G. S. R. 616 published in the Gazette of India, Part II, Section 3 (i) dated the 1st May, 1976].
(ii)	2	Implementation of recommendations contained in paras 42 & 43 of the Ninth Report of the committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Indian consortium for power Projects Private Ltd. and the Bharat Heavy Electricals Limited Amalgamation Order, 1974 (G. S. R. 155-E of 1975).
(iii)	3	
(iv)	4	The Central Excise (Seventh Amendment) Rules, 1978 [G. S. R. 473 published in the Gazette of India, Part II, Section 3 (i) dated the 8th April, 1978].
(v)	5	The Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 [S. O. 253-E published in the Gazette of India, Extraordinary, Part II, Section 3 (ii) dated the 6th April, 1978].
(vi)	6	
(vii)	7	The Directorate of Plant Protection Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 [G. S. R. 564 published in the Gazette of India, Part II, Section 3 (i) dated the 29th April, 1979].
(viii)	8	

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

- (i) The Indian Foreign Service Branch 'B' (Qualifying Examination for the appointment of Telephone operators to Grade VI) Regulations, 1975 [G.S.R. 616 published in the Gazette of India, Part II, Section 3(i) dated 1st May, 1976]—(Memorandum No. 1).

3. The Committee considered the above Memorandum and expressed their displeasure over the preemptory language used by the Ministry of External Affairs in their reply. The Committee observed that the very first sentence of their reply viz., 'this Ministry would not like to amend the above-mentioned Regulations', only reflected a closed mind on the Part of the Ministry in the matter. The Committee also observed that the Ministry's view as to what was in the 'interest of efficiency of Administration' was not final. The Committee desired the Ministry to be more courteous and discreet while attending to references sent by a Parliamentary Committee.

4. In a similar case regarding the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, the Committee was not satisfied with the reply of the Department of Personnel and Administrative Reforms that in case the amount of fee was mentioned in the regulations those might had to be amended from time to time with every variation in the rate of fee. The Committee in para 51 of their Sixteenth Report (Sixth Lok Sabha) desired the Department of Personnel and Administrative Reforms to amend the regulations to indicate therein the precise amount of fee which a candidate had to Pay.

5. The Committee desired the Ministry to incorporate in the present case also the precise amount of fee which a candidate had to Pay. The Committee felt that the difficulty pointed out by the Ministry in regard to amending the regulations every time the amount of fee, Payable by candidates, was altered, could be resolved by putting an asterisk on the amount of fee in the regulations and to indicate in a foot-note that it was subject to variation.

- (ii) Implementation of recommendations contained in paras 42 and 43 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Indian Consortium for power Projects Private Ltd. and the Bharat Heavy Electricals Limited Amalgamation Order, 1974 (G.S.R. 155-E of 1975)—(Memorandum No. 2).

6. The Committee considered the above Memorandum and noted that the Ministry of Law (Legislative Department) had conceded that provision or revisionary of appellate authority was of a substantive nature which could be made only by an amendment of the Companies Act, 1956. The Committee regretted that, despite the

above advice of the Legislative Department, the Department of Company Affairs had simply amended the Companies (Central Government's) General Rules and Forms, 1956 to provide that Joint Director (Accounts) in the Department of Company Affairs shall be the authority to assess the compensation payable to a member or creditor (including a debenture holder) of each of the companies amalgamating under sub-section (3) of Section 396 of the Companies Act, 1956.

7. The Committee desired the Ministry to amend the Companies Act, 1956, in order to provide for revisionary or appellate authority for redressal of grievances of a person aggrieved by any action taken under the Amalgamation Order.

8. In regard to the recommendation contained in para 42 of their Ninth Report (Sixth Lok Sabha), the Committee agreed with the views of the Ministry of Law (Department of Company Affairs) that although para 11(b) of the Amalgamation Order provided that the 'right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceeding in respect of any share' yet no citizen was barred from going to a court of law. The Committee, therefore, decided not to pursue this matter further.

(iii) * * * * *

9. * * * * *

(iv) The Central Excise (Seventh Amendment) Rules, 1978 (G.S.R. 473 of 1978)--(Memorandum No. 4).

10. The Committee considered the above Memorandum and accepted the opinion of the Ministry of Law (Department of Legal Affairs) and supported by its Legislative Department that the general legal position with respect to coming into force of the statutory rules was that in the absence of any provision to that effect those rules would come into force from the date of their publication in the Official Gazette unless it was expressly provided that they would come into force with effect from a particular date. The Committee felt that a uniform practice should be followed in this regard i.e., either there should invariably be a sub-rule in all statutory rules etc. specifically providing that those rules would come into force from the date of their publication in the Official Gazette or such a sub-rule should not be at all included in any rules etc., and automatically it should be presumed that they would become operative from the date of their notification. However, as such a sub-rule formed part of the majority of statutory rules already notified, the Committee felt that it would be better if the date of coming

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

into force of the rules was notified through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of the persons for whose benefit the rules were framed.

11. As no useful purpose was likely to be served with the insertion of the aforesaid sub-clause in the rules already notified, at this stage, the Committee desired that sub-clause regarding coming into force should always be included in Rules in future.

(v) The Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 (S.O. 253-E of 1978)—(Memorandum No. 5).

12. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Industry (Department of Heavy Industry) had amended the proviso to Rule 3 of the Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Rules, 1978 *vide.*, S.O. No. 395-E of 12-7-79 so as to provide for recording of reasons in writing by the Commissioner for receiving the intimation within a further extended period of thirty days.

(vi) * * * *

13. * * * *

(vii) The Directorate of Plant Protection Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 (G.S.R. 564 of 1979)—(Memorandum No. 7).

14. The Committee considered the above Memorandum and noted that, on being pointed out, the Minister of Agriculture had amended Column 11 of the Schedule to the Directorate of Plant Protection Quarantine & Storage (Accountant-cum-Superintendent) Recruitment Rules, 1978 *vide.*, G.S.R. 996 of 1979 by laying down that 'period of deputation shall ordinarily not exceed three years'.

(viii) * * * *

15. * * * *

The Committee then adjourned to meet again on Thursday, the 28th August, 1980 at 11.00 hours.

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

**MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)
(1980-81)**

The Committee met on Thursday, the 28th August, 1980 from 11.00 hours to 13.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*.

MEMBERS

2. Shri T. V. Chandrashekharappa
3. Shri Harish Kumar Gangawar
4. Shri Jaipal Singh Kashyap
5. Shri K. Lakkappa
6. Shri T. Nagaratnam
7. Shri Balasaheb Vikhe Patil
8. Shri M. Ramanna Rai
9. Shri Ratansinh Rajda
10. Shri Ajit Pratap Singh
11. Shri Chandra Shekhar Singh
12. Shri R. S. Sparrow.

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SECRETARIAT

Shri H. L. Malhotra,

—*Senior Legislative
Committee Officer*

2. to 7. * * * *

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8. The Committee then considered Memoranda Nos. 9 to 12 on the following subjects:—

S. No.	Memo. No.	Subject
1	9	The Cement Control (Fourth Amendment) Order, 1977 [S.O. 703-E published in the Gazette of India, Part II, Section 3(ii) dated the 1st-October, 1977].

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

S. No.	Memo. No.	Subject
2	10	The Mizoram Civil Service Rules, 1977 [G.S.R. 771 published in the Gazette of India, Extraordinary, Part II, Section 3(i) dated 23-12-1977].
3	11	The Central Water Commission (Class II Posts) Recruitment (Amendment) Rules, 1977 [G.S.R. 1442 published in the Gazette of India, Part II, Section 3(i) dated the 29th October, 1977].
4	12	The National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, 1977 [G.S.R. 201 published in the Gazette of India Part II, Section 3 (i) dated the 12th February, 1977].

- (1) The Cement Control (Fourth Amendment) Order, 1977 [S.O. 703-E published in the Gazette of India, Part II, Section 3(ii) dated the 1st October, 1977]-Memorandum No. 9).

9. The Committee considered the above Memorandum and were not convinced by the reply of the Ministry of Industry (Department of Industrial Development) for not favouring a provision being made in the Industries (Development and Regulations) Act, 1951, to lay down on the Table of the House various Orders issued under the provisions of Section 18-G or other Sections of the Act. The Committee felt that laying on the Table of all 'Orders' in pursuance of powers delegated by Parliament, was very significant as it intended to afford an opportunity to the Members of Parliament to move any amendment or modification to such Orders including a motion for their annulment, if they so desired. The Committee were, therefore, of the view that the Industries (Development and Regulations) Act might be amended to provide that all rules/regulations/orders framed by Central Government under the Industries (Development and Regulations) Act, 1951 were laid before each House of Parliament in accordance with the following laying formula as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha):

"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; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

10. The Committee desired the Ministry to bring forward the aforesaid amendment to the Act at an early date.

11. The Committee considered the plea of administrative difficulty taken by the Ministry in laying a number of executive orders before Parliament. The Committee were of the view that Orders which were of legislative nature and which were framed under the powers delegated by an Act of Parliament or Constitution were required to be laid before Parliament and not the executive orders.

(2) The Mizoram Civil Service Rules, 1977 [G.S.R. 771 published in the Gazette of India, Extraordinary, Part II Section 3(i) dated 3-12-1977]—(Memorandum No. 10).

12. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Home Affairs had agreed for publishing the Regulations to be framed by the Administrator of Mizoram under rule 29 of the Mizoram Civil Service Rules, 1977 in the Official Gazette for information of all concerned.

(3) The Central Water Commission (Class II posts) Recruitment (Amendment) Rules, 1977 [G.S.R. 1442 published in the Gazette of India Part II, Section 3(i) dated the 29th October, 1977]—(Memorandum No. 11).

13. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Irrigation) had since amended the Central Water Commission (Class II posts) Recruitment Rules, 1975 vide Notification No. 1/79-F. 39/3/75 Adm. I, dated the 9th February, 1979 so as to provide for consultation with the Union Public Service Commission while making direct recruitment to the post of Assistant Editor.

- (4) The National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, 1977 [G.S.R. 201 published in the Gazette of India, Part II, Section 3(i) dated the 12th February, 1977]—(Memorandum No. 12).

14. The Committee considered the above Memorandum and the contention of the Ministry of Works and Housing that the recruitment rules for Group 'A' and 'B' posts were framed in consultation with the Union Public Service Commission and the Department of Personnel and Administrative Reforms and therefore, no provision thereof could be amended, modified or relaxed without prior consultation with those two bodies was not acceptable to them. The Committee felt that to obviate any scope for speculation, it was but proper to incorporate the provision regarding consultation with the Union Public Service Commission expressly in the rules. The Committee, therefore, urged the Ministry to amend the National Buildings Organisation (Hindi Officer) (Group 'B') Recruitment Rules, so as to provide for prior consultation with Union Public Service Commission before relaxing any of the provisions of those rules with respect to any class or category of persons.

15. The Committee then considered their future programme of work. The Committee decided to undertake Study Tour to Goa, Bombay and Madras in the first week of October, 1980 for about seven days to have informal discussion with the Port Trust Authorities and others and to have discussions on matters of mutual interest with the respective State Committees. The Committee authorised the Chairman to seek the necessary permission of the Speaker for the Study Tours and to finalise the tour programme.

16. The Committee then decided to hold their next sitting on Saturday, the 6th and Monday, the 8th September, 1980.

The Committee then adjourned.

MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)
, (1980-81)

The Committee met on Tuesday, the 11th. November, 1980 from
11.00 hours to 12.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Harish Kumar Gangawar
3. Shri Jaipal Singh Kashyap
4. Shri K. Lakkappa
5. Shri T. Nagaratnam
6. Shri Ratansinh Rajda

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SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee considered their draft Second Report and adopted it.

3. The Committee authorised the Chairman and in his absence Shri T. Nagaratnam to present the Second Report to the House on their behalf on 18 November, 1980.

4 to 9. * * * * *

The Committee then adjourned.

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