

COMMITTEE ON SUBORDINATE
LEGISLATION

FIFTH REPORT
(SECOND LOK SABHA)

(Presented on the 5th May, 1959)



LOK SABHA SECRETARIAT
NEW DELHI

May, 1959

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1958-59)

1. Sardar Hukam Singh—*Chairman*.
2. Shri J. M. Mohamed Imam.
3. Shri Phani Gopal Sen.
4. Shri Ajit Singh Sarhadi.
5. Shri K. S. Ramaswamy.
6. Shri Sinhasan Singh.
7. Shri Jitendra Nath Lahiri.
8. Shri Bahadur Singh.
9. Shri T. N. Viswanatha Reddy.
10. Shri Aurobindo Ghosal.
11. Dr. A. Krishnaswami.
- *12. Shri Braj Raj Singh.
- †13. Shri Ghansyamlal Oza.
14. Shri Kanhaiyalal Bherulal Malvia.
15. Shri T. C. N. Menon.

SECRETARIAT

Shri N. N. Mallya—*Deputy Secretary*.

Shri A. L. Rai—*Under Secretary*.

*Resigned with effect from the 18th March, 1959.

†Nominated with effect from the 18th February, 1959 *vice* Shri Thakur Das Malhotra
died.

I

INTRODUCTION

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

2. Subsequent to the presentation of the Fourth Report the Committee have held three sittings and considered 371 new 'Orders'. The Committee also considered the 'Orders' that were pending final disposal at the time of presentation of the Fourth Report. At the sitting held on the 30th April, 1959, the Committee considered and passed this Report.

3. Observations of the Committee on matters of special interests made during the course of their examination of the 'Orders', matters which required to be brought to the notice of the House as well as the recommendations of the Committee have been included in this Report.

II

AMENDMENT TO THE DISPLACED PERSONS (COMPENSATION AND REHABILITATION) RULES, 1955 (G.S.R. 780 OF 1958)

4. G.S.R. 780 of 1958 was issued under section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It made amendments to Rule 122 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, increasing the rates of fees payable in respect of appeals and applications under various sections of the Act.

5. In this connection, the following two points were referred to the Ministry of Rehabilitation for clarification:—

- (1) The levy of fees as laid down by Rule 122 of the original rules did not seem to be authorised by any specific provision in the parent Act.
- (2) The increase in the rates of fees from Re. 1 and Rs. 2 to Rs. 15 and Rs. 20 respectively appeared to be high.

6. The Ministry in their reply to the Committee sought to justify the levy of fees as prescribed in Rule 122 on the following grounds:—

- (i) That section 40 of the parent Act under which the rules were framed empowered the Government to carry out the purposes of the Act and that sub-section 2(1) thereof further authorised the Government to prescribe the forms and manners in which applications for review and revision might be preferred and also to prescribe procedure for hearing of such appeals;
- (ii) that the rule in question did not impose a tax but levied only a fee;
- (iii) that Parliament was deemed to have approved the rules as they were laid before both Houses of Parliament for a period of 30 days as required by section 40(3);
- (iv) that no person ever questioned the validity of prescribing fees;
- (v) that the cases adjudicated upon by the Officers of the Chief Settlement Commissioner's Organisation relating to payments of compensation could be compared to declaratory or money suits filed in civil courts and that the enhanced rates of fees compared favourably with the fees charged for appeals in civil courts;
- (vi) that the rates of fees were enhanced, in consultation with the Advisory Board attached to the Ministry of Rehabilitation, in order to prevent appeals and revisions on frivolous grounds. The fees were certainly not so high as to prove a burden to a person who was genuinely aggrieved.

7. The Committee have considered the Ministry's reply. The Committee are of the view that a fee could not be levied by rules without any specific power being given in that behalf by the parent Act.

8. The Committee are also of the opinion that mere laying of rules on the Table of the House for a specified period does not amount to their approval which could only be achieved by bringing forth an affirmative motion in the House in that behalf.

9. In the present case the Committee feel that if the Government consider it necessary to levy fees the Act ought to be amended accordingly.

III

BYE-LAWS FOR RENDERING NECESSARY THE LICENCES FOR THE USE OF PREMISES WITHIN THE SAUGOR CANTONMENT AS STABLES, CATTLE SHEDS ETC. FOR PROFIT.

10. Bye-law 2 of the above bye-laws authorises the Cantonment Board to charge fees and impose conditions for the issue and renewal of licences issued thereunder.

11. In the preamble to the above bye-laws published in the Gazette it was cited that the bye-laws were framed under clause (37) of section 282 of the Cantonments Act, 1924 but the said clause (37) did not authorise the Board to levy such fees for the issue of licences. However, it was noted that it was sub-section (4) read with clauses (c) and (d) of sub-section (1) of section 210 and clause (16) of section 282 of the Cantonments Act, 1924 that gave the necessary authority to the Board to provide for such matters in the bye-laws.

12. The Ministry of Defence, to whom it was suggested that in the preamble to the bye-laws besides quoting the authority of clause (37) of section 282, the authority of section 210 and clause (16) of section 282 of the Cantonments Act, should have been cited, have assured to amend the preamble accordingly.

13. The Committee note the assurance given by the Ministry.

IV

THE PORT OF COCHIN (LANDING AND SHIPPING FEES AND WHARFAGE) RULES, 1958 (G.S.R. 464 OF 1958)

14. The Port of Cochin (Landing and Shipping Fees and Wharfage) Rules, 1958 were framed under sections 4 and 6 of the Madras Outport Landing and Shipping Fees Act, 1885.

15. Rule 6(2): This rule provides that no refund of landing or shipping fees would be made in respect of goods lost overboard or jettisoned within the limits of the Port.

16. In view of the provisions contained in clause (1) of the said rule which provides for refund of landing and shipping fees in case of

short landings or short shipment, it appeared unreasonable not to allow refund in respect of goods which were lost overboard or jettisoned within the Port limits, especially in case of landing fees.

17. Regarding shipping fees, the Ministry of Transport and Communications replied that the question of refund of the fees in the event of goods being stolen or jettisoned within the port limits, did not arise as the services for which the fees were realised would already have been performed by the Port prior to the shipment of the goods.

18. In regard to refund of landing fees the Ministry replied as under:—

“.....although it may seem unreasonable to deny refund of landing fees on the ground that the goods lost overboard or jettisoned within the limits of the Port are not actually landed, it has to be remembered that the owners can salve and claim them as salvaged goods without having to pay the landing fees legitimately due to Port. Therefore, there is adequate justification for disallowing refund of landing fees in such cases.....”

19. The Committee are not convinced with the Ministry's arguments because there is no certainty that in all cases the owners will be able to salve the goods wholly or partially.

20. The Committee, therefore, feel that in case of goods thrown overboard, or jettisoned but not salvaged, the landing fees should be refunded as no services are rendered by the Port authorities. However, in cases where the goods are salvaged and landed within the Port limits, the landing fees may be charged *pro rata*.

21. The Committee, however, accept the explanation of the Government in respect of shipping fees.

22. Rule 9: This rule as published in the Gazette read that the Port Administration would not portage at the Wharf “the underlined” items and that the owners have to make their own arrangements for handling them at their expense and risk. It was noticed that no items in the rules were underlined and thus the rule was not clear.

23. The Committee note that the Ministry, on being pointed out, have rectified the mistake through a corrigendum (G.S.R. 615 of 1958).

V

BYE-LAWS REGULATING THE HOLDING OF PUBLIC MEETINGS AND USE OF MICROPHONES IN THE KANPUR CANTONMENT (S.R.O. 98 OF 1936).

24. The above bye-laws were made by the Kanpur Cantonment Board in pursuance of the powers conferred by sections 282 and 283 of the Cantonments Act, 1924. Bye-law 3 thereof provided for imposition of a penalty upto Rs. 200 for breach of the bye-laws; but section 283 of the Cantonments Act authorised the Cantonment Board to provide for the imposition of maximum penalty upto Rs. 100 only. Thus bye-law 3 was beyond the bye-law making powers of the Cantonment Board.

25. The Committee note that, on being brought to the notice of the Ministry of Defence, the bye-law in question has been amended to provide for a maximum penalty of Rs. 100 which is within the limit prescribed by section 283 of the Cantonments Act, 1924 (S.R.O. 77 of 1959).

VI

THE INDIAN ELECTRICITY (AMENDMENT) BILL, 1958—INSERTION OF PROVISION FOR LAYING OF RULES MADE THEREUNDER BEFORE PARLIAMENT.

26. The above amending Bill or the principal Act, i.e., the Indian Electricity Act, 1910 did not contain any provision for laying of rules framed thereunder before the Houses of Parliament.

27. As the Bill was referred to a Joint Committee of both the Houses, the omission was brought to the notice of the Joint Committee and a suitable provision was incorporated in the Bill.

The Committee note the action taken in the matter.

VII

THE DELHI PANCHAYAT RAJ (AMENDMENT) BILL, 1958 AND THE DELHI LAND REFORMS (AMENDMENT) BILL, 1958—INSERTION OF PROVISIONS FOR LAYING OF RULES MADE THEREUNDER BEFORE PARLIAMENT.

28. In the above Bills as introduced in the Lok Sabha or the respective principal Acts, there was no provision for laying of rules

framed thereunder before Parliament, as recommended by the Committee in paras 78-79 of their Sixth Report, First Lok Sabha.

29. The Committee note that the necessary provisions for laying of the rules before Parliament in the said Bills have been inserted during the clause by clause consideration of the Bills.

VIII

RULES FRAMED UNDER SECTION 42 OF THE INDUSTRIAL FINANCE CORPORATION ACT, 1948

30. Sections 42 and 43 of the Industrial Finance Corporation Act, 1948 empower the Central Government and the Board of Directors of the Industrial Finance Corporation to frame rules and regulations respectively. While the regulations framed by the Board are required to be published in the Official Gazette and laid before Parliament under section 43, there is no such provision with regard to the rules framed by the Central Government under section 42 of the Act.

31. The Committee had already in paras 78-79 of their Sixth Report, First Lok Sabha, recommended that all rules made by Government should be laid before Parliament and be subject to modification. The Committee, therefore, recommend that when the Government bring forward a Bill amending the Industrial Finance Corporation Act, 1948, they ought to incorporate suitable provisions in the Bill to amend section 42 of the principal Act to provide:

- (i) that the rules framed by Government thereunder shall be published in the Official Gazette; and
- (ii) that the rules shall be laid before Parliament for 30 days and shall be subject to modification by Parliament.

The Committee also recommend that pending the amendment to the Act the rules framed by the Central Government under section 42 thereof ought to be published in the Official Gazette and laid before both Houses of Parliament.

IX

NON-EXERCISE OF RULE MAKING POWER DELEGATED UNDER THE ACTS BY GOVERNMENT

32. It has been brought to the notice of the Committee that in the case of certain Acts, the rule making power was not exercised at all

by the Government, while in some other Acts the rules were framed after inordinate delay. It was not clear to the Committee how the Acts which provided for certain matters to be regulated by rules, were administered in the absence of any rules.

33. In this connection, the Committee considered the question whether it was desirable to impose any time limit within which rules should be framed under an Act. The Committee also had the benefit of the views of the Government on this question.

34. The Committee consider that ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months. If no rules are framed within a reasonable period after the commencement of the Act the Committee will take up the matter with the Ministry concerned and report to the House the cases where it is felt that undue delay has occurred in framing the rules.

35. It has also been brought to the notice of the Committee that there are several instances, where rule-making power delegated to State Governments under the Central Acts has not been exercised by the State Governments. In this connection the Committee have decided that hereafter, if specific cases of non-exercise of rule-making power by a State Government under a Central Act are brought to the notice of the Committee, the Committee would favourably consider the question of referring such cases to the Central Government for taking up the matter with the State Government concerned.

X

LAYING OF RULES FRAMED BY STATE GOVERNMENTS UNDER A CENTRAL ACT BEFORE THE STATE LEGISLATURES

36. The Poisons Act, 1919 empowered the Central Government as well as the State Governments to frame rules thereunder but there was no provision for laying the rules made by the Central Government or the State Governments before respective legislatures.

37. During the clause by clause consideration of the Poisons (Amendment) Bill, 1958, Shri T. N. Viswanatha Reddy, a member of the Committee on Subordinate Legislation, moved an amendment to the effect that the principal Act be amended to provide for laying of rules made thereunder by the State Governments and the Central

Government before the State Legislatures or the Houses of Parliament as the case may be for 30 days and should be subject to modification by the respective legislatures.

38. In respect of this amendment a doubt was expressed whether such a provision as far as State Legislatures are concerned could be made in a Central Act.

39. The Committee noted that several existing Central Acts on the subjects falling under 'Concurrent List' provided for laying of the rules framed thereunder by State Governments before the respective State Legislatures e.g., the Industrial Disputes Act, 1947, the Hindu Marriage Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956, the Probation of Offenders Act, 1958 etc.

40. The Committee are of opinion that Central Acts can provide for laying the rules framed thereunder by the State Government before the respective State Legislatures.

XI

GOVERNMENT'S PROPOSAL FOR REVISING THE EXISTING CLAUSE IN BILLS PROVIDING FOR THE RULES ETC. TO BE LAID ON THE TABLE

41. In pursuance of an earlier recommendation* of the Committee the Government now incorporate a clause on the following lines in all Bills which involve delegation of legislative powers:

"All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following."

42. The Department of Parliamentary Affairs intimated the Committee that the Government would like to change the wordings of the clause quoted above in order to make the following points clear:

- (i) That the rules shall be laid before the Houses of Parliament for a period of 30 days which may be completed in one or more sessions;

* See para 36 of Third Report and paras 78-79 of Sixth Report, Committee on Subordinate Legislation, First Lok Sabha.

- (ii) that Parliament can modify the rules within the period of 30 days during which the rules remain on the Table of the Houses;
- (iii) that if any modification is made in the rules by Parliament such modification shall not affect the previous operation thereof;
- (iv) that if the rules are laid before the Houses of Parliament on different dates, the period of 30 days shall run from the later date;
- (v) that the rules shall take effect immediately.

43. The reasons given by the Government for the proposed change are:

- (i) that in the absence of any specific provision in the Acts that the 'laying period' shall be completed in one session or more, the rules are very often required to be re-laid under sub-rule (2) of Rule 234 of the Rules of Procedure of Lok Sabha. This entails considerable administrative difficulties.
- (ii) that the Supreme Court *in re: Kerala Education Bill* made an *obiter dicta* to the effect that the rules required to be laid before the Legislature become operative after they are so laid for the stipulated period.

This observation of the Supreme Court has created doubt as the view hitherto held by various High Courts and the Ministry of Law has been that the laying requirement is merely directory and the rules become operative as soon as they are published in the Gazette.

44. The Committee have considered the matter carefully and feel that in order to give adequate time to Members of Parliament to study the rules and give notices of amendments, the existing condition that rules shall be subject to such modifications as Parliament may make "during the session in which they are so laid or the session immediately following" should be retained in the proposed clause. The Committee have no objection to the other changes being made in the clause as proposed by the Government.

XII**DELAY IN LAYING 'ORDERS' ON THE TABLE**

5/2

45. The Committee note with regret that a number of 'Orders' were laid on the Table of the House after considerable delay. A statement of such 'Orders' is given in Appendix I.

46. The Committee would like to emphasise that all rules required to be laid before the House should be so laid within a period of 15 days after their publication in the Gazette, if the House is in session and if the House is not in session, the 'Orders' should be laid on the Table as soon as possible (but within 15 days) after the commencement of the following session.

XIII

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

47. The Committee considered the replies sent by the Government in respect of the action taken by the Government on various recommendations of, and assurances given to, the Committee.

48. The recommendations that have been accepted and the assurances implemented by the Government are given in Appendix II. Recommendations in respect of which the Government have given their own suggestions and such suggestions have been accepted by the Committee are given in Appendix III.

NEW DELHI;
The 4th May, 1959.

HUKAM SINGH,
Chairman,
Committee on Subordinate Legislation.

**SUMMARY OF RECOMMENDATIONS MADE IN THE FIFTH
REPORT OF THE COMMITTEE ON SUB ORDINATE LEGIS-
LATION (SECOND LOK SABHA)**

Serial No.	Reference to para. No. in the Report	Summary of Recommendations
1	8	(Mere laying of rules on the Table of the House for a specified period does not amount to their approval which could only be achieved by bringing forth an affirmative motion in the House in that behalf.)
2	9	If the Government consider it necessary to levy fees as has been done by rule 122 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, specific authority of Parliament in that behalf should be obtained and the Displaced Persons (Compensation and Rehabilitation) Act, 1954 amended accordingly.
3	19	In cases of goods thrown overboard, or jettisoned but not salvaged, the landing fee should be refunded under the Port of Cochin (Landing and Shipping Fees and Wharfage) Rules, 1958 as no services are rendered by the Port authorities. However, in cases where the goods are salvaged and landed within Port limits, the landing fees may be charged <i>pro rata</i> .
4	31	When the Government bring forward a Bill amending the Industrial Finance Corporation Act, 1948, they ought to incorporate suitable provisions in the Bill to amend section 42 of the principal Act to provide :— (i) that the rules framed by Government thereunder shall be published in the Official Gazette ; and (ii) that the rules shall be laid before Parliament for 30 days and shall be subject to modification by Parliament.

Serial No.	Reference to para No. in the Report	Summary of the Recommendations
		Pending the amendment to the Act the rules framed by the Central Government under section 42 thereof ought to be published in the Official Gazette and laid before both Houses of Parliament.
5	34	<p>(Ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months. If no rules are framed within a reasonable period after the commencement of the Act the Committee will take up the matter with the Ministry concerned and report to the House the cases where it is felt that undue delay has occurred in framing the rules.)</p> <p>②</p>
		Hereafter, if specific cases of non-exercise of rule making power by a State Government under a Central Act are brought to the notice of the Committee, the Committee would favourably consider the question of referring such cases to the Central Government for taking up the matter with the State Government concerned.
6	44	<p>(In order to give adequate time to Members of Parliament to study the rules and give notices of amendments, the existing condition that rules shall be subject to such modifications as Parliament may make "during the session in which they are so laid or the session immediately following" should be retained in the proposed clause in the Bills involving delegation of legislative power.)</p> <p>③</p>
7	46	<p>(Orders required to be laid before the House should be laid within a period of 15 days after their publication in the Gazette, if the House is in session and if the House is not in session the 'Order' should be laid on the Table as soon as possible (but within 15 days) after the commencement of the following session.)</p> <p>④</p>

APPENDICES TO THE REPORT

366(E) LS-3

APPENDIX I

(See para 45)

Statement of 'Orders' in respect of which there has been delay in laying on the Table

Serial No.	Name of 'Order'	Description of 'Order'	Date of publication in Gazette Table	Date of laying on the Table	*Delay approximately	Name of the Ministry concerned	Years		
							Months	Days	Days
1	2	3	4	5	6	7			
1.	G.S.R. 47 of 1958	Coir Industry (Registration and Licensing) Rules, 1958.	22-2-58	12-9-58	6	19	Ministry of Commerce and Industry.		
2.	G.S.R. 799 of 1958	Amendment to the Tea Rules, 1954.	13-9-58	17-11-58	2	3	Do.		
3.	G.S.R. 1107 of 1958	Amendment to the Textiles (Export) Control Order, 1949.	22-11-58	16-12-58		23	Do.		
4.	S.R.O. 2578 of 1957	The Customs Duties Drawback (Tele-Communication Equipment) Rules, 1957.	8-8-57	30-8-57		22	Ministry of Finance.		

*The inter-session periods have not been counted for delay in the case of those 'orders' which were published when the House was not in session and were laid on the Table during the session immediately following their publication in the Gazette.

1 2 3 4 5 6 7

5.	G.S.R. 773 of 1958	Amendment to the Medicinal and Toilet Preparations (Excise Duties) Rules 1956.	6-9-58	24-9-58	..	17	Ministry of Finance
6.	G.S.R. 806 of 1958	Amendment to the Central Sales Tax (Registration and Turnover) Rules, 1957.	1-10-58	2-12-58	..	21	Do.
7.	S.R.O. 1319 of 1957	The Fertilizer Control Order, 1957.	4-5-57	28-5-57	..	18	Ministry of Food and Agriculture.
8.	S.R.O. 3589 of 1957	Amendment to the Bombay Wheat (Movement Control) Order, 1956.	6-11-57	11-12-57	..	1	Do
9.	G.S.R. 886 of 1958	Amendment to the Manipur Food Grains (Movement Control) Order, 1956.	4-10-58	4-12-58	..	17	Do.
10.	G.S.R. 1009 of 1958	Amendment to the Bihar Food Grains (Movement Control) Order, 1957.	25-10-58	4-12-58	..	17	Do.
11.	G.S.R. 1048 of 1958	Amendment to the Rice and Paddy (West Bengal) Second Price Control Order, 1958.	29-10-58	4-12-58	..	17	Do.

12. G.S.R. 1050 of 1958	The West Bengal Wheat (Export Control) Order, 1958.	1-11-58	4-12-58	17	Do.	17	Ministry of Food and Agriculture.
13. G.S.R. 1051 of 1958	Imported Food Grains (Prohibition of Unauthorised Sale) Order, 1958.	1-11-58	4-12-58	17	Do.	17	Do.
14. G.S.R. 1129 of 1958	Amendment to the Delhi Roller Flour Mills (Atta Price Control) Order, 1958.	28-11-58	20-12-58	22	Do.	22	Do.
15. G.S.R. 1130 of 1958	Amendment to the Orissa Rice (Prohibition of Export) Order, 1957.	29-11-58	20-12-58	20	Do.	20	Do.
16. G.S.R. 672 of 1958	Amendment to the Ministers' (Allowances, Medical Treatment and other Privileges) Rules, 1957.	9-8-58	24-9-58	1	13	13	Ministry of Home Affairs.
17. G.S.R. 632 of 1958	Amendment to the Delhi Development Authority Rules, 1958.	26-7-58	18-11-58	3	7	7	Do.
18. Published in the Delhi Gazette.	Suppression of Immoral Traffic in Women and Girls (Delhi) Rules, 1958.	16-5-58	10-12-58	4	Do.	4	Do.
19. Published in the Tripura Gazette.	Suppression of Immoral Traffic in Women and Girls (Tripura) Rules, 1958.	18-11-58	10-12-58	21	Do.	21	Do.

1	2	3	4	5	6	7	
20.	G.S.R. 302 of 1958	Amendment to the Industrial Disputes (Central) Rules, 1957.	3-5-58	22-9-58	..	4	18 Ministry of Labour and Employment.
21.	S.R.O. 2436 of 1957	Amendment to the Mineral Concession Rules, 1949.	27-7-57	23-8-57	..	25	Ministry of Steel, Mines and Fuel.
22.	G.S.R. 1080 of 1958	Amendment to the Mining Leases (Modification of Terms) Rules, 1956.	15-11-58	5-12-58	..	18	Do.

APPENDIX II

(See para 48)

Recommendations/Assurances that have been accepted/implemented by Government

Serial No.	Reference to para No. in the Report	Summary of recommendations/assurances	Gist of Government's reply/action
1	2	3	4
1.	SECOND REPORT (First Lok Sabha) 8	The provision regarding the curtailment of the jurisdiction of the courts as provided in rule 6A of the Cinematograph (Censorship) Rules, 1951 (S.R.O. 85 of 1953) should more appropriately have been provided in the parent Act itself.	This has since been done by the Cinematograph (Amendment) Act, 1959.
2.	FIRST REPORT (Second Lok Sabha) 101	To enable the Wellington Cantonment Board to charge licence fee for herding or stabling of animals, the Cantonments Act, 1924 should be amended suitably.	Bye law 6 pertaining to charge of license fees has since been omitted. (G.S.R. 402 of 1958).
3.	SECOND REPORT (Second Lok Sabha) 8	Ministries should cite the relevant sections of the parent Act in the preambles to all rules, regulations, bye-laws etc. and amendments thereto issued or published by them.	It has been brought to the notice of all the Ministries/Departments to keep this recommendation in view whenever Rules etc. are published. [D.P.A. O.M. No. SR-II(4-8) C.B./58, dated 26th March, 1959].

4 THIRD REPORT
(Second Lok Sabha)
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The clause has since been amended accordingly G.S.R. 343 of 1959).

Ministry of Commerce and Industry assured that clause 18 of the Tea (Distribution and Export) Control Order, 1957 containing provision in respect of entry and search would be amended in accordance with the provisions contained in section 102 and 103 of the Criminal Procedure Code.

5. FOURTH REPORT
(Second Lok Sabha)
17

The clause has since been amended accordingly (G.S.R. 282 of 1959).

Clause 22 of the Fertilizer (Control, Order, 1957 (as amended by G.S.R. 358 of 1958) ought to be amended in order to clarify Government's intention of fixing only one rate of fees for different classes of dealers for the grant of duplicate licences or duplicate certificates of registration in a State.

6. 52-53

This has since been done (S.R.O. 404 of 1958).

The Committee note the assurance given by the Ministry of Defence to publish the necessary forms referred to in bye-laws 3 and 8 of the Ramgarh Cantonment Bye-Laws regarding collection and recovery of cycle and rickshaw tax (S.R.O. 122 of 1958).

7. 56

This has since been done (S.O. 2551 of 1958).

The Committee note the assurance given by the Ministry of Information and Broadcasting to publish the Schedule referred to in the Directorate General, All India Radio, New Delhi, Recruitment Rules (S.O. 1317 of 1958).

APPENDIX III

(See para 48)

Recommendations not accepted by the Government but replies in respect of which have been accepted by the Committee

Serial No.	Ref. to para No. of the Report	Summary of recommendations	Gist of Government's reply
1	2	3	4
1	THIRD REPORT (First Lok Sabha) 12	<p>Power given in section 4A (1) of the Indian Tariff Act, 1934 to levy export duty on an article not included in the Second Schedule to the Act is of the nature of power to levy taxation on anything which should not be vested in Government by delegated authority. Such a power of taxation should be given only in regard to specific articles exhaustively stated in the Schedule to the Act.</p>	<p>At the time of passing of the Indian Tariff (Third Amendment) Bill, 1952, which inserted the section in question in the principal Act, similar objections as in this recommendation, were taken and discussed in detail in the House. The Bill was ultimately passed without any amendment. The power of levying taxation on articles not included in the Second Schedule of the Act, is necessary in order to preclude any sort of speculation in trade by not revealing beforehand the items involved. The Government are often called upon to take emergency steps in the light of wide and sudden fluctuations in the prices in the day to day world market and have to levy export duty</p>

2. **SECOND REPORT**
(Second Lok Sabha)
59

In order to enable the Government to levy Survey Fees as have been levied under S.R.O. 1415 of 1957, the parent Act, i.e., the Essential Commodities Act, 1955 should be suitably amended.

partly on revenue considerations and partly with a view to mopping up the difference between the internal and external price of commodities to avoid inflationary developments.

[D.P.A. O.M. No. S(II)-P.A., dated the 16th March, 1959].

The survey fees are charged to meet the expenses of the *ad hoc* Committee who conduct the survey of all lots of cotton before fixing its price. These charges do not form any thing by way of revenue as they are disbursed among the members of the surveying Committee as their remuneration. Therefore, it does not appear necessary to make any amendment in the parent Act (Essential Commodities Act, 1955).

Instead the 'Order' itself be amended on the following lines :

" All actual costs and charges incurred in despatch of samples and any other incidental charges including charges for survey payable to the Committee, shall be borne by the applicant. The survey charges shall not exceed Rs. 16/- for every 50 bales or part thereof."

[D.P.A. O.M. No. 5 RII(55-59)CB/58(1), dated the 18th February, 1959].

APPENDIX IV

MINUTES

FIFTEENTH SITTING

Parliament House, New Delhi: Tuesday, the 3rd March, 1959.

The Committee met from 16:30 hours to 17.10 hours.

PRESENT

Sardar Hukam Singh—*Chairman.*

MEMBERS

2. Shri Phani Gopal Sen.
3. Shri K. S. Ramaswamy.
4. Shri Bahadur Singh.
5. Dr. A. Krishnaswami.
6. Shri Ghanshyamlal Oza.
7. Shri Kanhaiyalal Bherulal Malvia.

SECRETARIAT

Shri N. N. Mallya—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

2. The Committee considered and took decisions on memoranda prepared by the Secretariat on the following subjects and Orders:—

- (1) Government's proposal for revising the existing clause in Bills providing for the rules etc. to be laid on the Table. (Memorandum No. 106).
- (2) Bye-laws for rendering necessary the licences for the use of premises within the Saugor Cantonment as stables, cattle sheds etc. for profit (Memorandum No. 107).
- (3) The Port of Cochin (Landing and Shipping Fees and Wharfage) Rules, 1958, (G.S.R. 464 of 1958) (Memorandum No. 108).

- (4) Addendum to Bye-laws for regulating the collection and recovery of cycle and rickshaw tax within the Ramgarh Cantonment (S.R.O. 404 of 1958). (Memorandum No. 109).
- (5) The Directorate General, All India Radio, New Delhi, Recruitment Rules, 1958 (S.O. 2551 of 1958) (Memorandum No. 110).
- (6) Amendment to the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (G.S.R. 780 of 1958) (Memorandum No. 111).
- (7) Delay in laying of 'Orders' on the Table. (Memorandum No. 112).
- (8) * * * * *
- (9) Non-exercise of Rule-making power delegated under Acts by Government (Memorandum No. 114).
- (10) The Cinematograph (Amendment) Bill, 1958 (Memorandum No. 115).
- (11) The Indian Electricity (Amendment) Bill, 1958—Insertion of provisions for laying of Rules before Parliament (Memorandum No. 116).
- (12) Laying of Rules framed by State Governments under a Central Act before the State Legislatures (Memorandum No. 117).

Government's proposal for revising the existing clause in Bills providing for the Rules etc. to be laid on the Table

3. In pursuance of a recommendation of the Committee on Subordinate Legislation the Government now incorporate a clause on the following lines in all Bills which involve delegation of legislative powers:—

“All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following”.

4. The Department of Parliamentary Affairs have now intimated the Committee that the Government would like to change the wordings of the clause quoted above in order to make the following points clear:—

- (i) That the rules shall be laid before the Houses of Parliament for a period of 30 days which may be completed in one or more sessions;
- (ii) that Parliament can modify the rules within the period of 30 days during which the rules remain on the Table of the Houses;
- (iii) that if any modification is made in the rules by Parliament such modification shall not affect the previous operation thereof;
- (iv) that if the rules are laid before the Houses of Parliament on different dates the period of 30 days shall run from the later date;
- (v) that the rules shall take effect immediately.

5. The Committee considered the matter carefully and felt that in order to give adequate time to Members of Parliament to study the rules and give notices of amendments, if any, the existing condition that rules shall be subject to such modifications as Parliament may make "during the session in which they are so laid or the session immediately following" should be retained in the proposed clause. The Committee had no objection to the other changes being made in the clause proposed by the Government.

Bye-laws for rendering necessary the Licences for the use of premises within the Sauger Cantonment as stables, cattle sheds etc. for profit

6. Bye-law 2 of the above Bye-laws authorised the Cantonment Board to charge fees and impose conditions for the issue and renewal of licences issued thereunder.

7. In the preamble to the above Bye-laws published in the Gazette it was cited that the Bye-laws were framed under clause (37) of section 282 of the Cantonments Act, 1924. The said clause (37) did not authorise the Board to levy such fees for the issue of licences. However it was noted that it was sub-section (4) read with clauses (c) and (d) of sub-section (1) of section 210 and clause (16) of

section 282 of the Cantonments Act, 1924 that gave the necessary authority to the Board to provide for such matters in the Bye-laws.

8. The Ministry of Defence, to whom it was suggested that in the preamble to the Bye-laws besides quoting the authority of clause (37) of section 282, the authority of section 210 and clause (16) of section 282 of the Cantonments Act, should have been cited, have assured to amend the preamble accordingly.

The Committee noted the Ministry's assurance.

The Port of Cochin (Landing and Shipping Fees and Wharfage) Rules, 1958 (G.S.R. 464 of 1958)

9. Rule 6(2).—Rule 6(2) of the above rules provided that no refund of landing or shipping fees would be made in respect of goods lost overboard or jettisoned within the limits of the Port.

10. In view of the provisions contained in clause (1) of the said rules which provided for refund of landing and shipping fees in case of short landings or short shipment, it appeared unreasonable not to allow refund in respect of goods which were lost overboard or jettisoned within the Port limits, especially in case of landing fees.

11. The Ministry of Transport and Communications, to whom the point was referred, replied that in regard to landing fees, as the owners could salvage the goods thrown overboard or jettisoned and claim them as salvaged goods without having to pay the landing fees legitimately due to the Port there was no justification for allowing refund of landing fees in such cases. They, however, stated that the wharfage, if any, paid on such goods, was being refunded.

12. As regards shipping fees, the Ministry of Transport and Communications replied that the question of refund of the fees in the event of goods being stolen or jettisoned within the port limits, did not arise as the services for which the fees were realised would already have been performed by the Port prior to the shipment of the goods.

13. In regard to landing fees the Committee were of opinion that as the goods jettisoned or thrown overboard were not landed in the Port, there was no question of charging any landing fees. The Committee were not convinced by the argument of the Ministry that the owners could salvage the goods without paying any landing fees, because there was no certainty that in all cases the owners would be

able to salvage the goods wholly or in part. The Committee, therefore, felt that landing fees in respect of goods thrown overboard or jettisoned should be refunded and in case the owners salvage them, then the landing fees should be charged *pro rata*.

14. The Committee, however, accepted the explanation of the Government in respect of shipping fees.

15. *Rule 9*.—Rule 9 of the said rules as published in the gazette read that the Port Administration would not portage at the Wharf “the underlined” items and owners had to make their own arrangements for handling them at their expense and risk.

16. It was noticed that no items in the rules were underlined and thus the rule was not clear.

The Committee noted that the Ministry, on being pointed out, had rectified the mistake through a corrigendum. (G.S.R. 615 of 1958).

Implementation of Assurances given by the Ministries to the Committee in respect of (i) Cinematograph (Censorship) Rules, 1951, (ii) Bye-Laws for Regulating the Collection and Recovery of Cycle and Rickshaw Tax within the Ramgarh Cantonment and (iii) The Directorate General, All India Radio, New Delhi Recruitment Rules, 1958.

17. The Committee were glad to note that the Ministries concerned had implemented the assurances given by them to the Committee as mentioned in para 8 of their Second Report (First Lok Sabha) and paras 52 and 56 of their Fourth Report (Second Lok Sabha).

Amendment to the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (G.S.R. 780 of 1958)

18. G.S.R. 780 of 1958 was issued under section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It made amendments in Rule 122 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, increasing the rates of fees payable in respect of appeals and applications under various sections of the parent Act.

19. In this connection, the following two points were referred to the Ministry of Rehabilitation for clarification:—

- (1) The levy of fees as laid down by Rule 122 of the original rules did not seem to be authorised by any express provision in the parent Act.

- (2) The increase in the rates of fees from Re. 1 and Rs. 2 to Rs. 15 and Rs. 20 respectively appeared to be high.

20. The Ministry in their reply to the Committee sought to justify the levy of fees as prescribed in Rule 122 on the following grounds:—

- (i) That section 40 of the parent Act under which the rules were framed empowered the Government to carry out the purposes of the Act and that sub-section 2(1) thereof further authorised the Government to prescribe the forms and manners in which the applications for review and revision might be preferred and also to prescribe procedure for hearing of such appeals;
- (ii) that the rule in question did not impose a tax but levied only a fee;
- (iii) that Parliament was deemed to have approved the rules as they were laid before both Houses of Parliament for a period of 30 days as required by section 40(3);
- (iv) that no person ever questioned the validity of prescribing fees;
- (v) that the cases adjudicated upon by the Officers of the Chief Settlement Commissioner Organisation relating to payments of compensation could be compared to declaratory or money suits filed in civil courts and the enhanced rates of fees compared favourably with the fees charged for appeals in civil courts;
- (vi) that the rates of fees were enhanced in consultation with the Advisory Board attached to the Ministry of Rehabilitation in order to prevent appeals and revisions on frivolous grounds, that the fees were certainly not so high as to prove a burden to a person who was genuinely aggrieved.

21. The Committee were of the view that a fee could not be levied without an express power given in that behalf by the parent Act. The Committee were also of the opinion that mere laying of rules before the Houses of Parliament for a specified period did not amount to their approval which could only be achieved by bringing forth an affirmative motion in the House in that behalf.

22. In the present case the Committee felt that if the Government considered it necessary to levy fees the Act should be amended accordingly.

23.	*	*	*	*	*
24.	*	*	*	*	*

Non-exercise of rule-making power delegated under the Acts by Government

25. At the sitting of the Committee on Subordinate Legislation of First Lok Sabha, held on the 20th December, 1955, the attention of the Committee was drawn to para 25(7) of the Report of the Industrial Finance Corporation Enquiry Committee where the Enquiry Committee had commented on the non-use by Government of the rule-making power under section 42 of the Industrial Finance Corporation Act, 1948. The Committee then observed as under:—

“.....In the present scheme of things the rule-making power given to the Government in an Act was merely an enabling provision and there was nothing which could compel the Government to frame rules under any Act within any specified time.

The Committee considered as to whether it was desirable to enforce any time limit in such matters and whether they should take upon themselves to ensure that such rules were in fact framed and that too within a specified time.”

26. The Committee at their sitting held on the 13th December, 1957 considered the matter again and noted that in respect of Central Acts passed from 1950-55, the Government had not exercised rule-making power at all in certain cases while in others the time lag between the enforcement of the Act and the exercise of rule-making power had varied from a few days to approximately three years. The Committee felt that before considering the question of fixing any time limit the comments of the Ministries might be invited thereon.

27. The Government were not in favour of fixing any time limit for framing rules under an Act delegating rule-making power. It was pointed out by the Government that the rules were framed as soon as possible when any purpose of the Act could not be carried out properly without rules and further that in certain cases it might not be necessary to frame rules immediately because in the nature of things rules would be needed only after the actual working of the Act had made them necessary.

28. The Committee, while appreciating the views of the Government, regretted to note that there had been several instances where the rules were not framed even though the rules were necessary for proper administration of the Acts.

29. The Committee emphasised that ordinarily rules should be framed under an Act within a reasonable period after the commencement of the Act.

30. In this regard the Committee directed that the Secretariat might keep a watch and if no rules were framed within a period of six months from the date of the commencement of an Act an enquiry might be made from the Ministry concerned as to the reasons for not framing any rules. The matter then might be brought to the notice of the Committee.

31. It was also brought to the notice of the Committee that there were several instances where rule-making power delegated to State Governments under the Central Acts had not been exercised by the State Governments. The Committee felt that hereafter if specific cases of non-exercise of rule-making power by the State Government were brought to their notice, they would address the Central Government, if necessary, for taking up the matter with the State Government or Governments concerned.

The Indian Electricity (Amendment) Bill, 1958—insertion of provisions for laying of Rules before Parliament

32. The principal Act i.e., the Indian Electricity Act, 1910 and the above amending Bill did not contain any provision for laying of rules framed thereunder before the Houses of Parliament.

33. As the Bill was referred to a Joint Committee of both the Houses, the omission was brought to the notice of the Joint Committee and a suitable provision was incorporated in the Bill.

The Committee noted the action taken in the matter.

Laying of Rules framed by State Governments under a Central Act before the State Legislatures

34. The Poisons (Amendment) Bill, 1958 sought to empower the State Governments as well as Central Government to frame rules thereunder but there was no provision for laying the rules made by the State Governments or the Central Government before respective legislatures.

35. During the clause-by-clause consideration of the Bill, Shri T. N. Viswanatha Reddy, a member of the Committee on Subordinate Legislation, moved an amendment to the effect that the principal Act be amended to provide for laying of rules made thereunder by the State Governments and the Central Government before the State

Legislatures or the Houses of Parliament as the case may be for 30 days and should be subject to modification by the respective legislatures.

36. In respect of this amendment a doubt was expressed whether such a provision as far as State Legislatures were concerned could be made in a Central Act.

37. The Committee noted several Central Acts falling under 'Concurrent List' which provided for laying of the rules framed by State Governments before the respective State Legislatures *e.g.*, the Industrial Disputes Act, 1947, the Hindu Marriage Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956, the Probation of Offenders Act, 1958 etc.

38. The Committee were of opinion that Central Acts could provide for laying the rules framed thereunder by the State Governments before the respective State Legislatures.

Delay in laying of 'Orders' on the Table

39. The Committee decided that the delay in laying the 'Orders' on the Table shown in the Appendix I at page 15 *ante* be reported to the House.

The Committee then adjourned *sine die*.

II

SIXTEENTH SITTING

Parliament House, New Delhi: Thursday, the 16th April, 1959

The Committee met from 16.00 hours to 16.30 hours.

PRESENT

Sardar Hukam Singh—Chairman.

MEMBERS

2. Shri Ajit Singh Sarhadi
3. Shri K. S. Ramaswamy
4. Shri Sinhasan Singh
5. Shri Jitendra Nath Lahiri
6. Shri T. N. Viswanatha Reddy
7. Shri Ghanshyamlal Oza.

SECRETARIAT

Shri A. L. Rai—Under Secretary.

2. The Committee considered and took decisions on memoranda prepared by the Secretariat on the following subjects and Orders:—

- (1) The Delhi Panchayat Raj (Amendment) Bill, 1958—Insertion of provision for laying of Rules before Parliament (Memorandum No. 118).
- (2) The Delhi Land Reforms (Amendment) Bill, 1958—Insertion of provision for laying of Rules before Parliament (Memorandum No. 119).
- (3) Bye-laws regulating the holding of public meetings and the use of microphones in the Kanpur Cantonment (S.R.O. 98 of 1958) (Memorandum No. 120).
- (4) Amendment in the Tea (Distribution and Export) Control Order, 1957 (G.S.R. 555 of 1958) (Memorandum No. 121).

- (5) Amendment to Bye-laws for the regulation of stabling or herding of animals etc. within the Wellington Cantonment (S.R.O. 402 of 1958) (Memorandum No. 122).
- (6) Rules framed under section 42 of the Industrial Finance Corporation Act, 1948 (Memorandum No. 123).
- (7) Implementation of Recommendations of Committee on Subordinate Legislation—Para 59 of their Second Report (Second Lok Sabha) (Memorandum No. 124).
- (8) Action taken or proposed to be taken by Government on various recommendations of the Committee on Subordinate Legislation (Memorandum No. 125).
- (9) * * * *

The Delhi Panchayat Raj (Amendment) Bill, 1958 and the Delhi Land Reforms (Amendment) Bill, 1958—insertion of provision for laying of Rules made thereunder before Parliament

3. In the above Bills as introduced in Lok Sabha or the respective principal Acts there was no provision for laying of rules framed thereunder before Parliament, as recommended by the Committee in their Sixth Report, First Lok Sabha.

4. The Committee noted that the necessary provisions for laying of the rules before Parliament in the said Bills were inserted during the clause-by-clause consideration of the Bills.

Bye-laws regulating the holding of Public Meetings and the use of Microphones in the Kanpur Cantonment (S.R.O. 98 of 1958)

5. The above bye-laws were made by the Kanpur Cantonment Board in pursuance of the powers conferred by sections 282 and 283 of the Cantonments Act, 1924. Bye-law 3 thereof provided for imposition of a penalty upto Rs. 200 for breach of the bye-laws; but section 283 of the Cantonments Act authorised the Cantonment Board to provide for the imposition of a maximum penalty upto Rs. 100 only. Thus bye-law 3 was beyond the bye-law-making powers of the Cantonment Board. The matter was brought to the notice of the Ministry of Defence. The Committee noted that the bye-law in question was subsequently amended to provide for a maximum penalty of Rs. 100 which was in accord with the provisions of section 283 of the Cantonments Act, 1924 (S.R.O. 77 of 1959).

Rules framed under section 42 of the Industrial Finance Corporation Act, 1948

6. There is no provision in the Industrial Finance Corporation Act, 1948 that rules made by Central Government under section 42 of the Act should be published in the Gazette and laid before Parliament whereas the regulations framed by the Board of Directors of the Corporation under section 43 are required to be published in the Gazette and laid before Parliament.

7. This was not in accordance with the earlier recommendation of the Committee in paras 78-79, Sixth Report, First Lok Sabha, that all rules made by Government should be laid before Parliament and be subject to modification.

8. The Committee felt that when the Government bring forward a Bill amending the Industrial Finance Corporation Act, 1948, they should also incorporate suitable provisions in the Bill to amend section 42 of the parent Act to provide—

- (i) That the rules framed by Government thereunder shall be published in the Official Gazette; and
- (ii) that the rules should be laid before Parliament for 30 days and should be subject to modification by Parliament.

Implementation of Recommendations of Committee on Subordinate Legislation—Para 59 of their Second Report (Second Lok Sabha)

9. The Committee in connection with an 'Order' (S.R.O. 1415 of 1957) which was made under the Cotton Control Order, 1955, had recommended that in order to enable the levy of survey fees, the Essential Commodities Act, 1955 should be suitably amended.

10. The relevant para [Para 21(vi)] of the said S.R.O. read as under:—

“All charges incurred on despatch of samples and any other incidental charges shall be borne by the applicant. The survey fees shall not exceed Rs. 16 for every 50 bales or part thereof.”

11. The Ministry of Law had stated that the survey fees were charged to meet the expenses of the *ad hoc* Committee who conducted the survey of all lots of cotton before fixing its price. These

charges did not form anything by way of revenue as they were disbursed among the members of the surveying Committee as their remuneration. Therefore, it did not appear necessary to make any amendment in the parent Act (Essential Commodities Act, 1955).

12. The Ministry of Law, however, suggested an amendment to the 'Order' itself on the following lines so as to clarify the intention which was accepted by the Committee:—

“All actual costs and charges incurred in dispatch of samples and any other incidental charges including charges for survey payable to the Committee, shall be borne by the applicant. The survey charges shall not exceed Rs. 16 for every 50 bales or part thereof.”

13.	*	*	*	*	*
14.	*	*	*	*	*
15.	*	*	*	*	*
16.	*	*	*	*	*

Action taken or proposed to be taken by Government on various recommendations of and assurances given to the Committee on Subordinate Legislation

17. The Committee considered the replies sent by the Government in respect of the action taken or proposed to be taken by the Government on various recommendations of, and assurances given to, the Committee.

18. The recommendations which were accepted and the assurances implemented by the Government are given in Appendix II (*vide* page 19 *ante*). Recommendations in respect of which the Government had given their own suggestions and such suggestions were accepted by the Committee are given in Appendix III (*vide* page 21 *ante*).

19. The Committee then adjourned *sine die*.

III

SEVENTEENTH SITTING

Parliament House, New Delhi: Thursday, the 30th April, 1959

The Committee met from 16.00 hours to 16.20 hours.

PRESENT

Sardar Hukam Singh—Chairman.

MEMBERS

2. Shri J. M. Mohamed Imam
3. Shri Phani Gopal Sen
4. Shri Bahadur Singh
5. Shri Ajit Singh Sarhad
6. Shri T. N. Viswanatha Reddy.

SECRETARIAT

Shri A. L. Rai—Under Secretary.

2. The Committee considered the draft Fifth Report and adopted the same.

3. The Committee authorised the Chairman and in his absence Shri J. M. Mohamed Imam to present the Report to the House.

4. The Committee then adjourned *sine die*.
