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COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2010-2011)

EIGHTEENTH REPORT

[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS/
OBSERVATIONS CONTAINED IN FOURTH REPORT (FIFTEENTH LOK SABHA)]

(PRESENTED ON 3.8.2011)

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LOK SABHA SECRETARIAT

NEW DELHI

August, 2011/Sravana, 1933 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2010-2011)

1. **Shri P. Karunakaran** **Chairman**

2. Shri Paban Singh Ghatowar *

3. Shri Rajen Gohain

4. Shri D.B. Chandre Gowda

5. Shrimati Paramjit Kaur Gulshan

6. Shri Jitender Singh Malik

7. Shri Mangani Lal Mandal

8. Shri Pinaki Misra

9. Dr. Sanjeev Ganesh Naik

10. Shri Rajaram Pal

11. Shri Anantha Venkatarami Reddy

12. Shri Hamdullah Sayeed

13. Shri Adhalrao Patil Shivaji

14. Dr. Rajan Sushant

15. Shri Madhu Goud Yaskhi

SECRETARIAT

- | | | | |
|----|-------------------------|---|----------------------------|
| 1. | Shri Raj Shekhar Sharma | - | Joint Secretary |
| 2. | Shri J.S. Chauhan | - | Director |
| 3. | Shri Devi Dayal | - | Senior Committee Assistant |

*ceased to be a member of the Committee on being appointed as Minister in Union Cabinet on 12 July, 2011

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Eighteenth Action Taken Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Fourth Report (2009-2010) (Fifteenth Lok Sabha) which was presented to Lok Sabha on 16.3.2010.

3. The Committee considered and adopted this Report at their sitting held on 3.6.2011.

4. The summary of recommendations contained in the Fourth Report (15th Lok Sabha) and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

5. Extracts from the Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

6. An analysis of the action taken by Government on the recommendations contained in the Fourth Report of the Committee (15th Lok Sabha) is given in Appendix III.

New Delhi;
August, 2011
Sravana, 1933 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Fourth Report (Fifteenth Lok Sabha) which was presented to Lok Sabha on 16.3.2010. The Fourth Report dealt with the following Chapters: -

- I. Infirmities in the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568-E of 2008).
- II. Delay in final publication and vagueness in the Drug and Cosmetics (First Amendment) Rules, 2008 (GSR 512-E of 2008).
- III. The Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition Issues) Rules, 2008 (GSR 727-E of 2008).

2. The shortcomings observed during scrutiny of the rules mentioned above were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The Ministries concerned have accepted those shortcomings and have rectified the same. A statement showing the Action Taken by the Government on the recommendations contained in the Fourth Report is given in Appendix-I.

3. **The Committee note with satisfaction that all the five recommendations contained in the Fourth Report (Fifteenth Lok Sabha) have been accepted by the Government. The Committee appreciate the Government's action in issuing two corrigenda and carrying out one amendment to rectify the lacunae observed in the rules in accordance with three recommendations (Para Nos. 1.6, 2.7 and 3.3) of the Committee contained in the Report. With regard to the remaining two recommendations (Para Nos. 1.4 and 2.4) of the Committee pertaining to delay in publication of rules, the Government have noted Committee's recommendation for future compliance with the assurance that efforts will be made for timely publication of the rules in the future. The Committee expect that the Government would live up to their words in letter and spirit.**

New Delhi;
August, 2011
Shravana, 1933 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

APPENDIX – I

(vide Para 4 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE FOURTH REPORT OF THE COMMITTEE (15th Lok Sabha)

I. Infirmities in the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568-E of 2008).

Recommendation (Para 1.4)

The Committee note that the Extraordinary Gazette contains important notification which should be published the day they are sent for publication. The Committee hope that the Ministry, as assured in their reply, would take care in future to have such Extraordinary Notifications notified in the Gazette on the same date keeping in view their importance and urgency. The Committee however emphasize that Ministry should evolve measures for inbuilt checks and improve co-ordination to eliminate such delays.

Reply of the Ministry

This Department would take care in future to have the Extraordinary Notifications notified in the Gazette on the same day keeping in view their importance and urgency. This Department has already circulated the above recommendations to all the sections and ILS Officers of this Department with the request to adhere to the same. The Report was also forwarded to the Legislative Department, which has also circulated the above recommendations to all ILS Officers of that Department and to all Ministries and Department of Government of India.

[Ministry of Law and Justice (Department of Legal Affairs)
OM No. 29(02)/2010-Judl. dated 4.5.2010]

Recommendation (1.6)

The Committee note that the Ministry of Law & Justice (Department of Legal Affairs) have stated to have no objection to amend the Law Officers (Conditions of Service) Amendment Rules, 2008 (GSR 568- E of 2008) by inserting in the footnote that “no one will be adversely affected as a result of ‘retrospective effect’ being given in the amendment” and they are taking necessary steps in this direction. The Committee, however, failed to understand as to what prohibited the Department to take this step earlier despite the Committee’s repeated recommendations to this effect. This clearly shows the Ministry’s lackadaisical attitude in implementing the recommendations of the Committee. The Committee, therefore, urge the Ministry of Law and

Justice (Department of Legal Affairs) to scrupulously follow the recommendation of the Committee on Subordinate Legislation while framing such rules in future.

Reply of the Ministry

This Department would scrupulously follow the recommendations of the Committee on Subordinate Legislation while framing such rules in future. It is further submitted that this Department has already taken the necessary action to get a corrigendum issued vide Corrigendum dated 24th December, 2009 for inserting Explanatory Memorandum to the GSR No. 568(E) dated 18th July, 2008 pertaining to Law Officers (Condition of Service) Amendment Rules, 2008, as per the recommendation of the Committee on subordinate Legislation (Lok Sabha).

[Ministry of Law and Justice (Department of Legal Affairs)
OM No. 29(02)/2010-Judl. Dated 4.5.2010]

II. Delay in final publication and vagueness in the Drug and Cosmetics (First Amendment) Rules, 2008 (GSR 512-E of 2008)

Recommendation (Para 2.4)

The Committee seriously note that the Ministry of Health and Family Welfare had published the Drugs and Cosmetics (First Amendment) Rules, 2008 in final form after a delay of more than one year in utter disregard to the oft-repeated recommendation of the Committee that the rules, in final form, should be published within six months when large number of objections and suggestions are received on the draft rules and within three months when no objection/suggestion is received on the same. The Committee observe that Ministry could have easily adhered to the time limit recommended by the Committee for final notification of the above said Rules had they streamlined their functioning and made serious efforts in this direction.

Reply of the Ministry

The Department of AYUSH has noted the recommendation made by the Committee on Subordinate Legislation. Efforts will be made in future for printing final notification as per the time limits prescribed by the Committee on Subordinate Legislation.

[Ministry of Health and Family Welfare (Department of Ayurveda Yoga and Naturopathy, Unani, Siddha and Homeopathy) (AYUSH)
No. K. 11020/2/2006 – DCC (AYUSH) dated 31.3.2010]

Recommendation (Para 2.7)

The Committee note that rule 157 A lacked clarity as to whether each manufacturing unit of Ayurveda or Siddha or Unani drugs is required to keep record of raw material used by each licensed unit which are manufacturing Ayurveda or Siddha or Unani drugs. At the same time, they would like the Ministry to be well aware that the lack of clarity in rules vitiates the purpose of delegated legislation and harms the interest of the general public at large. The Committee note with satisfaction that the Ministry have agreed to amend the rules in order to remove the ambiguity and also other minor typographical errors pointed out by the Committee. The Committee recommend that the Ministry of Health and Family Welfare should bring about the related amendments as soon as possible. The Ministry should be cautious while bringing out amendments and framing of rules under delegated legislation and make efforts to avoid ambiguity.

Reply of the Ministry

The Department of AYUSH accepts the ambiguity and typographical errors which was pointed out by the Committee on the Subordinate Legislation. The Department of AYUSH have taken action accordingly and the corrigendum was published on 20/10/2009 vide GSR No. 765 (E) with the approval of Department of Legislative and Competent Authority of the Department of AYUSH and was sent to Lok Sabha Secretariat on 1st Feb., 2010.

[Ministry of Health and Family Welfare (Department of Ayurveda Yoga and Naturopathy, Unani, Siddha and Homeopathy) (AYUSH)
No. K. 11020/2/2006 – DCC (AYUSH) dated 31.3.2010]

III. The Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition issues) Rules, 2008 (GSR 727-E of 2008).

Recommendation (Para 3.3)

The Committee note that the Rule 3 of the Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition issues) Rules, 2008 (GSR 727-E of 2008) provides that the Commission has to furnish on completion of every year the return and statements in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues to the Central Government. The decision of the Central Government thereon shall be binding on the Commission. The Committee are of the strong opinion that the phrase “the decision of the Central Government shall be binding on the Commission” leaves an impression that the jurisdiction of the Courts of Law is being ousted. As informed, the Committee understand that the Rule provides for unforeseen aspects on which the return may be required by the Central

Government and on a reference made to it, the Central Government decides the matter. However, the phrase, in question, is not acceptable to the Committee. They, therefore, emphasise that as assured, the wordings 'the decision of the Central Government thereon shall be binding on the Commission' found mention in Rule 3(5) should be deleted forthwith or amended suitably.

Reply of the Ministry

The Competition Commission of India (Return on Measures for the promotion of competition Advocacy, Awareness and Training on Competition issues) Rules, 2008 have been amended vide Notification No. GSR 445 (E) dated 24th May, 2010 a copy of which, is enclosed. A copy of the same was also laid on the Table of Lok Sabha and Rajya Sabha on 05.08.2010 and 09.08.2010 respectively.

[Ministry of Corporate Affairs O.M. No. 5/28/2007-IGC/CS dated 15.1.2011]

APPENDIX-II

(vide Para 5 of Introduction of the Report)

EXTRACTS FROM THE MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2010-2011)

The Committee sat on Friday, the 3rd June, 2011 from 1130 to 1230 hours in
Committee Room No. 62, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri Mangani Lal Mandal
5. Shri Pinaki Misra
6. Shri Rajaram Pal
7. Dr. Rajan Sushant
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri J.S. Chauhan - Director
2. Shri S.C. Kaliraman - Additional Director

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3. The Committee, then, took up for consideration the draft 'Eighteenth Action Taken Report' and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House

4. XX XX XX

5. XX XX XX

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.

APPENDIX-III

(vide para 6 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE FOURTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	5
II.	Recommendations that have been accepted by the Government [<u>vide</u> recommendations at Sl. Nos. 1.4, 1.6, 2.4 2.7, & 3.3]	5
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV.	Percentage of recommendations accepted	100%