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COMMITTEE
ON
SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

SECOND REPORT

(Presented on the 18th November, 1977)

LOK SABHA SECRETARIAT
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Corrigenda to the Second Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) - (Presented on the 18th November, 1977)

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

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 4th August, 3rd September, 29th September and 8th November, 1977.

3. The Committee considered and adopted this Report at their sitting held on the 8th November, 1977. The Minutes of the sittings, which form part of the Report, are appended to it.

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

(i) *The Delhi Sikh Gurdwara Management Committee (Co-option of Members) (Amendment) Rules,* 1976 (*Notification No. F.* 18/33/74-*Judl. dated* 25-2-1975).

(ii) *The Delhi Sikh Gurdwara Management Committee (Election of Members) (Amendment) Rules,* 1974 (*No. F.* 18(19)/73-*Judl. dated* 19-11-1974).

5. Rule 63 of the Delhi Gurdwara Management (Co-option of Members) Rules, 1974, as substituted by the Delhi Sikh Gurdwara Management Committee (Co-option of Members) Amendment Rules, 1976 reads as under:

"In addition to the corrupt practices specified in Section 22 of the Municipal Corporation Act, 1967, the following shall be deemed to be corrupt practices:

The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his agent any assistance for the furtherance of the prospects of that candidates' election from any person —

(a) in the service of the 'Gurdwara' as defined in clause (f) of section 2 of the Delhi Sikh Gurdwaras Act, 1971, or

(b) in the service of the Government and belonging to any of the following classes, namely:

(i) gazetted officers;

(ii) stipendiary judges and magistrates;

(iii) members of the Armed Forces of the Union;

(iv) Members of the Police Forces;

(v) excise officers;

(vi) revenue officers other than village revenue officers known as lambardars or by any other name whose duty is to collect land revenue and who are remunerated by a share revenue collected by them but who do not discharge any police functions; and

(vii) such other class of persons in the service of the Government as may be prescribed by the Administrator.

Explanation.—(1) In this rule, the expression 'agent' means a person who is held to have acted as an agent in connection with the co-option with the consent of the candidate or other co-opted person.

(2) For the purpose of this rule, a person shall be deemed to assist in the furtherance of the prospects of a candidate's co-option if he acts as an agent of that candidate."

6. Similar provision was made in Rule 112 of the Delhi Sikh Gurdara Management Committee (Election of Members) Rules, 1974, as substituted by the Delhi Sikh Gurdwara Management Committee (Election of Members) (Amendment) Rules, 1974.

7. It was felt that the definition of 'corrupt practices' in an Election Law was of basic importance and should more appropriately have been laid down in the parent Act.

8. The Ministry of Home Affairs with whom the matter was taken up have replied as under:

"The Delhi Sikh Gurdwara Management Committee (Co-option of Members) (Amendment) Rules, 1976.

....the definition of the expression 'corrupt practices' contained in rule 63 of the Delhi Sikh Gurdwara Management Committee (co-option of Members) Rules, 1974 is more exhaustive than that contained in Section 22 of the Delhi Municipal Corporation Act. Section 39(2)(s) of the Delhi Sikh Gurdwara Act, 1971 empowers the Central Government to make rules regarding matters in respect of which the Act makes no provision or makes insufficient provision. Since the existing provision was considered insufficient, it was amended for making it more exhaustive. There does not, therefore, appear to be any irregularity in the matter.

* * * *

The Delhi Sikh Gurdwara Management Committee (Election of Members) (Amendment) Rules, 1974.

....a comparison of section 22 of the Delhi Municipal Corporation Act, 1957, with rule 112 of the rules referred to above shows that while the corrupt practices specified in clauses (1) to (7) of the said rule, *e.g.*, bribery, undue influence, etc. substantially find a place in section 22 of the 1957 Act, the additional corrupt practices as contained in clause (8) of the rule, in question have also been provided. These practices

relate to obtaining or procuring by a candidate or his agent, etc. of assistance, for the furtherence of prospects of the candidate's election from any person in the service of the Gurdwaras/Government etc. The suggestion of the Committee on Subordinate Legislation is that these additional corrupt practices should be incorporated in the parent Act *i.e.* the Delhi Sikh Gurdwaras Act, 1971.

It is considered that keeping in view the fact that the Delhi Sikh Gurdwaras Act does not itself lay down, in detail, the corrupt practices and has by virtue of section 31 referentially adopted the particular section (Section 22) of the Delhi Municipal Corporation Act, 1957, it would not be appropriate for the additional corrupt practices laid down in clause (8) of rule 112, to be brought into the parent Act. In this connection, it is pertinent to point out that the scheme of the rule making power under section 39 of the Delhi Sikh Gurdwaras Act, itself envisages, *inter alia*, if the Act makes no provision or makes insufficient provisions in respect of any matter, appropriate rules can be made in pursuance of the rule making power under the Act. Sub-section 2(a) of section 39 refers.

In the result, though there is no legal impediment in accepting the suggestion of the Committee, the implementation of the same would be contrary to the scheme of the 1971 Act. The Committee has also not objected to sub-rule (8) of rule 112 on the ground that it is bad for excessive delegation. Therefore, it does not appear necessary to delete rule 112."

9. The Committee are not satisfied with the reply of the Ministry of Home Affairs that under clause (s) of sub-section (2) of Section 39 of the Delhi Sikh Gurdwara Act, 1971, which empowers the Central Government to make rules regarding matters in respect of which the Act makes no provision or makes insufficient provision, Government can define 'corrupt practices' by rules. The Committee will like to make it clear that the question involved is not so much of legality as of propriety. As they feel, it is only matters of procedure and detail which should be spelt out through subordinate legislation; substantial matters should more appropriately be dealt with in the Act itself.

10. In the opinion of the Committee, definition of 'corrupt practices' is a substantial matter and of basic importance in a law dealing with elections, and it should more appropriately be dealt with in the Act itself. In this connection, the Committee note that in respect of elections to Lok Sabha and State Legislative Assemblies, 'corrupt practices' have been specified in the Representation of the People Act, 1951 and not in the rules framed

thereunder. The Committee, therefore, desire the Ministry of Home Affairs to delete rule 63 of Delhi Sikh Gurdwara Management Committee (Co-option of Members) Rules, 1974 and Rule 112 of the Delhi Sikh Gurdwara Management Committee (Election of Members) Rules, 1974 and incorporate their provisions in the parent Act.

III

Adaptation of Sikkim Laws (No. 1) Order, 1975 (S.O. 207-E of 1975)

11. The Adaptation of Sikkim Laws (No. 1) Order, 1975 (S.O. 207-E of 1975) was issued by the President of India in exercise of the powers conferred by Clause (i) of Article 37-F of the Constitution. Clause 5 of this 'Order' *inter alia* provided that the "Home and Police Department Notification No. 4081/HP regarding the control of undesirables within Sikkim" shall have effect subject to the modification that the following will be substituted for paragraph 4 of the Notification:

> "The District Magistrate, on receipt of the report from the Deputy Commissioner of Police may, after giving the person concerned a notice to show cause as to why his movements should not be restricted within the areas specified in the notice or why he should not be expelled from the State of Sikkim, direct him either to remove himself to the area specified in the Order or from the State itself. The order shall specify the route by which the person concerned shall remove himself into the area or out of the State as also the period within which the removal should be executed.
>
> Provided that the person aggrieved by the order shall have a right of appeal to State Government *within such time as may be specified in the order and the Government may either* rescind the order or confirm it."

12. Under the proviso to paragraph 4, as substituted, the period within which an aggrieved person can file an appeal to the State is to be specified in the order of the District Magistrate. The Ministry of Law (Legislative Department) were requested to state whether they had any objection to laying down a time-limit for filing an appeal in the Notification itself.

13. In their reply, the Legislative Department have stated as under:—

> "The Sikkim Home and Police Department Notification No. 4081/HP referred to in the O.M. of the Lok Sabha Secretariat relates to the control of undesirables within Sikkim. As the notification relates primarily to a matter in the State List and as under article 371F(G) of the Constitution, the Governor of Sikkim has a special responsibility for peace, the Ministry

of Home Affairs was requested to consider the matter in consultation with the Government of Sikkim. That Ministry has confirmed that having regard to the fact that Sikkim is a stretegic border State and having regard to the possibility of the presence of dangerous undesirables in the State and the need for dealing with them effectively, it would not be desirable to prescribe a time-limit for preferring an appeal as suggested in the aforementioned O.M. of the Lok Sabha Secretariat.

This Department is of the opinion that although ordinarily the prescribing of a specific time-limit for preferring an appeal would be desirable and would avoid scope for abuse of discretion, an exception has to be made in the present case. As the Supreme Court conceded in *Virendra vs. the State of Punjab* (AIR 1957 SC 896) in connection with a provision leaving it to the State Government to direct the prohibition of the printing or publication of any document relating to a particular subject 'for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public Order'—

'quick decision and effective action must be of the essence of those powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government charged with the duty of maintaining law and order. To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment. The same reasoning applies in the present case also. If a rigid period of limitation for preferring an appeal is provided for, it may lead to the situation of the State Government being compelled to allow a dangerous undesirable to remain in the State or in a particular vulnerable area of the State, as the case may be, until the period of limitation is over and the pressence of such a person in the State or in the particular area for the duration of the period of limitation may defeat the very purpose of the notification. It has, therefore, been considered sufficient to leave it to the authority to specify the time-limit for appeal to the State Government in the order itself.' "

14. The Committee are not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for not laying down a minimum time-limit for filing an appeal in the proviso to para 4 of the Adaption of Sikkim Laws (No. 1) Order, 1975. The Committee apprehend that under the said proviso, as worded, the District Magistrate

could specify so short a period for lodging an appeal to an aggrieved person as virtually to deny him any right of appeal. The Committee feel that when a right of appeal has been given to an aggrieved person, the right should not be just illusory. The Committee, therefore, desire the Ministry of Law Justice and Company Affairs (Legislative Department) to amend the proviso to paragraph 4 to provide for grant of some reasonable time-limit for filing an appeal.

IV

The Indian Naval Auxiliary Service Regulations, 1973 (*S.R.O.* 232 *of* 1973).

15. Sub-regulation (4) of regulation 110 of the Indian Naval Auxiliary Service Regulations, 1973, provides as follows:—

> "If any employer fails to obey the order of any such authority issued under sub-regulation (3), he shall be punishable with fine which may extent to one thousand rupees, and the court sentencing him to pay to the person whom he has failed to re-employ, a sum equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid by the said court shall be recoverable as if it were a fine imposed by such court."

16. The above regulations were framed under Section 184 read with section 5 of the Navy Act, 1957 (62 of 1957), which did not appear to confer power on the Central Government to impose a fine which might extent to one thousand rupees on an employer, who failed to re-employ a person belonging to the Indian Naval Auxiliary Service, on his termination from this Service.

17. The matter was referred to the Ministry of Defence, who were asked to state the authority in the Navy Act, 1957, under which the above provision had been made in regulation 110, *ibid.* The Ministry stated in their reply as under:—

> "The Indian Naval Auxiliary Service Regulations have been framed in pursuance of the powers vested in the Central Government under Section 5 and Section 184 of the Navy Act, 1967. The Naval Auxiliary Service is proposed to be the counterpart of the Territorial Army and its terms and conditions are more or less the same as those of the Territorial Army. To illustrate, sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations has been framed on the basis of sub-section (2) of Section 7-A of the Territorial Army Act, 1948."

18. It was pointed out to the Ministry that the regulations in question had been framed under the Navy Act, 1957, and not under the Terri-

torial Army Act, 1948, which is a separate piece of legislation, exclusively meant for the constitution of 'a Territorial Army,' as per its preamble. They were, therefore, asked to state whether they had any objection to deleting sub-regulation (4) of regulation 110, *ibid.*, which is beyond the scope of the Navy Act, or, in the alternative to come before Parliament for the incorporation of a similar provision in the Navy Act itself.

19. The Ministry of Defence have accepted the above suggestion and stated in their reply as under:—

> "....we have no objection to the deletion of sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations, 1973. Navy Act, 1957, will be suitably amended to incorporate these provisions, on the lines of a similar amendment in respect of persons belonging to the Indian Naval Reserve Force."

20. The Committee note that sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations, 1973 which empowers the Central Government to impose a fine on an employer who fails to re-employ a person belonging to the Indian Naval Auxiliary Service on his termination from this Service, is beyond the scope of the Navy Act, 1957. The Ministry of Defence with whom the matter was taken up have no objection to omit sub-regulation (4) of Regulation 110, and to incorporate its provisions in the Navy Act, 1957. The Committee desire the Ministry to take necessary action in this direction at a very early date.

V

The Tractors (Distribution and Sale) Control Order, 1971 (*S.O.* 3258 *of* 1971)

21. Clause 10(1) of the Tractors (Distribution and Sale) Control Order, 1971 reads as follows:—

> "No person shall, before the expiry of two years from the date when the tractor was first purchased as a new tractor, sell or offer to sell it, except under and in accordance with the terms and conditions of a permit in writing from the Controller, or, in a State, an Officer appointed for the purpose by the Government of that State."

22. It was felt that the terms and conditions for the re-sale of the tractors should be mentioned in the Order itself for the information of all concerned.

23. The erstwhile Ministry of Heavy Industry to whom the matter was referred, had stated as under:—

> "This clause is on the same lines as the similar clause in the Motor Cars (Distribution and Sale) Control Order, 1959. The provision enabling the Controller to lay down terms and conditions for re-sale before the expiry of two years was made in order to guard against undesirable practices. In the case of cars, for example, resale within a period of two years could fetch a handsome premium and such re-sale could, therefore, amount to profiteering. In accordance with this provision in the Control Order some Controllers at State level used to lay down conditions in the permit for re-sale that the car should be sold to a person nominated by the Controller and at a price determined by the Controller. Exercise of such powers by the Controller is also not considered desirable as it may lead to abuses. The Controller at the Central Government level has not on any occasion resorted to this provision in clause 10(1) while permitting resale of cars within two years. In these circumstances this Ministry feels that, instead of specifying in the Control Order the terms and conditions on which permit for resale of the tractor can be granted, the very reference to 'terms and conditions' in the clause may be deleted and the clause amended to read as follows:—

'No person shall, before the expiry of two years from the date when the tractor was first purchased as a new tractor, sell or offer to sell it, except under a permit in writing from the Controller or, in a State an officer appointed for the purpose by the Government of that State'."

24. The Committee at their sitting held on the 9th December, 1975 considered the matter and were not satisfied with the amendment proposed by the Ministry for deleting the reference to words "terms and conditions" in clause 10(1) of the order. In their opinion, this deletion will give greater latitude to the authorities concerned in that after the amendment there will be no obligation on them to lay down conditions for re-sale. They further held that with a view to prevent the misuse of the provisions of the clause, a tractor should be resold to the agency through which it had been purchased for being allotted to person in the waiting list and the price to be obtained on re-sale should not exceed the original price after allowing for wear and tear of the tractor. The Committee desired that comments of the Department of Havy Industry might be obtained on above point.

25. The Ministry of Industry and Civil Supplies (Department of Heavy Industry) with whom the matter was taken up have replied as under :—

"....Government have withdrawn statutory control on distribution of tractors other than the three model of tractors, namely Massey Ferguson-1035 (35HP) and Ford (46HP) and TAFE-504 (50HP) with effect from 27-1-1976. This has been done as a stage had been reached when the other model of tractors were available without much waiting and as such it was considered unnecessary to put any restriction on the sales of such tractors. In the prevailing situation, it is very unlikely that a person who is allowed to resell any of the tractors still under distribution control, before the expiry of a period of 2 years from the date of its purchase, will be able to make any profit by reselling it at a price higher than the one on which he had originally purchased it. It will, therefore, be impractical to expect that the dealers who had sold the tractor will buy it back from the original customer within a period of 2 years for allotment to other customers on the waiting list. Besides, no customer on the waiting list will accept even at a reduced price a tractor, which had been released to a customer ahead to him on the waiting list, in lieu of the delivery of a new tractor to him at his own turn on the waiting list. In view of this, this Department is of the view that the proposed stipulation that a tractor allowed to be re-sold under clause 10(1) of the Tractors

(D&S) Order should be resaleable only to the agency through which it had been purchased for being allotted to persons in the waiting list will serve any useful purpose, especially as the models of tractors other than the three models which are still under distribution control are freely available in the market."

26. The Committee note the reply of the Ministry of Industry (Department of Heavy Industry) that due to practical difficulties, no useful purpose will be served by making a stipulation in the Tractors (Distribution and Sale) Control Order that a tractor should be resaleable only to the agency through which it has been purchased for being allotted to the persons in the waiting list. In view of this, the Committee do not want to pursue the suggestion.

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

VI

The Bhakra Management Board Rules, 1974 (*G.S.R.* 1330 *of* 1974)

28. Sub-rule (3) of rule 3 of the Bhakra Management Board Rules, 1974, framed under the Punjab Reorganisation Act, 1966 (31 of 1966), provides as under :—

> "The Central Government may, if it is of opinion that it is necessary or expedient so to do, terminate the term of office of the Chairman or a whole-time member by giving a notice in writing of not less than ninety days or in lieu of such notice, on payment to such Chairman or a whole-time member, an amount equal to the amount of pay and allowances which he would have drawn for the said period of ninety days."

29. The above sub-rule did not provide for recording the reasons in writing before the notice for termination of the term of office of the Chairman or a whole-time member is issued. The matter was taken up with the Ministry of Energy (Department of Power) and they were asked to state whether they had any objection to providing in sub-rule (3) that the reasons for the termination of the term of office of the Chairman or a whole-time member shall be recorded in writing before notice is issued to them. The Ministry have not accepted the suggestion and have stated in their reply as under :

> "Sub-rule (3) of rule 3 provides for the termination of the term of office of the Chairman or a whole-time Member, if it is considered expedient to terminate the term within the specified period of three years, by giving a notice in writing of not less than 90 days or in lieu of such notice on payment of an amount equal to the amount of pay and allowances which he would have drawn for the said period of 90 days. The rule also provides that these officers can resign after giving notice of at least three months [sub-rule (2) of rule 3]. Such provisions are the normal terms of conditions for contract appointments, since circumstances may arise where, in the public interest, it may be considered necessary to terminate the appointment before the prescribed date. In such circumstances, for administrative reasons, it is not considered advisable to make a provision in the rules for recording the reasons in writing for

the termination of the term of office of the Chairman or a whole-time Member."

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

VII

The Naval Ceremonial Conditions of Service and Miscellaneous (Fifth Amendment) Regulations, 1973 (*S.R.O.* 244 *of* 1973).

31. Proviso (d) to regulation 350 of the above regulations, as added by S.R.O. 244 of 1973, empowers the Chief of Naval Staff as under:

> "(d) Provided that in deserving cases, the Chief of Naval Staff may relax the rules of initial and obligatory training if he considers that such relaxation is necessary. Applications for such relaxation may be made through the Registrar of Reserves stating full reasons for the relaxation."

32. The Ministry of Defence were asked to state whether any guidelines had been laid down to avoid discrimination in cases similarly placed. In reply, the Ministry stated as under:

> "Regulation 350 prescribes obligatory training—2 months' initial training on joining the Reserve or soon thereafter and one month's biennial training—for officers on the Active List holding permanent Reserve Commissions. The proviso added to Regulation 350 *vide* S.R.O. 244 empowers the Chief of the Naval Staff to relax the rules of initial and obligatory training if he considers that such relaxation is necessary in the following eventualities:—
>
> (i) A ship having INR/INVR officers on board, ordered to high seas, may not be able to return in time, thus preventing an officer to return to harbour on the due date of completion of initial or obligator training.
>
> (ii) During fleet exercises, it may be necessary to retain these officers on board in order to give them practical training and this may prolong the stipulated period.
>
> (iii) An officer may be attached to a ship which is not self-accounting *i.e.,* a unit not meant for making payments of his dues. He would be required to be sent to the self-accounting shore authority for discharge which would entail extra time."

33. The Ministry were asked to state whether they had any objection to incorporating the above guidelines in the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations, 1964. The Ministry of Defence replied as under:

> "....the proviso added to Regulation 350 *vide* S.R.O. 244 empowers the Chief of the Naval Staff to relax the rules of initial

and obligatory training in all deserving cases. Sub-paragraphs (i) to (iii) of Ministry of Defence O.M. explain only some of those deserving cases. There could be other pressing circumstances, such as declaration of war, in which the Chief of the Naval Staff may wish to relax the rules. Incorporating the sub-paragraphs mentioned above in the Naval Ceremonial Conditions of Service and Miscellaneous Regulations, 1964, would, therefore, amount to restricting the number of deserving cases and thereby restricting the powers of the Chief of the Naval Staff to relax the rules.

In view of the position explained above, it is regretted, the suggestion made by the Lok Sabha Secretariat cannot be agreed to."

34. The Committee on Subordinate Legislation (1975-76) at their sitting held on the 6th October, 1975, considered the above reply of the Ministry and felt that, while the Chief of the Naval Staff should have the power to relax the regulations in deserving cases, the safeguards generally included in the relaxation provision, *viz.*, (i) reasons to be recorded in writing, and (ii) relaxing the rule in respect of classes or categories of persons, contained in recruitment rules should also be incorporated in the regulations in question. The Committee were of the view that such a provision was necessary to ensure that power to relax was properly exercised, and did not discriminate between persons similarly placed.

35. As per the decision of the Committee, the matter was again referred to the Ministry of Defence and they were asked to state whether they had any objection to make a similar provision on the above lines in the said regulations.

36. In their reply, the Ministry have stated as under:

"This Ministry would like to assure the Parliamentary Committee on Subordinate Legislation that the two safeguards mentioned.... above would be duly complied with before the Chief of the Naval Staff exercises his powers in pursuance of S.R.O. 244 of the 2nd August, 1973.

In view of the above, the undersigned is to request the Committee to reconsider their views and not to insist on the incorporation of the safeguards in the S.R.O., and to let the *status quo* be maintained."

37. The Committee note the assurance of the Ministry of Defence that the two safeguards suggested by the Committee, viz. (i) the reasons to be recorded in writing; and (ii) relaxation to be made in respect of only classes or categories of persons, will be complied with, before the Chief of the

Naval Staff relaxes the rules of initial and obligatory training under proviso (d) to Regulation 350. If so, the Committee feel, the Ministry should have no difficulty in putting the above safeguards on a statutory footing by incorporating them in the Regulations. The Committee desire the Ministry to do this at an early date.

VIII

The Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 (*G.S.R.* 419-*E of* 1975).

(A)

38. Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 framed under the Border Security Force Act, 1968 (47 of 1968), provides as under:—

> "Pre-promotion Course: (1) Subject to the provisions of rule 21, every such member of the Force shall, before any promotion, be required to pass a pre-promotion Course referred to in sub-rule (3) or *such other examinations* as may be specified by the Director General, from time to time.
>
> Provided that if the competent authority is satisfied that due to exigencies of service or other reasons, any such member is not able to pass the pre-promotion course, he may with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available pre-promotion course failing which he may be reverted."

39. The Committee on Subordinate Legislation (1975-76), at their sitting held on the 14th November, 1975 examined the above rules and noticed that sub-rule (1) of rule 5, *ibid.*, empowers the Director General to specify from time to time '*such other examinations*', in lieu of those laid down in sub-rule (3) of rule 5. They felt that in exercise of the powers conferred under sub-rule (1), the Director General could nullify the provisions of sub-rule (3). They were, therefore, of the opinion that any changes in examinations should be prescribed through the rules.

40. The matter was referred to the Ministry of Home Affairs for furnishing their comments. In their reply, the Ministry have stated as under:—

> "*Rule* 5(1)
>
> The intention is not to nullify the provisions of sub-rule (3). The intention is only to make eligible those who have already undergone certain advanced courses which are of a higher standard than the prescribed pre-promotion courses referred to in Rule 5(3) which are normally conducted in the Subsi-

diary Training Centres. There are a few training institutions where specialised training is imparted and for such training, individuals are selected on the basis of their qualifications. The Weapons and Tactics Course conducted by the Central School of Weapons and Tactics, Indore, not only covers the syllabus for Plantoon Commanders' Course but is of a much higher standard but has also a much wider syllabus than the Junior Leaders' Course. To detail those who have already qualified at advance courses to do courses of a lower standard on the ground that such courses are prescribed as pre-promotion courses would be of avoidable waste of money and effort. Thus the intention behind Rule 5(1) is not to nullify provisions of Sub-Rule (3) but to avoid wasteful expenditure and effort by not sending for lower training courses those who have already cleared advanced courses."

41. The Committee note that the intention of the Ministry of Home Affairs in using the phrase "such other examinations" in rule 5(1) is to avoid wasteful expenditure and effort by not sending for lower training courses those members of the Border Security Force, who have already cleared advanced courses from some other particular schools or institutions. The Committee feel that the above intention of the Ministry should be clearly spelt out in the rules and not left vague as to give an impression that the Director General could specify any examinations other than those laid down in sub-rule (3) of rule 5. The Committee desire the Ministry of Home Affairs to amend the Rule in question suitably at an early date.

(B)

42. Rule 10(a) of the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975, provides as under:—

"Promotion to short-term vacancies.—

(a) *Promotions to short-term vacancies may be made on an officiating basis if the exigencies of service so required."*

43. During the course of examination, the Committee felt that the period of short-term vacancies should be indicated in the rules, so that these are not continued for indefinite period.

43A. The matter was referred to the Ministry for comments. While agreeing to the suggestion, the Ministry have stated as under:—

"*Rule* 10(*a*)

The filling of short-term vacancies is resorted to in extraordinary circumstances like war, Internal Security duties or emergency.

If past experience like the Bangladesh conflict or disturbances in Bihar, are any indication, it will be difficult to anticipate when a conflict or internal disturbances will cease. Therefore, it was not considered advisable or desirable to fix a particular period for promotion to short-term vacancies. However, in view of the observations of the Subordinate Legislation Committee short-term vacancies shall not ordinarily be for more than four months and the said rules shall be amended accordingly."

44. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend rule 10(a) to provide therein that duration of short-term vacancies shall not ordinarily be more than four months. The Committee desire the Ministry to amend the rule in question to the necessary effect at an early date.

(C)

45. Rule 14(2) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975, provides as under:

"All such nominees shall have—

(i) completed not less than two years' service as Constables;

(ii) attained such educational standards as may be specified by the Director General."

Similar provision as in (ii) above, has been made in rules 15((2)(ii), 16(2)(ii), 17(1)(b)(ii) and 182(2)(ii), *ibid.*

46. During the course of examination of the above rules, the Committee felt that educational standards to be attained by the nominees for next higher post should be specified in the rules and not left to the discretion of the Director General of Border Security Force. The Ministry of Home Affairs, to whom the matter was referred for comments, have stated as under:—

"Rules 14(2)(ii), 15(2)(ii), 16(2)(ii) 17(1)(b)(ii) and 18(2)(ii).

As regards laying down the educational standards, BSF is conducting Certificates of Education Class I, II and III. BSF Certificate of Education Class I is already recognised by Central Board of Secondary Education as equivalent to 9th Standard. It is now being taken up to declare it as equivalent to High Secondary. The syllabi for the various BSF Certificates of Education are being revised to conform to the new system of 10 plus 2 plus 3, now adopted by the States. In view of the foregoing and since only matriculates are now being recruited

as constables, it may not be necessary, at this stage, to lay down any educational standards...."

47. The Committee are not satisfied with the explanation of the Ministry of Home Affairs for not specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. The Committee feel that if, as stated by the Ministry, only matriculates are being recruited as constables, there should be no difficulty in specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. The Committee, therefore, recommend that the minimum educational standards should be specified in the rules and not left to the discretion of the Director General of the Border Security Force. The Committee desire the Ministry to take early action to amend the rules to the necessary effect.

(i) *The Coal Mines Deposit-linked Insurance Scheme,* 1976 (*G.S.R.* 487-*E of* 1976); *and*

(ii) *The Employees Deposit-linked Insurance Scheme,* 1976 (*G.S.R.* 488-*E of* 1976).

(A)

48. Sub-para (4) of para 9 of the Coal Mines Deposit linked Insurance Scheme, 1976, framed under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948) provided as under:—

> "Notwithstanding anything hereinbefore contained in this paragraph, the Board may issue such directions to employers generally as it may consider necessary or proper for the purpose of administering this Scheme and it shall be the duty of every employer to carry out such directions."

49. Similar provision existed in sub-para (4) of para 10 of the Employees Deposit-linked Insurance Scheme, 1976, which has also been framed under the said Act.

50. The matter was taken up with the Ministry of Labour. It was pointed out to them that the provisions contained in sub-para (4) of para 9/10 of the Scheme were of over-riding nature, as the Board of Trustees might issue directions to the employers, which might nullify the provisions laid down in the Schemes. The Ministry were, therefore, asked to state the authority in the parent Act, under which the above over-riding provisions had been made in both the Schemes; and whether, in the absence of such an authority available under the Act, they had any objection to delete sub-para (4) of para 9/10 of the Schemes.

51. The Ministry of Labour omitted the above provision from the Schemes *vide* their Notifications No. H. 11013(2)/76-PFII(i) and H. 11013(2)/76-PFII(ii) dated the 4th May, 1977.

52. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have omitted sub-para (4) of para 9 of the Coal Mines deposit-linked Insurance Scheme, 1976, and sub-para (4) of para 10 of the Employees Deposit-linked Insurance Scheme, 1976 which were provisions of an over-riding nature and had been made without any authority in the parent Act.

(B)

53. Para 26 of the Coal Mines Deposit-linked Insurance Scheme, 1976, provided as under:—

> "26. *Power to issue directions*: The Central Government may from time to time issue such direction to the Board or the commissioner as it may consider necessary for the proper administration of the Scheme."

54. Similar provision existed in para 27 of the Employee, Deposit-linked Insurance Scheme, 1976.

55. It was pointed out to the Ministry that the directions to be issued by the Central Government under the said paragraphs might partake of a legislative character or contain matters which should or could be covered by the Schemes. They were, therefore, asked to state the authority in the parent Act, under which the above provisions had been made in both the Schemes.

56. The Ministry of Labour omitted paragraph 26/27 of both the Schemes, *vide* their Notification Nos. H. 11013(2)/76-PFII(i) and H. 11013(2)/76-PFII(ii) dated the 4th May, 1977.

57. The Committee note with satisfaction that, on an enquiry being made about the authority in the parent Act for making, in para 26 of the Coal Mines Deposit-linked Insurance Scheme, 1976, and in para 27 of the Employees Deposit-linked Insurance Scheme, 1976, provisions empowering the Central Government to issue directions to the Board or the Commission for the proper administration of the Scheme, the Ministry of Labour have omitted those provisions vide **their Notifications Nos. H.11013(2)/76-PFII(i) and H.11013(2)/76-PFII(ii) dated the 4th May, 1977.**

X

Delay in final publication of the Industrial Employment (Standing Orders) Central Amendment Rules, 1975 (G.S.R. 824 of 1975).

58. The Industrial Employment (Standing Orders) Central (Amendment) Rules, 1975, framed under the Industrial Employment (Standing Orders) Act, 1973, were published in the Gazette of India, dated the 5th July, 1975, under G.S.R. 824 of 1975, and laid on the Table of Lok Sabha on the 21st July, 1975. The Committee on Subordinate Legislation (1975-76) at their sitting held on the 14th November, 1975, examined the said rules and noticed from the preamble thereof that the draft rules were published in February, 1973, and after a time-lag of more than 2 years, the rules were finally published in July, 1975.

59. The Ministry of Labour, who were asked to state the reasons for delay in final publication of the said rules have stated as under:—

> "....the draft Notification inviting objections and suggestions was published by Government on the 10th February, 1973. The Gazette was made available to the public on the 16th February, 1973. The Notification was due for finalising on and after 1st of April, 1973. As the matters covered by the draft notification related to certain important matters of procedures, more time was given for receipt of comments. The final batch of comments were received in August, 1973.
>
> The examination of the comments received took some time as certain points raised by the Employers' Organisations, Public Sector Establishments, etc. called for detailed scrutiny through the agency of the Central Industrial Relations Machinery. Some points of law which were raised had to be sorted out by reference to the Legal Affairs Department. The drafting of the Rules had also to be discussed in detail with the Legislative Department. All this took time and it also became necessary for Government to drop the proposed amendment to para 15 of Schedule I after protracted discussions while finalising the notifications...."

60. The Committee are not convinced by the reasons advanced by the Ministry of Labour for the delay of over 2 years in the final publication of the rules. The Committee are unhappy to note that even after the final

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

XI

The Defence Science Service (Amendment) Rules, 1974 (S.R.O. 379 of 1974)

61. Note below rule 12(2) of the Defence Science Service Rules, 1967, as inserted by the Defence Science (Amendment) Rules, 1974 (S.R.O. 379 of 1974) reads as under :—

> "For the purpose of confirmation of officers in various grades, combined Seniority Lists would be grade wise. Seniority *inter-se* of officers in these lists shall be fixed in accordance with the relevant orders of the Central Government on the subject issued from time to time."

62. It was felt that the criteria of determining seniority should be provided for in the rules in order to make them self contained.

63. The Ministry of Defence with whom the matter was taken up have stated as under:—

> "....the question of incorporating seniority rules for DSS officers in the DSS Rules, 1967 was examined in consultation with the Ministry of Home Affairs (now Department of Personsonnel and Administrative Reforms, Cabinet Secretariat) at the time of issue of Defenec Science Service Rules, 1967. On the advice of that Ministry, it was decided that since seniority of officers was governed by executive instructions, it was not necessary to include any provisions regarding seniority in the DSS Rules.
>
> It may be mentioned that Seniority Rules of DSS Officers have been issued *vide* this Ministry's Memorandum No. Admin.-RD-21(c)/91657/11428/D(R&D), dated the 1st January, 1969*"

64. The Committee are not satisfied with the explanation of the Ministry of Defence for not incorporating criteria for determining seniority in the Defence Science Service Ruls, 1967. The Committee feel that the criteria for determining seniority, being a basic ingredient of the recruitment rules, should be incorporated in the rules and not left to be deter-

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*See Appendix II.

mined through executive instructions, as the executive instructions issued by Government are not published in the Gazette, and therefore, their reasonableness or fairness cannot be judged by the Committee. The Committee note in this connection that criteria for determining seniority have been laid down in a number of Rules including the Indian Economic/Statistical Service Rules, 1961. The Committee, therefore, desire the Ministry of Defence to amend the Defence Science Service Rules to incorporate therin the criteria for determining seniority.

XII

The Export of Jute Products (Quality Control and Inspection) Amendment Rules, 1974 (S.O. 1165 of 1974).

65. Rule 15 of the Export of Jute Products (Quality Control and Inspection) Rules, 1970, as substituted by the above amendment Rules, read as under:—

> "Appeal.—(1) Any person aggrieved by the refusal of the agency to issue a certificate under rule 11, may, within ten days of the receipt of the communication of such refusal by him, prefer an appeal to a panel of experts consisting of not less than three persons as may be constituted for the purpose by the Central Government.
>
> (2) The Panel will consist of at least two-third of non-officials of the total membership of the panel of experts.
>
> (3) The quorum for the panel shall be three.
>
> (4) The decision of the panel on such appeal shall be final.

66. It was noticed that similar Rules in respect of other commodities published *vide* S.O. 1164 and 1166 to 1171 of 1974 provided that the appeal shall be disposed of within 15 days of its receipt but no such provision was made in the above Rules.

67. The Ministry of Commerce with whom the above point was taken up have replied as under:—

> "....it has been decided to provide in the Export of Jute Products (Quality Control and Inspection) Rules, 1970 a clause regarding disposal of appeal within 15 days of its receipt and action in this respect has been initiated....."

68. The Ministry have since amended the rules so as to provide for the disposal of the appeal within 15 days of its receipt by the panel of experts *vide* S.O. No. 4462 dated 20th November, 1976.

69. The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have amended Rule 15 of the Export of Jute Products (Quality Control and Inspection) Rules, 1970, to provide that an appeal filed under the rule shall be disposd of within 15 days of its receipt.

XIII

The All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1974 (G.S.R. 755 of 1974).

70. Sub-rule (2) of Rule 20 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 as substituted by the above amending rules, reads as under:—

> "(2) If the service has been thoroughly satisfactory, a reduction in the amount of retirement benefits otherwise admissible under these Rules may be made by the Central Government on the recommendations of, or in consultation with, the State Government to such extent as the Central Government may deem appropriate:
>
> Provided that no order regarding reduction in the amount of retirement benefits shall be made unless the member of the Service has been given a reasonable opportunity for making a representation in the matter:
>
> Provided further that the retirement benefits once granted shall not be reduced on the ground that proof of the service not having been *thoroughly* satisfactory became available after the sanction."

71. The Department of Personnel and Administrative Reforms were requested to state the connotation of the words "thoroughly satisfactory" used in sub-rule (2) of Rule 20.

71A. In their reply, the Department of Personnel and Administrative Reforms have stated as under:—

> "It has been decided to delete the word 'thoroughly' from sub-rule (2) of rule 20 of the Retirement Benefits Rules by amending the Rules. The Rules will be amended after obtaining the concurrence of the State Governments in this regard."

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

XIV

The Librarian Recruitment Rules, 1974 (*G.S.R.* 951 *of* 1974).

73. In column 7 of the schedule regarding educational and other qualifications required for direct recruits appended to the Librarian Recruitment Rules, 1974 (G.S.R. 951 of 1974) under the heading 'desirable' the expression 'some practical experience of work in library' had been mentioned.

74. The expression 'some' was felt to be vague, which could be interpreted differently by different persons.

75. The Ministry of Home Affairs were asked whether they had any objection to amend the schedule to indicate the precise practical experience considered 'desirable' for direct recruits. The Ministry have amended the rules, laying down one year's experience of work in Library as a 'desirable' qualification for direct recruits (*vide* notification No. 5/38/75-AD(CD) dated the 7th November, 1975).

76. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended the Librarian Recruitment Rules, 1974, so as to lay down the precise practical experience considered desirable for direct recruitment to the post of Librarian.

XV

Implementation of Recommendations

(i) Implementation of recommendation made in paras 46-47 of Ninth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Bills or Acts delegating legislative powers to subordinate authorities—the State Bank Laws (Amendment) Bill, 1973 (as passed by Rajya Sabha).

77. The State Bank Laws (Amendment) Bill, 1973, as passed by Rajya Sabha on 30-7-1973, was laid on the Table of Lok Sabha on 7-8-1973. The Bill which sought further to amend the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, was examined under direction 103(2) of the Directions by the Speaker and the following points arising therefrom were referred to Ministries of Finance (Department of Banking) and Law, Justice and Company Affairs (Legislative Department) for such action as they might deem fit:—

(i) Section 49 of the principal Act, *i.e.* the State Bank of India Act, 1955, empowered the Central Government, in consultation with the Reserve Bank, to make rules, by notification in the official Gazette, to carry out the purposes of the Act. The principal Act or the Bill as laid on the Table of Lok Sabha did not contain any provision for laying of rules so framed before Parliament as recommended by the Committee on Subordinate Legislation in paras* 36-37 of their Third Report (First Lok Sabha) that all future Bills which might seek to amend earlier Acts empowering the Central Government to make rules, regulations, etc. should include a suitable provision regarding laying them on the Table;

(ii) Section 50, *ibid*, empowered the Central Board of Directors of the State Bank to make regulations after consultation with the Reserve Bank and with the previous sanction of the Central Government for the purpose of giving effect to the provisions of the Act. Sub-section (2A) of Section 50, *ibid.*, now being inserted, *vide* clause 19(ii) of the Bill also sought to give

*The above recommendations were accepted by Government *vide* paras 78-79 of Sixth Report (First Lok Sabha) and paras 28-29 of Third Report (Second Lok Sabha). The revised laying formula was approved by Committee on Subordinate Legislation, *vide* paras 33-34 of Second Report (Fifth Lok Sabha).

retrospective effect to the regulations. The principal Act or the Bill did not contain any provision either for publication of regulations in the official Gazette or for laying them before Parliament as recommended by the Committee; and

(iii) Similarly, these provisions did not exist in respect of regulations made under Section 63 of the State Bank of India (Subsidiary Banks) Act, 1969, which was being amended, *vide* Clause 35 of the Bill.

78. While noting the above points, the Ministry of Finance, had stated in their reply as follows:

"Since these points are of general importance, the position with regard to the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, as also the other Acts administered by this Department, is being reviewed in the light of the comments communicated. ....In view of the different provisions contained in these Acts, a comprehensive view will have to be taken as to the provisions which should be included in these Acts. Appropriate action to initiate a comprehensive legislation will be taken in due course in consultation with the Ministry of Law, Justice and Company Affairs.

This issues after consultation with the Ministry of Law, Justice and Company Affairs."

79. After considering the above reply of the Ministry, the Committee had recommended in paras 46-47 of their Ninth Report (Fifth Lok Sabha) as follows:

"The Committee note the assurance given by the Ministry of Finance (Department of Banking) that appropriate action to initiate a comprehensive legislation for incorporating the provision regarding laying of Rules and Regulations before Parliament in the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, as also the other Acts administered by them will be taken in due course in consultation with the Ministry of Law, Justice and Company Affairs.

The Committee desire the Ministry to complete necessary action in this regard within the next six months."

80. In their interim reply, dated the 31st December, 1973, the Ministry had informed as under :

"....In so far as the Reserve Bank of India Act, 1934 is concerned, the provision regarding laying of regulations before Parliament is being incorporated in the said Act by amendment of section

58 thereof; *vide* clause 24 of the Reserve Bank of India (Second Amendment) Bill, 1973 (Bill No. XLIII of 1973) which was recently introduced in the Rajya Sabha on 20th December, 1973*. Appropriate action to incorporate similar provisions in the other Acts administered by this Department will be taken in due course after the position with regard to these Acts is reviewed and a comprehensive view taken in consultation with the Ministry of Law, Justice and Company Affairs....."

81. The matter was further pursued and with a view to keep a watch on the progress made by the Ministry in this behalf, a list of Acts administered by the Department of Banking was obtained, in which the provision for laying of rules/regulations was to be incorporated as per the recommendation of the Committee. It was seen therefrom that in case of 8 Acts**, this provision had yet to be made. In so far as the Reserve Bank of India Act, 1934 and the Industrial Finance Corporation Act, 1948, were concerned, suitable amendments had since been made *vide* Act No. 51 of 1974 and Act No. 52 of 1975, respectively. As regards other Acts, the Ministry in their O.M. dated 25th September, 1974, *inter alia* stated as under:

"We have presently under consideration certain proposals to amend different laws relating to Banking and an amendment Bill for the purpose is under preparation. We shall take the opportunity of including in this Bill suitable provisions, wherever required, for bringing the rule-laying provision in the Acts administered by this Department in tune with the rule-laying formula recommended by the Committee on Subordinate Legislation. The Bill will be introduced in Parliament as early as possible.

While the Rules provide for matters of important nature relating to public interest, the Regulations deal with matters of detail and for that reason are left to be framed by the Corporation concerned. They are also not of general public interest and mainly relate to day-to-day administration of the undertaking concerned. There would be considerable practical difficulties in providing for the laying of the Regulations before both the Houses of Parliament and it is also felt that Parliament may not be troubled with such matters which are left to be dealt with by the Boards of the Corporations concerned. Accordingly, it is submitted that the Committee may be requested to reconsider matter and agree that a provision may not be made in the Acts concerned requiring that the Regulations made by the Board of the undertaking concerned shall be laid before Parliament.

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*The Bill has since been passed by Parliament, *vide* Act No. 51 of 1974.
**See Appendix III.

This issues after consultation with the Ministry of Law, Justice and Company Affairs."

82. In three subsequent communications dated 4-2-75, 17-5-75 and 29-12-75, the Ministry, while asking for further extensions for completion of the action to implement the Committee's recommendation under reference, *inter alia*, stated as under:

"....necessary amendments to the relevant provisions of the following Acts, namely, the Banking Regulation Act, 1949, the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, which confer powers on the Central Government to frame rules regarding specified matters, so as to provide for laying of such rules before each House of Parliament, in accordance with the formula currently adopted for the purpose, have been included in the draft Bill, namely, the Banking Laws (Amendment) Bill. The Reserve Bank has, however, suggested some more amendments which are being processed further for incorporation in the draft Bill. It is our intention to introduce the Bill in Parliament as soon as it is finalised.

It is, therefore, requested that the above facts may kindly be placed before the Committee on Subordinate Legislation with the request that a suitable further extension, say, till 30th June, 1975, may kindly be granted to this Department for completion of the action to implement the Committee's recommendations under reference."

"....Subsequently, certain additional amendments have been suggested by the Reserve Bank to section 56 of the Banking Regulation Act, 1949, which are being processed further, in consultation with the Ministry of Law, Justice and Company Affairs and also the Reserve Bank of India, with a view to incorporating them suitably in the aforesaid draft Bill. In the circumstances, it has not been possible to finalise the Bill and introduce it in the last budget session of Parliament. It is our intention to introduce the Bill in Parliament as soon as it is finalised.

It is, therefore, requested that the above facts may kindly be placed before the Committee on Subordinate Legislation with the request that a suitable further extension, say, till 31st December, 1975, may kindly be granted to this Department for completion of the action to implement the Committee's recommendations under reference."

"....Subsequently, certain additional amendments have been proposed to the Reserve Bank of India Act, 1934, and to section 39 of the Banking Regulation Act, 1949 which are being processed further in consultation with the Ministry of Law, Justice and Company Affairs and also the Reserve Bank of India with a view to incorporating them suitably in the aforesaid draft Bill. In the circumstances, it has not been possible to finalise the Bill and introduce it in the last session of Parliament. It is our intention to introduce the Bill in the next session of Parliament as soon as it is finalised.

It is, therefore, requested that the above facts may kindly be placed before the Committee on Subordinate Legislation with a request that a suitable further extension, say, 30th June, 1976, may kindly be granted to this Department for completion of the action to implement the Committee's recommendations under reference."

83. The Committee on Subordinate Legislation had desired the Ministry, in para 47 of their Ninth Report, to complete necessary action to provide the laying clause in the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, as also the other Acts administered by that Ministry, within the next six months. The Report was presented to the House on the 19th November, 1973 and the period of six months stipulated by the Committee ended on the 18th May, 1974. Requests for extension of time were no doubt received from the Ministry from time to time, but the fact remains that the recommendation of the Committee has still not been implemented. This was pointed out to the Ministry and they were asked on 24th April, 1976 to state:—

(i) the precise reasons for this inordinate delay;

(ii) which Ministry/Department is taking time in finalising the draft Bill;

(iii) will the Ministry be able to finalise the draft Bill and introduce it in the current Session of Parliament; and

(iv) if not, the approximate time within which they will be able to finalise the draft Bill and introduce it in Parliament.

84. In their reply dated the 12th May, 1976, the Ministry of Finance (Department of Revenue and Banking) (Banking Wing) have sent the following replies to the above points:—

(i) The draft Bill includes a few important amendments on which certain legal objections have been raised and no consensus has emerged so far. Inter-ministerial meetings are proposed to be held to sort out the differences.

(ii) Consultations with the Reserve Bank are in progress and are likely to be completed before long.

(iii) Having regard to the present stage of the draft Bill, it would not be possible to introduce the Bill in the current Session of Parliament.

(iv) All steps are being taken to finalise the Bill with expedition and urgency and it will be introduced in the Parliament as soon as possible.

85. The Committee in their Ninth Report, presented to the House on 19-11-1973, had given 6 months' time to the Ministry of Finance (Department of Banking) for initiating a comprehensive legislation for incorporating a provision for laying of rules and regulations framed under the various Acts administered by the Department of Banking. The Committee are unhappy to note that necessary provision for laying of regulations has been made in case of only one Act, viz., the Reserve Bank of India Act, 1934. Necessary legislation in respect of other Acts has not yet been introduced in Parliament even though a period of over three years has since elapsed.

86. The Committee observe that the Ministry of Finance which had originally agreed to introduce a comprehensive legislation for laying of rules and regulations framed under the various Acts administered by the Department of Banking, have now advanced the plea that since regulations, which are generally framed by the undertakings, are not of general public interest and mainly relate to the day-to-day administration of the undertakings concerned, these need not be laid before Parliament. The Committee are not convinced by this argument. They need hardly point out that the body which delegates the power has a right to see that the power delegated by it is properly exercised, and the delegate does not transgress the limits laid down by it. Whether the delegate is the Central Government or a body subordinate to it, is not very material.

87. Nor do the Committee see any force in the argument that the laying of regulations relating to an undertaking before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As the Committee observe, even now the Committee on Subordinate Legislation can, and does, scrutinise the regulations framed by subordinates bodies. Laying of the regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. The Committee, therefore, desire the Ministry of Finance (Department of Banking) to bring forward without any further delay necessary legislation for laying of regulations framed under the remaining Acts administered by the Department of Banking, as has been done in the case of Regulations, framed under the Reserve Bank of India Act, 1934.

(ii) *Implementation of recommendations made in paras* 19—22 *of Eleventh Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Air Force Act (Amendment) Rules,* 1970 *(S.R.O.* 396 *of* 1970).

88. Sub-rule (j) of Rule 137A of the Indian Air Force Act Rules, as introduced by the Indian Air Force Act (Amendment) Rules, 1970, provides that a copy of the proceedings of the Court of Inquiry shall be furnished to the party concerned on payment.

89. The Ministry of Defence, who were asked whether there was any provision in the Indian Air Force Act, 1950, enabling Chief of Air Staff to charge fees, for supply of the copy of the proceedings of Court of Inquiry to the affected persons, had, *inter alia*, stated in their reply as under:

> "There is no provision in the Air Force Act, 1950, which would vest powers in the Chief of the Air Staff to charge fees for the supply of copies of the proceedings of the court of inquiry. The authority to charge fees is given by the Rules made under the Air Force Act, 1950. Section 191 of the Air Force Act provides that the rules and regulations made under the Act shall be published in the Official Gazette and on such publication shall have effect as if enacted in the Air Force Act.
>
> IAF Act Rules, 1932, which had been amended by the Indian Air Force (Amendment) Rules, 1970, were superseded by Air Force Rules, 1969, which came into force on 1st June, 1972. Similar provisions for supplying copies on payment at the rate of 0.50 paise for every 200 words or part thereof appear in Rule 156(9), thereof.

90. The Committee considered the above reply of the Ministry of Defence and desired the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) to state (i) whether a provision on the lines of section 191 of the Air Force Act that on publication, the rules shall have effect as if enacted in the Act exists in other Acts also; and (ii) whether in view of the wording of section 191 and the Air Force Act, there need not be an express provision in the Act authorising charging of fees.

91. The Ministry, *inter alia*, stated as under:—

"....provisions similar to the provisions of section 191 of the Air Force Act, 1950 exists in,—

(i) section 76(2) of the Stamp Act, 1899;

(ii) section 38 of the Central Excises and Salt Act, 1944;

(iii) section 31(4) of Mines Act, 1923 (4 of 1923) and section 59(5) of the Mines Act, 1952; and

(iv) section 19(5) of Madras General Sales Tax Act, 1939 (9 of 1939).

Some of these provisions came up for consideration before courts. In appeal State of Kerala *vs.* K. M. Charia reported in (1965) S.C.R. page 601 and page 608 their Lordships of the Supreme Court have laid down the law as follows:

'Sub-section (5) of section 19 provides that all rules made under this section shall be published in the Fort St. George Gazette, and upon such publication shall have effect as if enacted in the Act.

....The rules made under section 19 and published in the Government gazette have by the express provision to have effect as if enacted in the Act but thereby no additional sanctity attaches to the rules. Power to frame rules is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule, the state transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised.'

Answer to the second question raised by Lok Sabha Secretariat is, express provisions in the Act authorising charging of fees are needed for making rules providing for charging of fees."

92. The Committee, after considering the above replies of the Ministries of Defence and Law, Justice and Company Affairs (Department of Legal Affairs), had recommended in paras 19 to 22 of their Eleventh Report (Fifth Lok Sabha) as under :—

"The Committee note that, according to the opinion [Appendix I of the First Report of the Committee on Subordinate Legislation (Second Lok Sabha)] given by the Attorney General, no fee can be imposed under a rule unless there is an express autho-

risation therefor in the parent Act. Even though there is no expression for the levy of a fee for supply of copies of proceedings of courts of inquiry, the Ministry of Defence thought that they could levy such a fee under the Air Force Act Rules because of the wording of section 191 of the Act which provides that the rules framed under the Act, on their publication in the Gazette, shall have effect, as if enacted in the Air Force Act. The Committee also note that provisions similar to the provision of section 191 of the Air Force Act, 1950, exist in some other Acts also. [(i) section 76(2) of the Stamp Act, 1899, (ii) section 38 of the Central Excises and Salt Act, 1944; (iii) section 31(4) of Mines Act, 1923 (4 of 1923) and section 59(5) of the Mines Act, 1952; and (iv) section 19(5) of Madras General Sales Tax Act, 1939 (9 of 1939)].

The Committee, however, note from the reply furnished by Law Ministry that according to the ruling of the Supreme Court in the State of Kerala *vs.* K. M. Charia (Supreme Court Reporter—1965, p. 601), no additional sanctity attaches to the rules made under section 19(5) of the Madras General Sales Tax Act, 1939, which is similar to the provision contained in Section 191 of the Air Force Act, 1950. According to the Supreme Court, if in making a rule, the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised.

The Committee like the Ministry of Law to examine, in the light of the above ruling of the Supreme Court, whether in framing any rule under the aforementioned four Central Acts, the Central Government has transcended its authority.

The Committee also desire the Ministry of Defence to make an express provision in the Indian Air Force Act, 1950, providing for charging of fee for supply of copies of the proceedings of the court of inquiry."

93. In pursuance of the above recommendations of the Committee, the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) have examined the relevant Central Acts and stated in their reply as under :

"....the matter has been examined by us in the light of comments received from the Ministry of Labour and Finance and the legal position in the matter is as follows:

(a) The Stamp Act, 1899

Sections 9(1), 10(1)(b), 18(2), 37, 49, 74 and 75 of the Stamp Act, 1899, contain the rule making power of the Government. Section 9(1) empowers the concerned Government (either the Central or the State Government depending on the instrument involved) to grant remission etc. from stamp duty in respect of instruments falling within their legislative competence. Under this provision remissions or compositions of duties are to be made by rule or order published in the Official Gazette. Ministry of Finance have stated that in so far as instruments falling within the legislative competence of the Central Government are concerned orders granting remission from duty and composition of duties are being published in the Official Gazette in the form of notifications and not in the form of rules.

As regards the other sections of the Stamp Act containing the rule making power, these empower only the State Governments to make rules for various purposes mentioned in the respective sections.

(b) Mines Act, 1952

The Coal Mines Regulations, 1957, and the Metalliferous Mines Regulations, 1957, have been made under section 57 of the Mines Act, 1952. Section 57 empowers the Central Government by notification in the Official Gazette to make regulations consistent with the Act for all or any of the purposes mentioned in clauses (a) to (zz) thereof. Clause (e) of the said section contains the power for making rules for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency. Clause (f) refers to "fixing the fees if any, to be paid in respect of such examinations and of the grant and renewal of such certificates". It is, therefore, seen that authority to charge fees for examinations etc. under Regulations 20 and 27 of the Coal Mines Regulations, 1957 and Regulations 21 and 30 of the Metalliferous Mines Regulations, 1957 is derived directly from clause (f) of section 57 of the Mines Act, 1952, and not from section 59(5) of the Act, which only states that regulations and rules shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act. The

Mines Act, 1923, has been repealed by section 88 of the Mines Act, 1952. Its provisions need not, therefore, be examined.

(c) **Central Excises and Salt Act, 1944**

Section 37(2)(xii) of the Central Excises and Salt Act, 1944, empowers the Central Government to make rules to provide for the issue of licences and transport permits and fees, if any, to be charged therefor. The Ministry of Finance have intimated that the provision has been made in the Central Excise Rules for charging of fees in respect of the following matters:—

(1) various licences issued under the Act *vide* rule 1976 of the Central Excises Rules, 1944;

(2) for giving clearances of excisable goods from the factory or warehouse after expiry of the hours fixed by the Collector on a working day and for such clearances on Sundays and public holidays. [*vide* rule 224(1)];

(3) for supply of duplicate of any certificate, transport permit or other documents issued to any person, *vide* rule 224-B of the Central Excise Rules, 1944; and

(4) for examination of excisable goods intended for export where the exporter so desires, *vide* rule 185(2) as substituted by Rule 173-O(1) in Chapter VIIA of the Central Excise Rules, 1944.

(a) Items (1) and (2) relating to Rules 176 and 224(1) under which fees are collected may be said to be within the scope of section 37(2)(xii) of the Act.

(b) Item (3) which relates to rule 224(B) provides for payment of fee when duplicate copies of certificates, transport permits or other documents are supplied. This rule in so far as it relate to levying of fee for granting duplicate copies of any licence or transport permit may be said to fall within the scope of section 37(2)(xii) of the Act since the levying of fee on issuing of licence or transport permits will also include levying fee on supply duplicate copies thereof.

(c) Item (4) provides for collection of fees for examination of excisable goods intended for export, where the exporter so desires— rule 185(2) as substituted by Rule 173-O(1) in Chapter VIIA

of the Central Excise Rules. This provision appears to be beyond scope of section 37(2)(xii).

However, Ministry of Finance, have stated that they propose to include in the new Bill (which would replace the existing Act) specific provision for charging of fees wherever thought necessary.

Delay in sending the reply, which was due to consultations required to be made with the concerned Departments, is regretted."

94. The Ministry of Defence have agreed to amend the Act and stated in their reply dated the 21st June, 1976, as under :—

"....various amendments to the Army Act, 1950, are being progressed in consultation with Army Headquarters. As soon as some finality is reached, the approved amendments will be legislated. Identical amendments to the Air Force Act, 1950, will be progressed/legislated, after amendments to the Army Act have been finalised."

95. On being asked to state the progress made in the matter, the Ministry have stated in their communication dated the 26th October, 1976, as follows:—

".....amendment to the Air Force Act, 1950, is proposed to be incorporated in the draft revised of the Unified Code in the normal manner rather than being issued separately. Act in this respect is in progress and the approved amendment will be legislated in due course."

96. In the State of Kerala vs. K. M. Charia (S.C.R. 1965, p. 601), the Supreme Court had observed that validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that is unauthorised, and that no additional sanctity attaches to such rules. In para 21 of their Eleventh Report (Fifth Lok Sabha), the Committee on Subordinate Legislation had desired the Ministry of Law examine, in the light of the above ruling of the Supreme Court, whether in framing any rule under the Central Acts which contained a provision similar to the provision of section 191 of the Air Force Act, 1950, the Central Government had transcended their authority.

97. The Committee note that, in pursuance of the said recommendation of the Committee, the Ministry of Law have examined three Central Acts,—(i) the Stamp Act 1899; (ii) the Mines Act, 1952, and (iii) the Central Excises and Salt Act, 1944. They note that in so far as the Stamp Act, 1899 is concerned, provision authorising the Government to grant remission etc. from stamp duty exists in the Act. Likewise, authority empowering the Government to charge fees in respect of examinations and

grant and renewal of certificates exists in the Mines Act, 1952. In the case of the Central Excises and Salt Act, 1944, however, there is no authority at present for collection of fees for examination of excisable goods intended for export, as laid down in Rule 173-O(1) of the Central Excise Rules. The Committee note in this connection that the Ministry of Finance propose to bring a new Bill to replace the existing Act which would contain a specific provision for charging of fees wherever thought necessary. The Committee desire the Ministry of Finance to bring the proposed legislation before Parliament at an early date.

98. The Committee had also desired the Ministry of Defence to make an express provision in the Air Force Act, 1950, providing for charging of fee for supply of copies of the proceedings of the Court of Inquiry. The Committee note from the reply of the Ministry of Defence that they propose to bring several amendments to the Air Force Act in due course which will include a provision for charging of fees for supply of copies of the proceedings of the Court of Inquiry. The Committee desire the Ministry of Defence also to bring the proposed legislation before Parliament at an early date.

(iii) *Implementation of recommendations made in paras* 13-15 *of Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha)* re: (i) *the Drugs and Cosmetics (Amendment) Rules,* 1972 (*G.S.R.* 2139 *of* 1972); (*ii*) *the Drugs and Cosmetics (Third Amendment) Rules,* 1972 (*G.S.R.* 289 *of* 1973); *and* (*iii*) *the Drugs and Cosmetics (Amendment) Rules,* 1973 (*G.S.R.* 444 *of* 1973).

99. It was noticed from the preamble to the following rules that large number of amendments to the Drugs and Cosmetics Rules, 1945, were published in *draft form* in the years 1968, 1969 and 1970, on different dates for inviting objections/suggestions from persons likely to be affected by the proposed amendments, but the amendment rules were finally published in the Gazette sometime in 1972 and 1973, *i.e.*, after a gap of two years and nine months:

(i) The Drugs and Cosmetics (Amendment) Rules, 1972 (G.S.R. 2139 of 1972).

(ii) The Druge and Cosmetics (Third Amendment) Rules, 1972 (G.S.R. 289 of 1973).

(iii) The Drugs and Cosmetics (Amendment) Rules, 1973 (G.S.R. 444 of 1973).

100. After perusing the written replies and hearing oral evidence of the representatives of the Ministry of Health and Family Planning (Department of Health) in the matter, the Committee on Subordinate Legislation

observed in paras 13-15 of their Fifteenth Report (Fifth Lok Sabha) as under :

"13. The Committee are unhappy to find the instances of inordinate delay in final publication of amendments to the Drugs and Cosmetics Rules. They note that while in some cases the gap between the publication of draft rules and final rules was between two and four years, in some other cases, it was as much as four years and none months. In the opinion of the Committee, there was no justification for these delays. The Committee need hardly point out that if the Ministry feel the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for years together.

14. The Committee note the assurance given by the Ministry of Health and Family Planning (Department of Health) that the existing procedure regarding final publication of amendments would be streamlined and that efforts would be made to finalise an amendment within, at the most, a period of one year from the date of its publication for comments in the Gazette. The Committee would like to watch the working of the new procedure. They would also like the Ministry of Health and Family Planning to consider whether the time-lag between the publication of draft rules and publication of the final rules cannot be further reduced.

15. As regards steps for preventing mass-scale adulteration in drugs and cosmetics, the Committee note that Government have decided to amend the law and increase the penalty to life imprisonment. The Committee are glad to note that a Bill to amend the Prevention of Food Adulteration Act has already been introduced in Parliament and Government propose to introduce shortly another Bill on the same lines to amend the Drugs and Cosmetic Act, which would contain very strict provisions for dealing with adulteration of drugs and cosmetics. The Committee desire that early action should be taken in this direction. They further desire the Ministry to conduct an early review of the existing rules to see whether they contain any loopholes which can be taken advantage of by unscrupulous elements, and if so, to plug them."

101. In their action taken note, the Ministry had stated as under:

"....the undermentioned procedure is being followed to avoid delay in finalising the draft amendments to Rules framed under

the Drugs and Cosmetics Act, 1940:—

1. Check registers are being maintained by the Drugs Controller and he is required to keep a constant watch over the draft amendments that are published and also to review the progress made in their finalisation.

2. Efforts are being made to finalise the amendments within a period of one year from the date of publication for comments in the Gazette.

3. The dates on which the draft notification was published in the Gazette, and when it was made available to public etc. are being ascertained at the earliest so as to avoid delays at later stages in collecting this information.

4. Action is being taken to get the approval of the Cabinet to the Draft Bill for amendment of the Drugs and Cosmetics Act at the earliest so that it is introduced as soon as possible."

102. The Ministry did not send their reply to the observations of the Committee made in paras 14 and 15 of their Fifteenth Report. They were, therefore, asked to state—

(i) whether they have considered further reducing the time-lag between the publication of draft rules and publication of final rules; and

(ii) whether the existing Drugs and Cosmetics Rules contain any loopholes which can be taken advantage of by unscrupulous elements and if so, how do they propose to plug them.

103. In their reply, the Ministry have stated as follows:—

"(i) *whether they have considered further reducing the time-lag between the publication of draft rules and publication of final rules.*

The draft amendments to the Drugs and Cosmetics Rules, after they have been published in the Gazette, are circulated by the Government of India, Ministry of Health and Family Planning, to the State Governments and also to Associations of drugs manufacturers and dealers, so as to give a wide publicity to the draft amendments. The Directorate General of Health Services also sends the draft amendments to the State Drugs Control Authorities so that the State Drugs Control Authorities can consult the drug manufacturers and dealers in their State and also the Inspectorate, the Government Analyst etc. and send their comments. Although a time of three months

is stipulated for the receipt of comments, since a large number of interests are involved, who have to consult the various disciplines in the Pharmaceutical Profession, industry and trade, comments continue to be received even after the period of there months is over.

On receipt of these comments, the Drugs Controller, India in some cases has to consult experts in the Pharmaceutical industries, Analysts etc. to verify whether there would be any genuine difficulties as represented by the trade or the industry, if any rule is made. This process takes time. In some cases, the draft amendment contains provisions which are of controversial nature and the comments received for and against the provision require discussions and detailed consideration. In such cases it becomes necessary to refer the draft amendment along with the comments to the Drugs Technical Advisory Board again for further consideration. The meeting of the Drugs Technical Advisory Board is held once every year and the draft amendments along with the comments are discussed in its meeting as all the comments received on the draft amendment cannot be settled by correspondence. This procedure also takes time.

On the basis of the comments received from the public and whenever necessary after consulting the experts, or after further consulting the Drugs Technical Advisory Board the Drugs Controller (India) finalises the draft amendment which is forwarded to this Ministry who thereafter consider whether the finalised amendment should be accepted by Government or not. The Ministry of Law is then shown the finalised amendment. The Ministry of Law often suggests change which are again referred to the Directorate General of Health Services for consideration. The Ministry of Law also at time suggests that the finalised amendment should be discussed by the concerned Ministry with the officers of the Law Ministry for clarification of some points especially as the matters involved are very often technical in nature. After these formalities have been completed, the finalised notification is sent by this Ministry to the Translation Unit of the Ministry of Law for making the Hindi version. After the Hindi version has been received, the English and Hindi versions of the notification are fair-typed and forwarded to the Government of India Press for publication in the Gazette. The procedures and formalities outlined above are time-consuming and it is felt that a period of about one year is essential for such type of work. Efforts

will however continue to be made to finalise amendments as early as possible especially in cases where no controversies or further technical consultations are involved.

(ii) *whether the existing Drugs and Cosmetics Rules contain any loopholes which can be taken advantage of by unscrupulous elements, and if so, how do they propose to plus them.*

The Drugs and Cosmetics Rules, which have been framed in pursuance of the provision of Drugs and Cosmetics Act, and are at present comprehensive enough to regulate the quality of drugs and cosmetics manufactured, sold and distributed in the country. These rules are, however, being constantly reviewed and suitably amended whenever necessary, for plugging loopholes when noticed.

In view of the action being taken to review and amend the Rules from time to time, there are at present no loopholes in the Drugs and Cosmetics Rules which can be taken advantage of by unscrupulous elements. What is, however, required is a more rigorous and effective enforcement of the existing provisions of the Drugs and Cosmetics Act and the Drugs and Cosmetics Rules by the State. The fact that in certain States where the Drugs Control enforcement is effective, the problem of drug adulteration is under control, will bear out the observation that the existing legal provisions are adequate enough."

104. The Committee note the reply of the Ministry of Health and Family Welfare (Department of Health) that the proceedings and formalities involved in finalising draft amendments to Drugs and Cosmetics Rules are time-consuming and a period of one year is regarded essential for the purpose. However, the Ministry have assured that efforts will continue to be made to finalise amendments as early as possible, especially in cases where no controversies or further technical consultations are involved. The Committee trust that the Ministry will keep their assurance, and make every effort to finalise amendments to rules in the minimum period possible.

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

(iv) *Implementation of recommendation made in para 38 of the Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Wealth-tax (Second Amendment) Rules, 1973 (S.O. 187-E of 1973).*

106. Rules 2H and 2I inserted by the Wealth-tax (Second Amendment) Rules, 1973, provide that for the purposes of clauses (xxxi) and (xxxii) of sub-section (1) of section 5 of the Wealth-tax Act, 1957, the value of each asset forming part of industrial undertaking other than cash shall be estimated to be the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

107. On examination of the above rules, it was felt that the assets should be estimated either according to the book value thereof, or as assessed by Government approved valuers and not at the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date. The matter was taken up with the Ministry of Finance (Central Board of Direct Taxes) and after considering their reply, the Committee observed in para 38 of their Fifteenth Report (Fifth Lok Sabha) as under :—

"The Committee agree that rules and 2I of the Wealth Tax Rules, 1957, are to be read with section 16A of the Wealth Tax Act, 1957, under which the Wealth Tax Officer may refer the valuation of any asset to a Valuation Officer. But the Committee would like to point out that under the said Section 16A, it is not obligatory on the Wealth Tax Officer to refer the valuation of each and every asset to the Valuation Officer. He may make such a reference, if he is of the opinion that the value of an asset as returned by an assessee is less than its market value. But, in the absence of any guidelines, the possibility of different Wealth Tax Officers forming different opinions about similar assets cannot be ruled out. The Committee note in this connection that, according to the Ministry's own admission, if the assets to be valued under rules 2H and 2I are at different places, the element of subjectivity could come in. With a view to reducing such element to the barest minimum, the Committee need hardly emphasise the imperative need for issue of guidelines. The Committee urge the Ministry of Finance to consider the question of amending the Wealth Tax Rules, so as to incorporate therein suitable guidelines as to valuation."

108. In their action taken note, the Ministry have stated as follows:

"The recommendation made by the Committee has been very carefully considered by the Ministry of Finance. It has not been found advisable to incorporate the guidelines on valuation in

the body of the rules. As a large number of variable factors enter into the calculations of the market value of assets, etc. it may not be possible to frame exhaustive rules covering all the possible combination of factors which would enter such computation.

It is proposed to issue suitable guidelines in the form of instructions to the Assessing Officers."

109. The Committee are not convinced by the argument of the Ministry of Finance (Central Board of Direct Taxes) that as a large number of variable factors enter into the calculations of the market value of assets, it may not be possible to frame exhaustive rules covering all the possible combination of factors which would enter such computation. The Committee note that the Ministry propose to issue suitable guidelines in the form of instructions to the Assessing Officers. In view of this, the Committee feel that the Ministry should have no difficulty in putting those guidelines on a statutory footing, instead of their remaining in the form of instructions which do not come to the notice of the public. The Committee, therefore, reiterate their earlier recommendation made in para 38 of their 15th Report (5th Lok Sabha) that the Wealth-tax Rules should be amended so as to incorporate therein suitable guidelines as to valuation.

(v) *Implementation of recommendation contained in para 77 of the Nineteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) in regard to the Paper (Conservation and Regulation of Use) Order,* 1974.

110. Clause 5(1) of the Paper (Conservation and Regulation of Use) Order, 1974 empowered the Central Government to exempt, by order and subject to such conditions as might be specified in the Order, the printing of certain categories of diaries from the operation of the provisions of the order.

111. The Committee on Subordinate Legislation felt that reasons in writing should be recorded before the Central Government granted exemption under the above provision.

112. The Ministry of Industry and Civil Supplies (Department of Industrial Development) with whom the matter was taken up replied that the power to grant exemption had been withdrawn. Thereupon, the Committee on Subordinate Legislation recommended as under in para 77 of their Nineteenth Report (Fifth Lok Sabha):—

"The Committee note that the power to grant exemption from the provisions of the Order has been withdrawn *vide* S.O. No. 458(E). The Committee desire that in case an exemption pro-

vision is incorporated in future, it should also provide for reasons to be recorded in writing before grant of exemption."

113. The Ministry of Industry and Civil Supplies (Department of Industrial Development) have now stated as under in their O.M. dated 27-7-1976:—

"....*vide* S.O. No. 650(E) dated the 12th November, 1975 the Paper (Conservation and Regulation of Use) Order, 1974 was amended to include another exemption provision as per clause 5 reproduced below:

5. *Power to exemption*:—The Central Government may having regard to the availability of Paper during any period, by order, exempt the printing of advertisement or propaganda materials, calendars, diaries, or invitation or greeting cards from the operation of the provisions of clause 3 for such period as may be specified in the order.

Under this clause, S.O. No. 651-E dated 12-11-75 and S.O. No. 353-E dated 17-5-76 were issued exempting the printing of advertisement or propaganda material, calendars, diaries, and invitation or greeting cards from the provisions of clause 3 of the Paper (Conservation and Regulation of Use) Order, 1974 upto and inclusive of the 31st March, 1976 and the 31st March, 1977 respectively. These orders take effect from the date of issue.

Even though the present orders are also exemption orders, they differ from the earlier exemption orders mainly in two respects. The earlier exemptions were granted to individual concerns whereas the present exemption orders are general and are applicable to all concerned with the printing of propaganda material, diaries, calendars, invitation|greeting cards etc. Further the earlier exemption orders were executive orders whereas the present exemption orders are statutory orders notified in the Gazette. In view of these differences, it is presumed that the Committee's recommendation contained in para 77 of the Nineteenth Report are not applicable in this case."

114. The Committee note that the two exemption Orders issued by the Ministry of Industry vide S.O. 651(E) dated 12-11-75 and S.O. 353(E) dated 17-5-76 under clause 5 of the Paper (Conservation and Regulation of Use) Order, 1974 are general in nature and applicable to all concerned with the printing of propaganda material, diaries, calendars, etc. They also note that whereas the earlier exemption Orders were executive Orders, the present Orders are statutory orders duly notified in the Gazette. In view of this, the Committee confirm the presumption of the Ministry

of Industy that the recommendation made in para 77 of the Nineteenth Report of the Committee (Fifth Lok Sabha) in regard to recording of reasons in writing before grant of exemption is not applicable to the above-mentioned Orders.

NEW DELHI;
The 8th November, 1977.

SOMNATH CHATTERJEE,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(*Vide* para 4 of the Report)

SUMMARY OF MAIN RECOMMENDATIONS/OBSERVATIONS MADE BY THE COMMITTEE

S. No.	Para No.	Summary
(1)	(2)	(3)
1. (i)	9	The Committee are not satisfied with the reply of the Ministry of Home Affairs that under clause(s) of sub-section (2) of Section 39 of the Delhi Sikh Gurdwara Act, 1971 which empowers the Central Government to make rules regarding matters in respect of which the Act makes no provision or makes insufficient provision, Government can define 'corrupt practices' by rules. The Committee will like to make it clear that the question involved is not so much of legality as of propriety. As they feel, it is only matters of procedure and detail which should be spelt out through subordinate legislation; substantial matters should more appropriately be dealt with in the Act itself.
(ii)	10	In the opinion of the Committee, definition of 'corrupt practices' is a substantial matter and of basic importance in a law dealing with elections, and it should more appropriately be dealt with in the Act itself. In this connection, the Committee note that in respect of elections to Lok Sabha and State Legislative Assemblies, 'corrupt practices' have been specified in the Representation of the People Act, 1951 and not in the rules framed thereunder. The Committee, therefore, desire the Ministry of Home Affairs to delete rule 63 of the Delhi Sikh Gurdwara Management Committee (Co-option of Members) Rules, 1974 and Rule 112 of the Delhi Sikh Gurdwara Management Committee (Election of Members) Rules, 1974 and incorporate their provisions in the parent Act.

(1)	(2)	(3)
2.	14	The Committee are not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for not laying down a minimum time-limit for filing an appeal in the proviso to para 4 of the Adaptation of Sikkim Laws (No. 1) Order, 1975. The Committee apprehend that under the said proviso, as worded, the District Magistrate could specify so short a period for lodging an appeal to an aggrieved person as virtually to deny him any right of appeal. The Committee feel that when a right of appeal has been given to an aggrieved person, the right should not be just illusory. The Committee, therefore, desire the Ministry of Law, Justice and Company Affairs (Legislative Department) to amend the proviso to paragraph 4 to provide for grant of some reasonable time-limit for filing an appeal.
3.	20	The Committee note that sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations, 1973 which empowers the Central Government to impose a fine on an employer who fails to re-employ a person belonging to the Indian Naval Auxiliary Service on his termination from this Service, is beyond the scope of the Navy Act, 1957. The Ministry of Defence with whom the matter was taken up have no objection to omit sub-regulation (4) of Regulation 110 of the Indian Naval Auxiliary Service Regulations and to incorporate its provisions in the Navy Act, 1957. The Committee desire the Ministry to take necessary action in this direction at a very early date.
4.	26	The Committee note the reply of the Ministry of Industry (Department of Heavy Industry) that due to practical difficulties, no useful purpose will be served by making a stipulation in the Tractors (Distribution and Sale) Control Order, 1971 that a tractor should be resaleable only to the agency through which it has been purchased for being allotted to the persons in the

(1)	(2)	(3)
		waiting list. In view of this, the committee do not want to pursue the suggestion.
5.	27	As regards the proposal of the Ministry of Industry (Department of Heavy Industry) to omit a reference to "terms and conditions" from clause 10(1) of the Tractors (Distributions and Sale) Control Order, the Committee observe that this deletion will give greater latitude to the controlling authorities concerned in that after this amendment there will be no obligation on them to lay down conditions for resale. The Committee, therefore, desire the Ministry of Industry (Department of Heavy Industry) to amend the order in question laying down therein the "terms and conditions" for resale of tractors, or, in the alternative, issue suitable guidelines to all State Governments regarding circumstances in which permission for resale of tractors, still under statutory control, should be granted. The Committee feel that this is all the more necessary to ensure that there are no variations in the "terms and conditions" from State to State. The Committee also feel that to check profiteering one of the prescribed conditions for re-sale of tractors could be that the re-sale price should not exceed the price at which the tractor was originally purchased.
6.	30	The Committee are not convinced by the reply of the Ministry of Energy that circumstances may arise where in the public interest, it may be considered necessary to terminate the appointment of the Chairman or a whole-time member of the Bhakra Management Board before the prescribed period of 3 years and hence it is not advisable to make a provision in the Rules for recording the reasons in writing. The Committee fail to understand how the Ministry of Energy would initiate action to terminate the terms of the Chairman or a whole-time member without putting anything in writing on record. After all, there must be something on record which may lead to the issue of the notice and the termination of the ap-

(1)	(2)	(3)
		pointment. The Committee desire the Ministry of Energy to amend the Bhakra Management Board Rules so as to provide for recording of reasons in writing before a notice of termination of the term of office of the Chairman or a whole-time member is issued.
7.	37	The Committee note the assurance of the Ministry of Defence that the two safeguards suggested by the Committee, *viz.*, (i) the reasons to be recorded in writing; and (ii) relaxation to be made in respect of only classes or categories of persons, will be complied with, before the Chief of the Naval Staff relaxes the rules of initial and obligatory training under proviso (d) to Regulation 350 of the Naval Ceremonial Conditions of Service and Miscellaneous Regulations. If so, the Committee feel, the Ministry of Defence should have no difficulty in putting the above safeguards on a statutory footing by incorporating them in the Regulations. The Committee desire the Ministry of Defence to do this at an early date.
8.	41	The Committee note that the intention of the Ministry of Home Affairs in using the phrase "such other examinations" in rule 5 (1) of the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975 is to avoid wasteful expenditure and effort by not sending for lower training courses those members of the Border Security Force, who have already cleared advanced courses from some other particular schools or institutions. The Committee feel that the above intention of the Ministry should be clearly spelt out in the rules and not left vague as to give an impression that the Director General could specify any examinations other than those laid down in sub-rule (3) of rule 5 of the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975. The Committee desire the Ministry of Home Affairs to amend the Rule in question suitably at an early date.

(1)	(2)	(3)
9.	44	The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend rule 10(a) of the Border Security Force (Subordinate and Under Officers) Promotion and Seniority Rules, 1975 to provide therein that duration of short-term vacancies shall not ordinarily be more than four months. The Committee desire the Ministry of Home Affairs to amend the rule in question to the necessary effect at an early date.
10.	47	The Committee are not satisfied with the explanation of the Ministry of Home Affairs for not specifying in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 the minimum educational standards to be attained by the nominees for the next higher post. The Committee feel that if, as stated by the Ministry, only matriculates are being recruited as constables, there should be no difficulty in specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. The Committee, therefore, recommend that the minimum educational standards should be specified in the rules and not left to the discretion of the Director General of the Border Security Force. The Committee desire the Ministry of Home Affairs to take early action to amend the rules to the necessary effect.
11.	১২	The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have omitted sub-para (4) of para 9 of the Coal Mines Deposit-linked Insurance Scheme, 1976, and sub-para (4) of Para 10 of the Employees Deposit-linked Insurance Scheme, 1976 which were provisions of an over-riding nature and had been made without any authority in the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
12.	১৭	The Committee note with satisfaction that, on an enquiry being made about the authority in the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 for making, in para 26 of the Coal Mines

(1)	(2)	(3)
		Deposit-linked Insurance Scheme, 1976, and in para 27 of the Employees Deposit-linked Insurance Scheme, 1976, provisions empowering the Central Government to issue directions to the Board or the Commission for the proper administration of the Scheme, the Ministry of Labour have omitted those provisions *vide* their Notifications Nos. H. 11013(2)/76-PFII(i) and H. 11013(2)/76-PFII(ii) dated the 4th May, 1977.
13.	60	The Committee are not convinced by the reasons advanced by the Ministry of Labour for the delay of over 2 years in the final publication of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 1975. The Committee are unhappy to note that even after the final batch of comments had been received in the Ministry of Labour in August, 1973, it took them over one year and 11 months to examine comments and sort out legal issues involved therein with the Ministry of Law. The Committee will like to reiterate their earlier recommendation made in para 13 of the Fifteenth Report (Fifth Lok Sabha) that if a Ministry feel the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for inordinately long periods.
14.	64	The Committee are not satisfied with the explanation of the Ministry of Defence for not incorporating criteria for determining seniority in the Defence Science Service Rules, 1967. The Committee feel that the criteria for determining seniority, being a basic ingredient of recruitment rules, should be incorporated in the rules and not left to be determined through executive instructions, as the executive instructions issued by Government are not published in the Gazette, and therefore, their reasonableness or fairness cannot be judged by the Committee. The Committee note in this connection that criteria for determining seniority have been laid down in a number of rules including

(1)	(2)	(3)
		the Indian Economic/Statistical Service Rules, 1961. The Committee, therefore, desire the Ministry of Defence to amend the Defence Science Service Rules to incorporate therein the criteria for determining seniority.
15.	69	The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have amended Rule 15 of the Export of Jute Products (Quality Control and Inspection) Rules, 1970, to provide that an appeal filed under the rule shall be disposed of within 15 days of its receipt.
16.	72	The Committee note with satisfaction that, on being pointed out, the Department of Personnel and Administrative Reforms have decided to delete the word 'thoroughly' from sub-rule (2) of Rule 20 of the All India Services (Death-*cum*-Retirement Benefits) Rules, 1958. The Committee desire the Department to issue the necessary amendment to the Rules in this regard at an early date.
17.	76	The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended the Librarian Recruitment Rules, 1974, so as to lay down the precise practical experience considered desirable for direct recruitment to the post of Librarian.
18. (i)	85	The Committee in their Ninth Report, presented to the House on 19-11-1973, had given 6 months' time to the Ministry of Finance (Department of Banking) for initiating a comprehensive legislation for incorporating a provision for laying of rules and regulations framed under the various Acts administered by the Department of Banking. The Committee are unhappy to note that necessary provision for laying of regulations has been made in case of only one Act, *viz.*, the Reserve Bank of India Act, 1934. Necessary legislation in respect of other Acts has not yet been introduced in Parliament even though a period of over three years has since elapsed.

(1)	(2)	(3)
(ii)	86	The Committee observe that the Ministry of Finance, which had originally agreed to introduce a comprehensive legislation for laying of rules and regulations framed under the various Acts administered by the Department of Banking, have now advanced the plea that since regulations, which are generaly framed by the undertakings, are not of general public interest and mainly relate to the day-to-day administration of the undertakings concerned, these need not be laid before Parliament. The Committee are not convinced by this argument. They need hardly point out that the body which delegates the power has a right to see that the power delegated by it is properly exercised, and the delegate does not transgress the limits laid down by it. Whether the delegate is the Central Government or a body subordinate to it is not very material.
(iii)	87	Nor do the Committee see any force in the argument that laying of regulations relating to an undertaking before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As the Committee observe, even now the Committee on Subordinate Legislation can, and do, scrutinise the regulations framed by subordinate bodies. Laying of regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. The Committee, therefore desire the Ministry of Finance (Department of Banking) to bring forward without any further delay necessary legislation for laying of regulations framed under the remaining Acts administered by the Department of Banking, as has been done in the case of Regulations, framed under the Reserve Bank of India Act, 1934.
19. (i)	96	In the State of Kerala *vs.* K. M. Charia (S.C.R. 1965, P. 601), the Supreme Court had observed that validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised, and that no additional sanctity attaches to such rules. In para 21 of their Eleventh Report (Fifth Lok Sa-

(1)	(2)	(3)
		bha), the Committee on Subordinate Legislation had desired the Ministry of Law to examine, in the light of the above ruling of the Supreme Court, whether in framing any rule under the Central Acts which contained a provision similar to the provision of section 191 of the Air Force Act, 1950, the Central Government had transcended their authority.
(ii)	97	The Committee note that, in pursuance of the recommendation of the Committee made in part 21 of their Eleventh Report (Fifth Lok Sabha), the Ministry of Law have examined three Central Acts,— (i) the Stamp Act, 1899; (ii) the Mines Act, 1952, and (iii) the Central Excises and Salt Act, 1944. They note that in so far as the Stamp Act, 1899 is concerned, provision authorising the Government to grant remission etc. from stamp duty exists in the Act. Likewise authority empowering the Government to charge fees in respect of examinations and grant and renewal of certificates exists in the Mines Act, 1952. In the case of the Central Excises and Salt Act, 1944, however, there is no authority at present for collection of fees for examination of excisable goods intended for export, as laid down in Rule 173—0(1) of the Central Excise Rules. The Committee note in this connection that the Ministry of Finance propose to bring a new Bill to replace the existing Act which would contain a specific provision for charging of fees wherever thought necessary. The Committee desire the Ministry of Finance to bring the proposed legislation before Parliament at an early date.
(iii)	98	The Committee had also desired the Ministry of Defence to make an express provision in the Air Force Act, 1950 providing for charging of fee for supply of copies of the proceedings of the Court of Inquiry. The Committee note from the reply of the Ministry of Defence that they propose to bring several amendments to the Air Force Act in due course which will include a provision for charging of fees for supply of copies of the proceedings of the Court of Inquiry. The Committee desire the Ministry of Defence also to

(1)	(2)	(3)
		bring the proposed legislation before Parliament at an early date.
20. (i)	104.	The Committee note the reply of the Ministry of Health and Family Welfare (Department of Health) that the proceedings and formalities involved in finalising draft amendments to the Drugs and Cosmetics Rules are time-consuming and a period of one year is regarded essential for the purpose. However, the Ministry have assured that efforts will continue to be made to finalise amendments as early as possible, especially in cases where no controversies or further technical consultations are involved. The Committee trust that the Department of Health will keep their assurance, and make every effort to finalise amendments to rules in the minimum period possible.
(ii)	105	The Committee also note the reply of the Ministry of Health and Family Welfare (Department of Health) that Drugs and Cosmetics Rules are being constantly reviewed and suitably amended, whenever necessary, for plugging loopholes as and when noticed and at present there are no loopholes which can be taken advantage of by unscrupulous elements. According to the Ministry, what is required is a more rigorous and effective enforcement of the existing provisions of the Drugs and Cosmetics Act and the Drugs and Cosmetics Rules by the State. The Committee trust that constant vigilance will be exercised by Government to ensure that the provisions of the Act and the Rules are not evaded by unscrupulous elements.
21.	109	The Committee are not convinced by the argument of the Ministry of Finance (Central Board of Direct Taxes) that as a large number of variable factors enter into the calculations of the market value of assets, it may not be possible to frame exhaustive rules covering all the possible combination of factors which would enter such computation. The Committee note that the Ministry of Finance propose to issue suitable guidelines in the form of instructions to the Assessing Officers. In view of this, the Committee feel that the

(1)	(2)	(3)
		Ministry should have no difficulty in putting those guidelines on a statutory footing, instead of their remaining in the form of instructions which do not come to the notice of the public. The Committee, therefore, reiterate their earlier recommendation made in para 38 of their 15th Report (Fifth Lok Sabha) that the Wealth-tax Rules should be amended so as to incorporate therein suitable guidelines as to valuation.
22.	114	The Committee note that the two exemption Orders issued by the Ministry of Industry *vide* S.O. 651(E) dated 12-11-75 and S.O. 353(E) dated 17-5-76 under clause 5 of the Paper (Conservation and Regulation of Use) Order, 1974 are general in nature and applicable to all concerned with the printing of propaganda material, diaries, calendars, etc. They also note that whereas the earlier exemption Orders were executive Orders, the present orders are statutory orders duly notified in the Gazette. In view of this, the Committee confirm the presumption of the Ministry of Industry that the recommendation made in para 77 of the Nineteenth Report of the Committee (Fifth Lok Sabha) in regard to recording of reasons in writing before grant of exemption is not applicable to the above-mentioned orders.

APPENDIX II

(*vide* para 63 of the Report)

SENIORITY RULES FOR GAZETTED OFFICERS IN THE DEFENCE SCIENCE SERVICE

The following are the grades of gazetted appointments in the Defence Science Service:—

1. Junior Scientific Officer
2. Senior Scientific Officer, Grade II
3. Senior Scientific Officer, Grade I
4. Principal Scientific Officer
5. Deputy Chief Scientific Officer
6. Director Grade II
7. Director Grade I

The officers in the first four categories *i.e.*, up to the level of P.Sc.O. will be assigned only one of the following 17 serrated pyramid subjects covering the field of activity of the services at present:—

1. Metallurgy
2. Armaments
3. Explosives
4. Instrumentation
5. Electronics
6. Engineering
7. Flight Sciences
8. Nuclear Science
9. Chemistry
10. Biology
11. Physics
12. Physiology
13. Psychology
14. Mathematics and Statistics
15. Sc. Inf. & Tech. Documentation
16. General Stores
17. Textiles.

This will be done by the Scientific Adviser on the basis of academic qualifications and experience etc. of the officer. An officer in a particular S. P. subject will not normally be eligible for transfer to another S. P. Subject except in public interest. There will, however, be no inter-subject promotion.

3. Combined seniority list of the officers of each grade will be maintained. In the case of the first four categories *i.e.*, Junior Scientific Officer,

Senior Scientific Officer Grade II, Senior Scientific Officer Grade I and Principal Scientific Officer, seniority lists will also be maintained subject-wise in addition to the combined lists. The following rules will be observed in preparing these lists:—

(*i*) *Direct Recruitment*

Relative Seniority of direct recruits will be determined in accordance with the order of merit in which they are selected for appointment to a particular grade on the recommendation of the Union Public Service Commission, those appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. In this connection, the date of the Union Public Service Commission's recommendation addressed to the Ministry shall be the date of seniority. The date of assumption of actual charge will have no effect on the seniority determined in the above manner.

(*ii*) *Departmental Promotion*

(a) Departmental promotees will be arranged in the order of their selection by the Departmental Promotion Committee, those selected earlier being senior to those selected later.

(b) Relative seniority of departmental promotees in different subject groups in a particular grade will be determined in accordance with the principle laid down in sub-para (v) below.

(*iii*) *Transfer*

Appointment by transfer will be made with prior concurrence of the Union Public Service Commission and as such will be deemed as direct recruitment.

(*iv*) Inter-se *seniority of direct recruits* vis-a-vis *promotees*

The relative seniority of direct recruits and promotees in a grade will be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Defence Science Service Rules.

In the grades where no ratio has been fixed the seniority of direct recruits will reckon from the date of the Union Public Service Commission letter recommending the names of the individuals. In the case of the departmental promotees, the seniority will reckon from the date of DPC meeting or the occurrence of vacancy whichever is later.

There might be cases where an individual is officiating on *ad hoc* basis against a senior appointment before the DPC meeting is held. In such cases also, seniority will reckon from the date of the DPC meeting.

(v) Inter-se *seniority on combined seniority list where the officers belong to different subject groups.*—In the case of persons selected by the Union Public Service Commission at the same time, the Union Public Service Commission should be asked to indicate a common order of merit. The Departmental promotees in various subject groups cleared by the Departmental Promotion Committee at the same time should be grouped in three groups according to their grading *i.e.* "Outstanding", "Very Good" and "Good". All those graded as "Outstanding" will rank *en bloc* above those graded as "Very Good" and "good". Similarly, those graded as "very good" will rank *en bloc* above those graded as "Good". The outstandings will then be given seniority in accordance with their seniority in the combined seniority list *i.e.*, the grade from which they have been cleared for promotion. The *inter se* seniority of direct recruits and promotees will thereafter be determined in accordance with the principles laid down in sub-para (iv) above.

4. Persons appointed on *ad hoc* basis to a grade without consultation with the UPSC under Regulation 4 of the UPSC (Exemption from Consultation) Regulations, 1958, are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer, as the case may be. Until they are replaced, such persons will be shown in the order of their *ad hoc* appointments and below all persons regularly appointed to the grade. In cases where the appointment of persons appointed in *ad hoc* basis is regularised by the UPSC, seniority will count from the date of regularisation and not from the date of *ad hoc* appointment unless the appointment is regularised by the UPSC from the original date.

5. The permanent employees in each grade of the DSS as on 4 February, 1967 will be placed senior to all the temporary employees in that grade. The *inter se* seniority of the permanent employees as already fixed will not be disturbed. The seniority of temporary employees as already fixed will not also be disturbed. The seniority of all new entrants subsequent to 4 February, 1967 will be determined in accordance with the above principles. The relative seniority of persons promoted/recruited to the various grades shall be in the order of their selection provided that where persons promoted/recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion/recruitment, seniority shall follow the order of confirmation and not the original order of merit.

6. Notwithstanding anything contained in these principles for determination of seniority, seniority of persons belonging to the following categories will, on their appointment to DSS posts continue to be determined by the instructions noted against each such category:

(a) Ex-Government servants penalised for their patriotic activities.	M of H.A. OM No. 6/4/52-S&N. G. dated 29-5-57 reproduced in AI 240/57.
(b) Central Govt. employees discharged on account of affliction with T.B. or pleurisy.	M of D OM No. 8(1)54/10313/Apptt. dated 19-9-56 extended ex-pleurisy patients *vide* OM No. 8(1) 56/241/D-Apptts. dated 15-1-58.
(c) Permanent displaced Government servants nominated by the transfer bureau to purely temporary organisations, who, subsequently on their retrenchment, were absorbed in other offices.	M of H.A. OM No. 30/uu/48/APPt. dated 22-6-49.

APPENDIX III

(*vide* para 81 of the Report)

List of Acts being administered by the Department of Banking in which the provisions for laying of rules/ regulations is to be made.

S.No.	Short title of the Act	Approximate date when this provision is likely to be incorporated
(1)	(2)	(3)
1	The Industrial Finance Corporation Act, 1948.	In so far as laying of regulations framed under this Act is concerned, the Ministry have stated that regulations deal with matters of detail and for that reason are left to be framed by the Corporations, They are also not of general public interest and mainly relate to day-to-day administration of the Corporation concerned. There would be considerable practical difficulties in providing for the laying of the same before the Houses of Parliament and it is also felt that the Parliament should not be troubled with such matter which are left to be dealt with by the Boards of the Corporations.
2.	The Banking Regulation Act, 1949.	There is no provision in this Act to lay the rules framed thereunder The Ministry have stated that an Amendment Bill containing miscellaneous amendments to different statutes relating to banking is proposed to be introduced in Parliament as early as possible.
3.	The State Bank of India Act, 1955.	Do. As regards laying of regulations, the Ministry have sent the same reply as given against S. No. 1 above
4.	The State Bank of India (Subsidiary Banks) Act, 1959	As regards laying of regulations, the Ministry have sent the same reply as given against S. No. 1 above
5.	The Deposit Insurance Corporation Act, 1961.	Do.
6.	The Agricultural Refinance Corporation Act, 1963.	Do.
7.	The Industrial Development Bank of India Act, 1964.	Do.
8.	The Banking Companies (Acquisition and Transfer) of Undertakings) Act, 1970.	Do,

MINUTES

APPENDIX IV

II

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1977-78)

The Committee met on Thursday, the 4th August, 1977 from 16.00 to 17.15 hours.

PRESENT

Chairman

1. Shri Somnath Chatterjee

Members

2. Shri Bhagirath Bhanwar
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri K. T. Kosalram
6. Shri P. Rajagopal Naidu
7. Shri N. Sreekantan Nair
8. Shri Trepan Singh Negi

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 1—9 on the following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
(i)	1	The Delhi Sikh Gurdwara Management Committee (Co-option of Members) (Amendment) Rules, 1976 (Notification No. F. 18/33/74-judl. dated 25-2-75).
(ii)	2	The Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 (G.S.R. 419-E of 1975).
(iii)	3	Delay in final publication of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 1975 (G.S.R. 824 of 1975).

1	2	3
(iv)	4	** ** **
(v)	5	Implementation of recommendation made in paras 46-47 of Ninth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Bills or Acts delegating legislative powers to subordinate authorities—the State Bank Laws (Amendment) Bill, 1973 (as passed by Rajya Sabha).
(vi)	6	** ** **
(vii)	7	The Export of Jute Products (Quality Control and Inspection) Amendment Rules, 1974 (S.O. 1165 of 1974).
(viii)	8	** ** **
(ix)	9	The Tractors (Distribution and Sale) Control Orders, 1971 (S.O.3258 of 1971).

(i) *Delhi Sikh Gurdwara Management Committee (Co-option of Members) (Amendment) Rules,* 1976 (*Notification No. F.* 18/33/74-*Judl., dated 25th February,* 1975) (*Memorandum No.* 1).

3. The Committee considered the above Memorandum and were not convinced with the reply of the Ministry of Home Affairs that under clause(s) of sub-section (2) of section 39 of the Delhi Sikh Gurdwara Act, 1971, which empowered the Central Government to make rules regarding matters in respect of which the Act made no provision or made insufficient provision, Government could define 'corrupt practices' by rules. In their opinion, the question was not so much of legality as that of propriety. They felt that definition of 'corrupt practices' was a substantial matter and of basic importance in a law dealing with elections. It was only matters of procedure and detail which should be spelt out through subordinate legislation. The Committee noted in this connection that in respect of elections to Lok Sabha and State Legislative Assemblies, 'corrupt practices' have been specified in the Representation of the People Act, 1951, and not in the rules framed thereunder. The Committee, therefore, decided to recommend that rule 63 of the above rules should be deleted and its provisions should be incorporated in the parent Act.

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

(ii) *The Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules,* 1975 (*G.S.R.* 419-*E of* 1975)—(*Memorandum No.* 2).

(A)

4. *Rule* 5(1).—The Committee considered the above Memorandum and were of the opinion that if the intention of the Ministry of Home Affairs was to avoid wasteful expenditure and effort by not sending for lower training courses those members of the Border Security Force, who had already cleared advanced courses from some particular schools or institutes, it should be clearly indicated in the rules and not left vague, which might give an impression that the Director-General could specify any examinations other than those laid down in sub-rule (3) of rule 5 of the above rules.

(B)

5. *Rule* 10(*a*).—The Committee noted that the Ministry had agreed to amend rule 10(a), *ibid.*, to provide therein that promotion to short-term vacancies would not be for more than four months.

(C)

6. *Rules* 14(2), 15(2)(ii), 16(2)(ii), 17(1)(b)(ii) and 18(2)(ii).—The Committee were not satisfied with the explanation of the Ministry for not specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. If, as was stated by the Ministry, only matriculates were being recruited as constables, the Committee felt that there should be no difficulty in specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post. The Committee, therefore, decided that the said minimum educational standards should be specified in the rules and not left to the discretion of the Director-General of the Border Security Force.

(iii) *Delay in final publication of the Industrial Employment (Standing Orders) Central (Amendment) Rules,* 1975 (*G.S.R.* 824 *of* 1975)—(*Memorandum No.* 3).

7. The Committee considered the above Memorandum and were not convinced with the reasons given by the Ministry for the delay of over 2 years in the final publication of the above rules. They were unhappy to note that after the final batch of comments had been received in August, 1973, it took the Ministry over one year and 11 months to examine comments and sort out legal issues involved therein with the Law Ministry. The Committee decided to reiterate their earlier recommendation made

in para 13 of Fifteenth Report (Fifth Lok Sabha) that if a Ministry felt the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for years together.

8. * * *

(iv) * * *

9. * * *

(v) *Implementation of recommendation made in paras 46-47 of Ninth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Bills or Acts delegating legislative powers to subordinate authorities —the State Bank Laws (Amendment) Bill, 1973 (as passed by Rajya Sabha)—(Memo. No. 5).*

10. The Committee considered the above Memorandum and noted that although, in their Ninth Report presented to the House on 19-11-1973, the Committee had given 6 months' time to the Ministry for initiating a comprehensive legislation for incorporating a provision for laying of rules and regulations framed under the various Acts administered by the Department of Banking (nine in number) necessary provision for laying had been made in case of regulations framed under only one Act, *viz.*, the Reserve Bank of India Act, 1934. Necessary legislation in respect of the other eight Acts has not yet been introduced in Parliament even though a period of over 3 years has since elapsed. The Committee also noted that the Ministry had been requesting for extensions from time to time and the last extension had also lapsed on 30-6-77. No further extension had so far been asked for by the Ministry thereafter. The Committee desired that the necessary legislation should be brought forward before Parliament at a very early date.

11. The Committee also considered the argument advanced by the Ministry that the regulations were not of general public interest and mainly related to day-to-day administration of the undertakings concerned. They were, therefore, left to be framed by the undertakings concerned and it was not necessary to lay them before Parliament. The Committee were not convinced by this argument, for they felt that the body which delegates the power has the right to see that the power delegated by it is properly exercised and the delegate does not transgress the limits laid down by it.

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

Whether the delegate is the Central Government or a body subordinate to it is not very material.

Nor were the Committee convinced by the argument that the laying of the regulations before Parliament might impinge the autonomy of the undertakings concerned. They were of the view that laying of the regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. They, therefore, decided to recommend that the Ministry should bring forward necessary legislation at an early date for incorporating a provision for laying of Regulations framed under the remaining Acts, as had been done in the case of the Regulations framed under the Reserve Bank of India Act, 1934.

(vi) * * * *

12. * * * *

(vii) *The Export of Jute Products (Quality Control and Inspection) Amendment Rules,* 1974 (*S.O.* 1165 *of* 1974)—(*Memorandum No.* 7).

13. The Committee considered the above Memorandum and noted that the provision for disposal of appeal within 15 days of its receipt had since been made in the above rules, *vide* S.O. 4462 of 1976, dated 20-11-1976.

(viii) * * * *

14 to 16. * * * *

(ix) *The Tractors (Distribution and Sale) Control Order,* 1971 (*S.O.* 3258 *of* 1971)—(*Memorandum No.* 9).

17. The Committee considered the above Memorandum and noted the reply of the Department of Heavy Industry that no useful purpose will be served by making a stipulation in the Order that a tractor allowed to be resold under clause 10(1) of the Order should be resaleable only to the agency through which it had been purchased for being allotted to persons in the waiting list. In view of this, the Committee decided not to pursue the suggestion.

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

As regards the proposal of the Ministry to omit a reference to "terms and conditions" from clauses 10(1) of the Order, as observed by the Committee of 1975-76, the deletion will give greater latitute to the authorities concerned in that after this amendment there will be no obligation on them to lay down conditions for re-sale. The Committee, therefore, desired the Ministry of Industry (Department of Heavy Industry) to amend the Order in question, laying down the "term and conditions", or, in the alternative, issue suitable guidelines to all the State Governments regarding circumstances in which permission for re-sale of tractors under statutory control should be granted. The Committee felt that this was necessary to ensure that there was no variation as to "terms and conditions" from State to State. They also felt that one of the prescribed conditions for re-sale could be that the resale price should not exceed the price at which the tractor was originally purchased so as to check profiteering.

The Committee then adjourned.

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

(1977-78)

The Committee met on Saturday, the 3rd September, 1977 from 11.00 hrs. to 12.30 hrs.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Ram Sewak Hazari
8. Shri K. T. Kosalram
9. Shri N. Sreekantan Nair
10. Shri Trepan Singh Negi
11. Kumari Maniben Vallabhbhai Patel
12. Shri Sachindralal Singha

* * * *

SECRETARIAT

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

2 to 22. * * * *

23. The Committee then considered Memoranda Nos. 10 to 14 on the following subjects:—

S. No.	Memo No.	Subject
1	2	3
1.	10	Adaptation of Sikkim Laws (No. 1) Order, 1975 (S.O. 207-E of 1975).
2.	11	The Defence Science Service (Amendment) Rules, 1974 (S.R.O. 379 of 1974).

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

2346 L.S.—6.

1	2	3
3.	12	** ** **
4.	13	** ** **
5.	14	The Librarian Recruitment Rules, 1974 (G.S.R. 951 of 1974).

(i) *Adaptation of Sikkim Laws (No. 1) Order, 1975 (S.O. 207-E of 1975).*

24. The Committee considered the above Memoranda and were not satisfied with the reply of the Ministry of Law (Legislative Department) for not laying down a minimum time-limit for filing an appeal in the proviso to para 4. They observed that under the said proviso, as worded, the District Magistrate could specify so short a period for lodging an appeal to an aggrieved person virtually to deny him any right of appeal. The Committee felt that when a right of appeal had been given to an aggrieved person, the right should not be just illusory. The Committee, therefore, decided to recommend that proviso to paragraph 4 be amended to provide for grant of some reasonable time-limit for filing an appeal.

(ii) *The Defence Science Service (Amendment) Rules, 1974 (S.R.O. 379 of 1974).*

25. The Committee considered the above memorandum and desired the Ministry of Defence to incorporate the criteria for determining seniority in the rules, as the executive instructions issued by Government were not published in the Gazette, and therefore, their reasonableness or fairness cannot be judged by the Committee. They also noted in this connection that criteria for determining seniority had been laid in a number of service rules, such as the Indian Economic Service Rules, 1961 and the Indian Statistical Service Rules, 1961.

(iii)	**	**	**	**
26.	**	**	**	**
(iv)	**	**	**	**
27.	**	**	**	**

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

(v) *The Librarian Recruitment Rules,* 1974 (*G.S.R.* 951 *of* 1974).

28. The Committee considered the above memorandum and noted with satisfaction that on being pointed out the Ministry of Home Affairs have amended the rules so as to lay down the precise practical experience considered desirable for direct recruitment of Librarian.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1977-78)

The Committee met on Thursday, the 29th September, 1977 from 10.30 hours to 13.00 hours.

PRESENT

CHAIRMAN

Shri Somnath Chatterjee

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Tarun Gogoi
8. Shri K. T. Kosalram
9. Shri P. Rajagopal Naidu
10. Shri N. Sreekantan Nair
11. Shri Trepan Singh Negi
12. Kumari Maniben Vallabhbhai Patel
13. Shri Saeed Murtaza
14. Shri Sachindralal Singha.

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SECRETARIAT

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

2 to 23. * * * *

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

24. The Committee then considered Memoranda Nos. 15—24 on the following subjects:—

Sl. No.	Memo No.	Subject
1.	15	The Indian Naval Auxiliary Service Regulations, 1973 (S.R.O. 232 of 1973).
2.	16	The Naval Ceremonial Conditions of Service and Miscellaneous (Fifth Amendment) Regulations, 1973 (S.R.O. 244 of 1973).
3.	17	The Bhakra Management Board Rules, 1974 (G.S.R. 1330 of 1974).
4.	18	(*i*) The Coal Mines Deposit-linked Insurance Scheme, 1976 (G.S.R. 487-E of 1976); and (*ii*) The Employees Deposit-linked Insurance Scheme, 1976 (G.S.R. 488-E of 1976).
5.	19	Implementation of recommendations made in paras 19-22 of Eleventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Air Force Act (Amendment) Rules, 1970 (S.R.O. 396 of 1970).
6.	20	Implementation of recommendations made in paras 13-15 of Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding (i) the Drugs and Cosmetics (Amendment) Rules, 1972 (G.S.R. 2139 of 1972); (ii) The Drugs and Cosmetics (Third Amendment) Rules, 1972 (G.S.R. 289 of 1973); and (iii) The Drugs and Cosmetics (Amendment) Rules, 1973 (G.S.R. 444 of 1973).
7.	21	Implementation of recommendation made in para 38 of the Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sobha) regarding the Wealth-tax (Second Amendment) Rules, 1973 (G.S.R. 187-E of 1973).
8.	22	** ** **
9.	23	The All India Services (Death-cum-Retirement Benefits Amendment) Rules, 1974 (G.S.R. 755 of 1974).
10.	24	Implementation of recommendation contained in para 77 of the Nineteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) in regard to the Paper (Conservation and Regulation of Use) Order, 1974.

(i) *The Indian Naval Auxiliary Service Regulations*, 1973 (*S.R.O.* 232 *of* 1973) (*Memorandum No.* 15).

25. The Committee considered the above Memorandum and noted that the Ministry of Defence had agreed to delete sub-regulation (4) of Regulation 110 which empowered the Central Government to impose a

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fine extending to one thousand rupees on an employer without any specific authority for that in the Navy Act, 1957. They also noted that the Government proposed to amend the Navy Act to incorporate these provisions therein.

(ii) *The Naval Ceremonial Conditions of Service and Miscellaneous (Fifth Amendment) Regulations,* 1973 (*S.R.O.* 244 *of* 1973)—(*Memorandum No.* 16).

26. The Committee considered the above Memorandum and noted that the Ministry of Defence had agreed to comply with the two safeguards suggested by the Committee *viz.* (i) reasons to be recorded in writing; and (ii) relaxation to be made in respect of classes or categories of persons, before the Chief of the Naval Staff relaxed the rules of initial and obligatory training under the provisio to Regulation 350.

27. The Committee desired the Ministry to put these safeguards on a statutory footing by incorporating them in the Regulations.

(iii) *The Bhakra Management Board Rules,* 1974 (*G S.R.* 1330 *of* 1974)—(*Memorandum No.* 17).

28. The Committee considered the above Memorandum and were not convinced by the reply of the Ministry of Energy that circumstances might arise where in the public interest, it might be considered necessary to terminate the appointment of the Chairman or a whole-time member before the prescribed period of 3 years and hence it was not advisable to make a provision in the Rules for recording the reasons in writing. The Committee failed to understand how the Ministry would initiate action to terminate the term without putting anything in writing on record. There must be something on record which might lead to issuing of the notice and the termination of the appointment. The Committee decided to recommend to the Ministry to amend the rules so as to provide for recording of reasons in writing before a notice of termination of the term of office of the Chairman or a whole-time member was issued.

(iv) (a) *The Coal Mines Deposit-linked Insurance Scheme,* 1976 (*G.S.R.* 487-*E of* 1976); *and*

(b) *The Employees Deposit-linked Insurance Scheme,* 1976 (*G.S.R.* 488-*E of* 1976)—(*Memorandum No* 18).

(A)

29. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Labour had omitted sub-para (4) of para 9 of the Coal Mines Deposit-linked Insurance Scheme, 1976 and

sub-para (4) of para 10 of the Employees Deposit-linked Insurance Scheme, 1976 which were provisions of an over-riding nature and had been made without any authority in the parent Act.

(B)

30. The Committee noted that on being enquired about the authority in the parent Act for making in para 26 of the Coal Mines Deposit-linked Insurance Scheme, 1976 and in para 27 of the Employees Deposit-linked Insurance Scheme, 1976 provisions empowering the Central Government to issue directions to the Board or the Commission for the proper administration of the Scheme, the Ministry of Labour had omitted those provisions *vide* their Notifications Nos H-11013/(2)/76-PF-II(i) & H. 11013(2)/76-PF-II dated the 4th May, 1977.

(v) *Implementation of recommendations made in paras* 19—22 *of the Eleventh Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Air Force Act (Amendment) Rules,* 1970 *(S.R.O.* 396 *of* 1970)—(*Memorandum No.* 19).

31. The Committee considered the above Memorandum and noted that in so far as the Stamp Act, 1899 was concerned, provision regarding granting of remission etc. for stamp duty existed in the Act. Like-wise provision for fixing fees to be paid in respect of examinations and grant and renewal of certificates existed in the Mines Act, 1952. In the case of Central Excises and Salt Act, 1944, however, there was no authority at present for collection of fees for examination of excisable goods intended for export, as laid down in Rule 173-O(1) of the Central Excise Rules. The Ministry of Finance proposed to include in the proposed new Bill specific provisions for charging of fees wherever thought necessary.

32. The Committee also noted that the Ministry of Defence proposed to bring several amendments to the Air Force Act in due course, which will include a provision for charging of fees for supply of copies of the proceedings of the court of inquiry. The Committee desired the Ministries of Finance and Defence to expedite the proposed amendments to the Central Excises and Salt Act and the Air Force Act, respectively.

(vi) *Implementation of recommendations made in paras* 13—15 *of Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Drugs and Cosmetics (Amendment) Rules,* 1972 *(G.S.R.* 2139 *of* 1972); (*ii*) *The Drugs and Cosmetics (Third Amendment) Rules,* 1972 (*G.S.R.* 289 *of* 1973); *and* (*iii*) *the Drugs and Cosmetics (Amendment) Rules,* 1973 (*G.S.R.* 444 *of* 1973)—(*Memorandum No.* 20).

33. The Committee considered the above Memorandum and noted the reply of the Ministry of Health and Family Welfare (Department of Health) that the proceedings and formalities involved in finalising draft amendments to the Drugs and Cosmetics Rules were time-consuming and a period of about one year was felt to be essential for the purpose. However, the Committee noted the assurance of the Ministry that efforts would continue to be made to finalise amendments as early as possible, especially in cases where no controversies or further technical consultation were involved.

34. The Committee also noted the reply of the Ministry that the Drugs and Cosmetics rules were being constantly reviewed and suitably amended wherever necessary, for plugging loopholes as and when noticed. Consequently, there were at present no loopholes in the Drugs and Cosmetics Rules which can be taken advantage of by unscrupulous elements.

(vii) *Implementation of recommendation made in para* 38 *of the Fifteenth Report of the Committee on Subordinate Legislation* (*Fifth Lok Sabha*) *regarding the Wealth-tax* (*Second Amendment*) *Rules,* 1973 (*S.O.* 187-*E of* 1973)—(*Memorandum No.* 21).

35. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Finance (Central Board of Direct Taxes) that a large number of variable factors entered into the calculations of the market value of assets and as such it might not be possible to frame exhaustive rules covering all the possible combinations of factors which would enter such computation. The Committee decided to reiterate their earlier recommendation made in para 38 of their Fifteenth Report (Fifth Lok Sabha) that the guidelines regarding assets should be incorporated in the rules.

(viii) * * * *

36. * * * *

(ix) *The All India Services* (*Death-cum-Retirement Benefits*) *Amendment Rules,* 1974 (*G.S.R.* 755 *of* 1974)—(*Memorandum No.* 23).

(A)

37. * * * *

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

(B)

38. The Committee considered the Memorandum and noted that on being pointed out, the Department of Personnel and Administrative Reforms had decided to delete the word 'thoroughly' from sub-rule (2) of rule 20 of the All India Services (Death-*cum*-Retirement Benefits) Rules, 1958.

(x) *Implementation of recommendation contained in para 77 of the Nineteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) in regard to the Paper (Conservation and Regulation of use) Order, 1974—(Memorandum No. 24).*

39. The Committee considered the above Memorandum and noted that the two exemption Orders issued *vide* S.O. No. 651-E dated 12th November, 1975 and S.O. 353-E dated 17th May, 1976 under clause 5 of the Paper (Conservation and Regulation of Use) Order, 1974 were general and applicable to all concerned with the printing of propaganda material diaries, calendars etc. Further, the exemption orders were statutory orders notified in the Gazette. In view of these two safeguards, the Committee decided to confirm the presumption of the Ministry that the recommendation made in para 77 of Nineteenth Report (Fifth Lok Sabha) regarding recording of reasons in writing before grant of exemption was not applicable in these two cases.

The Committee then adjourned to meet again on the 27th October, 1977.

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

(1977-78)

The Committee met on Tuesday, the 8th November, 1977 from 11.00 to 12.00 hours.

PRESENT

1. Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Trepan Singh Negi
8. Kumari Maniben Vallabhbhai Patel

SECRETARIAT

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

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

3. The Committee authorised the Chairman and in his absence, Shri Santoshrao Gode to present the Second Report to the House on their behalf on the 18th November, 1977.

4—26.

The Committee then adjourned to meet again on the 29th November, 1977.

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