

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

TENTH REPORT

(Presented on the 25th July, 1978)



**LOK SABHA SECRETARIAT
NEW DELHI**

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Corrigenda to the Tenth Report of the
Committee on Subordinate Legislation
(Sixth Lok Sabha) (Presented on the
25th July, 1978)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1978-79)

1. Shri Somnath Chatterjee—*Chairman*
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4. Shri Ram Sewak Hazari
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14. Shri Krishnarao Thakur
15. Shri C. N. Visvanathan

SECRETARIAT

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

REPORT

I

INTRODUCTION

1. The Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Tenth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 16th June and 3rd July, 1978.

3. The Committee considered and adopted this Report at their sitting held on the 20th July, 1978. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A statement showing the summary of recommendations|observations of the Committee is also appended to the Report.

II

THE UNIVERSITY GRANTS COMMISSION (DISQUALIFICATION, RETIREMENT AND CONDITIONS OF SERVICE OF MEMBERS) SECOND AMENDMENT RULES, 1976 (G.S.R. 295 OF 1976).

5. The University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 were published in the Gazette of India, Part II, Section 3(i), dated the 28th February, 1976, but were deemed to have come into force on the 15th January, 1973, *vide* sub-rule (2) of rule 1 of the Rules *ibid*. The Explanatory Memorandum in regard to retrospective effect given to the Rules, *inter alia*, mentioned as under:—

“In accordance with the decision of the Cabinet, the Notification revising the scale of pay of the Vice-Chairman with effect from 15.1.1973 was prepared. Government carefully examined the legal point whether the notification should be given retrospective effect since the University Grants Commission Act does not provide for giving retrospective effect.

.....As there is only one post of Vice-Chairman in the University Grants Commission, it was felt that no body else's interests will be adversely affected if the revised

scale of pay is given retrospective effect and that there was no likelihood of the decision being challenged in any court of law because there is no financial or procedural irregularity.

In the circumstances stated above, Government decided to give retrospective effect to the notification regarding the revision of scale of pay of Vice-Chairman, University Grants Commission."

6. In this connection, attention of the Ministry of Education and Social Welfare (Department of Education) was invited on the 23rd September, 1976 to the observations/recommendations of the Committee on Subordinate Legislation contained in paras 8—11 of their Nineteenth Report (Fifth Lok Sabha), wherein the Committee had observed that retrospective effect to subordinate legislation cannot be given without an express authorisation therefor in the parent Act and that the purpose of appending an explanatory memorandum to subordinate legislation is not to provide legal authority for retrospective effect but to apprise the public of the circumstances in which retrospective effect has been given. The Ministry were *inter alia*, asked to furnish their comments as to whether the retrospective effect given to the rules in question did not amount to committing a procedural irregularity and financial irregularity involving payment of arrears to the Vice-Chairman of the University Grants Commission as a result of revision of his scale of pay with effect from the 15th January, 1973.

7. In their reply dated the 7th May, 1977 the Ministry of Education and Social Welfare (Department of Education) have stated as under:—

Point raised	Reply given
(a) Whether the Ministry are aware of the above observations [recommendations of the Committee ?	Yes.
(b) Does this Ministry agree that retrospective effect has been given to the Rules in question without due legal authority ?	Yes
(c) If so, does it not amount to committing a procedural irregularity ?	No, in view of the circumstances explained in the explanatory

Pointed raised

Reply given

memorandum to the Ministry's notification dated 6-2-76.

- (d) Were any arrears paid to the Vice-Chairman of U.G.C. as a result of revision of scale of pay with effect from 15-1-1973?

Yes.

- (e) If so, how can the Ministry say that there is no financial irregularity involved in this case?

While the case does involve some financial implications it cannot be said that this is a case of financial irregularity.

- (f) Committee desire this Ministry either to give retrospective effect to the Rules or alternatively, incorporate a provision in the Act which may empower the Government to give retrospective effect to the Rules.

The observation of the Committee for incorporating a provision in the UGC Act to empower the Government to give retrospective effect to the Rules has been noted and) will be kept in view while next, amending the UGC Act."

8. The Committee note that the Ministry of Education and Social Welfare (Department of Education) have admitted in their reply that the University Grants Commission Act, 1956, does not empower the Central Government to give retrospective effect to rules framed under Section 25 of the Act. As without such authorisation, no subordinate legislation can operate retrospectively, the retrospective effect given to the University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 is without due legal authority.

9. The Ministry seem to be labouring under a false notion that they have not committed any financial or procedural irregularity in view of the circumstances having been explained in the explanatory memorandum to the Rules. The Committee need hardly point out in this regard that mere mention of the circumstances necessitating retrospective effect to the rules in the explanatory memorandum or there being no likelihood of retrospective action being challenged in a court of law, does not impart legal authority for giving retrospective effect to the rules. The Committee had clarified this post-

tion in para 8 of their Nineteenth Report (Fifth Lok Sabha) also, 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 the Rules in future.

10. The Committee note that the Ministry of Education and Social Welfare (Department of Education) have agreed to incorporate a provision in the University Grants Commission Act to empower the Central Government to give retrospective effect to the rules. The Committee desire the Ministry to bring the amending legislation for the purpose by the end of this year. The Committee further desire that provision be made in the Act for validating the rules already made and given retrospective effect.

III

THE COAL MINES (CONSERVATION AND DEVELOPMENT) RULES, 1975 (G.S.R. 184-E OF 1975)

(A)

11. Rule 6 of the Coal Mines (Conservation and Development) Rules, 1975 states as under:—

- “6. Power of the Central Government to recover Cost.—(1) The Central Government may recover from the owner, agent or manager of a coal mine either wholly or partly the cost of such measures or operations as are undertaken by it under section 4, if it is satisfied on consideration of all facts and circumstances that such recovery of cost is justified.
- (2) The Central Government may permit the owner to meet either wholly or partly the expenditure on account of recovery of the cost mentioned in sub-rule (1) from out of the moneys at the credit of the Account.”

12. Section 4 of the Coal Mines (Conservation and Development) Act, 1974 empowers the Central Government to take any measures for conservation and development of coal but does not appear to empower the Government to recover the cost from the owner etc. of mines. It was felt that the power to recover the cost of operations should flow from an express provision in the Act and not from the Rules made thereunder.

13. The Ministry of Energy (Department of Coal) with whom the matter was taken up on the 1st October, 1975, replied on the 1st December, 1975 as under:—

“Rule 6 incorporates therein the principles of reimbursement and is based on the provisions of section 70 of the Contract Act, 1872. Under that section, where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously; and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. In this case, the measures taken by the Central Government under section 4(1) of the Act will be lawfully done and the benefit of the measures so taken will be available to the owner. Such benefit is not a gratuitous one and, as such, the owner is bound, under the law, to reimburse the expenditure incurred by the Central Government in conferring such benefit on him. Since the provision concerned is based on a well-known provision of a substantive law, it was felt that no further provision was necessary in the Act itself and the rule can be justified on the basis of the substantive law of the country.”

14. As a question of interpretation of law was involved in the above matter, it was referred to the Ministry of Law, Justice and Company Affairs (Legislative Department) on the 10th September, 1976 for their opinion on the following points:—

- (i) Whether an express provision is necessary in the Coal Mines (Conservation and development) Act, 1974 to empower the Central Government to recover the cost of operations; and
- (ii) whether the contention of the Ministry of Energy is correct that Rule 6 being based on a well-known provision of a substantive law, it is not necessary to have the provisions in the Act itself.

15. In their reply dated the 22nd January, 1977, the Ministry of Law, Justice and Company Affairs (Legislative Department) have stated as under:—

“Section 70 of the Indian Contract Act reads as follows:—

‘Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit

thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.'

The section is quite wide in terms as has been pointed out in Pollock and Mulla's Commentary on the Indian Contract and Specific Relief Act. According to the section it is not essential that the act shall have been necessary in the sense that it has been done under circumstances of pressing emergency, or even that it shall have been an act necessary to be done at some time for the preservation of property. As held by the Supreme Court in *Mulam Chand vs. State of Madhya Pradesh* (A.I.R. 1968 S.C. 1218) 'the important point to notice is that in a case falling under section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under section 70, it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.' The Supreme Court in the above decision quotes with approval the following passage from the judgement of Lord Wright in *Bibrosa vs. Fair Bairn* (1943 A.C. 32), namely, "any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep". Section 70 of the Indian Contract Act is enacted to provide for the remedy of which Lord Wright speaks in the above judgement.

The Indian Contract Act is a general law and it is not necessary for the enforceability of its provisions, that it should be repeated in the other Acts. Therefore, even in the absence of a separate independent provision, in the Coal Mines (Conservation and Development) Act, 1974, in regard to the reimbursement of the cost incurred for the measures or operations undertaken by the Central Government for the benefit of the coal mine owners, it will be

permissible for the Central Government to invoke the provisions of section 70 of the Indian Contract Act.

Rule 6 of the Coal Mines (Conservation and Development) Rules, 1975, only states this legal position. Since there are good justifications for the rule in question, it would not be advisable to omit the rule. If, however, the Committee on Subordinate Legislation so desire, a provision enabling the framing of such a rule could be included in the Act when it is next amended."

16. The Committee note from the reply of the Ministry of Energy (Department of Coal) that the provisions of rule 6 of the Coal Mines (Conservation and Development) Rules, 1975 can be justified on the basis of the provisions of Section 70 of the Contract Act, 1872. Similarly, the Ministry of Law, Justice and Company Affairs have opined that even in the absence of a separate independent provision in the Coal Mines (Conservation and Development) Act, 1974, in regard to the reimbursement of the cost incurred for the measures or operations undertaken by the Central Government for the benefit of the coal mine owners, it will be permissible for the Central Government to invoke the provisions of section 70 of the Indian Contract Act, which is a general law. The Committee, however, feel that the power to recover the cost of operations undertaken by Government for the benefit of coal mine owners should flow from an express provision in the Coal Mines (Conservation and Development) Act, 1974 itself and not the rules framed thereunder. The Committee in this connection note from the reply of the Ministry of Law that a provision enabling the framing of such a rule could be included in the Coal Mines (Conservation and Development) Act when it is next amended. The Committee, therefore, desire the Ministry of Energy (Department of Coal) to bring the necessary amending legislation for the purpose at an early date.

(B)

17. Sub-rule (11) of Rule 8 of the Coal Mines (Conservation and Development) Rules, 1975 reads as under:—

"(11) Any dues of excise duty remaining unpaid after the date specified by the Coal Controller shall be recovered from the owner of the Coal Mine as an arrear of land revenue and shall be credited to the Central Government."

18. As the power to recover dues of excise duty as arrears of land revenue was a substantive provision, it was felt that it should

more appropriately flow from an express provision in the Act and not from rules framed thereunder.

19. The Ministry of Energy, with whom the above matter was taken up on the 1st October, 1975 replied on the 1st December, 1975 as under:—

“Section 8 of the Act provides that the duties of excise, levied under section 6, shall be collected by such agencies and in such manner as may be prescribed. The Act thus clearly provides that the manner in which the duties of excise shall be collected shall be specified by rules. The sub-rule in question is, therefore, directly relatable to section 8 of the Act and, as such, is *intra vires* the Act. In view of the said provisions, it would be lawful to collect the duties of excise as an arrear of land revenue under section 5 of the Revenue Recovery Act, 1890.”

20. The Committee note from the reply of the Ministry of Energy (Department of Coal) that sub-rule (11) of rule 8 of the Coal Mines (Conservation and Development) Rules, 1975 is relatable to Section 8 of the Coal Mines (Conservation and Development) Act, 1974, which provides that the duties of excise shall be collected by such agencies and in such manner as may be prescribed. The Committee, however, feel that the provision to recover dues of excise duty as arrears of land revenue, being in the nature of an extreme remedy, is a substantive provision for which a specific authorisation must be made in the Act itself rather than in the rules framed thereunder. The Committee, therefore, desire the Ministry to delete sub-rule (11) of rule 8 of the rules *ibid* and incorporate its provision in the parent Act by amending the same suitably at an early date.

IV

THE CENTRAL ADVISORY COMMITTEE FOR LIGHTHOUSES (PROCEDURAL) RULES, 1976 (G.S.R. 1734 OF 1976).

(A)

21. Rule 5 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 reads as under:—

“Vacancies, etc., not to invalidate acts and proceedings.—No act or proceedings of the Committee shall be deemed to be invalid on the ground merely of:—

- (a) the existence of any vacancy in or defect in the constitution of the Committee; or

(b) any omission, defect or irregularity not affecting the merits of the case."

22. It was felt that this was a substantive provision of law pertaining to the jurisdiction of the courts which should more appropriately be provided in the parent Act. In this connection, attention of the Ministry of Shipping and transport (Transport Wing) was invited to paras 6-7 of the Second Report (First Lok Sabha) wherein commenting upon a similar provision contained in the Cinematograph (Censorship) Rules, 1951, the Committee had observed that this was a substantive provision of Law and should be provided in the Act itself.

23. The Ministry of Shipping and Transport (Transport Wing) to whom the matter was referred on the 19th April, 1977, replied on the 22nd October, 1977 as under:—

"...There is no objection in eliminating rule 5 from the said rules and embodying the same in the Lighthouse Act, 1927 itself (subsequently amended in 1976). However, it is considered desirable that rule 5 may not be removed from the rules until it is brought in the body of Lighthouses Act, 1927. This modification will be carried out when the Lighthouse Act, 1927, would be taken up for amendment at a later stage."

24. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to delete rule 5 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 and for embodying its provision in the Act itself. The Committee desire the Ministry to bring the necessary Bill for amending the Indian Lighthouse Act, 1927 preferably by the end of this year.

(B)

25. Rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 reads as under:—

"*Suspension or termination of representation on the Committee.*—If, after such enquiry as it may deem necessary, the Central Government is of the opinion that any body or association which is represented on the Committee has acted or is acting in a manner prejudicial to the interests of Shipping generally, it may, by order, suspend the representation of that body or association for such period as

may be specified in that order or may terminate the same altogether."

26. It was felt that before terminating the representation of any body or association on the Advisory Committee, an opportunity of being heard should be given to the body or association concerned.

In their reply dated the 22nd October, 1977, the Ministry have stated as under:—

"As regards rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, the views expressed by the Lok Sabha Secretariat have been considered. This Ministry have no objection to amend rule 10 by inserting the following in continuation of the existing proviso:—

'Provided that no such suspension or termination as the case may be shall be made except after giving an opportunity to the concerned Body/Association of being heard on the proposed action.'

This Ministry may please be informed whether the Committee on Subordinate Legislation of the Lok Sabha have accepted the above views."

28. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 so as to provide for an opportunity of being heard to a body or association before its representation on the Committee is suspended or terminated. In this regard, the Committee approve the amendment proposed to the rules *ibid* and desire the Ministry to issue the same at an early date.

V

- (1) THE POSTS AND TELEGRAPHS DEPARTMENT TECHNICIAN (HIGHER GRADE) AND TECHNICIAN (TELEPHONE, TELEGRAPHS, CARRIER AND WIRELESS) RECRUITMENT RULES, 1975 (G.S.R. 2689 OF 1975); AND
- (2) THE POSTS AND TELEGRAPHS (FIREMEN) RECRUITMENT (AMENDMENT) RULES, 1975 (G.S.R. 591 OF 1975).

29. Rule 5 of the Posts and Telegraphs Department Technician (Higher Grade) and Technician (Telephone, Telegraph, Carrier and Wireless) Recruitment Rules, 1975 provides as under:—

"5. *Training and bond.*—(1) The persons selected for the said posts whether by direct recruitment or by promotion

shall, before appointment, undergo such training and for such period as may be specified by the Director General of Posts and Telegraphs.

- (2) The direct recruits shall, before proceeding for the said training, execute a bond in such form as may be specified by the Director General of Posts and Telegraphs, for serving the Government for a period of not less than five years."

30. Similarly, Rule 9 of the Posts and Telegraphs (Wiremen) Recruitment Rules, 1968, as inserted by the Amendment Rules (G.S.R. 591 of 1975), left the period of training and form of the bond to be specified by the Director General, Posts and Telegraphs.

31. It was felt that to make the rules self-contained the particulars and period of training as well as the form of the bond should be indicated in the Rules and not be left to be prescribed by the Director General, Posts and Telegraphs.

32. The matter was taken up with the Ministry of Communications (Posts and Telegraphs Department) in May, 1976. The Ministry sent their replies in June, 1976, which read as under:—

- (i) The Posts and Telegraphs Department Technical (Higher Grade) and Technician (Telephone, Telegraph, Carrier and Wireless) Recruitment Rules, 1975.

"Since the recruitment rules are required to be simple and compact, the training period and related matters have been circulated to all Heads of Circles, in detail in the form of administrative instructions. These instructions are made known to each candidate beforehand and are uniformly applicable to all the candidates.

Specification of the training period in the statutory rules would result in administrative difficulties and delays as whenever the training or its duration is required to be modified to meet in needs of service, the rules would have to be modified. Due to the fast technological changes in the field of telecommunication the content and mode of training may have to be modified from time to time to suit the requirements. As such it would not be desirable to have the rigidity in this aspect.

The procedure of modification/change in recruitment rules takes considerable time and any amendment in the rules

required because of change of content or mode of the training will necessarily take time. This would in turn hold up recruitment and training of candidates and would result in delay in filling up of vacancies.

The other recommendation relates to specifying the form of the bond in the recruitment rules. If this form* is included in the recruitment rules, they would become very voluminous. This form is in the nature of a legal document which has been drafted in consultation with Ministry of Law and is duly published at the time of recruitment. A copy of the bond is circulated before hand to all the candidates before they are deputed or selected for the post of Technician."

(ii) *Posts and Telegraphs (Wiremen) Recruitment (Amendment) Rules, 1975.*

"..... proforma for the framing of the Statutory Recruitment Rules has been prescribed by the Department of Personnel and Administrative Reforms. The Rules are framed with the approval of Department of Personnel. So far as inclusion of training period and bond in the rules of recruitment is concerned, it may be mentioned that as per instructions, temporary departmental candidates and outsiders are required to execute bond before going under training for a period of three months. The period of training is extended in case of regular mazdoors and Class IV staff for a period of one month provided however the Head of circle is satisfied that the official is likely to be benefited by the extended period of training. Before sending the candidate to training the candidates are to execute a revised bond. The amount of security is mentioned therein. The bond is equal to monthly stipend payable to the trainee multiplied by the number of months prescribed for the training. For the extended training another bond is required to be executed for the enhanced security. It is provided in the bond that the candidate after completion of the training has to serve the department for the period of five years.

These instructions are issued in the form of Administrative instructions and are incorporated in the P & T Manual Vol. IV for the information of all concerned. Moreover

*See Appendix II.

these administrative instructions may require frequent modifications, conditioned by the fast growth and advance in the telecommunications technology. Statutory rules may normally consist of those requirements which are likely to be valid for a considerable period. If these matters are also included, the Statutory rules might have to be frequently amended which will involve delay. This delay may hamper recruitment of staff which in turn will cause shortage of staff for the maintenance and installation of telecommunication equipment. It may ultimately effect the service rendered to the public at large. In addition the inclusion of the 'Bond' particulars will make the statutory rules unduly bulky.

Hence we feel that the training and bond particulars may not be included in statutory rules."

33. The Committee have given a careful thought to the various points raised by the Ministry of Communications in their reply but feel that in order to obviate any scope of discriminatory treatment between trainees similarly placed, a definite period of training should be indicated in the rules. If necessary, the Ministry can specify varying periods of training for different categories of candidates.

34. In this connection, the Committee would like to draw the attention of the Ministry of Communications to para 46 of their Sixteenth Report (Fifth Lok Sabha) wherein, commenting on the Engineering Supervisors (Recruitment) Rules, 1974, the Committee have observed that indication of a definite period of training is necessary to obviate any scope of discriminatory treatment between different batches of candidates of the same category.

35. If in any case, it becomes necessary for the Ministry to extend or reduce the specified period of training to meet certain exigencies, it should be done for reasons to be recorded in writing and in respect of a class or category of trainees and not individuals.

36. In regard to form of the bond to be executed by the trainees while the Committee feel that it is not necessary to include the form in the recruitment rules, they desire the Ministry to incorporate the essential requirements of the bond in the rules to serve as guidelines.

37. The Committee desire the Ministry to issue the requisite amendments to the rules on the above lines at an early date.

VI

THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (APPELLATE TRIBUNAL FOR FORFEITED PROPERTY) RULES, 1977 [S.O. 179(E) OF 1977].

38. Rules 22 and 23 of the Smugglers and Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977 provide for charging of fees for supply of copies and inspection of records and registers of the Appellate Tribunal for Forfeited Property.

39. The Ministry of Finance (Department of Revenue) were requested to state the legal authority for levy of fees under rules 22 and 23 *ibid.* The Appellate Tribunal for Forefeited Property, to whom the matter was referred by the Ministry for furnishing comments, have stated as under in their reply dated the 27.9.1977:—

“Copying fee is charged for the services rendered and for the material utilised by the Government while supplying the extra copies to the appellants on request. Similarly, inspection fee is charged for the services rendered by the Government in connection with the requests from the appellants for inspection of records. It was in this view of the matter that a provision was made to charge or collect copying fee and inspection fee. However, when the matter was referred to the Ministry of Law, they have opined that it will be advisable to amend the Statute to take specific power for levy of the fees. The matter has, therefore, been referred to the Ministry for carrying out the necessary amendment in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.”

40. In a communication dated the 20th February, 1978, the Ministry of Finance (Department of Revenue) have stated as under:—

“...the Appellate Tribunal for Forfeited Property has sent to this Ministry proposal for amending the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, specifically for providing for levy of copying and inspection fees. The said proposal is currently being processed in this Ministry with a view to introduce an Amendment Bill in the Parliament at an early date.”

41. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have

agreed to amend the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 for taking specific power for levy of copying and inspection fees. The Committee desire the Ministry to introduce the proposed amending Bill in this regard in Parliament at an early date.

VII

THE ALLOTMENT OF GOVERNMENT RESIDENCES TO OFFICERS IN GOVERNMENT OF INDIA PRESS, NASIK, COIMBATORE, KORATTY, ALIGARH, NILOKHERI, SANTRAGACHI (HOWRAH), RING ROAD, NEW DELHI, FARIDABAD AND GANGTOK RULES, 1972 (S.O. 2735 OF 1974).

42. Rule 18 (i) and (ii) of the Allotment of Government residences to officers in Government of India Press Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules, 1972, provides as under:—

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

Explanation.—In this sub-rule the expression 'officer' include unless the context otherwise requires a member of his family and any person claiming through the officer.

(ii) In an officer sublets a residence allotted to him or any portion thereof or any of the out-houses or garages, appurtenant thereto, in contravention of these rules, he may,

without prejudice to any other action that may be taken against him be charged enhanced licence fee not exceeding four times the standard licence fee under F.R. 45-A. The quantum of licence fee to be recovered and the period for which the same may be recovered in each case will be decided by the Assistant Manager (Estate) on merits. In addition the officer may be debarred from sharing the residence for a specified period in future as may be decided by the Assistant Manager (Estates)".

43. It was felt that before any action is taken against a person for breach of rules and conditions under the above provision, an opportunity of being heard should be provided to him.

44. The Ministry of Works and Housing, with whom the matter was taken up on the 6th April, 1976, have stated as under in their reply dated the 23rd November, 1977:—

"The allotment of an accommodation in the name of an officer can be cancelled for breach of Rules and conditions in accordance with Rule 18(i) and (ii) of the said Rules, but before taking such action, adequate opportunities are given to individual concerned to establish his/her plea against the charge on account of which it is proposed to cancel the allotment. Instructions to this effect have been issued by the Directorate of Printing vide their Office Order* No. 7/31/62-AII dated the 11th November, 1977 and it is not considered necessary to amend the Rules stipulating that an opportunity of being heard should be provided to the officer before cancellation of such allotment."

45. The Committee note from the reply of the Ministry of Works and Housing that instructions have been issued by the Directorate of Printing vide their Office Order* No. 7/31/62-AII dated the 11th November, 1977, inter alia, providing therein for giving the allottee a reasonable opportunity of being heard in the matter before a penalty is inflicted upon him under rule 18(i) and (ii) of the Allotment of Government residences to officers in Government of India Press, Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules, 1972. The Committee are, however, not satisfied with the reply of the Ministry that it is not necessary to incorporate the above executive instructions in the rules. In the opinion of the Committee, ex-

*See Appendix III.

cutive instructions are no substitute for statutory rules as such instructions are not published in the Gazette and thereby escape the notice of the Committee for adjudging their propriety or fairness. The Committee feel that when executive instructions already provide for giving a reasonable opportunity of being heard to the person concerned, the Ministry should have no difficulty in putting those instructions on a statutory footing. The Committee, therefore, desire the Ministry to amend the rules to the necessary effect at an early date.

VIII

THE SHIPPING DEVELOPMENT FUND COMMITTEE (DEATH-CUM-RETIREMENT GRATUITY) RULES, 1977 (G.S.R. 674 OF 1977).

46. Sub-rule (2) of rule 5 of the Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 provides that if the service of an employee has not been satisfactory, the Chairman may make such reduction in the amount of the death-cum-retirement gratuity as he may think proper.

47. The Ministry of Shipping and Transport (Transport Wing) were asked on the 8th December, 1977 to state whether they had any objection to amend the rules so as to provide therein for giving an opportunity to the person concerned to make a representation against the proposed reduction in the amount of gratuity.

48. In their reply dated the 29th December, 1977 the Ministry have stated as under:—

“....This Ministry has no objection to the proposal made. Action to notify such an amendment is being initiated separately.”

49. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 to provide therein for giving an opportunity to the person concerned to make a representation against the proposed reduction in the amount of death-cum-retirement gratuity under sub-rule (2) of rule 5 *ibid*. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.

IX

THE SETTLEMENT COMMISSION (INCOME-TAX/WEALTH-TAX) (CONDITIONS FOR SERVICE OF CHAIRMAN AND MEMBERS) RULES, 1976 (G.S.R. 837 OF 1977).

50. Rule 8 of the Settlement Commission (Income-Tax/Wealth-Tax) (Conditions for Service of Chairman and Members) Rules, 1976 states as under:—

“8. Interpretation.—If any question arises relating to the interpretation of the rules, the decision of the Central Government thereon shall be final.”

51. The Ministry of Finance (Department of Revenue) were asked on the 5th December, 1977 to state whether they had any objection to amending the rules suitably so that it did not convey an impression that it ousted the jurisdiction of courts in interpretation of rules.

52. In their reply dated the 1st April, 1978 the Ministry have stated as under:—

“...the Ministry of Law who have been consulted have expressed the opinion that the Court's jurisdiction is not barred inspite of the provisions contained in rule 8. Nevertheless, there is no objection to amend rule 8 of the above mentioned rules, *inter alia*, to provide that if there any dispute, it shall be referred to the Central Government for its decision or in any other manner, including the deletion of this rule, as may be suggested by the Committee on Subordinate Legislation.”

53. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have agreed to amend the Settlement Commission (Income-Tax/Wealth-Tax) (Conditions for Service of Chairman and Members) Rules, 1976 to the effect that if there is any dispute relating to the interpretation of rules, it shall be referred to the Central Government for its decision. The Committee desire the Ministry to issue the necessary amendment to the rules at an early date.

THE HOTELS, BOARDING HOUSES, GUEST HOUSES, HOSTELS, LODGING HOUSES AND MOTELS (BUILDING STANDARDS) REGULATIONS, 1977 (NOTIFICATION NO. F1 (17) 74-M.P., DATED THE 15TH JANUARY, 1977.

54. Sub-regulation (4) of Regulation 1 of the Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) Regulations, 1977 provides as under:—

“In interpreting the provisions of these regulations, the decision of the Delhi Development Authority shall be final.”

55. The above regulation is so worded as to give an impression that it ousts the jurisdiction of courts in the interpretation of regulations. The Ministry of Works and Housing were requested on the 6th December, 1977 to state whether they had any objection to amending the above regulation so that it does not give such an impression.

56. In their reply dated the 30th December, 1977 the Ministry have stated as under:—

“The suggestion contained in Lok Sabha Secretariat O.M. has been considered by the D.D.A. which has agreed to the suggestion made. However, a few more amendments to the Regulations are also under consideration and final order will issue shortly.”

57. In a further note dated the 16th February, 1978, the Ministry have intimated that they propose to substitute sub-regulation (4) of Regulation 1 by the following:—

“(4) If any question arises relating to the interpretation of these regulations, it shall be decided by the Government.”

58. The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend sub-regulation (4) of regulation 1 of the Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) Regulations, 1977 so that it does not give an impression on the minds of the persons concerned that the jurisdiction of courts of law is being ousted in regard to interpretation of the Regulations. The Committee desire the Ministry to issue the proposed amendment in this regard at an early date.

**THE LEVY SUGAR PRICE EQUALISATION FUND RULES, 1977
(G.S.R. 619-E OF 1977)**

59. Rule 6 of the Levy Sugar Price Equalisation Fund Rules, 1977 provides for application for claiming refund of any amount from the Levy Sugar Price Equalisation Fund by a wholesale dealer, retail dealer or any other buyer of levy sugar. No time-limit has, however, been prescribed for grant of the refund in the rules.

60. The Ministry of Agriculture and Irrigation (Department of Food) were requested on the 1st December, 1977 to state whether they had any objection to provide in the rules the maximum time-limit within which the refund would be granted.

61. In their reply dated the 20th December, 1977, the Ministry have stated as under:—

“....this Ministry have no objection to a time-limit for settlement of refund claims being provided in the Levy Sugar Equalisation Fund Rules, 1977. It is considered that three months' time from the date of receipt of claims in this Ministry will be sufficient to process and settle the claims of wholesale|retail dealers and the consumer of sugar.

.....under the provisions of the Act a refund from the Fund becomes admissible only to such buyers of levy sugar as do not pass on the incidence of the higher price to the next buyer. Determination in the case of bulk buyers of sugar, like fruit products manufacturers, pharamaceuticals, baby food manufacturers etc., where the incidence of the higher price of levy sugar was passed on to the consumers of the products in the shape of their selling price will take quite some time. Therefore, it will be advisable to make a provision in the rules empowering the Government to relax the three months' time-limit in special circumstances.”

62. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Food) have agreed to amend the Levy Sugar Price Equalisation Fund Rules, 1977 to provide for a time-limit for settlement of the claims of refund from the Levy Sugar Price Equalisation Fund. The Committee concur with the proposal of the Ministry to lay down a maximum time-limit of three months from the date of receipt of claims for granting refund from the Fund, with provision for relaxation of this limit in special circumstances involving bulk buyers of sugar,

like fruit products manufacturers, pharmaceuticals, baby food manufacturers, etc. where the incidence of the higher price of levy sugar is passed on to the consumers. The Committee, however, feel that relaxation of time-limit in such cases should be for a minimum necessary period and for specific reasons to be recorded in writing. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.

XII

THE SURVEY OF INDIA (DEPUTY STORE OFFICER) RECRUITMENT RULES, 1975 (G.S.R. 288 OF 1975)

63. Rule 6 of the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 stated as under:—

"6. Repeal and Saving:

Any rules corresponding to these rules and in force immediately before the commencement of these rules are hereby repealed:

Provided that any order made or any action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provision of these rules."

64. As the expression 'any rules corresponding to these rules' appearing in the above rule was vague, the Department of Science and Technology was requested on the 24th December, 1975 to indicate the name of the rules sought to be repealed.

65. In their reply dated the 6th February, 1976, the Department of Science and Technology have stated as under:—

".....the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 replaced the recruitment rules for the post of Deputy Stores Officer framed in 1960. In fact, the recruitment rules for various isolated posts in the Survey of India including the post of Deputy Stores Officer were finalised by the then Ministry of Agriculture (who were looking after the Survey of India Organisation at that time) in 1950, and were forwarded together to the Union Public Service Commission, the Surveyor General of India etc. The rules do not appear to have been formally notified in the form of Statutory rules. It was because of this no specific mention could be made of the (1950) rules sought to be replaced. Ministry of Law (Legislative Department) were apprised of the above background, when the 1975 rules were referred to them for vetting before promulgation.

In the circumstances, the existing rule 6 may kindly be allowed to be retained as it is."

66. The Committee note from the reply of the Department of Science and Technology that rule 6 of the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 repeals the recruitment rules for the post of Deputy Stores Officer framed in 1950 by the then Ministry of Agriculture. According to the Department, no specific mention could be made of the (1950) rules in the repealing provision because these rules did not appear to have been formally notified in the form of statutory rules. The Committee feel that such rules as are not put on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by a specific provision in the statutory rules. The Committee, therefore, desire the Department to delete rule 6 of the Rules *ibid.* and issue necessary amendment to this effect at an early date.

XIII

AMENDMENT NUMBER IN SHORT TITLES OF NOTIFICATIONS AMENDING THE CENTRAL EXCISE RULES (G.S.R. 67-E AND G.S.R. 438 OF 1975)

67. Notification No. 16/75 amending the Central Excise Rules, 1944, published under G.S.R. 67-E in the Gazette of India Extraordinary dated the 1st March, 1975 was shown as the Fourth Amendment in its short title. It was noticed that a subsequent Notification No. 86/75-CE making certain other amendments to the same rules, published under G.S.R. 438 in the Gazette of India dated the 5th April, 1975 also carried the same amendment number i.e. Fourth in its short title.

68. The Ministry of Finance (Department of Revenue and Insurance) were asked on the 23rd October, 1975 to state the circumstances under which the same amendment number had been shown in the short titles of the above two Notifications issued in the same year and whether any corrigendum in this regard had been issued.

69. In their reply dated the 5th December, 1975 the Ministry of Finance (Department of Revenue and Insurance) have stated that Fourth Amendment in the short title to the latter Notification was allotted inadvertently and care shall be taken to ensure that such mistakes do not occur in future. The Ministry have issued a corrigendum to the latter Notification substituting 'Fifth Amendment' for 'Fourth Amendment'.

70. The Committee note that, on being pointed out, the Ministry of Finance (Department of Revenue) have issued Corrigendum to substitute 'Fifth Amendment' for 'Fourth Amendment' appearing in the short title of Notification No. 86/75-Central Excise (G.S.R. 438 of 1975). The Committee desire the Ministry to take due care while assigning amendment numbers in short titles to the Notifications in future.

XIV

IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 27 OF THE TWENTIETH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING WATER (PREVENTION AND CONTROL OF POLLUTION) RULES, 1975 (G.S.R. 58-E 1975)

71. Rules 3 and 4 of the Water (Prevention and Control of Pollution) Rules, 1975 read as under:—

- "3. Salaries, allowances and other conditions of service of the Chairman:—*(1) The Chairman shall be paid a fixed monthly salary of Rs. 3000/-.
- (2) The other terms and conditions of service of the Chairman, including allowances payable to him, shall be such as may be specified in his order of appointment and in the absence of being so specified, such terms and conditions shall be, as far as may be, the same as are applicable to a Grade I Officer of corresponding status of the Central Government.
- (3) Notwithstanding anything contained in sub-rule (1) and (2), where a Government servant is appointed as Chairman, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time.
4. *Salaries, allowances and other conditions of Service of Member-Secretary.—*(1) The Member-Secretary shall be paid a monthly pay in the scale of Rs. 2250-125-2500.
- (2) The other terms and conditions of service of the Member-Secretary including allowances payable to him shall be, as far as may be, the same as are applicable to a Grade I Officer of corresponding status of the Central Government.
- (3) Notwithstanding anything contained in sub-rules (1) and (2), where a Government servant is appointed as

Member-Secretary, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time."

72. The Committee on Subordinate Legislation (Fifth Lok Sabha) examined the above rules at their sitting held on the 17th May, 1975 and felt that the terms and conditions of service of the Chairman and the Member-Secretary should be provided for in the rules, as envisaged by Section 63(2) (e) of the parent Act rather than be left to be regulated by Government through administrative orders.

73. Not being satisfied with the reply of Ministry of Works and Housing, the Committee in para 27 of their Twentieth Report (Fifth Lok Sabha) recommended as under:—

"The Committee are not convinced by the explanation of the Ministry of Works and Housing for not incorporating the terms and conditions of service of the Chairman and Member-Secretary in the rules. Section 63(2) (e) of the Water (Prevention and Control of Pollution) Act, 1974, envisages rules to be framed regarding these terms and conditions. In view of this, the Committee recommend that the terms and conditions of service of the Chairman and Member-Secretary of the Board should either be incorporated in the Rules or, in the alternative, the Act should be amended to empower the appropriate Government to regulate the terms and conditions of their service through administrative orders."

74. In their action taken note dated the 27th April, 1978 on the above recommendation, the Ministry of Works and Housing have stated as under:—

"The above recommendation has been considered by the Central Government and it has been decided to amend Rules 3 and 4 of the Water (Prevention and Control of Pollution) Rules, 1975, to incorporate the terms and conditions of service of the Chairman and Member-Secretary of the Central Board for the Prevention and Control of Water Pollution thereunder. A copy of the draft notification* proposed to be issued for carrying out these amendments is sent herewith. It is requested that the draft notification may be placed before the Committee on Subordinate Legislation and their approval

7 *See Appendix IV.

communicated to this Ministry at an early date for further action."

75. 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) Rules, 1975, to incorporate therein the terms and conditions of service of the Chairman and Member-Secretary of the Central Board for the Prevention and Control of Water Pollution. The Committee approve the amendments as set out by the Ministry in their draft Notification* and desire the Ministry to issue them at an early date.

SOMNATH CHATTERJEE,

NEW DELHI;

Chairman,

The 20th July, 1978.

Committee on Subordinate Legislation.

***See Appendix IV.**

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	8	The Committee note that the Ministry of Education and Social Welfare (Department of Education) have admitted in their reply that the University Grants Commission Act, 1956, does not empower the Central Government to give retrospective effect to rules framed under Section 25 of the Act. As without such authorisation, no subordinate legislation can operate retrospectively, the retrospective effect given to the University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 is without due legal authority.
2	9	The Ministry seem to be labouring under a false notion that they have not committed any financial or procedural irregularity in view of the circumstances having been explained in the explanatory memorandum to the Rules. The Committee need hardly point out in this regard that mere mention of the circumstances necessitating retrospective effect to the rules in the explanatory memorandum or there being no likelihood of retrospective action being challenged in a court of law, does not impart legal authority for giving retrospective effect to the rules. The Committee had clarified this position in para 8 of their Nineteenth Report (Fifth Lok Sabha) also, which had been brought

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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 the Rules in future.

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The Committee note that the Ministry of Education and Social Welfare (Department of Education) have agreed to incorporate a provision in the University Grants Commission Act to empower the Central Government to give retrospective effect to the rules. The Committee desire the Ministry to bring the amending legislation for the purpose by the end of this year. The Committee further desire that provision be made in the Act for validating the rules already made and given retrospective effect.

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The Committee note from the reply of the Ministry of Energy (Department of Coal) that the provisions of rule 6 of the Coal Mines (Conservation and Development) Rules, 1975 can be justified on the basis of the provisions of Section 70 of the Contract Act, 1872. Similarly, the Ministry of Law, Justice and Company Affairs have opined that even in the absence of a separate independent provision in the Coal Mines (Conservation and Development) Act, 1974, in regard to the reimbursement of the cost incurred for the measures or operations undertaken by the Central Government for the benefit of the coal mines owners, it will be permissible for the Central Government to invoke the provisions of section 70 of the Indian Contract Act, which is a general law. The Committee, however, feel that the power to recover the cost of operations undertaken by Government for the benefit of coal mine owners should flow from an express provision in the Coal Mines

(Conservation and Development) Act, 1974 itself and not the rules framed thereunder. The Committee in this connection note from the reply of the Ministry of Law that a provision enabling the framing of such a rule could be included in the Coal Mines (Conservation and Development) Act when it is next amended. The Committee, therefore, desire the Ministry of Energy (Department of Coal) to bring the necessary amending legislation for the purpose at an early date.

5 20 The Committee note from the reply of the Ministry of Energy (Department of Coal) that sub-rule (11) of rule 8 of the Coal Mines (Conservation and Development) Rules, 1975 is related to Section 8 of the Coal Mines (Conservation and Development) Act, 1974, which provides that the duties of excise shall be collected by such agencies and in such manner as may be prescribed. The Committee, however, feel that the provision to recover dues of excise duty as arrears of land revenue, being in the nature of an extreme remedy, is a substantive provision for which a specific authorisation must be made in the Act itself rather than in the rules framed thereunder. The Committee, therefore, desire the Ministry to delete sub-rule (11) of rule 8 of the rules *ibid.*, and incorporate its provision in the parent Act by amending the same suitably at an early date.

6 24 The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to delete rule 5 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 and for embodying its provision in the Act itself. The Committee desire the Ministry to bring the necessary Bill for amending the Indian Lighthouses Act, 1927 preferably by the end of this year.

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7	28	The Committee note with satisfaction that, on being pointed out, the Ministry of Shipipng and Transport (Transport Wing) have agreed to amend rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 so as to provide for an opportunity of being heard to a body or association before its representation on the Committee is suspended or terminated. In this regard, the Committee approve the amendment proposed to the rules <i>ibid</i> and desire the Ministry to issue the same at an early date.
8	33	The Committee have given a careful thought to the various points raised by the Ministry of Communications in their reply but feel that in order to obviate any scope of discriminatory treatment between trainees similarly placed, a definite period of training should be indicated in the Posts and Telegraphs Department Technician (Higher Grade) and Technician (Telephone, Telegraphs, Carrier and Wireless) Recruitment Rules, 1975 and the Posts and Telegraphs (Wiremen) Recruitment (Amendment) Rules, 1975. If necessary, the Ministry can specify varying periods of training for different categories of candidates.
	34	In this connection, the Committee would like to draw the attention of the Ministry of Communications to para 46 of their Sixteenth Report (Fifth Lok Sabha) wherein commenting on the Engineering Supervisors (Recruitment) Rules, 1974, the Committee have observed that indication of a definite period of training is necessary to obviate any scope of discriminatory treatment between different batches of candidates of the same category.
	35	If in any case, it becomes necessary for the Ministry to extend or reduce the specified period of training to meet certain exigencies, it should be done for reasons to be recorded in

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		writing and in respect of a class or category of trainees and not individuals.
36		In regard to form of the bond to be executed by the trainees, while the Committee feel that it is not necessary to include the form in the recruitment rules, they desire the Ministry to incorporate the essential requirements of the bond in the rules to serve as guidelines.
37		The Committee desire the Ministry to issue the requisite amendments to the rules on the above lines at an early date.
9	41	The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have agreed to amend the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 for taking specific power for levy of copying and inspection fees. The Committee desire the Ministry to introduce the proposed amending Bill in this regard in Parliament at an early date.
10	45	The Committee note from the reply of the Ministry of Works and Housing that instructions have been issued by the Directorate of Printing <i>vide</i> their Office Order* No. 7/31/62-All dated the 11th November, 1977, <i>inter alia</i> , providing therein for giving the allottee a reasonable opportunity of being heard in the matter before a penalty is inflicted upon him under Rule 18(i) and (ii) of the Allotment of Government residences to officers in Government of India Press, Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules 1972. The Committee are, however, not satisfied with the reply of the Ministry that it is not necessary to incorporate the above executive instructions in the rules. In the opinion of the Committee, executive instructions are no substitute for statutory rules as such instructions are not pub-

*See Appendix III.

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lished in the Gazette and thereby escape the notice of the Committee for adjudging their propriety or fairness. The Committee feel that when executive instructions already provide for giving a reasonable opportunity of being heard to the person concerned, the Ministry should have no difficulty in putting those instructions on a statutory footing. The Committee, therefore, desire the Ministry to amend the rules to the necessary effect at an early date.

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The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 to provide therein for giving an opportunity to the person concerned to make a representation against the proposed reduction in the amount of death-cum-retirement gratuity under sub-rule (2) of rule 5 *ibid*. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.

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The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have agreed to amend the Settlement Commission (Income-Tax/Wealth-Tax) (Conditions for Service of Chairman and Members) Rules, 1976 to the effect that if there is any dispute relating to the interpretation of the rules, it shall be referred to the Central Government for its decision. The Committee desire the Ministry to issue the necessary amendment to the rules at an early date.

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The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend sub-regulation (4) of regulation 1 of the Hotels, Boarding Houses, Guest House, Hostels, Lodging Houses:

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		and Motels (Building Standards) Regulations, 1977 so that it does not give an impression on the minds of the persons concerned that the jurisdiction of courts of law is being ousted in regard to interpretation of the Regulations. The Committee desire the Ministry to issue the proposed amendment in this regard at an early date.
14	62	The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Food) have agreed to amend the Levy Sugar Price Equalisation Fund Rules, 1977 to provide for a time limit for settlement of the claims of refund from the Levy Sugar Price Equalisation Fund. The Committee concur with the proposal of the Ministry to lay down a maximum time-limit of three months from the date of receipt of claims for granting refund from the Fund, with provision for relaxation of this limit in special circumstances involving bulk buyers of sugar, like fruit products manufacturers, pharmaceuticals, baby food manufacturers, etc. where the incidence of the higher price of levy sugar is passed on to the consumers. The Committee, however, feel that relaxation of time-limit in such cases should be for a minimum necessary period and for specific reasons to be recorded in writing. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.
15	66	The Committee note from the reply of the Department of Science and Technology that rule 6 of the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 repeals the recruitment rules for the post of Deputy Stores Officer framed in 1950 by the then Ministry of Agriculture. According to the Department, no specific mention could be made of the (1950) rules in the repeal-

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ing provision because these rules did not appear to have been formally notified in the form of statutory rules. The Committee feel that such rules as are not put on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by specific provision in the statutory rules. The Committee, therefore, desire the Department to delete rule 6 of the Rules *ibid*, and issue necessary amendment to this effect at an early date.

16	70	<p>The Committee note that, on being pointed out, the Ministry of Finance (Department of Revenue) have issued Corrigendum to substitute 'Fifth Amendment' for 'Fourth Amendment' appearing in the short title of Notification No. 86/75-Central Excise (G.S.R. 438 of 1975). The Committee desire the Ministry to take due care while assigning amendment numbers in short titles to the Notifications in future.</p>
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17	75	<p>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) Rules, 1975, to incorporate therein the terms and conditions of service of the Chairman and Member-Secretary of the Central Board for the Prevention and Control of Water Pollution. The Committee approve the amendments as set out by the Ministry in their draft Notification* and desire the Ministry to issue them at an early date.</p>
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*See Appendix IV.

APPENDIX II

(Vide para 32 of the Report)

BOND TO BE EXECUTED BY POSTAL AND TELEGRAPHS TRAINEES BEFORE ADMISSION TO THE TRAINING CLASS.

(Departmental candidates in permanent service are exempted from
executing this bond).

I son/daughter of Shri
..... province, having been admitted on
the of 196 for training as a
candidate for employment in the grade of
in the Indian Posts & Telegraphs Department, hereby of my own
free will (and with the consent of my father/guardian)
..... s/o who has signed below in
token of his agreement and acknowledgement on my behalf declare
and agree as follows:—

(a) I will undergo the full course of training extending over..
..... months as prescribed or for such period as
may be prescribed by the competent authority and shall conform to
the instructions regarding training conveyed to me by such authority. During the period of training I undertake to apply myself
carefully and diligently to the course of studies prescribed so
that I may become well qualified to perform the duties of the post
to which I may be appointed. I understand that in consideration of
this and in anticipation of my fulfilling condition (c) below the
Government will grant me a stipend at a rate of Rs.....
per month during the prescribed training period.

(b) I accept the terms and conditions of my training and my
future service on probation in the grade of in the P&T
Department as laid down at present or as may be laid down from
time to time.

(c) I will after successful completion of my training serve P&T
Department as a for the minimum period of
five years from the date of my appointment in that grade and du-
ring that period I will not sever my connection with the
department unless I first obtain the consent of the competent autho-
rity in writing.

(d) I understand that my appointment, after training in the
said grade shall be on a temporary basis and until further orders

and that I shall be liable to be removed from the training class or to have my service terminated at any time without assigning any reason in my of the following cases:

1. Unsuitability for training in service.
2. Misconduct/Insubordination.
3. Abolition or discontinuance of the temporary post to which I might be appointed.
4. Breach on my part of the terms herein contained to be observed by me.

(e) As security for the due fulfilment by me of conditions (a) and (c) of this Bond, I hereby bind myself in the amount of Rs. with the consent of my father/guardian, who has attested below, alongwith two sureties named below.

(f) In case of my removal from the training class or service due to misconduct, insubordination or unsuitability, or in case of a breach of condition (a) or (c), Government shall have, subject to hereinafter stated, full powers to order the recovery of the amount of the Bond above mentioned and I shall forthwith refund the same to the Government, provided that (i) if the breach of condition (a) or (c) was caused due to illness not brought on my own carelessness or other cause not due to my fault or over which I have no control, or my death, Government shall not exercise the said power or (ii) if I am removed from the training class the Government shall recover only so much of the amount as is equivalent to the allowance till then paid to by Government in respect of this training or (iii) I am removed from service within five years of my appointment due to my fault or if I commit a breach of condition

(e) above Government shall have full powers to recover from me or my sureties the amount for which I am bound under clause (a) above, subject to the condition that my liability under clause (c) shall decrease proportionately by one fifth after each complete year of my service the liability of self and my sureties hereunder shall cease and determine.

SIGNATURE OF CANDIDATE

I,.....Father/Guardian of the said.....
.....confirm and agree to be bound by the above terms.

Signature of Father/Guardian
Address:

Place:.....

Date:.....

We (1) Mr.....and (2) Mr hereby jointly and severally agree to make good the loss caused to the Government if the saidfails to fulfil his obligations under the terms of this bond. Our liability hereunder shall not be impaired or discharged by reason of time being granted or for any forbearance, act or omission of the Government or any person authorised by them (whether with or without our consent or knowledge) nor shall it be necessary for the Government to sue the said.....before suing us for the amount due hereunder.

In the presence of

I..... A. Signature of first surety also state his profession or occupation.

In the presence of

. B. Signature of second surety also state his profession or occupation.

2.....

Note 1- The amount of security shown should be the monthly allowance payable to a candidate multiplied by the number of months prescribed for the particular course of training.

Note 2- Signature of father or guardian is necessary if the candidate is a minor. Portions referring to father or guardian may be omitted when not required.

Note 3- Sureties should be permanent Central/State Government Employees and a certificate to this effect issued by the Employer of the sureties should also be attached.

APPENDIX III

(Vide Paras 44 and 45 of the Report)

No. 7/31/62-API

GOVERNMENT OF INDIA

Directorate of Printing

Dated New Delhi the 11th November, 1977.

OFFICE ORDER

SUBJECT.—Subletting of Government residence/out house or garages etc.

It has been decided that the following procedure shall be followed with immediate effect in conducting enquiries into cases of subletting of Government accommodation in Press Colony and in imposing penalties laid down in Rule 18 (i) and (ii) of the Allotment Rules, 1972, relating to Government of India Press Colonies:

- (i) On receipt of a complaint of subletting, the complainant should be called to appear before the Enquiry Officer, who should be other than Assistant Manager (Estates). For this purpose, he may be given notice of a week or 10 days. If he corroborates the complaint and gives material particulars regarding subletting, the Enquiry Officer may record his statement and put up the case to the Assistant Manager (Estates) so that he can form an opinion whether *prima-facie* it is a case of subletting. Such a course will not be necessary in case of subletting coming to the notice of the Press as a result of local/surprise inspection by Press Management. In cases where an enquiry is ordered on anonymous and pseudonymous complaints, verification of the authenticity of the complaints may be done through spot inspection. Even in cases where the complainant is called for verification of the complaint, a spot inspection may be made if necessary, and the officer concerned may put up his report with his views to the Assistant Manager (Estates).
- (ii) If the Assistant Manager (Estates) is *prima facie* satisfied that a case of sub-letting is made out, he will issue a-

notice to the allottee to show cause within 21 days of the notice, why penalties for subletting prescribed under Rule 18(i) and/or 18(ii) may not be imposed on him. By means of this notice, the allottee would be asked to bring up both oral as well as documentary evidence (such as Ration Card, Radio Licence, CGHS Card, correspondence etc.) on the date fixed. For the same date, the Assistant Manager (Estates) may also call witnesses/ neighbours etc. who might depose regarding subletting. At first, the evidence of the allottee may be taken up and thereafter that of the Press Management. Witnesses should be examined in the presence of the allottee who should have the right to cross-examine the witnesses produced by the Management.

- (iii) If, after the evidence of the Press Management and the allottee, the Assistant Manager (Estates) considers it necessary, he may inspect the Government quarter in the presence of the allottee and record his note of inspection. this inspection will be done only in rare cases where the evidence so warrants.
- (iv) After considering the cause, if any, shown by the allottee and evidence and after giving him a reasonable opportunity of being heard, the Assistant Manager (Estates) will record a reasoned order.

Sd/-

(M. M. JOSHI)

Deputy Director (Admn.)

APPENDIX IV

(Vide paras 74 and 75 of the Report)

GOVERNMENT OF INDIA/BHARAT SARKAR

MINISTRY OF WORKS AND HOUSING

(Nirman Aur Awas Mantralaya)

New Delhi, the

NOTIFICATION

G.S.R. —In exercise of the powers conferred by Section 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) the Central Government after consultation with the Central Board for the Prevention and Control of Water Pollution, hereby makes the following rules, to amend the Water (Prevention and Control of Pollution) Rules, 1975, namely:—

1. (1) These rules may be called the Water (Prevention and Control of Pollution) Amendment Rules, 1978.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Water (Prevention and Control of Pollution) Rules, 1975;

(i) In rule 3, for sub-rule (2) following sub-rule shall be substituted, namely:—

“(2) (a) In addition to the above salary, he will be entitled to the City Compensatory and House Rent Allowance as admissible to the Central Government servants in terms of Ministry of Finance (Department of Expenditure) O.M. No. 2(3)E.II(B)/64, dated the 27th November, 1965 as amended from time to time. However, in case he is allotted accommodation by the Government, he will be required to pay 10 per cent of the emoluments drawn by him as house rent or licence fee.

(b) Travelling Allowance & D.A. for journeys connected with the Central Board will be regulated under the Supplementary Rules of the Central Government and will be borne by the Board.

- (c) The Central Board shall provide to the Chairman medical facilities comparable to an officer of the Central Government receiving Rs. 3,000/- per mensem."

(ii) In rule 4, for sub-rule (2) the following sub-rule shall be substituted:—

- (2) (a) In addition to the above salary, he will be entitled to the City Compensatory and House Rent Allowances as admissible to the Central Government servants in terms of Ministry of Finance (Department of Expenditure) O.M. No. 2(3) EII(B)/64, dated the 27th November, 1965 as amended from time to time. However, in case he is allotted accommodation by the Government, he will be required to pay 10 per cent of the emoluments drawn by him as house rent or licence fee.
- (b) Travelling allowance and D.A. for journeys connected with the Central Board will be regulated under the Supplementary Rules of the Central Government and will be borne by the Board.
- (c) The Central Board shall provide to the Member-Secretary medical facilities comparable to an officer of the Central Government receiving pay in the scale of Rs. 2250—2500 per mensem.

(No. H-11013/4/76-EPC)

Under Secy. to the Govt. of India

MINUTES

APPENDIX V

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE: ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Friday, the 16th June, 1978 from 11-00 to 12.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri Saeed Murtaza
8. Shri Madan Lal Shukla
9. Shri Sachindralal Singha
10. Shri Ramji Lal Suman
11. Shri Krishnarao Thakur
12. Shri C. N. Visvanathan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

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

3. The Members congratulated the Chairman for the excellent work done by the Committee during last year.

4. The Committee then considered Memoranda Nos. 114 to 121 on the following subjects:—

S.No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	114	Smugglers & Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977 (S.O. 179-E of 1977).
(ii)	115	Implementation of recommendation contained in para 27 of the Twentieth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) Regarding Water (Prevention and Control of Pollution) Rules, 1975 (G.S.R. 58-E of 1975).
(iii)	116	The Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 (G.S.R. 674 of 1977).
(iv)	117	The Settlement Commission (Income-tax/Wealth-tax) (Conditions for Service of Chairman and Members) Rules, 1976 (G.S.R. 837 of 1977).
(v)	118	The Levy Sugar Price Equalisation Fund Rules, 1977 (G.S.R. 619-E of 1977).
(vi)	119	Notification amending Central Excise Rules, 1944—Allotment of same amendment number to two notifications.
(vii)	120	The Allotment of Government residences to officers in Government of India Press, Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules, 1972 (S.O. 2735 of 1974).
(viii)	121	(a) The Posts & Telegraphs Department Technician (Higher Grade) and Technician (Telephone Carrier and Wireless) Recruitment Rules 1975 (G.S.R. 2689 of 1975; and (b) Posts & Telegraphs (Wiremen) Recruitment (Amendment) Rules, 1975 (G.S.R. 591 of 1975).

(i) *Smugglers & Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977 (S O. 179-E of 1977)—(MEMORANDUM NO. 114).*

5. The Committee considered above memorandum and noted with satisfaction that on being pointed, the Ministry of Finance (Department of Revenue), had agreed to amend the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, for taking specific power for levy of copying and inspection fee. The Committee desired the Ministry to introduce amending Bill in this regard in Parliament at an early date.

(ii) *Implementation of recommendation contained in para 27 of the Twentieth Report of the Committee on Subordinate Legislation Fifth Lok Sabha) regarding Water (Prevention and Control of pollution) Rules, 1975 (G. S. R. 58-E of 1975)—(MEMORANDUM NO. 115).*

6. The Committee considered above memorandum and noted with satisfaction that on being pointed out, the Ministry of Works and Housing had proposed to amend Rules 3 and 4 of the Water (Prevention and Control of Pollution) Rules, 1975, to incorporate therein the terms and conditions of Service of the Chairman and Member-Secretary of the Central Board for the Prevention and Control of Water Pollution. The Committee approved the proposed amendments forwarded by the Ministry and desired the Ministry to issue them at an early date.

(iii) *The Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 (G.S.R. 674 of 1977)—(MEMORANDUM NO. 116).*

7. The Committee considered the above memorandum and noted with satisfaction that on being pointed out, the Ministry of Shipping and Transport had agreed to amend the Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 to provide therein for an opportunity to the person concerned to make a representation against the proposed reduction in the amount of gratuity under sub-rule (2) of Rule 5 *ibid*. The Committee desired the Ministry to amend the rules at an early date.

(iv) *The Settlement Commission (Income Tax/Wealth Tax); (Conditions for service of Chairman and Members) Rules, 1976 (G.S.R. 837 of 1977)—(MEMORANDUM NO. 117)*

* * * * *

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

(B)

9. The Committee noted with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) had agreed to amend Rule 8 of the Settlement Commission (Income-Tax/Wealth-Tax) (Conditions for Service of Chairman and Members) Rules, 1976 to provide that if there was any dispute relating to the interpretation of the Rules it shall be referred to the Central Government for its decision. The Committee desired the Ministry to amend the rules accordingly at an early date.

(v) *The Levy Sugar Price Equalisation Fund Rules, 1977 (G.S.R. 619-E of 1977)—(MEMORANDUM NO. 118).*

10. The Committee considered above memorandum and noted with satisfaction that on being pointed out, the Ministry of Agriculture & Irrigation (Department of Food) had agreed to amend the Levy Sugar Price Equalisation Fund Rules, 1977, to provide a period of 3 months' time from the date of receipt of claims within which the refund from the Fund should be granted, subject to relaxation of this time limit in special circumstances when bulk buyers of sugar like fruit products manufacturers, pharmaceuticals etc. were involved who passed on the higher price of Levy Sugar to the consumers. The Committee desired the Ministry to amend the rules at an early date.

(vi) *Notifications amending Central Excise Rules, 1944—Allotment of same amendment number to two notifications—(MEMORANDUM NO. 119)*

11. The Committee considered above memorandum and noted that on being pointed out, the Ministry of Finance (Department of Revenue & Insurance) had issued corrigendum to the later Notification (G.S.R. 438) issued under the Central Excise Rules, 1944 substituting 'Fifth Amendment', for 'Fourth Amendment'. The Committee desired the Ministry to be careful while allotting Amendment numbers to notifications in future.

(vii) *The Allotment of Government residences to officers in Government of India Presses, Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules, 1972 (S.O. 2735 of 1974) (MEMORANDUM NO. 120).*

12. The Committee considered above memorandum and were not satisfied with the reply of the Ministry of Works and Housing that as executive instructions had been issued to provide for giving adequate-

opportunity to the individual concerned to establish his/her plea against the charge on account of which it was proposed to cancel the allotment of accommodation under Rule 18(i) and (ii), there was no need to amend the Rules for that purpose. The Committee were of the view that when the Ministry had issued executive instructions for giving show cause notice to the person concerned before taking any action under Rule 18 (i) and (ii), they should have no difficulty in putting those instructions on statutory footing. The executive instructions in the opinion of the Committee were no substitute for statutory rules as the executive instructions were not published in the Gazette and therefore did not come to the notice of the Committee to judge their reasonableness.

13. The Committee desired the Ministry of Works and Housing to amend the Rules so as to provide for an opportunity of being heard before action was taken against the allottee under Rule 18(i) and (ii). *ibid.*

(viii) (a) *The Posts & Telegraphs Department Technician (Higher Grade) and Technician (Telephone Carrier and Wireless) Recruitment Rule, 1975 (G.S.R. 2689 of 1975); and*

(b) *The Posts & Telegraphs (Wiremen) Recruitment (Amendment) Rules, 1975 (G.S.R. 591 of 1975)—(MEMORANDUM NO. 121)–*

14. The Committee considered above memorandum and were not satisfied with the reply of the Ministry for not specifying the period of training in the rules. The Committee felt that in order to obviate any scope of discriminatory treatment between trainees similarly placed a definite period of training should be indicated in the rules and if this specified period is extended or reduced in any case the reasons therefor might be recorded in writing by the concerned authorities.

15. The Committee decided not to insist upon inclusion of the form of the Bond to be executed by the trainees in the Recruitment Rules. They, however, desired the Ministry to incorporate essential requirements of the bond in the Rules to serve as guide-lines. The Committee desired the Ministry of Communications to issue the requisite amendments to the rules at an early date.

16. *The Committee then adjourned to meet again on the 3rd July, 1978 at 3.30 p.m.*

ANNEXURE

(Vide para 2 of the Minutes)

Address by the Chairman to the Members of the Committee on
Subordinate Legislation (1978-79)

(16th June, 1978)

Friends,

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

2. These days when in the context of the Welfare State, the nature and range of functions of Government are fast changing, the responsibilities of Parliament are also getting increasingly onerous. There is hardly any walk of citizen's life which is not regulated by the State in one way or the other. Over the years Parliament has passed an increasingly larger volume of legislation, extending the activities of Government into a number of fields and often involving provisions of considerable complexity. It is impossible for any body of legislators to deliberate upon, discuss and approve every rule or regulation which may be essential for the purpose of administering various laws. The extension of Government activity into economic and social life of the country has created problems for Parliament in the matter of enactment of laws. It has, therefore, become important to lighten the load borne by the legislative machine. Apart from the pressure on Parliamentary time, the technicality of the subject matter, the need to meet unforeseen contingencies, the requirement of flexibility etc. make delegated legislation a necessity. Parliament by statute lays down the broad policy and principles of new law and the executive may be means of delegated legislation work out the details as to its applicability within those principles.

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

4. One of the important safeguards against assumption of arbitrary powers by the Executive is that when an Act gives the power to frame

rules, it is imperative that these rules should be framed as soon as possible after the commencement of the Act. The Committee have recommended that in no case this period should exceed six months. In case, however, a Ministry/Department finds that for any unavoidable reason it is not possible for them to adhere to the prescribed time-limit in an exceptional case, they should at the expiration of six months from the commencement of the relevant Act, explain the reasons to the Committee and seek a specific extension of time for framing the rules.

5. Another safeguard against assumption of arbitrary powers by the Executive is that rules framed by the Executive in exercise of delegated powers should not only be required to be laid before the legislature but that the legislature should also have statutory right of annulling or modifying them. With that end in view every Bill introduced in the House or transmitted by Rajya Sabha is examined by the Committee to see whether it contains a provision for laying and modification of rules on the lines approved by the Committee. In its Fourteenth Report (Fifth Lok Sabha), the Committee has desired that a provision for laying of rules should be incorporated even in old Acts providing for rule-making power which do not contain such a provision.

6. Under Direction 103A, the Speaker may refer a Bill containing provisions for delegation of legislative powers to the Committee on Subordinate Legislation. When a Bill is so referred, the Committee is required to examine, *inter alia* the extent of the powers sought to be delegated; and if the Committee is of opinion that the provisions contained in the Bill delegating legislative powers should be annulled in whole or in part, or should be amended in any respect it may report that opinion and the grounds therefor to the House before the Bill is taken up for consideration in the House. The Members of this Committee owe a special responsibility to see that full use is made of this Direction. For this, they will have to be ever-watchful. If they find that any Bill introduced in the House seeks to make excessive or abnormal delegation of powers, they may raise the matter in the House or approach the Hon'ble Speaker for referring it to our Committee under this Direction.

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

- (i) It is a well-known maxim that no fee can be levied under a rule unless the parent Act expressly authorises such a

levy. However, the Committee has, from time to time, come across cases where fees had been levied under the rules without an express authorisation in the parent law. In such cases, the Committee has invariably been insisting that either the provision for fee in the rules should be omitted or alternatively Government should come before Parliament for obtaining an express power for the levy of the fee through an amendment of the relevant Act.

- (ii) Sometimes for ensuring compliance with the provisions of the law, the power of search and seizure has to be vested in the Executive. The Committee has desired that in such cases, not only the minimum rank of the Government officer empowered to exercise the power should be specified but that such safeguards as presence of witnesses, preparation of inventories and giving a copy thereof to the persons concerned should be provided for in the Rules.
- (iii) There is another well-known maxim that a delegate cannot sub-delegate his legislative power unless there is an express authorisation to that effect in the parent law.

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

8. The root of abuse of subordinate legislation lies in unfettered, unguided discretionary powers. The principal function of the Committee is to see that adequate safeguards are provided against the possible abuse of such powers. The Committee has made a number of recommendations to this end. The following are some of the broad principles underlying the recommendations of the Committee:

- (i) As far as possible, guidelines/criteria to be followed by the authority vested with the discretionary powers should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm, it should be required to record in writing the reasons for such deviation.
- (iii) In order that the persons similarly placed are not treated differently, the powers of exemption/relaxation should be exercisable in respect of 'categories or classes of persons', as contra-distinguished from individuals.

- (iv) Before any adverse action is taken against a party, it should be given a reasonable opportunity of being heard, and after a decision adversely affecting a party has been taken, it should have the right of appeal or representation, as the case may be.
- (v) In cases where an authority is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (vi) The provisions of rules which may make a citizen liable to a penalty should be well-defined, and not worded vaguely. [The expressions such as 'reasonable distance', 'adequate space' and 'adequate height' contained in the Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970 were objected to by the Committee who insisted that the bye-laws should be amended to indicate precise measurements.]
- (vii) In cases of rules relating to disciplinary proceedings, not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority also laid down in the rules.
- (viii) The conditions of service should be determined through statutory rules and not through executive Orders. The executive Orders are not published in the Gazette and therefore, do not come to the notice of the Committee for scrutiny.

9. The Committee is concerned not merely with legality of the rules. It bears in mind that the ultimate aim of all legislation (including subordinate legislation) is the larger public good. The Committee, therefore, sees that the subordinate legislation framed by the executive not only does not transgress the limits laid down in the parent law but it also conforms to the canons of equity and natural justice and does not result in unnecessary harassment to the general public.

10. I will now refer to a few important recommendations which the Committee have made during last year.

- (i) In their Sixth Report (First Lok Sabha) the Committee had recommended that when an Act gives a right to the public to send their comments on draft rules, it is only

reasonable that sufficient time should be given to the public to study the draft rules and send their objections/suggestions on their provisions. With this end in view, the Committee had recommended that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette copies to various parts of the country should be given to the public to send their comments on such draft rules. Although the Committee had made their recommendation as far back as December, 1956 cases continue to come to the notice of the Committee where a period of less than 30 clear days has been given to the public to send their comments. In their First Report (Sixth Lok Sabha) presented to the House on the 16th July, 1977 the Committee have noticed 11 such orders and reiterated their earlier recommendation.

- (ii) Whenever a statutory law provides a right of appeal to an aggrieved person, it is to be seen that this right should not be just illusory. In their Second Report (Sixth Lok Sabha) presented on 18th November, 1977, the Committee have recommended that a reasonable time limit should be provided in the rules for filing an appeal.
- (iii) The Committee have time and again deprecated delay in laying of 'Orders' on the Table of the House. In their Third Report (Sixth Lok Sabha) presented on the 14th December, 1977, the Committee noticed that cases of inordinate delays in laying still continue to occur. Such delays result in depriving Parliament of their statutory right of modification/annulment for unduly long periods. The Committee have re-stressed upon Ministries/Departments that delays in laying are against the relevant provisions of Acts which require that the 'Orders' should be laid before Parliament as soon as possible, after they are made. The Committee have also heard the oral evidence of the Secretaries of the concerned Ministries/Departments to explain the delay in cases where it exceeded 6 months.
- (iv) When an Act provides for the rules to be laid before Parliament, the regulations framed thereunder should also be subject to the same conditions. With this end in view, the Committee in para 26 of their Seventh Report (Sixth Lok Sabha) have recommended to all the Ministries/Departments of Government to examine all Acts delegating

power to make regulations with which they are administratively concerned and to incorporate suitable provisions for laying them before Parliament in those Acts which do not contain such provisions at present.

- (v) One of the functions of the Committee is to examine whether an 'Order' gives retrospective effect to any of the provisions without such express authorisation for it in the parent law. A law made by a Legislature may itself empower subordinate legislation to be operative retrospectively. Without such a law, no Subordinate Legislation can have any retrospective effect. Even in cases where Government have power to give retrospective effect to subordinate legislation, the Committee have recommended that such effect should be given only in unavoidable circumstances and, when given it should be accompanied by an explanatory memorandum affirming that no one is likely to be adversely affected as a result of retrospective effect.

11. A special feature of the work done by the Committee last year was presentation of an exclusive action-taken Report—Eighth Report. Since the inception of the Committee in 1954, only once before, the Committee had presented such an action-taken Report—Tenth Report (Fifth Lok Sabha).

12. During last year the Committee held nineteen sittings and considered 116 Memoranda. They presented nine Reports to the House which was a record for the number of Reports presented during a year.

13. The last Committee had also considered the issue of laying of Rules framed by State Governments under Central Acts before the State Legislature/Parliament. That matter will in due course be placed before this Committee for decisions.

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

15. Before I conclude, I would like to stress that, in discharging our duties, we would not be acting in hostility to the Executive.

Our job is the implementation of the will of Parliament and our efforts should be complementary.

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

Thank you.

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)
(1978-79)

The Committee met on Monday, the 3rd July, 1978 from 15-30 to 16-15 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri B. K. Nair
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri G. S. Reddi
8. Shri P. A. Sangma
9. Shri Madan Lal Shukla
10. Shri Sachindralal Singha
11. Shri Ramji Lal Suman
12. Shri Krishnarao Thakur
13. Shri C. N. Visvanathan

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 122 to 131 on the following subjects:—

S.No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	122	The Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 (G.S.R. 288 of 1975).
(ii)	123	The Coal Mines (Conservation and Development) Rules, 1975 (G.S.R. 184-E of 1975).
(iii)	124	The University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 (G.S.R. 295 of 1976).
(iv)	125	The Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 (G.S.R. 1734 of 1976).
(v)	126	The Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) Regulations, 1977 (Notification No. FI(17) 74-M.P. dated the 15th January, 1977).
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(i) *The Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 (G.S.R. 288 of 1975)—(Memorandum No. 122).*

3. The Committee considered the above Memorandum and noted from the reply of the Department of Science and Technology that the rules sought to be repealed by rule 6 of the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975, had not been formally notified in the form of statutory rules. The Committee felt that such rules as were not put on statutory footing automatically ceased to be in operation after notification of statutory rules and there was no necessity to repeal them by a specific provision in the statutory rules. The Committee, therefore, desired the Department to delete rule 6 of the above Rules and issue necessary amendment in this regard at an early date.

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

(ii) *The Coal Mines (Conservation and Development) Rules, 1975* (G.S.R. 184-E of 1975)—(Memorandum No. 123).

(A)

4. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Energy that the provision of rule 6 was based on Section 70 of the Contract Act which was a general law of the country and as such it was not necessary to incorporate any provision in this regard in the Act itself. The Committee felt that the power to recover the cost of operations undertaken by Government for the benefit of coal mine owners should flow from an express provision in the Coal Mines (Conservation and Development) Act, 1974 and not the Rules framed thereunder. The Committee noted in this regard that the Ministry of Law had no objection to include a provision enabling the framing of such a rule in the Act. The Committee desired the Ministry of Energy (Department of Coal) to bring the amending legislation for the purpose at an early date.

(B)

5. The Committee were not satisfied with the reply of the Ministry of Energy that sub-rule (11) of Rule 8 was relatable to Section 8 of the Coal Mines (Conservation and Development) Act, 1974 which provides that the duties of excise shall be collected in such manner as may be prescribed. The Committee felt that the provision to recover dues of excise duty as arrears of land revenue, being in the nature of a extreme remedy, was a substantive provision which was generally provided for in the Act itself rather than in the rules framed thereunder. The Committee, therefore, desired the Ministry of Energy to delete sub-rule (11) of Rule 8 and incorporate its provision in the Coal Mines (Conservation and Development) Act, 1974 by amending the same at an early date.

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(iii) *The University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976* (G.S.R. 295 of 1976)—(Memorandum No. 124).

7. The Committee considered the above Memorandum and noted that the Ministry of Education and Social Welfare (Department of Education) had admitted in their reply that the University Grants Commission Act did not provide for giving retrospective effect to the rules. The Ministry had also conceded that the retrospective effect given to the above rules was without due legal authority. The Committee emphasised in this connection that mere mention of the cir-

circumstances in the explanatory memorandum necessitating retrospective effect to the rules or there being no likelihood of retrospective action being challenged in a court of law did not impart legal authority to give retrospective effect to the rules. The Committee felt that in the absence of due legal authority for retrospective effect, the contention of the Ministry that no procedural or financial irregularity had been committed was untenable.

8. The Committee noted that the Ministry had agreed to incorporate a provision in the University Grants Commission Act to empower the Government to give retrospective effect to the Rules. They desired the Ministry to bring amending legislation for the purpose by the end of this year. The Committee further desired the Ministry to make provision in the Act for validation of the rules already made and given retrospective effect.

(iv) *The Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 (G.S.R. 1734 of 1976) — (Memorandum No. 125).*

(A)

9. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to delete rule 5 from the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, and embodying its provision in the Indian Lighthouse Act, 1927 itself. The Committee desired the Ministry to bring forth the amending Bill preferably by the end of this year.

(B)

10. The Committee noted that, on being pointed out, the Ministry of Shipping and Transport had agreed to amend Rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, so as to provide for an opportunity of being heard to a body or association before its representation on the Committee was suspended or terminated.

11. The Committee approved the amendment proposed to be made in this regard and desired the Ministry to issue the same at an early date.

(v) *The Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) Regulations, 1977 (Notification No. F.1(17)74-M.P. dated the 15th January, 1977) — (Memorandum No. 126).*

12. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Works and Housing had

agreed to amend sub-regulation (4) of Regulation 1 of the above regulations so that it did not give an impression of ousting the jurisdiction of courts.

13. The Committee approved the amendment proposed to be made in this regard and desired the Ministry to issue the same at an early date.

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The Committee then adjourned to meet again on the 20th July, 1978.

MINUTES OF THE TWENTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Thursday, the 20th July, 1978 from 15-30 to 16-00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri Ram Sewak Hazari
4. Kumari Maniben Vallabhbhai Patel
5. Shri G. S. Reddi
6. Shri Saeed Murtaza
7. Shri P. A. Sangma
8. Shri Sachindralal Singha
9. Shri Krishnarao Thakur

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Kumari Maniben Vallabhbhai Patel to present the Tenth Report to the House on their behalf on the 25th July, 1978.

The Committee then adjourned to meet again on the 3rd August, 1978.

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