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COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

SECOND REPORT

(Presented on the 10th December, 1971)

LOK SABHA SECRETARIAT
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LOK SABHA SECRETARIAT

Corrigenda to the Second Report of Committee on Subordinate Legislation (Fifth Lok Sabha).

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1971-72)

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Shri P. K. Patnaik—*Joint Secretary*.

Shri H. G. Paranjpe—*Deputy Secretary*.

REPORT

I

INTRODUCTION

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

2. The Committee have held four sittings—on the 3rd and 4th September, 17th November and 3rd December, 1971 and considered 663 'Orders'. The Committee also took evidence of the representatives of the Ministries of Home Affairs and Law and Justice (Department of Legal Affairs) regarding the provisions contained in Rule 6 of the Border Security Force Rules, 1969, at their sitting held on the 4th September, 1971. At their sitting held on the 3rd December, 1971, the Committee considered and adopted this Report. The Minutes of the sitting, which from part of the Report, the appended to it.

3. A statement showing the summary of recommendations|observations of the Committee is appended to the Report (Appendix I).

II

THE BORDER SECURITY FORCE RULES, 1969 (S.O. 2336 OF 1969)

4. Rule 6 of the Border Security Force Rules, 1969 reads as follows:—

> "In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as may be just and proper in the circumstances of the case."

5. It was felt that even though Section 141(2)(O) of the Border Security Force Act, 1968 empowered the Government to make rules in regard to any matter in respect of which no provision had been made in the Act, or insufficient provision had been made in the Act, it did not seem to confer power on Government to make an omnibus provision like that contained in Rule 6.

6. The Ministry of Home Affairs to whom the matter was refered for elucidation stated as under:—

> "Rule 6—The rule has been made in pursuance of section 141 (2)(o) of the Border Security Force Act, 1968 which specifically provides that rules may be made for matters unprovided for in the Act. This Ministry have tried to make provisions in regard to all matters that we could think of but in the case of an armed force of the nature of the Border Security Force which has been given very wide responsibility for the protection of borders of India, all contingencies cannot possibly be contemplated. Therefore, the necessity for making Rule 6 in terms of powers conferred by section 141 (2) (o) of the Act arises. In making this rule we have not enlarged the powers of any existing authority. All that we have provided is that such authority, while exercising the powers which it already possesses should act in a just and proper manner if no procedure has been laid down for the exercise of those powers. As such in our opinion it confers no new power much less a power of an over-riding nature; it only deals with unforeseen contingencies and provides that the authority concerned should exercise the power it already possesses in a fair and proper manner."

7. The Committee heard the views of the representatives of the Ministry of Home Affairs and Ministry of Law and Justice (Department of Legal Affairs) at their sitting held on the 4th September, 1971. In his evidence, the representative of the Ministry of Home Affairs stated that in framing the Border Security Force Rules, very careful thought had been bestowed by Government. Six months were spent in drafting the rules. To the best of their knowledge and judgement, Government had tried to visualise all possible contingencies and eventualities, and provided therefor in the Act and the Rules. But Government felt that in the case of an armed force of the nature of the Border Security Force, all contingencies could not possibly be visualised. There might arise new situations—unforeseen and unvisualised—to deal with which there should be some provision in the rules. Rules 6 had been framed to meet this need.

8. The witness further stated that the provisions of this rule were not substantive. The Rule was intended to be only an aid to procedure, to help fill in gaps in procedure. Thus, if at any point of time, it was found that no procedure had been laid down in the rules for meeting a particular situation or the procedure laid down therein

was inadequate for the purpose, the rule in question would enable the competent authority to act, but all the same, its actions would have to be "just and proper in the circumstances of the case". In fine, in terms of this rule, justice and propriety would be the guidelines where no precise procedure had been laid down.

9. When asked to state whether the object underlying the said rule was to indemnify the members of the Border Security Force for anything done or any action taken in the discharge of their duties, the representative of the Ministry of Home Affairs stated that it was not so. For this purpose, Section 140 was already on the Statute Book. The representative of the Border Security Force added, "I should like to assure the Members....that we would not use this section merely for the sake of temporary protection of an individual who does not deserve it. In fact, we cannot do it. Under the Act itself, it is impossible because we cannot use this power in these cases which have been provided for. This Section cannot be used for that purpose at all."

10. In reply to a question, the representative of the Ministry of Home Affairs stated, "He (the competent authority) cannot be arbitrary. The moment he interprets ustice and fair-play in his own way, the court is there to strike down........". In reply to another question he stated, "There can be no action taken under this particular rule which will infringe the Act".

11. Asked whether under the rule in question, the competent authority could so act as to curtail the freedom of an individual. The representative of the Border Security Force stated, "I want to see that my Force does not at any time restrict the liberty or in any way curtail the freedom of any individual...."

12. When asked to state whether the Border Security Force had ever invoked the provisions of this rule, and if so, in what circumstances. The representative of the Ministry of Home Affairs stated that the Border Security Force had no occasion to invoke this rule. And even though in the case of the Army, a similar rule had been in existence since 1954, they had invoked it only once and that too for excluding some undesirable elements from a court martial. In reply to a question, the witness stated, "....All that I can assure the Committee is that we will try to avoid invoking of the rule as far as possible, but if a contingency arises we may have to invoke."

13. In reply to a question regarding the validity of rule 6, the representative of the Ministry of Law stated that the provisions contained in this rule were of an enabling nature. It had been made subject to certain restrictions. If in regard to a matter, there

was no specific provision, the competent authority had to act after satisfying two conditions, namely that the particular action was just and also proper. If the competent authority functioned within the rule, it would have to be established that this action was justified by justice and propriety in the circumstances of the case, and if it abused its authority, then what would be struck down by the courts would be the abuse of the action but not the rule itself.

14. The Committee have considered the matter in all its aspects. They are not happy over ommibus provisions as contained in Rule 6 under which, in regard to residuary matters, anything done or any action taken by the competent authority, which it might consider "just and proper in the circumstances of the case" would be lawful. They feel that ordinarily the powers available under an Act should be properly canalised and regulated; and, for this purpose, not only the powers exercisable by the authorities concerned should be specified but the procedure for the exercise of those powers also laid down. However, having regard to the unforeseen contingencies the Border Security Force has to deal with in protecting the borders of the country, and also the assurances of the representatives of the Ministry of Home Affairs and the Border Security Force that Rule 6 would be invoked only when absolutely necessary and that too not for giving undeserved protection to the members of the Force, the Committee feel that an exception may be made in this case. Even so, they hope that in cases where any action under this rule is likely to adversely affect any citizen, the Border Security Force would, as far as possible, give a reasonable opportunity of being heard to the citizen concerned.

III

THE POST OFFICE SAVINGS BANKS (AMENDMENT) RULES, 1969 (G.S.R. 957 OF 1969)

15. Clause (vii) of the proviso to Rule 9 of the Post Office Savings Banks Rules, 1965, as inserted by the above-mentioned G.S.R., reads as follows:—

"no interest shall be allowed—

(a) on an account of a deceased depositor, after the end of the month in which notice is issued to the person or persons recognised by the postal authority concerned as being entitled to receive the balance of the amount lying in the said account, or

"(b) on any amount deposited in the said account subsequent to the death of the depositor."

16. The matter was taken up with the Ministry of Finance who were asked to clearly indicate the considerations that had weighed with Government for non-payment of interest on any amount deposited in the account of a deceased depositor subsequent to his death or of any interest after the end of the month in which the notice was issued. They were also asked to indicate the practice followed by commercial banks in this regard.

17. In their reply, the Ministry of Finance have stated as follows:—

"The Amendment issued in March 1969 merely restored the position obtaining under Post Office Savings Bank Rules, 1881. It would be difficult to state now the considerations that weighed with the Government of India in 1881 which necessitated inclusion of the provisions contained in Note (2) below Rule 29 of the Post Office Savings Bank Rules, 1881. It is felt that one of the reasons could perhaps be that once a person is recognised as the person entitled to receive the money in a deceased depositor's account that person should either withdraw the amount or open a new account in his own name to which the balance would be transferred. In fact the object of a Post Office Savings Bank account being encouragement of thrift it would obviously not be appropriate that an account standing in the name of a deceased person should be allowed to stay indefinitely. It is understood that the account of a deceased depositor in a Bank continues to earn interest until the balance is paid to the legal heir, either in cash or by transfer to a new account opened n his name. The Banks, it is learnt, do not issue notices to persons recognised as entitled to receive the balance of an account, as in the case of the Post Office."

18. The Committee are not convinced by the arguments given by the Ministry of Finance for non-payment of interest on any amount deposited in the account of a deceased depositor subsequent to his death or of any interest after the end of the month in which the notice is issued. The Committee note in this regard that the account of a deceased depositor in a bank continues to earn interest until the balance is paid to the legal heir, either in cash or by transfer to a new account opened in his name. The Committee desire that, in the interest of both equity and thrift, the practice obtaining in the

banks in this regard should also be followed in case of deposits in the Post Office Savings Bank Accounts, and the rules suitably amended to this end.

IV

THE COTTON TEXTILE COMPANIES (MANAGEMENT OF UNDERTAKINGS AND LIQUIDATION OR RECONSTRUCTION) RULES 1968 (G.S.R. 619 OF 1969)

19. Under Rule 4(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, a member or a creditor of a textile company proposed to be wound up may, within a period of 15 days from the date on which a notice is sent to him, make representation to the Central Government regarding the reserve price for the sale of the undertaking as a running concern, as determined by the authorised person. Likewise, under Rule 5(3), a member or a creditor may, within a period of 15 days from the date on which the notice is sent to him, make suggestions and objections to the authorised person regarding the draft scheme for the reconstruction of the textile company.

20. As under the above Rules, the period of 15 days was to be reckoned with reference to the date of issue of notices, it was felt that a member or a creditor might not get a fair opportunity of making representations, etc., in case there was an undue delay in the delivery of notices to him.

21. The matter was taken up with the Ministry of Foreign Trade, who, in their reply, have stated as follows:—

> "......it has been decided to extend the period of notice mentioned in Rules 4(3) and 5(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, from 15 days to 21 days and, at the same time to authorise the authorised person to grant extension of the period in cases where he is satisfied that there was undue delay in the delivery of notice to the members/creditors concerned. Necessary action to amend the relevant rules, etc., is being taken, in consultation with the Ministry of Law."

The Ministry of Foreign Trade have since forwarded a copy of the Notification amending the Rules on the above lines (*see* Appendix II).

22. The Committee note that Government have taken steps to amend Rules 4(3) and 5(3) to extend the period of notices issued

thereunder from 15 days to 21 days, and, at the same time, to empower the authorised person to grant extension of the period in cases where he is satisfied that there was an undue delay in the delivery of notices to the members|creditors concerned. The Committee feel that these steps, though in the right direction, are not adequate enough. They desire that the period allowed for making representations, etc. should be reckoned with reference to the date of receipt of notices by the members|creditors concerned, and, in case they refuse to receive the notices or sign the acknowledgement, with reference to the date of such refusal. In case, the postal authorities, in pursuance of the normal procedure, cannot find the members|creditors concerned or any of their agents duly empowered to receive the notices on their behalf, arrangements may be made for the affixation of the notices on the outer door or some other conspicuous part of the premises shown in the last address of the members/creditors concerned, and the relevant period reckoned with reference to the date of affixation.

V

THE EXPORT OF CERAMIC PRODUCTS (INSPECTION) RULES, 1969 (S.O. 2335 OF 1969) AND THE EXPORT OF VINYL FILM AND SHEETING (INSPECTION) RULES, 1969 (S.O. 457 OF 1969)

23. Rule 7(1) of the Export of Ceramic Products (Inspection) Rules, 1969 provides that any person aggrieved by the refusal of the Export Promotion Agency to issue a certificate declaring a consignment as export-worthy, could within ten days of receipt of such refusal by him, prefer an appeal to a panel of experts, consisting of not less than three persons, appointed for the purpose by the Central Government. Sub-rule (3) of Rule 7 provides that "the decision of the panel of experts shall be final." Under Section 7(5) of the Export (Quality, Control and Inspection) Act, 1963, the decision of the appellate authority, when an appeal is filed, "shall be final and shall not be questioned in any court of law".

24. The Sub-Committee of the Committee on Subordinate Legislation, which considered the above rule at their sitting held on the 27th October, 1970, desired to know the Constitution of the panel of experts stating, in particular, whether it comprised officials, non-officials or both.

25. The Ministry of Foreign Trade to whom a reference was made stated in their reply that the panel of experts for Ceramic Products comprised both officials and non-officials.

26. The provisions of Rule 7 of the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 are similar to those of Rule 7 of the Export of Ceramic Products (Inspection) Rules, 1969 (*vide* para 23 above). The Ministry of Foreign Trade were requested to indicate their views regarding the making of specific provision in the rule for inclusion of a non-official/non-officials in the panel of experts.

27. In their reply, the Ministry stated:

> "The panel of experts referred to in Rule 7 consists of both officials and non-officials. While nominating the members to the Appellate Panels, due consideration is given to their expert knowledge, experience and their interest in quality control and export promotion of the commodity concerned. Regarding the suggestion for stipulating a specific provision in the rules for inclusion of non-official(s) in the panel of experts, this Ministry are of the view that the same does not appear to be necessary. *Appellate panels invariably contain the names of non-officials who are expert in the line.*"

28. The Committee note that under Section 7(5) of the Export (Quality, Control and Inspection) Act, 1963, the decisions of the panel of experts on appeals to be preferred against the decisions of the Agency are to be final and are not to be questioned in any court of law. The Committee, therefore, consider it important that the constitution of the panel of experts is such as to command the confidence of the aggrieved parties for its impartiality. They, therefore, feel that there should not only be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts. The Committee desire that the rules should be suitably amended to include such a provision.

VI

REVISION OF MODEL CLAUSE IN BILLS PROVIDING FOR LAYING OF STATUTORY RULES BEFORE BOTH HOUSES OF PARLIAMENT

29. The following Model Clause relating to laying of statutory rules and orders is being incorporated in all Bills providing for delegation of legislative power in accordance with the recommendation made in 1959 by Committee on Subordinate Legislation of the Second Lok Sabha (*vide* para 45, Seventh Report):—

> "Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament

while it is in session for a total period of thirty days which may be comprised *in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following,* both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

30. In para 25 of their Fifth Report (1968), the Committee on Subordinate Legislation (Rajya Sabha) recommended that "the existing 'laying formula' should be modified so as to provide that—

(i) the statutory period of thirty days might be completed in one session or two or more successive sessions; and

(ii) the right to suggest modification in the 'Order' should extend to one additional session immediately following the session in which the period of thirty days is completed."

31. On 17th March, 1970, Shri Mohd. Yunus Saleem, the then Deputy Minister of Law wrote to the Chairman of the Committee on Subordinate Legislation of the Fourth Lok Sabha:

"The Committee on Subordinate Legislation of the Rajya Sabha, in its 5th Report, presented on 19th August, 1968, recommended in Part III of its Report, that the existing formula of laying of statutory rules before both Houses of Parliament has to be slightly amended, so that the statutory period of 30 days as obtained in the existing formula may be completed in one Session or 'two or more successive Sessions'. The existing formula was settled after the approval of the Committee on Subordinate Legislation of the Lok Sabha, by its 7th Report, presented on 24th December, 1959. It is, therefore, necessary that the concurrence of the Committee on Subordinate Legislation of the Lok Sabha is obtained, before the Government consider to take steps to amend the formula in the manner suggested by the Committee on Subordinate Legislation of the Rajya Sabha."

32. The Committee on Subordinate Legislation of Fourth Lok Sabha considered the matter on 9th April, 1970. The Committee recommended that the existing formula should continue or, in the

alternative, the recommendation of Rajya Sabha Committee on Subordinate Legislation be accepted in its entirely (*vide* para 19, Sixth Report, Fourth Lok Sabha).

33. In pursuance of the above recommendation of the Committee, the Ministry of Law and Justice (Legislative Department) have now forwarded the following revised draft Model Clause for approval by the Committee before it is incorporated in all future legislations providing for delegation of legislative power:

> "Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised *in one session or in two or more successive sessions*, and if, before the expiry of the session immediately *following the session or the successive sessions* aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

34. The Committee approve the above revised draft Model Clause, forwarded by the Ministry of Law and Justice (Legislative Department).

VII

OUTSTANDING RECOMMENDATION OF THE COMMITTEE—RULES REGARDING RECRUITMENT OF MEMBER-SECRETARIES IN THE RAILWAY SERVICE COMMISSIONS

35. The Committee on Subordinate Legislation (Fourth Lok Sabha) in para 49 of their Fourth Report had made the following recommendation :—

> "The Committee feels that the revised notification regarding the recruitment of Member-Secretary in the Railway Service Commissions, which has been sent to the Union Public Service Commission for their acceptance is not satisfactory. The notification, as it is worded, leaves ample scope for appointing the serving or retired Railway Officer as member of a Railway Service Commission without having first-hand knowledge of the working of any of the Zonal Railways. The Committee feels that the recruitment rules

should be suitably amended in order to provide that an officer of the Railway Board's Secretariat or of the Zonal Railway will be eligible for appointment as Member-Secretary provided he has held office on a Zonal Railway for at least five years."

36. The Committee on Subordinate Legislation (1970) reconsidered the matter in paras 57-58 of their Sixth Report (Fourth Lok Sabha) and reiterated the above recommendation.

37. In their reply, the Ministry of Railways (Railway Board) have stated as follows:

"......The Ministry of Railways have very carefully considered the recommendation and they are of the view that service in the Railway Board Secretariat is adequate for eligibility to posts of Member-Secretary in Railway Service Commissions and that an officer of the Railway Board Secretariat can function as competently as an officer who has held office on a Zonal Railway in so far as work as Member-Secretary of Railway Service Commissions is concerned. This view has also been accepted by the Union Public Service Commission in consultation with whom the recruitment rules for the posts were framed. In the circumstances, the Minister of Railways has decided that the existing rules need not be amended."

38. **The Committee are not convinced by the above reply of the Ministry of Railways. They feel that since the Member-Secretary has to discharge dual functions, it is desirable that he should have some experience of working on Railways. They, therefore, reiterate their earlier recommendation that the rules should be suitably amended to provide that an officer of the Railway Board Secretariat or of the Zonal Railway will be eligible for appointment as Member-Secretary provided he has held office on a Zonal Railway for at least five years.**

VIII

NUMBERING OF AMENDMENT 'ORDERS'

39. In paragraph 44 of their Third Report (First Lok Sabha), the Committee on Subordinate Legislation had recommended that, for facility of reference and easy recognisability, sets of amendments to any 'Order' issued from time to time should be serially numbered and the short title to each Amendment 'Order' should clearly show the relevant serial number. In pursuance of this recommendation,

detailed instructions were issued by the Ministry of Law in November, 1960. According to these instructions, Amendment 'Orders', like Amendment Bills, were to be serially numbered for each calendar year, and except the first Amendment 'Order' issued during a calendar year, short title to which was to bear the word '(Amendment)'. short titles to other Amendment 'Orders' were to show the precise serial number of the Amendment. To ensure compliance with the above instructions, the Ministry of Law requested that, in all cases where any existing rules, regulations, etc. were proposed to be amended, the Ministries|Departments should indicate in the drafts sent to the Legislative Department for scrutiny, whether the main Rules, Regulations, etc. were being amended for the first, the second or a subsequent time in the same calendar year.

40. It was, however, observed that although the Army Rules were twice amended in 1969—first by S.R.O. 5 of 1969 and then by S.R.O. 66 of 1969—the short titles of both the 'Orders' read as "Army (Amendment) Rules, 1969", and did not indicate the distinctive serial number of the amendment. ,

41. Likewise, the Indian Wireless Telegraphy (Possession) Rules, 1965 were amended twice during 1969—first by G.S.R. 2179 of 1969 and then by G.S.R. 2281 of 1969. In this case also, short titles to both the Amendment 'Orders' read as "Indian Wireless Telegraphy (Possession) Amendment Rules, 1969".

42. The Ministry of Defence with whom the first case was taken up, have *inter alia,* stated as follows:—

> "......The amendments were initiated from different Branches of Army Headquarters and finalised at different points of time—the first in 1968, though published in 1969, and the second in 1969. There was some mix up which is regretted and the S.R.O. 66 of 1969 which should have been shown as the second amendment was not shown as such.
>
> ......However, care is taken to avoid the lapse in respect of all future amendments and to number them properly."

43. As regards the second case, the Department of Communications (P. & T. Board) have, *inter alia*, stated as follows:—

> "......it has been checked up from the record that the amendment issued *vide* notification No. G.S.R. 2281 was second in order. The instructions have been noted for future guidance. The mistake for not giving the serial number is sincerely regretted.

44. The Committee note that both the Ministry of Defence and the Ministry of Communications have regretted their mistake in not having numbered the amendments, according to the instructions issued by the Ministry of Law, pursuant to the recommendation of the Committee. In their view, in both the cases, the mistake was due to a lack of proper coordination between the various branches of the Ministries concerned. They would, therefore, urge the Ministries concerned to streamline the existing procedure regarding numbering of amendments issued by the various branches of the Ministries so that such mistakes do not recur.

NEW DELHI;
The 3rd December, 1971.

VIKRAM MAHAJAN,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(*vide* para 3 of the Report)

Summary of main Recommendations/Observations made by the Committee

Sl. No.	Para Number	Summary
(1)	(2)	(3)
1	14	The Committee are not happy over omnibus provisions as contained in Rule 6 of the Border Security Force Rules, 1969 (S.O. 2336 of 1969) under which, in regard to residuary matters, anything done or any action taken by the competent authority, which it might consider "just and proper in the circumstances of the case" would be lawful. They feel that ordinarily the powers available under an Act should be properly canalised and regulated; and, for this purpose, not only the powers exercisable by the authorities concerned should be specified but the procedure for the exercise of those powers also laid down. However, having regard to the unforeseen contingencies the Border Security Force has to deal with in protecting the borders of the country, and also the assurances of the representatives of the Ministry of Home Affairs and the Border Security Force that Rule 6 would be invoked only when absolutely necessary and that too not for giving undeserved protection to the membes of the Force, the Committee feel that an exception may be made in this case. Even so, they hope that in cases where any action under this rule is likely to adversely affect any citizen, the Border Security Force would, as far as possible, give a reasonable opportunity of being heard to the citizen concerned.
2	18	The Committee are not convinced by the arguments given by the Ministry of Finance for non-payment of interest on any amount deposited in the account of a deceased depositor

(1)	(2)	(3)
		subsequent to his death or of any interest after the end of the month in which the notice is issued. The Committee note in this regard that the account of a deceased depositor in a bank continues to earn interest until the balance is paid to the legal heir, either in cash or by transfer to a new account opened in his name. The Committee desire that, in the interest of both equity and thrift, the practice obtaining in the banks in this regard should also be followed in case of deposits in the Post Office Savings Bank Accounts, and the Post Office Savings Banks Rules, 1965 suitably amended to this end.
3	22	The Committee note that Government have taken steps to amend Rules 4(3) and 5(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968 (G.S.R. 619 of 1968) to extend the period of notices issued thereunder from 15 days to 21 days, and, at the same time, to empower the authorised person to grant extension of the period in cases where he is satisfied that there was an undue delay in the delivery of notices to the members/creditors concerned. The Committee feel that these steps, though in the right direction, are not adequate enough. They desire that the period allowed for making representations, etc. should be reckoned with reference to the date of receipt of notices by the members creditors concerned, and, in case they refuse to receive the notices or sign the acknowledgement, with reference to the date of such refusal. In case, the postal authorities, in pursuance of the normal procedure, cannot find the members/creditors concerned or any of their agents duly empowered to receive the notices on their behalf, arrangements may be made for the affixation of the notices on the outer door or some other conspicuous part of the premises shown in the last address of the members/ creditors concerned, and the relevant period reckoned with reference to the date of affixation.
4	28	The Committee note that under Section 7(5) of the Export (Quality, Control and Inspection) Act, 1963, the decisions of the panel of experts

(1)	(2)	(3)
		on appeals to be preferred against the decisions of the Agency are to be final and are not to be questioned in any court of law. The Committee, therefore, consider it important that the constitution of the panel of experts is such as to command the confidence of the aggrieved parties for its impartiality. They, therefore, feel that there should not only be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts. The Committee desire that the Export of Ceramic Products (Inspection) Rules, 1969 (S. O. 2335 of 1969) and the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 (S. O. 457 of 1969) should be suitably amended to include such a provision.
5	34	The Committee approve the revised draft Model Clause, forwarded by the Ministry of Law and Justice (Legislative Department) for incorporation in Bills, providing for laying of statutory rules before both Houses of Parliament.
6	38	The Committee are not convinced by the reply of the Ministry of Railways contained in paragraph 37 of the Report. They feel that since the Member-Secretary of a Railway Service Commission has to discharge dual functions, it is desirable that he should have some experience of working on Railways. They, therefore, reiterate their earlier recommendation that the rules should be suitably amended to provide that an officer of the Railway Board Secretariat or of the Zonal Railway will be eligible for appointment as Member-Secretary provided he has held office on a Zonal Railway for at least five years.
7	44	The Committee note that both the Ministry of Defence and the Ministry of Communications have regretted their mistake in not having numbered the amendments, according to the instructions issued by the Ministry of Law, pursuant to the recommendation

(1)	(2)	(3)
		of the Committee. In their view, in both the cases, the mistake was due to a lack of proper coordination between the various branches of the Ministries concerned. They would, therefore, urge the Ministries concerned to streamline the existing procedure regarding numbering of amendments issued by the various branches of the Ministries so that such mistakes do not recur.

APPENDIX II

(*Vide* para 21 of the Report)

Notification issued by the Ministry of Foreign Trade and published in the Gazette of India, Part II, Section 3, Sub-section (i), dated the 30th October, 1971.

GOVERNMENT OF INDIA

MINISTRY OF FOREIGN TRADE

New Delhi, the 31st August, 1971.

NOTIFICATION

G.S.R. 1610.—In exercise of the powers conferred by sub-section (1) of section 10 of the Cotton Textile Companies (Management of Undertakings and Liquidation or Recontruction) Act, 1967 (29 of 1967), the Central Government hereby makes the following rules further to amend the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, namely:—

1. These rules may be called the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) (Amendment) Rules, 1971.

2. In the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968,—

(i) In sub-rule (3) of rule 4 and in sub-rule (3) of rule 5, for the words "fifteen days", the words "twenty-one days" shall be substituted;

(ii) to sub-rule (3) of rule 4 and sub-rule (3) of rule 5, the following proviso shall be added, namely:—

"Provided that the Authorised person may, if he is satisfied that there had been delay in the delivery of such notice to any member or creditor, entertain the representation of such member or creditor notwithstanding the expiry of the said period of twenty-one days;"

(iii) in Schedule I and Schedule II, for the words and figures "within 15 days from the date of this notice", the words and figures "within 21 days from the date of this notice" shall be substituted.

Sd|- B. D. KUMAR
Joint Secy. to the Govt. of India.
[F. No. 24015|1|71-Tex (G)]

To

The Manager,
Government of India Press,
New Delhi.

MINUTES

APPENDIX III

(*Vide* para 2 of the Report)

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1971-72)

The Committee met on Friday, the 3rd September, 1971 from 15.30 to 16.30 hours.

7. ~~Shri Samar Guha~~

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri Dharnidhar Das
6. Shri T. H. Gavit
7. Shri Samar Guha
8. Shri Subodh Hansda
9. Shri M. Muhammad Ismail
10. Shri V. Mayavan
11. Shri D. K. Panda
12. Shri P. V. Reddy
13. Shri R. R. Sharma
14. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*.

2. The Committee considered Memoranda Nos. 9 to 11 and 14 on the following subjects and 'Orders':—

S. No.	Memo. No.	Subject
(i)	9	Numbering of Amendment 'Orders'.
(ii)	10	Export of Ceramic Products (Inspection), Rules, 1969 (S.O. 2335 of 1969) and the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 (S. O. 457 of 1969).
(iii)	11	Action taken on the recommendations made by the Committee on Subordinate Legislation (Fourth Lok Sabha) in para 49 of their Fourth Report and in para 58 of their Sixth Report.
(iv)	14	Revision of Model Clause in Bills providing for laying of statutory rules before both Houses of Parliament.

(i) Numbering of Amendment 'Orders' (Memorandum No. 9)

3. In paragraph 44 of their Third Report (First Lok Sabha), the Committee on Subordinate Legislation had recommended that, for facility of reference and easy recognisability, sets of amendments to any 'Order' issued from time to time should be serially numbered and the short title to each Amendment 'Order' should clearly show the relevant serial number. In pursuance of this recommendation, detailed instructions were issued by the Ministry of Law in November, 1960. According to these instructions, Amendment 'Orders', like Amendment Bills, were to be serially numbered for each calendar year, and except the first Amendment 'Order' issued during a calendar year, short title to which was to bear the word '(Amendment)', short titles to other Amendment 'Orders' were to show the precise serial number of the Amendment. To ensure compliance with the above instructions, the Ministry of Law requested that, in all cases where any existing rules, regulations, etc. were proposed to be amended, the Ministries/Departments should indicate in the drafts sent to the Legislative Department for scrutiny, whether the main Rules, Regulations, etc. were being amended for the first, the second or a subsequent time in the same calendar year.

4. It was, however, observed that although the Army Rules were twice amended in 1969—first by S.R.O. 5 of 1969 and then by S.R.O. 66 of 1969—the short titles of both the 'Orders' read as "Army (Amendment) Rules, 1969", and did not indicate the distinctive serial number of the amendment.

5. Likewise the Indian Wireless Telegraphy (Possession) Rules, 1965 were amended twice during 1969—first by G.S.R. 2179 of 1969 and then by G.S.R. 2281 of 1969. In this case also, short titles to both the Amendment 'Orders' read as "Indian Wireless Telegraphy (Possession) Amendment Rules, 1969."

6. The Ministry of Defence with whom the first case was taken up, *inter alia*, stated as follows:

> "......The amendments were initiated from different Branches of Army Headquarters and finalised at different points of time—the first in 1968, though published in 1969, and the second in 1969. There was some mix up which is regretted and the S.R.O. 66 of 1969 which should have been shown as the second amendment was not shown as such.
>
> ....However, care is taken to avoid the lapse in respect of all future amendments and to number them properly."

7. As regards the second case, the Department of Communications (P&T Board) have, *inter alia*, stated as follows:—

> "......It has been checked up from the record that the amendment issued *vide* notification No. G.S.R. 2281 was second in order. The instructions have been noted for future guidance. The mistake for not giving the serial number is sincerly regretted."

8. The Committee noted that both the Ministry of Defence and the Ministry of Communications had admitted their mistake in not having numbered the amendments, according to the instructions issued by the Ministry of Law, pursuant to the recommendation of the Committee. They felt that the mistake was due to a lack of proper co-ordination between the various branches of the Ministries concerned. They, therefore, decided to urge the Ministries concerned to streamline the existing procedure regarding numbering of amendments issued by various branches of the Ministries so that such mistakes did not recur.

(ii) *Export of Ceramic Products (Inspection) Rules, 1969 (S.O. 2335 of 1969) and the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 (S.O. 457 of 1969) (Memorandum No. 10).*

9. Rule 7(1) of the Export of Ceramic Products (Inspection) Rules, 1969 provided that any person, aggrieved by the refusal of the Export Promotion Agency to issue a certificate declaring a consignment as export-worthy, could within ten days of receipt of such refusal by him, prefer an appeal to a panel of experts, consisting of not less than three persons, appointed for the purpose by the Central Government. Sub-rule (3) of Rule 7 provided that "the decision of the panel of experts shall be final".

10. The Sub-Committee of the Committee on Subordinate Legislation, which considered the above rule at their sitting held on the 27th October, 1970, desired to know the constitution of the panel of experts stating, in particular, whether it comprised officials, non-officials or both.

11. The Ministry of Foreign Trade to whom a reference was made stated in their reply that the panel of experts for Ceramic Products comprised both officials and non-officials.

12. The provisions of Rule 7 of the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 were similar to those of Rule 7 of the Export of Ceramic Products (Inspection) Rules, 1969 (*vide* para 9 above). The Ministry of Foreign Trade were requested to indicate their views regarding the making of specific provision in the rule for inclusion of a non-official|non-officials in the panel of experts.

In their reply, the Ministry stated:—

> "The panel of experts referred to in Rule 7 consists of both officials and non-officials. While nominating the members to the Appellate Panels, due consideration is given to their expert knowledge, experience and their interest in quality control and export promotion of the commodity concerned. Regarding the suggestion for stipulating a specific provision in the rules for inclusion of non-official(s) in the panel of experts, this Ministry are of the view that the same does not appear to be necessary. *Appellate panels invariably contain the names of non-officials who are expert in the line.*"

13. The Committee noted that under the Act, decisions of the panel of experts on appeals to be preferred against the decisions of the Agency were to be final and were not to be questioned in any court of law. It was, therefore, important that the constitution of the panel of experts should be such as to command the confidence of the aggrieved parties for its impartiality. They, therefore, felt that there should not only be a specific provision in the rules for inclusion of

non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts.

(iii) *Action taken on the recommendations made by the Committee on Subordinate Legislation (Fourth Lok Sabha) in para 49 of their Fourth Report and in para 58 of their Sixth Report (Memorandum No. 11).*

14. The Committee on Subordinate Legislation (Fourth Lok Sabha) in para 49 of their Fourth Report had made the following recommendation:—

"The Committee feels that the revised notification regarding the recruitment of Member-Secretary in the Railway Service Commissions, which has been sent to the Union Public Service Commission for their acceptance is not satisfactory. The notification, as it is worded, leaves ample scope for appointing the serving or retired Railway Officer as member of a Railway Service Commission without having first-hand knowledge of the working of any of the Zonal Railways. The Committee feels that the recruitment rules should be suitably amended in order to provide that an officer of the Railway Board's Secretariat or of the Zonal Railway will be eligible for appointment as Member-Secretary provided he has held office on a Zonal Railway for at least five years."

15. The Committee on Subordinate Legislation (1970) reconsidered the matter in paras 57-58 of their Sixth Report (Fourth Lok Sabha) and reiterated the above recommendation.

16. In their reply, the Ministry of Railways (Railway Board) stated as follows:

"..... The Ministry of Railways have very carefully considered the recommendation and they are of the view that service in the Railway Board Secretariat is adequate for eligibility to posts of Member-Secretary in Railway Service Commissions and that an officer of the Railway Board Secretariat can function as competently as an officer who has held office on a Zonal Railway in so far as work as Member-Secretary of Railway Service Commissions is concerned. This view has also been accepted by the Union Public Service Commission in consultation with whom the recruitment rules for the posts were framed. In the circumstances, the Minister of Railways has decided that the existing rules need not be amended."

17. The Committee were not convinced by the above reply of the Ministry of Railways. They felt that since the Member-Secretary had to discharge dual functions, it was desirable that the said officer should have some experience of working on Railways. They, therefore, decided to reiterate their earlier recommendation that the rules should be suitably amended to provide that an officer of the Railway Board Secretariat or of the Zonal Railway will be eligible for appointment as Member-Secretary provided he had held office on a Zonal Railway for at least five years.

(iv) *Revision of Model Clause in Bills providing for laying of statutory rules before both Houses of Parliament (Memorandum No.* 14).

18. The existing Model Clause relating to laying of statutory rules and orders is being incorporated in all Bills providing for delegation of legislative power in accordance with the recommendation made in 1959 by Committee on Subordinate Legislation of the Second Lok Sabha (*vide* para 45, Seventh Report).

19. On 17.3.1970, Shri Mohd. Yunus Saleem, the then Deputy Minister of Law wrote to the Chairman of the Committee on Subordinate Legislation of the Fourth Lok Sabha.

> "The Committee on Subordinate Legislation of the Rajya Sabha, in its 5th Report, presented on 19-8-1968, recommended in Part III of its Report, that the existing formula of laying of statutory rules before both Houses of Parliament has to be slightly amended, so that the statutory period of 30 days as obtained in the existing formula may be completed in one Session or "two or more successive Sessions". The existing formula was settled after the approval of the Committee on Subordinate Legislation of the Lok Sabha, by its 7th Report, presented on 24-12-1959. It is, therefore, necessary that the concurrence of the Committee on Subordinate Legislation of the Lok Sabha is obtained, before the Government consider to take steps to amend the formula in the manner suggested by the Committee on Subordinate Legislation of the Rajya Sabha."

20. The Committee on Subordinate Legislation of Fouth Lok Sabha considered the matter on 9-4-1970. The Committee recommended that the existing formula should continue or, in the alternative, the recommendation of Rajya Sabha Committee on Subordinate Legislation be accepted in its entirely (*vide* para 19, Sixth Report).

21. In pursuance of the above recommendation of the Committee, the Ministry of Law & Justice (Legislative Department) forwarded the following revised draft Model Clause for approval by the Committee before it is incorporated in all future legislations providing for delegation of legislative power:

> "Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised *in one session or in two or more successive sessions*, and if, before the expiry of the session immediately *following the session or the successive sessions* aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

22. The Committee approved the revised draft Model Clause relating to laying of statutory rules and orders, as forwarded by the Ministry of Law & Justice (Legislative Department).

The Committee then adjourned to meet again at 11.00 *hours on Saturday, the* 4*th September,* 1971.

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION FIFTH LOK SABHA (1971-72)

The Committee met on Saturday, the 4th September, 1971 from 11.00 hours to 12.45 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri Dharnidhar Das
6. Shri T. H. Gavit
7. Shri Subodh Hansda
8. Shri M. Muhammad Ismail
9. Shri V. Mayavan

10. Shri D. K. Panda
11. Shri P. V. Reddy
12. Shri R. R. Sharma
13. Shri Tulmohan Ram

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri B. Venkataraman, Joint Secretary.
2. Shri K. F. Rustamji, Director General, Border Security Force.
3. Col. N. S. Bains, Chief Law Officer, Border Security Force.

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

1. Shri D. B. Kulkarni, Joint Secretary and Legal Adviser.
2. Shri S. K. Bahadur, Deputy Legal Adviser.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee examined the representatives of the Ministry of Home Affairs and Ministry of Law and Justice (Deptt. of Legal Affairs) in regard to the provisions contained in Rule 6 of the Border Security Force Rules, 1968.

3. Tracing the origin of the Rule in question, the representative of the Ministry of Home Affairs stated that the Border Security Force had been charged with the responsibility of policing the borders of the country. It had, therefore, to function basically as a Defence force. The working of the Border Security Force during the last four years of its existence had shown that it had to be a 'No. 2' to the Army. If, at any point of time, there was an intrusion, it was to take the first shock of the attack. This was the reason that the law governing the Border Security Force—the Act and the rules—had liberally borrowed from the Army law. The Rule in question was on the lines of Rules of the Army Rules, 1954.

4. As to the need of the rule in question, the representative of the Ministry of Home Affairs stated that in framing the Border Security Force Rules, very careful thought had been bestowed by Government. Six months were spent in drafting the rules. To the best of their knowledge and judgement, Government had tried to visualize all possible contingencies and eventualities, and provided therefor in the Act and the Rules. But Government felt that in the case of an armed force of the nature of the Border Security Force, all contingencies could not possibly be visualised. There might arise new situations—unforeseen and unvisualised—to deal with which there should be some provision in the rules. Rule 6 had been framed to meet this need.

5. As to the object and scope of Rule 6, the witness stated that the provisions of this rule were not substantive. The Rule was intended to be only an aid to procedure, to help fill in gaps in procedure. Thus, if at any point of time, it was found that no procedure had been laid down in the rules for meeting a particular situation or the procedure laid down therein was inadequate for the purpose, the rule in question would enable the competent authority to act, but all the same, its actions would have to be "just and proper in the circumstances of the case". In fine, in terms of this rule, justice and properiety would be the guidelines where no precise procedure had been laid down.

6. The Committee desired to know whether the object underlying the said rule was to indemnify the members of the Border Security Force for anything done or any action taken in the discharge of their duties. The representative of the Ministry of Home Affairs stated that it was not so. For this purpose, Section 140 was already on the Statute Book. The representative of the Border Security Force added, "I should like to assure the Members....that we would not use this Section merely for the sake of temporary protection of an individual who does not deserve it. In fact, we cannot do it. Under the Act itself. it is impossible because we cannot use this power in those cases which have been provided for. This Section cannot be used for that purpose at all."

7. In reply to a question, the representative of the Ministry of Home Affairs stated, "He (the competent authority) cannot be arbitrary. The moment he interprets justice and fair-play in his own way, the court is there to strike down......". In reply to another question he stated, "There can be no action taken under this particular rule which will infringe the Act".

8. The Committee then enquired whether under the rule in question, the competent authority could so act as to curtail the freedom of an individual. The representative of the Border Security Force stated, "I want so see that my Force does not at any time restrict the liberty or in any way curtail the freedom of any individual.........."

9. The Committee then desired to know whether the Border Security Force had ever invoked the provisions of this rule, and if so, in what circumstances. The representative of the Ministry of Home Affairs stated that the Border Security Force had no occasion to invoke this rule. And even though in the case of the Army, a similar rule had been in existence since 1954, they had invoked it only once and that too for excluding some undesirable elements from a court martial. In reply to a question, the witness stated,"......All that I can assure the Committee is that we will try to avoid invoking of the rule as far as possible, but if a contingency arises we may have to invoke."

10. In a written reply to a question from the Committee the Ministry of Home Affairs had stated that Rule 6 had been made in pursuance of Section 141(2) (o) of the Border Security Force Act, 1968 which empowered the Central Government to make rules in respect of any other matter in respect of which the Act made no provision or made insufficient provision, and provision was, in the opinion of the Central Government, necessary for the proper implementation of the Act. The Committee felt that the words "any matter" used in Section 141(2)(o) meant a specific matter. and, therefore, the rules to be framed by the Central Government in pursuance of Section 141(2)(o), when it refers to 'any matter', it refers to a specific of the Ministry of Law stated: "I agree with your view that Section 141 (2) (o), when it refers to 'any matter', it refers to a specific matter". According to him, the rule in question was not relatable to Section 141(2) (o) but to Section 141(1) which conferred a general power on the Central Government to make rules for carrying into effect the purposes of the Act.

11. The Committee then enquired whether the rule in question, if challenged in a Court of Law, was not likely to be struck down as being in excess of the powers of subordinate legislation conferred on the Central Government. The representative of the Ministry of Law stated that the provisions of Rule 6 were of an enabling nature. It had been made subject to certain restrictions. If in regard to a matter, there was no specific provision, the competent authority had to act after satisfying two conditions, namely that the particular action was just and also proper. If the competent authority functioned within the rule it would have to be established that this action was justified by justice and propriety in the circumstances of the case, and if it abused this authority, then what would be struck down by the courts would be the abuse of the action but not the rule itself.

(The witnesses then withdrew)

12. After the witnesses had withdrawn, the Committee deliberated over the matter at considerable length. They were not happy over omnibus provisions as contained in Rule 6 under which, in regard to residuary matters, anything done or any action taken by the competent authority, which it might consider "just and proper in the circumstances of the case" would be lawful. They felt that ordinarily the powers available under an Act should be properly canalised and regulated; and, for this purpose, not only the powers exercisable by the authorities concerned should be specified but the procedure for the exercise of these powers also laid down. However, having regard to the unforeseen contingencies the Border Security Force had to deal with in protecting the borders of the country, and

also the averments and assurances of the representatives of the Ministry of Home Affairs and the Border Security Force that Rule 6 was intended to fill in only gaps in procedure and that it would be invoked only when absolutely necessary and that too not for giving undeserved protection to the members of the Force, the Committee agreed to make an exception in this case. Even so, they hoped that in cases where any action under this rule was likely to adversely affect any citizen, the Border Security Force would, as far as possible, give a reasonable opportunity of being to the citizen concerned.

The Committee then adjourned to meet again at 11.00 *hours on Friday, the 1st October*, 1971.

*MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) 1971-72

The Committee met on Wednesday, the 17th November, 1971 from 15.30 to 16.15 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri R. R. Sharma

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 15 to 17 and 20 on the following subjects: —

Sl. No.	Memo. No.	Subject
(i)	15	The Post Office Savings Banks (Amendment) Rules, 1969 (G.S.R. 957 of 1969).
(ii)	16	The Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968 (G. S. R. 619 of 1968).
(iii)-(iv)	17 and 20	* * *

* Minutes of the Seventh and Eighth sittings and omitted portions of Minutes of the Ninth Sitting are not covered by the Second Report.

(i) *The Post Office Savings Banks (Amendment) Rules,* 1969 (*G.S.R.* 957 *of* 1969) (*Memorandum No.* 15)

3. Clause (vii) of the proviso to Rule 9 of the Post Office Savings Banks Rules, 1965 as inserted by the above-mentioned G.S.R., read as follows:—

"no interest shall be allowed—

(a) on an account of a deceased depositor, after the end of the month in which notice is issued to the person or persons recognised by the postal authority concerned as being entitled to receive the balance of the amount lying in the said account, or

(b) on any amount deposited in the said account subsequent to the death of the depositor."

4. The matter was taken up with the Ministry of Finance who were asked to clearly indicate the considerations that had weighed with Government for non-payment of interest on any amount deposited in the account of a deceased depositor subsequent to his death or of any interest after the end of the month in which the notice was issued. They were also asked to indicate the practice followed by commercial banks in this regard.

5. In their reply, the Ministry of Finance stated as follows:

"The Amendment issued in March 1969 merely restored the position obtaining under Post Office Savings Bank Rules, 1881. It would be difficult to state now the considerations that weighed with the Government of India in 1881 which necessitated inclusion of the provisions contained in Note (2) below Rule 29 of the Post Office Savings Bank Rules, 1881. It is felt that one of the reasons could perhaps be that once a person is recognised as the person entitled to receive the money in a deceased depositor's account that person should either withdraw the amount or open a new

account in his own name to which the balance would be transferred. In fact the object of a Post Office Savings Bank account being encouragement of thrift it would obviously not be appropriate that an account standing in the name of a deceased person should be allowed to stay indefinitely. It is understood that the account of a deceased depositor in a Bank continues to earn interest until the balance is paid to the legal heir, either in cash or by transfer to a new account opened in his name. The Banks, it is learnt, do not issue notices to persons recognised as entitled to receive the balance of an account, as in the case of the Post Office."

6. The Committee were not convinced by the arguments adduced by the Ministry of Finance for non-payment of interest on any amount deposited in the account of a deceased depositor subsequent to his death or of any interest after the end of the month in which the notice was issued. The Committee noted in this regard that the account of a deceased depositor in a bank continued to earn interest until the balance was paid to the legal heir, either in cash or by transfer to a new account opened in his name. The Committee desired that, in the interest of equity, the practice obtaining in the banks in this regard should also be followed in case of deposits in the Post Office Savings Bank accounts, and the rules suitably amended to this end.

(ii) The Cotton Textile Companies Management of Undertakings and Liquidation or Reconstruction Rules, 1968 *(G.S.R.* 619 *of*1968*)*
*(Memo. No.*16*).*

7. Under Rule 4(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, a member or a creditor of a textile company proposed to be wound up may, within a period of 15 days from the date on which a notice is sent to him, make representation to the Central Government regarding the reserve price for the sale of the undertaking as a running concern, as determined by the authorised person. Like-wise, under Rule 5(3), a member or a creditor may, within a period of 15 days from the date on which the notice is sent to him, make suggestions and objections to the authorised person regarding the draft scheme for the reconstruction of the textile company.

8. As under the above Rules, the period of 15 days was to be reckoned with reference to the date of issue of notices, it was felt that a member or a creditor might not get a fair opportunity of making representations, etc., in case there was an undue delay in the delivery of notices to him.

9. The matter was taken up with the Ministry of Foreign Trade who in their reply stated as follows:-

> "......it has been decided to extend the period of notice mentioned in Rules 4(3) and 5(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, from 15 days to 21 days and, at the same time, to authorise the authorised person to grant extension of the period in cases where he is satisfied that there was undue delay in the delivery of notice to the members| creditors concerned. Necessary action to amend the relevant rules, etc. is being taken in consultation with the Ministry of Law."

The Ministry of Foreign Trade subsequently forwarded a copy of the Notification amending the Rules on the above lines.

10. The Committee noted that Government had taken steps to amend Rules 4(3) and 5(3) on the lines indicated in para 9 above. In their opinion, this step, though in the right direction, was not adequate enough. They felt that the period allowed for making representations, etc. should be recknoned with reference to the date of receipt of notices by the members/creditors concerned, and, in case they refused to receive notices, with reference to the date of refusal. In case, the members/creditors avoided receipt of notices, these should be pasted on the premises indicated in the last known address, and the relevant period reckoned with reference to the date of pasting.

(iii) -(iv) * * * *

11-20 * * * *

The Committee then adjourned to meet again at 15.30 hours on Friday, the 3rd December, 1971.

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

MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION FIFTH LOK SABHA (1971-72)

The Committee met on Friday, the 3rd December, 1971 from 15.30 to 16.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri Dharnidhar Das
6. Shri T. H. Gavit
7. Shri V. Mayavan
8. Shri P. V. Reddy

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

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

3. The Committee authorised the Chairman and, in his absence, Shri M. C. Daga to present the Report to the House on their behalf on the 10th December, 1971.

The Committee then adjourned to meet again on the 3rd and 4th January, 1972.

GMGIPND—LS I—2796 (E) LS—5-1-72—850.