

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

NINETEENTH REPORT

(Presented on the 15th April, 1976)



**LOK SABHA SECRETARIAT
NEW DELHI**

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CORRIGENDA TO THE NINETEENTH REPORT
OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (FIFTH LOK SABHA)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1975-76)

1. Dr. Kailas—*Chairman*
2. Shri R. N. Barman
3. Shrimati Premalabai Dajisaheb Chavan
4. Shri K. Chikkalingaiah
5. Shrimati Marjorie Godfrey
6. Shri Md. Jamilurrahman
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8. Shri Kamala Prasad
9. Shri Zulfiquar Ali Khan
10. Shri D. K. Panda
11. Shri Ram Singh Bhai
12. Shri M. S. Sanjeevi Rao
13. Shri M. Satyanarayan Rao
14. Shri Tayyab Hussain
15. Shri Shiv Shankar Prasad Yadav

SECRETARIAT

Shri P. K. Patnaik—*Additional Secretary.*

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

REPORT

INTRODUCTION

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

2. The Committee have held four sittings—on the 9th and 10th December, 1975, 24th March and 14th April, 1976.

3. The Committee considered and adopted this Report at their sitting held on the 14th April, 1976. 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).

II

- (I) THE MINISTERS (ALLOWANCES, MEDICAL TREATMENT AND OTHER PRIVILEGES) (AMENDMENT) RULES, 1973 (G.S.R. 228-E OF 1973),
- (II) THE MINISTERS (ALLOWANCES, MEDICAL TREATMENT AND OTHER PRIVILEGES) (AMENDMENT) RULES, 1974 (G.S.R. 13-E OF 1974).
- (III) THE MINISTERS (ALLOWANCES, MEDICAL TREATMENT AND OTHER PRIVILEGES) (SECOND AMENDMENT) RULES, 1974 (G.S.R. 693-E OF 1974).

5. The Ministers (Allowances, Medical Treatment and other Privileges) (Second Amendment) Rules, 1974 were published in the Gazette of India dated the 23rd December, 1974 but they were given retrospective effect from the 10th October, 1974 *vide* sub-rule (2) of Rule 1 *ibid*.

6. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 16th May, 1975 noticed that the Salaries and Allowances of Ministers Act, 1952 under which the above Rules have been framed did not empower the Government to give retrospective effect to the Rules framed thereunder and as such retrospective effect to the above rules had apparently been given without due legal authority. A similar point arose out of examination of the remaining two amending rules.

7. The Ministry of Home Affairs with whom the above point was taken up have given the following identical reply in all the three cases:

“...since the Salaries and Allowances of the Ministers Act, 1952 under which the Ministers' (Allowances, Medical Treatment and other Privileges) Amendment Rules, 1973 (G. S. R. 228-E dated 3-5-73) were framed, *does not confer specific power on the Government for giving retrospective effect, an explanatory memorandum was embodied in the Notification, and published in*

the Gazette of India, alongwith it, in accordance with the instructions contained in Department of Parliamentary Affairs O. M. No. SR II (8-10) IV/68-CB dated 13-5-1969. The explanatory memorandum indicates the circumstances in which giving retrospective effect was unavoidable and also certifies that no one's interest is prejudicially affected by reason of retrospective effect given to the aforesaid amending rules.

In view of the position explained above it is requested that the Notification G. S. R. 228-E dated 3-5-1973 may be treated to be in order. It may, however, be mentioned that any further amendment at this stage to the said notification and similar other Notifications which were issued from time to time since the framing of the Ministers' (Allowances, Medical Treatment and other Privileges) Amendment Rules, 1973, so as to make them operative with effect from the date of their publication in the Gazette of India, is likely to result in anomalies.

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

8. The Committee are not satisfied with the above reply of the Ministry of Home Affairs. It is apparent from the reply that the Ministry is labouring under an impression that publication of explanatory memorandum in regard to retrospective operation of rules does away with the necessity of a specific provision in the Act empowering the Government to give retrospective effect to the Rules framed thereunder. This impression of the Ministry is not correct.

The Committee will like to make it clear that the purpose of an explanatory note is not to provide legal authority for giving retrospective effect, where it does not exist. The Committee have made this recommendation to ascertain that retrospective effect is given only in unavoidable circumstances and that no body is adversely affected as a result thereof.

9. In para 49 of their Seventh Report (Fourth Lok Sabha), the Committee had drawn the attention of the Ministry of Home Affairs to the observation of the Attorney- General that no subordinate legislation can have any retrospective effect unless the Act under which it is framed itself empowers such legislation to be operative retrospectively. As according to the Ministry of Home Affairs own admission, the Salaries and Allowances of Ministers Act, 1952, does not confer a specific power on the Government to give retrospective effect to the rules to be framed thereunder, the Committee feel that retrospective effect to the Rules in question had been given without due legal authority.

10. The Committee, therefore, desire the Ministry of Home Affairs either to give prospective effect to the Rules or alternatively to incorporate a provision in the Act which may empower the Government to give retrospective effect to the Rules.

11. The Committee further desire that the above observations of the Committee should also be brought to the notice of all Ministries/ Departments so as to make it clear that retrospective effect to subordinate legislation cannot be given without an express authorisation

therefor in the parent Act, and that the purpose of appending an explanatory memorandum to subordinate legislation is not to provide legal authority for retrospective effect but to apprise the public of the circumstances in which retrospective effect has been given.

III

The National Cooperative Development Corporation Rules, 1975
(G. S. R. 477 of 1975).

12. Rule 9 (1) of the above Rules states as under:—

“The Managing Director shall draw such salary and allowances as the Central Government may deem fit to fix in each case.”

However, the National Cooperative Development Corporation Act, 1962 envisages methods of appointment, the conditions of service and the scale of pay of the Managing Director to be governed by Rules framed under Section 12(2) (e).

The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 17th May, 1975 desired to know (a) the reasons for empowering the Central Government to fix salary and allowances of the Managing Director; and (b) whether they had any objection to prescribing the salary and allowances of the Managing Director in the Rules as envisaged in the parent Act.

13. The Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) with whom the above points were taken up have replied as under :—

“Although Rule 9 (1) empowers the Central Government to fix the salary and allowances of the Managing Director of National Cooperative Development Corporation in each case, sub-rule 2 and sub-rule 3 of Rule 9 lay down the broad principles that should govern the determination of salary and allowances of the Managing Director of National Cooperative Development Corporation. The following is the extract of sub-rule 2 and 3 of Rule 9:

- (2) If the Managing Director is not an officer in the service of the Central Government,—(i) his leave and leave allowances and travelling allowances shall be the same as those admissible to the class of officers to which the Central Government may declare him to correspond in status; (ii) the other conditions of service shall be such as the Central Government may determine in each case.
- (3) If the Managing Director is an officer in the service of the Government the Corporation shall make such contribution towards the leave allowances, pension, gratuity and provident fund as may be required by the conditions of his service under the Government to be made by him or on his behalf.

The points raised by the Lok Sabha Secretariat are explained below :

Beyond laying down the basic principles, it will neither be practicable nor advisable to incorporate in the Rules the terms and conditions of service of a Managing Director of National Cooperative Development Corporation in precise terms about the actual pay-scales, allowances pension, gratuity, provident fund, etc. as these terms and conditions will necessarily vary according to the status, experience and seniority, cadre of service etc. of the person who may hold this post from time to time. In fact the question of prescribing salary and allowances of the Managing Director in the Rule was considered at the time of formulation of the present Rules and it was considered that it would not at all be practicable to do so for the reasons indicated above. It may also be relevant to mention in this connection that Rule 9 of the present National Cooperative Development Corporation Rules, 1975, is the same as Rule 11 of the National Cooperative Development Corporation Rules, 1963, which was also framed in terms of Section 8 of the National Cooperative Development Corporation Act. The designation 'Secretary', in the earlier National Cooperative Development Corporation Act 1962, has been replaced by the word 'Managing Director' in the National Cooperative Development Corporation Amendment Act, 1974."

14. The Committee are not satisfied with the reply given by the Ministry that beyond laying down the broad principles in sub-rule (2) and (3) of Rule 9 for determining the salary and allowances of the Managing Director, it is neither practicable nor advisable to incorporate in the Rules the precise terms about the actual pay scales, allowances, pension, etc., as these would necessarily vary according to the status, experience and seniority of the person holding the post. The Committee note in this connection that the broad principles contained in Rule 9 pertain only to such matters as leave, leave salary, gratuity, etc. and not the scale of pay and other conditions of service. Section 22(2)(c) of the National Cooperative Development Corporation Act, 1962 envisages framing of Rules to govern the conditions of service and the scale of pay of the Managing Director. The Rules, however, leave it to the Central Government to fix any salary in their discretion. In view of the express provision of the Act, this amounts to unauthorised delegation of powers.

15. The Committee feel that in case the Ministry experience any difficulty in specifying the salary of the Managing Director in the rules, they should get the power to fix the salary through an amendment of the Act. The Committee desire the Ministry either to amend the Rules so as to specify the salary therein or get the Act amended suitably.

IV

THE INDIAN COINAGE RULES, 1974 (S. O. 2231 OF 1974)

(A)

16. The short title to above rules did not mention the distinctive reference to the denomination and metallic composition of the coins involved.

In this connection, attention of the Ministry of Finance (Department of Economic Affairs) was invited to para 206 of the Twelfth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) where in a similar case the Ministry had agreed to give for the purpose of distinction in the short title to the various rules issued under the Indian Coinage Act, 1906, a reference to the denomination and metallic composition of the coins involved apart from the year of their issue.

17. The Ministry of Finance (Department of Economic Affairs) to whom the matter was referred, in their reply have stated as under:—

“It is regretted that the denomination and metallic composition of the coins covered by S.O. 2231 of 1974 did not indicate the denomination and metallic composition of the coin through oversight.

It may also be mentioned that the notifications to be published in future would contain reference to the coins in the title *e.g.* Development Oriented Coins of 1975 which have been minted to commemorate 1975 as International Women’s Year.”

18. The Committee note that the Ministry of Finance (Department of Economic Affairs) have regretted their mistake in not indicating in the short title the denomination and metallic composition of the coins covered by the Notification. They have also assured that the notification to be published in future would contain a reference to the coins in the short title. The Committee trust that the Ministry will take care to keep their assurance to the Committee.

(B)

19. Retrospective effect had been given to above Rules without any authority in the Indian Coinage Act. The Ministry of Finance (Department of Economic Affairs) who were asked to state the reasons for giving retrospective effect have stated as under:—

“The relevant notification which has been published as S.O. 2231 of 1974 in the Gazette of India dated the 31st August, 1974 was sent to the Manager, India Government Press, New Delhi on the 16th July, 1974. It is now proposed to send such notifications to the Government Press with the indication that the notifications should be published before the date on which they become effective; otherwise the notifications would be issued in the Gazette Extraordinary.”

20. The Committee note the circumstances in which retrospective effect had been given to the rules in question. They also note the assurance given by the Ministry of Finance (Department of Economic Affairs) that to obviate recurrence of such cases in future, they would publish the Gazette Notifications before the date on which they become effective or otherwise the notification would be published in the Gazette Extraordinary. However, in view of the legal position that no subordinate legislation can have retrospective effect without a specific authority for it in the parent Act, the retrospective effect in this case, albeit unintended, was without due authority of law. The Committee, therefore, desire that to regularise the retrospective effect already given in this case, the Ministry should either amend the Indian Coinage Act so as to incorporate a provision therein empowering the Government to give retrospective effect to the Rules made thereunder or give effect to the rules in question from the date of their publication in the Official Gazette.

V

THE CENTRAL BOARD FOR THE PREVENTION AND CONTROL OF WATER POLLUTION (PROCEDURE FOR TRANSACTION OF BUSINESS) RULE, 1975 (G.S.R. 3-E OF 1975).

(A)

21. Sub-rule (6) of Rule 3 relating to notice of meetings and Rule 6 relating to quorum of the above Rules state as under :—

Rule 3(6) :

“The Central Board may adjourn from day to day or any particular day, and no fresh notice shall be required for any adjourned meeting.”

Rule 6 :

“Quorum.—(1) Five members shall form the quorum for any meeting.

- (2) If at any time fixed for any meeting or during the course of any meeting a quorum is not present, the presiding officer shall adjourn the meeting and if a quorum is not present on the expiration of fifteen minutes from such adjournment the presiding officer shall adjourn the meeting to such hours on the following or on some other future date as he may fix.
- (3) *No quorum shall be necessary for the adjourned meeting.*
- (4) No matter which had not been on the agenda of the original meeting shall be discussed at such adjourned meeting.
- (5) No fresh notice shall be required for the adjourned meeting.”

22. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 16th May, 1975 desired to know the reasons for not issuing a fresh notice for an adjourned meeting under Rules 3 (6) and 6(5).

23. The Ministry of Works and Housing with whom the above point was taken up have replied as under :

“(i) Rule 3(6)

Rule 3 of the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975, contemplates that notice of meetings of the Central Board shall be given to the members. The concept of notice as understood, in common parlance is the information, whether in writing or orally or otherwise, given in relation to a particular event. It may not be necessary that for small adjournments or day to day adjournments of meetings, notice should be given in writing. Besides that, when a meeting is continued for the next day it would be one process wherein no notice in writing is necessary. Sub-rule (6) of rule 3, as it is, provides that the Central Board may adjourn from day to day or any particular day and no fresh notice shall be required for any adjourned meeting. It contains two things : adjournment from day to day and adjournment for any other particular day. So far as the members present at the particular meeting are concerned either for adjournment from day to day or for any particular day, no notice in writing is necessary as they had taken part in the meeting and were aware of the date and time of further meeting. As regards absentees, notice should, however, be given if there is sufficient time gap between the meeting and the adjourned date so that if for one reason or the other the absentees could not take part in the meeting they might be able to take part in subsequent meeting. This is, however, procedural and it is implied in the rule itself that the Chairman would take care of whether sufficient notice to the members in advance has been given. Sub-rule (6) perhaps contemplates a situation where it may not be possible to serve the notice due to lack of time. Whether a notice should be required to be given of adjournment, would depend on the facts and circumstances and the Chairman would be best person to decide. However, to provide that for every adjournment a fresh notice should be given may not be practically possible or necessary, as the case may be.

“(ii) Rule 6(5)

Rule 6 provides for the quorum of the meeting which shall consist of five members. Sub-rule (3) of rule 6 provided that no quorum shall be necessary for adjourned meeting. Sub-rule (5) provides that no fresh notice shall be required for the adjourned meeting. The expression ‘adjourned meeting’ relates to insufficiency of quorum and when the adjourned meeting assembles according to sub-rule (4), no fresh matter

which was not on the agenda of the original meeting shall be discussed at the adjourned meeting. Perhaps in that context it may not be necessary to give a fresh notice.

24. The Committee are not satisfied with the reply given by Ministry of Works and Housing for not issuing fresh notice for a meeting adjourned under Rule 3(6) or 6(5). They feel that a fresh notice is necessary to enable the absentee members to attend the meeting at which the business of the adjourned meeting is proposed to be transacted. The Ministry have admitted in their reply that a fresh notice should be given if there is a sufficient time-gap between the meeting and the adjourned date. The Committee desire the Ministry to amend Rule 3(6) and 6(5) to provide for a fresh notice in cases where the meeting is adjourned from one day to another. In case, however, meeting is adjourned from day to day, provision should be made for fresh notice to the local members either on telephone or through special messenger.

(B)

25. Rule 3(7) of the above Rules provides as under :

“(7) No proceeding shall be invalidated merely on the ground that the provision in this Rule relating to the notice is not strictly complied with.”

It was pointed out to the Ministry that the above rule was so worded as to appear to oust the jurisdiction of courts.

26. The Ministry of Works and Housing with whom the above point was taken up have stated as under :

“It may be seen that the provisions of Sections 11, 58 and 59 of the Act bar the jurisdiction of the Court in a context different from Rule 3(7) of the Rules 1975. Section 11 protects the acts or proceedings for want of vacancy in the Board, Section 58 bars the jurisdiction in matters of appeal where appeal lies to the appellate authority specified in the Act and Section 59 provides protection to Government and Government officers of action taken in good faith. Rule 3(7) provides that the proceedings of the Board shall not be invalidated merely on the ground that the provision of this rule relating to the notice was not strictly complied with. The purpose of making rule 3 is to see that transaction of business of the meeting of the Board be intimated to all the members so that they, being informed well in advance may take part in the proceedings ; however, the intention of rule 3(7) is not to bar the jurisdiction of the court in the case where it could be shown that the provisions of Rule 3 were in spirit not followed or adhered to or that the proceedings were nothing but slipshod or circumvented to defeat the purpose of the Rule.”

27. The Committee are not convinced by the reply given by the Ministry of Works and Housing. They feel that a provision seeking to protect the proceedings of a meeting for which procedure regarding notice has not been followed should more appropriately be incorporated in the Act and not in subordinate legislation. The Committee desire the Ministry to delete Rule 3(7).

VI

THE OIL INDUSTRY (DEVELOPMENT) RULES, 1975 (G.S.R. 160-E OF 1975)

28. Sub-rules (8) and (9) of Rule 28 of the above Rules read as under:

“28(8). Where a matter has to be disposed of by the Board or a Committee thereof and decision in respect of that matter cannot wait till a meeting of the Board or the Committee, as the case may be, is held or till completion of circulation of the relevant papers among the members of the Board or the Committee, the Chairman may take the required decisions himself.

(9) Where the Chairman takes such a decision, he shall submit the same for ratification by the Board or the Committee, as the case may be, provided that if the Board or the Committee modifies or annuls the decision taken by the Chairman, such modification or annulment shall be without prejudice to the validity of any action taken previously as a result of that decision.”

29. The Committee on Subordinate Legislation which examined the Rules at their sitting held on the 17th May, 1975 felt that a time-limit should be laid down in the Rules within which the decision taken by the Chairman should be got ratified by the Board or the Committee.

30. The Ministry of Petroleum and Chemicals with whom the above matter was taken up have replied as under :

“The time-limit for getting the decision ratified by the Board or the Committee has not been provided for in the rules in line with the practice in other commodity Boards of similar nature. Under Rule 9 the Board is to meet twice a year on such dates and at such places as the Chairman may think fit. Under rule 11(i), the Chairman may, at any time call for a meeting of the Board or any of the Committees, if a requisition for a meeting is presented to him in writing by at least half the total number of members of the Board or the Committee, as the case may be. Though the Oil Industry Development Rules do not specifically say that a decision taken by the Chairman, should be ratified within a specified time by the Board it can be safely assumed that the Chairman being a very responsible person, would take the earliest possible steps to have it ratified by the appropriate forum. It does not appear necessary to prescribe a specific time-limit for such ratification in the rules. Rule 28(9) of the Oil Industry Development Rules is based on a similar provision contained in rule 38(9) of the Cardamom Rules, 1966 as reproduced below :

"Where the Chairman takes such decision he shall submit the same for ratification by the Board or the Committee, as the case may be, provided that if the Board or the Committee modifies or annuls the decision taken by the Chairman, such modification or annulment shall be without prejudice to the validity of any action taken previously as a result of that decision."

31. The Committee are not convinced by the reply of the Ministry that the Chairman, being a very responsible person, would take the earliest possible steps to have his decision ratified by the appropriate forum. The Committee feel that there should be no difficulty in fixing a time-limit within which the decision of the Chairman should be got ratified by the Committee or the Board. In case the Ministry feel that it is not possible to do so, it should at least be provided in the Rules that the decision of the Chairman would be ratified at the next sitting of the Committee or the Board. The Committee desire the Ministry to amend the Rules accordingly at an early date.

VII

THE VICTORIA MEMORIAL (AMENDMENT) RULES, 1973 (G.S.R. 45 OF 1975)

(A)

32. Rule 15 (b) of the above rules provides that the Trustees shall be responsible for the sanction and payment of salaries and all admissible allowances of the employees of the Victoria Memorial.

33. Rule 16 *ibid* provides that the Trustees may create such posts as may be necessary for the care and maintenance of the Museum and may fix or alter the scales of pay for such posts and may reclassify such posts.

34. The Victoria Memorial Act, 1903 under which above rules had been framed did not seem to authorise the Trustees to exercise such powers.

35. The Department of Culture to whom the matter was referred stated as under :—

"Section 2 (a) of the Act empowers the Trustees of the Victoria Memorial to do all acts necessary for and consistent with the purposes of that Act. Section 4 of the Act implies the power on the part of the Trustees to employ officers and servants. Section 2(2) read with Section 4 of the Act empowers the Trustees to create posts as may be necessary for the purposes of the Act, namely, care and maintenance of Victoria Memorial and other matters incidental thereto, namely fixing the scale of pay of posts, classify such posts, etc. Hence Rule 16 appears to be in order."

36. The Committee are not satisfied with the above reply of the Department of Culture. The Committee feel that section 2 (2) of the Victoria Memorial Act, 1903 which empowers the trustees to do all acts

necessary for purposes of the Act makes too wide a delegation. They desire that to avoid any ambiguity, the limits of delegation should be well-defined in an Act and the authority for important matters envisaged to be regulated through rules should clearly flow from, and not be implied from, its provisions. The Committee will like the Department of Culture to bear this in mind in future. They will also like the Ministry of Law, Justice and Company Affairs (Legislative Department) to bring the above observations of the Committee to the notice of all the Ministries/Departments of Government of India.

(B)

37. Rule 19 of the above rules provides that admission to the Victoria Memorial shall be on the basis of tickets at the rates of 30 paise for each adult and 15 paise for each child visitor on all days except Friday and 50 paise for each adult and 25 paise for each child visitor on Fridays.

38. There was no express provision in the Victoria Memorial Act authorising for such charges for admission tickets.

39. The Department of Culture to whom the matter was referred stated as under :

“Section 5(2) (d) of the Act empowers the Central Government to make rules for providing the conditions under which the public shall have access to the Victoria Memorial. The conditions envisaged under Section 5(2) (d), it is felt, empower the Central Government to make rules to provide for purchase of tickets by the members of the public for having access to the memorial.”

40. The Committee are not convinced by the reply of the Department of Culture that the power to make Rule 19 providing for tickets for admission to the Museum is derived from section 5(2)(d) of the Act. They observe that section 5(2)(d) only empowers the Central Government to make rules for providing the conditions under which the public shall have access to the Museum. In the opinion of the Committee, imposition of ticket is not merely a condition for entry into the Museum but a sort of a fee involving financial burden. Such a financial burden should be specifically authorised by the Act. The Committee desire the Department to amend the Act so as to incorporate a specific provision therein empowering the Government to impose ticket for entry into the Museum.

VIII

THE MERCHANT SHIPPING (CREW ACCOMMODATION)
AMENDMENT RULES, 1974 (G. S. R. 1390 OF 1974)

41. Proviso to Rules 5(2) 12(3) and (4) 16 (3) (f), 21(7), 23(4), 31(7) and 38(2)(ü) of the Merchant Shipping (Crew Accommodation) Rules, as substituted by the above amendment Rules, empower the Central Government to grant exemption to any ship from compliance with the provisions of those Rules.

42. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 16th May, 1975 desired to know (i) the considerations for empowering the Central Government to grant exemption in the above cases and (ii) in case Government felt that the above exemption provisions were absolutely necessary, whether they had any objection to providing in the Rules for reasons for exemption being recorded in writing before exemption was granted.

43. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under:—

“The undersigned is directed to... forward herewith a statement* containing the detailed particulars called for in their O.M. under reference. It is also mentioned that generally the amendment rules tend to improve the existing standards of amenities and facilities for the benefit of crew. In providing these facilities, allowance has to be made for practical considerations such as size of the ship, its intended service, duration of voyage, number of crew required to be accommodated on board permanently etc. With a view to enabling Government to make such allowance in deserving cases the powers of exemption have been taken in individual rules. Where necessary, the exercise of these powers is made dependent on prior consultation with shipowners and seafarers.”

44. The Committee note from the statement forwarded by the Ministry that reasons for granting exemption from the provisions of the Rules were recorded in the office records. In view of this, the Committee feel that the Ministry should have not difficulty in giving statutory shape to the existing procedure by making a provision in the Rules. The Committee desire the Ministry to amend the Rules accordingly at an early date.

IX

THE CIVIL SERVICE (SECOND AMENDMENT) REGULATIONS, 1974 (S.O. 1669 of 1974).

45. The preamble to above regulations read as follows:—

“In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and of *all other powers enabling him in this behalf* and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following regulations....”

46. Normally, the preamble to recruitment rules reads as under:

“In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor-General in relation to persons

servng in the Indian Audit and Accounts Departments, the President hereby makes”

47. The Ministry of Finance (Department of Expenditure) who were requested to state whether they had any objection to indicate the precise provisions coming in the category of “all other powers” in the preamble to the rules, have stated as under:

“The Ministry of Law (Legislative Department) were requested to elucidate the precise provisions coming in the category of the expression ‘and of all other powers enabling him in this behalf’ used in the preamble of the Notification dated 20-6-74. That Ministry have advised as follows:—

“The notification in question was issued under the provision to article 309 of the Constitution and clause (5) of article 148. Article 367(1) of the Constitution provides that unless the context otherwise requires, the General Clauses Act, 1897, shall apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Section 21 of the General Clauses Act, 1897, empowers an authority issuing a notification to exercise in the like manner the power to add, amend, vary or rescind any notification. As the Notification was issued under the proviso to article 309, read with article 148(5), and as there was no specific power to issue subsequent amendment, the intention in using the expression “and of all other powers enabling him in this behalf” is to refer to the provisions of section 21 of the General Clauses Act which apply by virtue of article 367 of the Constitution. As section 21 of the General Clauses Act, 1897, is in the nature of a rule of construction, it would not be elegant to make an express reference to it in the preamble. This approach is in accordance with settled practice’.”

48. In their previous Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to rules. The idea underlying the above recommendation is to enable one to know whether the rules have been made under due legal authority and within the limits laid down in the parent law. The words “and of all other powers enabling him in this behalf” used in the preamble to rules, as in the instant case, keep a person guessing as to what “other powers” are.

49. According to the Ministry of Law, Justice and Company Affairs (Legislative Department), the expression ‘all other powers’ in this case refers to Section 21 of the General Clauses Act. If so, the Committee feel that this Section should have been cited in the preamble instead of the words “and all other powers”. The Committee are not convinced by the argument of the Ministry that it would not be elegant to make an express reference to this Section as it is in the nature of a rule of construction.

50. The Committee have come across a number of cases in which the expression “and all other powers enabling him in this behalf”

has been used in the preamble to rules. The Committee will like the Ministry of Law, Justice and Company Affairs to issue necessary instructions to all Ministries/Departments to cite precise statutory authority in the preamble to rules, and avoid using expressions of the above nature which may keep the public guessing as to what 'other powers' are. The Ministry of Law should also see at the vetting stage that precise legal authority is invariably cited in the preamble to rules.

X

CENTRAL EXCISE (SEVENTH AMENDMENT) RULES, 1974
(G.S.R. 336-E OF 1974).

51. Sub-rules (2) and (3) (a) of Rule 56 of the Central Excise Rules, 1944 as inserted by the above amending Rules, read as under :—

“(2) The Officer referred to in sub-rule (1) shall conduct the test from the samples taken under that sub-rule and communicate to the manufacturer the result of such test.”

“(3) (a) Where the Officer is of the opinion that the samples after completion of the test can be restored to the manufacturer, the officer shall send a notice in writing to the manufacturer requesting him to collect the samples within such period as may be specified in the notice.”

52. It was not clear from the Rules whether the notice to the manufacturer for collecting samples was sent under Registered Post A/D to ensure its delivery.

53. The Ministry of Finance (Department of Revenue and Insurance) with whom the above point was taken up, have replied as under :

“... Important informations are invariably sent under registered cover A/D and as such there is no need to amend the Rule for this purpose.”

54. The Committee note that important information is invariably being sent by the Ministry of Finance (Deptt. of Revenue and Insurance) under registered cover Acknowledgement Due. In view of this, the Committee feel the Ministry should have no difficulty in making a statutory provision for the same by amending the relevant rules. The Committee desire the Ministry to amend the Rules accordingly at an early date.

XI

THE CENTRAL EXCISE (3RD AMENDMENT) RULES, 1975
(G.S.R. 14-E OF 1975).

55. Sub-rule (3) of Rule 224 of the Central Excises Rules, 1944, as substituted by the above amending rules, provides as under :—

“(3) No excisable goods shall, in excess of the quota determined in the manner provided for in sub-rule (4), be removed for

home consumption from a factory licensed under these rules or from a warehouse during any week in such period not exceeding four weeks in a year as the Central Government may, by notification in the official gazette, from time to time specify:

PROVIDED that the Central Government may, if it is satisfied that it is necessary or expedient in public interest so to do, permit, by general or special order, any assessee or class of assesseees to remove, subject to such conditions as it may specify, such goods for home consumption in excess of the said quota from the factory or, as the case may be, from the warehouse."

56. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 16th May, 1975 felt that the words "assessee or" appearing in the proviso to above sub-rule should be omitted so that the benefit of exemption was available to classes of assesseees as contradistinguished from individual assesseees. They also wanted to know whether the general or special order by which exemption was granted was published in the Gazette for general information.

57. The Ministry of Finance (Department of Revenue and Insurance) with whom the above points were taken up have replied as under :

"(i) Normally, relaxations granted in terms of proviso to sub-rule (3) of Rule 224 of Central Excise Rules are granted to a class of assesseees as contradistinguished from an individual assessee. However, there may be individual cases of acute hardship where it may be justifiable, and in fact necessary, to grant relaxation, in public interest, to an individual assessee. For example, where a manufacturer has to supply a large quantity of goods during the notified period, to another person, who has to execute an urgent export order, after carrying out some further processing on the goods supplied by the first manufacturer. As, all cases where it may become necessary to grant relaxation, in public interest, cannot be foreseen, and cannot also be provided for, by general relaxations, it is necessary that the Central Government should have the power to grant relaxations from the purview of quota restrictions, even to an individual assessee, if the same is justified in public interest. The observations of the Committee have, however, been noted, and as far as possible the relaxations will be granted only to a class of assesseees, and the power of the Central Government to grant relaxations to an individual assessee will be used only in very genuine and deserving cases and where such a relaxation is warranted in public interest.

(ii) The general or special order granting relaxations from restrictions imposed under rule 224(3) have to be conveyed to the Collectors immediately by telex or telegram in order to enable the public to avail of the relaxation. Collectors in turn issue trade notices immediately for the information of the public and the staff. This procedure is adopted because the restrictions are for a specified period, and the relaxation in order to be effective has to reach the field formations by fastest possible

means. If the relaxations are to be published in the form of notification in the Gazette, due to the formality involved *viz.* vetting of the draft notification by Law Ministry, getting it translated by the Official Language (Legislative) Commission and the time taken for printing, etc. the relaxation might become too late and infructuous and defeat the purpose for which such relaxations are granted. It does not, therefore, appear practicable, purely in the larger interest of the public to accept the suggestion for issuing these relaxations in the form of Gazette notification."

58. The Committee note with satisfaction the assurance given by the Ministry of Finance (Department of Revenue and Insurance) that as far as possible, relaxation would be granted only to a class of assesseses, and that the power to grant relaxation to individual assesseses would be used only in very genuine and deserving cases where such a relaxation is warranted in public interest. The Committee desire that even in such cases of relaxation to individual assesseses, the Ministry should, besides issuing Trade Notices through trade associations, also publish the Orders in the Gazette so that they come to the notice of the general public and persons similarly placed might have the benefit of such relaxations. The Committee desire the Ministry to make necessary amendment in the Rules to provide for publication of relaxations in the Gazette.

XII

THE RAILWAY PROTECTION FORCE (SUPERVISOR OFFICERS) RECRUITMENT RULES, 1974 (G.S.R. 832 OF 1974)

(A)

59. In column 4 of the schedule to above rules, against the post of Inspector General, it has been indicated that his scale of pay shall be determined by the Central Government in each case.

60. It was felt that in order to make the rules self-contained and for the information of all concerned, the scale of pay should be mentioned in the schedule.

61. The Ministry of Railways (Railway Board) to whom the matter was referred have stated as follows :

"It has not been so far considered necessary to indicate the pay scale of the Inspector General (RPF) in the recruitment rules as this post is filled only by deputation of I.P.S. Officers who draw pay in the scale applicable to them. The Third Pay Commission has, however, recommended a separate pay scale for this post which is under consideration of the Ministry of Railways in consultation with the Ministry of Finance. After a final decision is taken in the matter the scale of pay for the post of I.G./R.P.F. will be incorporated in the recruitment rules for Railway Protection Force."

62. The Committee note with satisfaction that, on being pointed out, the Ministry of Railways (Railway Board) have agreed to amend the Rules in question so as to incorporate therein the scale of pay for the post of Inspector-General, Railway Protection Force. The Committee desire the Ministry to issue the amendment at an early date.

(B)

63. In column 13 of the schedule to above rules regarding circumstances in which the U.P.S.C. is to be consulted in making recruitment to the posts of Inspector-General, Deputy Inspector-General and Chief Security Officer, the words "as required under the rules" have been mentioned.

64. It was not clear which other rules have been referred in above case. The Ministry of Railways (Railway Board) to whom the matter was referred have stated as under :

"The Rules mentioned in column 13 of the Schedule for the posts for Inspector-General, Deputy Inspector-General and Chief Security Officer, are "The U.P.S.C. exemption from consultation regulations, 1958". The Ministry of Railways have no objection to amend the Recruitment Rules with a view to indicating clearly the rules in question. Necessary action is being taken to amend the Rules in consultation with the U.P.S.C. and the Lok Sabha Secretariat will be informed as and when the Rules are amended."

65. The Committee note with satisfaction that on being pointed out, the Ministry of Railways (Railway Board) have agreed to amend the Rules in question so as to specifically mention the Union Public Service Commission (Exemption from Consultation) Regulations in column 13 of the Schedule. The Committee desire the Ministry to amend the Schedule at an early date.

XIII

- (I) THE BOARD OF TRUSTEES OF THE PORT OF BOMBAY (PROCEDURE AT BOARD MEETINGS) RULES, 1975 (G.S.R. 27-E OF 1975).
- (II) THE BOARD OF TRUSTEES OF THE PORT OF CALCUTTA (PROCEDURE AT BOARD MEETINGS) RULES, 1975 (G. S.R. 30-E OF 1975).
- (III) THE BOARD OF TRUSTEES OF THE PORT OF MADRAS (PROCEDURE AT BOARD MEETINGS) RULES, 1975 (G.S.R. 33-E OF 1975).

66. Rule 8 of the above Rules provides as under :—

"8. *Adjournment of meetings.*—The President of a meeting may, with its consent, adjourn it to a later date which shall either be announced at the meeting or communicated to the Trustees at least three days before the date of the meeting."

67. The Committee on Subordinate Legislation which examined the above Rules and having held on the 16th May, 1975 pointed out that there

was no indication in the Rules whether and if so, how the absentee members would be informed of the date of adjourned meeting in cases where the President announced at the meeting itself the date to which the meeting was adjourned.

68. The Ministry of Shipping and Transport (Transport Wing) with whom the above point was taken up, have replied as under : —

“.....Steps are being taken to amend rule 8 of the Board of Trustees of the Ports of Bombay / Calcutta/ Madras (Procedure at Board Meetings) Rules, 1975, in consultation with the concerned Ports.”

69. **The Committee note with satisfaction that the Ministry have agreed to amend Rule 8 so as to provide for intimation of the date of adjournment of a meeting to absentee members in cases where the President announced at the meeting itself the date to which the meeting was adjourned. The Committee desire the Ministry to issue the necessary amendment at an early date.**

XIV

THE MINERAL CONCESSION (THIRD AMENDMENT) RULES, 1974 (G.S.R. 1332 OF 1974)

70. Rule 29(2) of the Mineral Concession Rules, 1960 provides as under :—

“Every application for the surrender of a part of lease-hold area in accordance with the provisions of sub-rule (1), shall be accompanied by a deposit of two hundred rupees for meeting the expenditure for the purpose of survey and demarcation of the area to be surrendered : Provided that the lessee shall deposit such further amount, not exceeding two hundred rupees, as may be demanded by the State Government for meeting any additional expenditure for the said purpose within one month from the date of demand of such deposit : provided further that where the whole or any part of the amount deposited has not been expended, it shall be refunded to the lessee.”

71. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 16th May, 1975 desired to know whether the Ministry had any objection to specifying in the Rules the time limit within which the money not expended would be refunded to the lessee.

72. The Ministry of Steel and Mines (Department of Mines), with whom the matter was taken up, have agreed to specify the time-limit in the Rules.

73. **The Committee note with satisfaction that the Ministry have agreed to specify in the Rules the time-limit within which the money not expended would be refunded to the lessee. The Committee desire the Ministry to issue the necessary amendment at an early date.**

XV

THE PAPER (CONSERVATION AND REGULATION OF USE),
AMENDMENT ORDER, 1974 (S.O. 742-E OF 1974)

74. Clause 5(1) of the Paper (Conservation and Regulation of Use) Order, 1974 as inserted by the above amendment Order, read as under :—

“5. *Power to exempt.*—(1) The Central Government may, having regard to the fact that a particular diary containing technical data relating to engineering, legal, medical or any other matter is meant to be used generally as an aid for ready reference by persons in the engineering, legal, medical or other professions, by order and subject to such conditions, if any, as may be specified in the order, exempt the printing of such diary from the operation of the provisions of this Order.”

75. The Committee on Subordinate Legislation which examined the Order at their sitting held on the 16th May, 1975 felt that reasons in writing should be recorded before the Central Government exempted the printing of diaries under clause 5(1) from the operation of the provisions of the Order.

76. The Ministry of Industry and Civil Supplies (Department of Industrial Development) with whom the matter was taken up replied as under :

“...the power to grant exemption in this regard has been withdrawn by Order SO 458(E) and as such there is no need for an amendment as suggested by the Committee on Subordinate Legislation.”

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

XVI

THE CEMENT CONTROL (FIFTH AMENDMENT) ORDER, 1974
(S.O. 464-E OF 1974)

78. Clause 4 of the above ‘Order’ read as under :—

“A producer who uses furnace oil for the production of cement with the prior approval of the Central Government will be allowed an additional amount, upto Rs. 50 per tonne on the cement so produced by him, subject to such conditions as are laid down by the Central Government in this behalf.”

79. It was felt that the conditions subject to which a producer using furnace oil for the production of cement is allowed an additional amount upto

Rs. 50 per tonne should be mentioned in the Order so as to obviate any scope for discriminatory treatment between producers similarly placed.

80. The Ministry of Industry and Civil Supplies to whom the matter was referred stated as under :—

“.....the oil subsidy which was payable to producers who used furnace oil for the production of cement was in force for one year from 17th May, 1974 to 16th May, 1975. It has not been extended any further and it remains discontinued with effect from 17th May, 1975. The conditions subject to which a producer using furnace oil for the production of cement was allowed an additional amount upto Rs. 50 per tonne were conveyed to the concerned producers as well as producers in general through letters addressed to them.”

81. The Committee note that the oil subsidy which was payable to producers using furnace oil for the production of cement has been discontinued. They are, however, not convinced by the reply given by the Ministry that the conditions subject to which the subsidy was allowed were conveyed to the producers through letters addressed to them. The Committee desire that in case such an order is issued in future, the conditions for grant of subsidy should be mentioned in the 'Order' itself so as to obviate any scope for discriminatory treatment between producers similarly placed.

XVII

(A)

THE ALLOTMENT OF GOVERNMENT RESIDENCES IN THE FOREST RESEARCH INSTITUTE AND COLLEGES, DEHRA DUN, FOREST RESEARCH LABORATORY, BANGALORE, SOUTHERN FOREST RANGERS COLLEGES AND FOREST RESEARCH CENTRE, COIMBATORE (POOL ACCOMMODATION FOR GAZETTED AND NON-GAZETTED GOVERNMENT SERVANTS) RULES, 1974 (S.O. 892 OF 1974).

82. S.R. 317-AL-8(5) of the above Rules provided that when an officer was dismissed or removed from service or when his services had been terminated and the Head of Department was satisfied that it was necessary or expedient in the public interest to do so, he might require the Estate Officer to cancel the allotment of the residence made to such officer either forthwith or with effect from such date prior to the expiry of the period of one month.

83. It was felt that in cases where allotment was cancelled with effect from the date prior to the expiry of one month, the reasons for such cancellation should be recorded in writing.

84. The Ministry of Agriculture (Department of Agriculture) to whom the matter was referred issued the necessary amendment *vide* Notification No. G. 11025/28/74-FRY-F dated 27-10-1975.

85. The Committee note with satisfaction that on being pointed out, the Ministry have amended the Rules so as to provide for reasons to be recorded in writing in cases where allotment is cancelled from a date prior to the expiry of one month after the dismissal or removal from service of an officer.

(B)

86. S.R. 317-AL-18(1) and (2) of the above Rules provided that if an allottee contravened the rules, his allotment would be cancelled or he might be charged the licence fee at the enhanced rate.

87. It was felt that before taking action under above rules, the person concerned should be given an opportunity of being heard.

88. The Ministry of Agriculture (Department of Agriculture) with whom the matter was taken up issued the necessary amendment to the rules *vide* Notification No. G. 11025/28/74-FRY-F dated 27-10-1975.

89. The Committee note with satisfaction that, on being pointed out, the Ministry have amended the Rules providing for an opportunity of being heard to a person before cancelling his allotment or charging licence fee at enhanced rate for contravening the allotment Rules.

XVIII

THE MERCHANT SHIPPING (PREVENTION OF POLLUTION OF THE SEA BY OIL) RULES, 1974 (G.S.R. 516 OF 1974).

90. Rule 9 of the above Rules states as under :—

“Avoidance of leakage through structural defects—A careful examination of the ship’s hull shall be carried out at regular intervals, particularly in way of any fuel oil tanks, for the purpose of detecting leakages of oil.”

The expression ‘regular intervals’ used in the above Rule was felt to be vague which might be interpreted differently by different persons.

91. The Ministry of Shipping and Transport (Transport Wing) was requested to state whether they had any objection to indicating in the above Rule the precise intervals at which an examination of the ship’s hull would be carried out.

92. In reply, the Ministry of Shipping and Transport (Transport Wing) have stated as under :—

“...rule 9 of the Merchant Shipping (Prevention of Pollution of the Sea by Oil) Rules, 1974, purports to deal with steps to be taken for avoiding leakage through structural defects. For this purpose, it appears sufficient to prescribe an interval of not exceeding two years between two inspections. Incidentally, this period corresponds with the period specified in the Merchant Shipping (Cargo Ship Construction and Survey) Rules, 1974, for intervals between two external inspections of cargo ships including tankers....

In view of the position explained above, Lok Sabha Secretariat is requested that the Committee on Subordinate Legislation may be apprised of the above position and their decision in the matter communicated to this Ministry. If the Committee agrees with

the above views, steps would be taken to amend rule 9 as proposed in the preceding paragraph."

93. The Committee note with satisfaction that the Ministry have agreed to amend the Rules so as to prescribe an interval not exceeding two years between two inspections. They desire the Ministry to issue the necessary amendment at an early date.

XIX

GIVING OF PARTICULARS OF PREVIOUS PUBLICATION IN THE PREAMBLE TO 'ORDERS'

94. During the examination of 'Orders' noted in Appendix III, it was noticed that their preamble did not contain (a) the date on which the draft Orders were published in the gazette, (b) the date on which the gazette copy were made available to the public; and (c) the last date fixed for the receipt of public comments thereon.

95. Attention of the Ministries/Departments concerned was invited to the following recommendation of the Committee on Subordinate Legislation contained in para 28 of their First Report (Fourth Lok Sabha) and reiterated in para 49 of their Fifth Report (Fifth Lok Sabha) :

"It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft rules for inviting comments/suggestions from the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee, therefore, recommend that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, Government may perhaps do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules."

96. A gist of the replies received from the Ministries/Departments concerned is given in Col. 4 of Appendix III.

97. The Committee note that the Ministries of Shipping and Transport (Transport Wing), Labour and Commerce have regretted their lapse in not giving particulars regarding publication of draft rules in the preamble to the final rules. The Committee

also note the reply of the Ministry of Defence that the requisite information is being given by them since July, 1972. The Committee desire these Ministries to be careful about such matters in future.

98. The Committee reiterate their earlier recommendations made in para 28 of their First Report (Fourth Lok Sabha), para 49 of their Fifth Report (Fifth Lok Sabha) and para 33 of their Eighth Report (Fifth Lok Sabha) that adequate opportunity should be given to the public to go through the draft rules and offer their comments. To ensure this, the particulars about (i) the date of the Gazette in which the draft rules were published ; (ii) the date on which the Gazette Copies containing the draft rules were made available to the public; and (iii) the last date fixed for receipt of public comments thereon, should invariably be given in the preamble to the final rules/bye-laws.

99. The Committee also desire the Ministries/Departments to allow, to be on the safe side, 45 days instead of 30 days as at present from the date of publication of Gazette for inviting comments/objections from the public as generally there is a time-lag between the date of publication of a Gazette and the date on which its copies are made available to the public.

XX

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS MADE BY, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION

100. The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix IV.

NEW DELHI :
The 14th April, 1976.

DR. KAILAS,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(Vide para 4 of the Report)

*Summary of main recommendations/observations made by the
Committee*

Sl. No.	Para No.	Summary
(1)	(2)	(3)
1.	8	<p>The Committee are not satisfied with the reply of the Ministry of Home Affairs. It is apparent from the reply that the Ministry is labouring under an impression that publication of explanatory memorandum in regard to retrospective operation of rules does away with the necessity of a specific provision in the Act empowering the Government to give retrospective effect to the Rules framed thereunder. This impression of the Ministry is not correct.</p> <p>The Committee will like to make it clear that the purpose of an explanatory note is not to provide legal authority for giving retrospective effect, where it does not exist. The Committee have made this recommendation to ascertain that retrospective effect is given only in unavoidable circumstances and that nobody is adversely affected as a result thereof.</p>
	9	<p>In para 49 of their Seventh Report (Fourth Lok Sabha), the Committee had drawn the attention of the Ministry of Home Affairs to the observation of the Attorney-General that no subordinate legislation can have any retrospective effect unless the Act under which it is framed itself empowers such legislation to be operative retrospectively. As, according to the Ministry of Home Affairs own admission, the Salaries and Allowances of Ministers Act, 1952, does not confer a specific power on the Government to give retrospective effect to the rules to be framed thereunder, the Committee feel that retrospective effect to the Rules in question had been given without due legal authority.</p>
	10	<p>The Committee, therefore, desire the Ministry of Home Affairs either to give prospective effect to the Rules or alternatively to incorporate a provision in the Act which may empower the Government to give retrospective effect to the Rules.</p>

(1) (2)

(3)

- 11 The Committee further desire that the above observations of the Committee should also be brought to the notice of all Ministries/Departments so as to make it clear that retrospective effect to subordinate legislation cannot be given without an express authorisation therefor in the parent Act, and that the purpose of appending an explanatory memorandum to subordinate legislation is not to provide legal authority for retrospective effect but to apprise the public of the circumstances in which retrospective effect has been given.
- 2 14 The Committee are not satisfied with the reply given by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) that beyond laying down the broad principles in sub-rules (2) and (3) of Rule 9 of the National Cooperative Development Corporation Rules, 1975 for determining the salary and allowances of the Managing Director, it is neither practicable nor advisable to incorporate in the Rules the precise terms about the actual pay scales, allowances, pension, etc., as these would necessarily vary according to the status, experience and seniority of the person holding the post. The Committee note in this connection that the broad principles contained in Rule 9 *ibid* pertain only to such matters as leave, leave salary, gratuity etc. and not the scale of pay and other conditions of service. Section 22(2)(e) of the National Cooperative Development Corporation Act, 1962 envisages framing of Rules to govern the conditions of Service and the scale of pay of the Managing Director. The Rules, however, leave it to the Central Government to fix any salary in their discretion. In view of the express provision of the Act, this amounts to unauthorised delegation of powers.
- 15 The Committee feel that in case the Ministry experience any difficulty in specifying the salary of the Managing Director in the rules, they should get the power to fix the salary through an amendment of the Act. The Committee desire the Ministry either to amend the Rules so as to specify the salary therein or get the Act amended suitably.
- 3 18 The Committee note that the Ministry of Finance (Department of Economic Affairs) have regretted their mistake in not indicating in the short title the denomination and metallic composition of the coins covered by the Indian Coinage Rules, 1974 (S.O. 2231 of 1974). They have also assured that the notifications to be published in future would contain a reference to the coins in the short title. The Committee trust that the Ministry will take care to keep their assurance to the Committee.
- 20 The Committee note the circumstances in which retrospective effect had been given to the Indian Coinage Rules, 1974. They also note the assurance given by the Ministry of Finance

(1) (2)

(3)

(Department of Economic Affairs) that to obviate recurrence of such cases in future, they would publish the Gazette Notifications before the date on which they become effective or otherwise the notification would be published in the Gazette Extraordinary. However, in view of the legal position that no subordinate legislation can have retrospective effect without a specific authority for it in the parent Act, the retrospective effect in this case, *albeit* unintended, was without due authority of law. The Committee, therefore, desire that to regularise the retrospective effect already given in this case, the Ministry should either amend the Indian Coinage Act so as to incorporate a provision therein empowering the Government to give retrospective effect to the Rules made thereunder or give effect to the rules in question from the date of their publication in the Official Gazette.

- 4 24 The Committee are not satisfied with the reply given by the Ministry of Works and Housing for not issuing fresh notice for a meeting adjourned under Rule 3(6) or 6(5) of the Central Board for the Prevention and Control of Water Pollution (Procedure for transaction of Business) Rules, 1975. They feel that a fresh notice is necessary to enable the absentee members to attend the meeting at which the business of the adjourned meeting is proposed to be transacted. The Ministry have admitted in their reply that a fresh notice should be given if there is a sufficient time gap between the meeting and the adjourned date. The Committee desire the Ministry to amend Rules 3(6) and 6(5) *ibid* to provide for a fresh notice in cases where the meeting is adjourned from one day to another. In case, however, meeting is adjourned from day to day, provision should be made for fresh notice to the local members either on telephone or through special messenger.
- 27 The Committee are not convinced by the reply given by the Ministry of Works and Housing. They feel that a provision seeking to protect the proceedings of a meeting for which procedure regarding notice has not been followed should more appropriately be incorporated in the Act and not in Subordinate Legislation. The Committee desire the Ministry to delete Rule 3(7).
- 5 31 The Committee are not convinced by the reply of the Ministry of Petroleum and Chemicals that the Chairman, being a very responsible person, would take the earliest possible steps to have his decision ratified by the appropriate forum. The Committee feel that there should be no difficulty in fixing a time-limit within which the decision of the Chairman should be got ratified by the Committee or th

(1) (2)

(3)

limits laid down in the parent law. The words "and of all other powers enabling him in this behalf" used in the preamble to Rules as in the case of the Civil Service (Second Amendment) Regulations, 1974 keep a person aguessing as to what "other powers" are.

- 49 According to the Ministry of Law, Justice and Company Affairs (Legislative Department), the expression 'all other powers' in this case refers to section 21 of the General Clauses Act. If so, the Committee feel that this Section should have been cited in the preamble instead of the words "and all other powers". The Committee are not convinced by the argument of the Ministry that it would not be elegant to make an express reference to this section as it is in the nature of a rule of construction.
- 50 The Committee have come across a number of cases in which the expression "and all other powers enabling him in this behalf" has been used in the preamble to rules. The Committee will like the Ministry of Law, Justice and Company Affairs to issue necessary instructions to all Ministries/Departments to cite precise statutory authority in the preamble to rules, and avoid using expressions of the above nature which may keep the public aguessing as to what 'other powers' are. The Ministry of Law should also see at the vetting stage that precise legal authority is invariably cited in the preamble to rules.
- 54 The Committee note that important information under the Central Excise (Seventh Amendment) Rules, 1974 is invariably being sent by the Ministry of Finance (Deptt. of Revenue and Insurance) under registered cover 'Acknowledgement Due.' In view of this, the Committee feel the Ministry should have no difficulty in making a statutory provision for the same by amending the relevant rules. The Committee desire the Ministry to amend the Rules accordingly at an early date.
- 58 The Committee note with satisfaction the assurance given by the Ministry of Finance (Department of Revenue and Insurance) that as far as possible, relaxation under the Central Excise (Third Amendment) Rules, 1975 would be granted only to a class of assessees, and that the power to grant relaxation to individual assessees would be used only in very genuine and deserving cases where such a relaxation is warranted in public interest. The Committee desire that even in such cases of relaxation to individual assessees, the Ministry should, besides issuing Trade Notices through trade associations, also publish the Orders in the Gazette so that they come to the notice of the general public and persons similarly placed might have the benefit of such relaxations. The Committee desire the Ministry to make necessary amendment in the Rules to provide for publication of relaxations in the Gazette.

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| 12 | 62 | The Committee note with satisfaction that, on being pointed out, the Ministry of Railways (Railway Board) have agreed to amend the Railway Protection Force (Supervisor Officers) Recruitment Rules, 1974 so as to incorporate therein the scale of pay for the post of Inspector-General, Railway Protection Force. The Committee desire the Ministry to issue the amendment at an early date. |
| | 65 | The Committee note with satisfaction that on being pointed out, the Ministry of Railways (Railway Board) have agreed to amend the above mentioned Rules so as to specifically mention the Union Public Service Commission (Exemption from Consultation) Regulations in column 13 of the Schedule. The Committee desire the Ministry to amend the Schedule at an early date. |
| 13 | 69 | The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have agreed to amend Rule 8 of the (i) The Board of Trustees of the Port of Bombay (Procedure at Board Meetings) Rules, 1975; (ii) The Board of Trustees of the Port of Calcutta (Procedure at Board Meetings) Rules, 1975; and (iii) The Board of Trustees of the Port of Madras (Procedure at Board Meetings) Rules, 1975 so as to provide for intimation of the date of adjournment of a meeting to absentee members in cases where the President announced at the meeting itself the date to which the meeting was adjourned. The Committee desire the Ministry to issue the necessary amendments at an early date. |
| 14 | 73 | The Committee note with satisfaction that the Ministry of Steel and Mines (Department of Mines) have agreed to specify in the Mineral Concession (Third Amendment) Rules, 1974 the time-limit within which the money not expended would be refunded to the lessee. The Committee desire the Ministry to issue the necessary amendment at an early date. |
| 15 | 77 | The Committee note that the power to grant exemption from the provisions of the Paper (Conservation and Regulation of Use) Amendment Order, 1974 has been withdrawn <i>vide</i> S.O. No. 458(E). The Committee desire that in case an exemption provision is incorporated in future, it should also provide for reasons to be recorded in writing before grant of exemption. |
| 16 | 81 | The Committee note that the oil subsidy which was payable under the Cement Control (Fifth Amendment) Order, 1974 to producers using furnace oil for the production of |

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cement has been discontinued. They are, however, not convinced by the reply given by the Ministry of Industry and Civil Supplies that the conditions subject to which the subsidy was allowed were conveyed to the producers through letters addressed to them. The Committee desire that in case such an order is issued in future, the conditions for grant of subsidy should be mentioned in the 'Order' itself so as to obviate any scope for discriminatory treatment between producers similarly placed.

- 17 89 The Committee note with satisfaction that on being pointed out the Ministry of Agriculture and Irrigation (Department of Agriculture) have amended the Allotment of Government Residences in the Forest Research Institute and Colleges, Dehra Dun, Forest Research Laboratory, Bangalore, Southern Forest Rangers Colleges and Forest Research Centre, Coimbatore (Pool Accommodation for Gazetted and non-Gazetted Government Servants) Rules, 1974 providing for an opportunity of being heard to a person before cancelling his allotment or charging licence fee at enhanced rate for contravening the allotment Rules.
- 18 93 The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Merchant Shipping (Prevention of Pollution of the Sea by oil) Rules, 1974 so as to prescribe an interval not exceeding two years between two inspections. They desire the Ministry to issue the necessary amendment at an early date.
- 19 97 The Committee note that the Ministries of Shipping and Transport (Transport Wing), Labour and Commerce have regretted their lapse in not giving particulars regarding publication of draft rules in the preamble to the final rules. The Committee also note the reply of the Ministry of Defence that the requisite information is being given by them since July, 1972. The Committee desire these Ministries to be careful about such matters in future.
- 98 The Committee reiterate their earlier recommendations made in para 28 of their First Report (Fourth Lok Sabha), para 49 of their Fifth Report (Fifth Lok Sabha) and para 33 of their Eighth Report (Fifth Lok Sabha) that adequate opportunity should be given to the public to go through the draft rules and offer their comments. To ensure this, the particulars about (i) the date of the Gazette in which the draft rules were published; (ii) the date on which the Gazette copies containing the draft rules were made available to the public; and (iii) the last date fixed for receipt of public
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comments thereon, should invariably be given in the preamble to the final rules/bye-laws.

99 The Committee also desire the Ministries/Departments to allow, to be on the safe side, 45 days instead of 30 days as at present from the date of publication of Gazette for inviting comments/objections from the public as generally there is a time-lag between the date of publication of a Gazette and the date on which its copies are made available to the public.

20 100 The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix IV.

APPENDIX—II

(Vide para 43 of the Report)

Statement showing provisions of the Merchant Shipping (Crew Accommodation) Rules under which powers have been taken by Government to grant exemption

Provision of the Rule	Powers taken by Government in proviso to the Rule	Reasons for taking the power of exemption	Whether there is any objection to record reasons, in writing
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Rule 5(2)

In every ship to which these rules apply, sleeping room and other parts of crew accommodation requiring free movement shall be so constructed as to provide a clear headroom of at least 190 centimetres.

Central Government may exempt any ship from the requirements of this sub-rule to the extent it is satisfied that compliance therewith is unreasonable or impracticable.

Designs of ships are determined on the basis of their intended service. These pre-determined designs tend to impose certain limitations on arrangements such as accommodation spaces service spaces etc. which are done at very late stage of construction. These limitations are likely to render compliance of the provision impracticable in certain cases. It was, therefore,

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however to spell out these in letters communicating exemptions to shipowners lest they should be used by shipowners and/or seafarers unions for claiming any further exemption in other cases, etc.

thought necessary to take the exemption power embodied in the proviso.

Rule 12(3)

Every enclosed space other than a cold stores room forming part of the crew accommodation of a ship to which these rules apply being a ship of 1000 tons or over or a ship of under 1000 tons regularly engaged on voyages confined to areas within the tropics and Persian Gulf shall be provided with a trunked mechanical ventilation system.

Central Government may exempt any ship under 500 tons from the requirement of this rule/sub-rule.

It is considered that ships of under 500 tons may in certain cases find it difficult to comply with this requirement. Powers are therefore, taken to exempt ships within this.

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however, to spell out these in letters communicating exemptions to shipowners lest they should be used by shipowners and/or seafares unions for claiming any further exemption in other cases, etc.

Rule 12(4)

In the crew accommodation of every ship to which these rules apply, being a ship not fully airconditioned an electric fan shall be fitted in every sleeping room, mess room, recreation room, study Office, gallery and Pantry.

Central Government may exempt any ship under 500 tons from the requirements of this sub-rule.

It is considered that ships of under 500 tons may in certain cases find it difficult to comply with this requirement; Powers are, therefore, taken to exempt ships within this tonnage group from the requirements of this rule.

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however, to spell out these reasons in letter; communicating exemptions to shipowners lest they should be used by shipowners and/or seafarers unions for claiming any further exemptions in other cases, etc.

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Rule 16(3)(f)

Other ratings. Not more than three persons per room in a cargo ship and not more than 6 persons per room in passenger ship.

Central Government may if it is satisfied after consultation with the owner of the ship or with such organisation or organisation in India as it may consider to be most representative of employers of seamen and of seamen that full compliance of this requirement is unreasonable or impracticable permit upto 4 persons to be accommodated in a cabin in any specified part of crew accommodation of a cargo ship and upto 8 persons in a cabin in any such accommodation in a passenger ship.

Peculiar features of construction of individual ships sometimes leave spaces in some parts of a ship which are larger for one cabin but smaller for two cabins. In order to ensure maximum utilisation of such spaces in consultation with representative bodies of shipowners and seafarers it is considered necessary to take the exemption powers.

Rule 21(7)

In every ship of 10,000 tons or over to which these rules apply there shall be provided the following recreation facilities, namely :—

Central Government may exempt any ship from the requirement of this sub-rule if it is satisfied that compliance therewith is unreasonable or impracticable.

Designs of ships are determined on the basis of their intended service. These predetermined designs tend to impose certain limitations on arrangements such as

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however, to spell out these reasons in letters

(i) arrangement for showing a films or television in a smoking room, library room or a mess room properly equipped for the purpose.

(ii) a hobby-cum-games room.

(iii) a swimming pool.

Note : Provision of hobby-cum-games room shall not be obligatory in respect of ships of under 20,000 tons.

Rule 23(4)

Subject to the provisions of sub-rule (1A) washing accommodation for all classes of persons provided in pursuance of sub-rule (1) shall include one bath shower, one wash basin and one toilet mirror for every six persons or a part thereof exceeding two persons in the case of a ship of less than 25,000 tons

accommodation and service spaces which are done at a very late stage of construction. These limitations are likely to render compliance of the provision unreasonable or impracticable in certain cases. It was, therefore, considered necessary to take the exemption powers embodied in the proviso.

communicating exemptions to the shipowner lest they should be used by shipowners and/or seafarers unions for claiming any further exemptions in other cases, etc.

It is considered that facilities to be provided for the passenger ships need not be to the extent specified in this rule, if the duration of voyage between two ports is less than four hours. In the case of other ships it is considered that where number of crew on board is more than 100, there may not be

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however, to spell out these reasons in letters communicating exemptions to the ship owners lest they should be used by ship owners and/or seafarers unions for claiming

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and the same equipment for every four persons in the case of ships of 25,000 tons or over.

Note : Each of such classes of persons shall be provided with at least one bath shower and one wash basin.

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able or impracticable.

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sufficient space available on board in certain cases for providing facilities at the scales specified in this rule, on account of limitations imposed by ship design based on intended service. It was, therefore, considered necessary to take powers of exemption embodied in the proviso.

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any further exemptions in other cases etc.

Rule 31(7)

In addition to a trunked mechanical ventilation system provided in accordance with rule 12 or an air-conditioning system provided in accordance with rule 12A, every permanent hospital shall be provided with adequate natural supply of exhaust ventilation to the open air by

Central Government may exempt any ship from this requirement if it is satisfied that compliance therewith is unreasonable or impracticable in the circumstances.

Peculiar constructional features of a ship are likely to render it unable to comply with this requirement. It is to deal with cases of this nature that the power of exemption embodied in the proviso has been taken by the Government.

Reasons for granting exemptions are recorded in office records of the Directorate. It is not considered desirable, however to spell out these reasons in letters communicating exemptions to the ship owners lest they should be used by ship owners and/or seafarers

means of ventilators independent of the ventilators provided for any other space in the ship.

Rule 38(2)(ii)

The Central Government may, after consultation with such organisation or organisations in India as it may consider to be most representative of the employer of seamen and seamen—

Where in any ship crew accommodation taken as a whole is equivalent or superior to that specified in the rules, the question of exemption becomes only formality arising out of rigidity of rules.

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unions for claiming any further exemptions in other cases, etc.

- (i) exempt any ship from the requirement of these rules if it is satisfied that corresponding advantages are provided in the ship so that crew accommodation considered as a whole is equivalent or superior in standard to that required by these rules; or

In case of ferry heads operating on voyages of very short duration or feeder ships which do not require permanent crew, the crew accommodation required is very much less than specified in these rules. Where a ship is obliged to carry on board repair staff as additional

(1)	(2)	(3)	(4)
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members of the crew for short duration, it may not always be possible to provide on board accommodation for such crew at the scales specified in the rules.

(ii) exempt any ship being—

(a) a sea-going ferry or a feeder ship which is not continuously manned with permanent crew; or

(b) a sea-going ship when it temporarily carries repair personnel on board in addition to ship's crew; or

(c) a sea-going ship engaged on short voyages when members of crew are allowed to go ashore for some part of the day.

Ships engaged on short voyages do not require crew accommodation at scales specified in these rules, particularly when it is intended to permit shore off to members of crew.

From any of the requirement of these rules after determining the extent to which it shall be appropriate to grant such exemptions having regard to the need for off duty accommodation and other relevant considerations.

Taking all these factors into consideration, it was considered necessary to take power of exemption embodied in this rule. It may be noted that exercise of this power is subjected to previous consultation with representative bodies of ship-owners and seafarers.

APPENDIX III

(Vide Para 94 of the Report)

List of 'Orders' in which particulars about previous publications of draft 'orders' were not indicated

S. No.	Name and number of Order	Ministry concerned	Gist of reply
(1)	(2)	(3)	(4)
1	The Varanasi Cantonment (Rickshaw Control of fare and licence) Amdt. Bye-laws, 1970 (S.R.O.139 dt. 10-4-1971)	} Defence	The matter regarding mentioning of date of publication of a notification and last date fixed therefor in the preamble to the final bye-laws came to the notice of this Ministry in October, 1971. In July, 1972 all Cantonments Boards were asked to give requisite information in the Orders. The bye-laws under reference were published before 1972, therefore revised preamble could not be given.
2	Levy of Octroi on Goods and Animals brought within the limits of Ferozpur Cantonment Bye-laws, 1971 (S. R. O. 133 dt.3-4-1971)		
3	The Chakrata Cantonment (House Tax) Amdt. Bye-laws, 1970 (S. R. O. 135 dt.3-4-1971)		
4	The Morar Cantonment (Erection or Re-erection of Buildings) Amdt. Bye-Laws, 1970 (S. R. O. 137 dt. 3-4-1971).		
5	The Jullundur Cantonment (Regulation and Control) of use of Loud Speakers Bye-laws, 1970 (S.R.O. 136 dt. 3-4-1971)		
6	The Bombay Chipping & Painting Works (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 869 dt.20-2-1971)		

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7. Madras Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 870 dt. 20-2-1971).

8. Bombay Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 871 dt. 20-2-1971)

9. The Visakhapatnam Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 874 dt. 20-2-71)

10. The Marmugao Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 875 dt. 20-2-71)

Shipping and Transport (Transport Wing)

Mistake regretted.

11. The Cochin Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 876 dt 20-2-71)

12. The Kandla Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 878 dt 20-2-71)

13. The Bombay Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 2616 dt. 10-7-71).

14. The Bombay Chipping and Painting Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 2617 dt. 10-7-71)

(1)	(2)	(3)	(4)
15.	The Madras Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O 2618 dt. 10-7-71)		
16.	The Cochin Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 2619 dt. 10-7-71)		
17.	The Mormugão Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 2620 dt.10-7-71)		
18.	The Madras Unregistered Dock Workers (Regulation of Employment) Admt. Scheme, 1971 (S. O. 2621 dt. 10-7-71)		
19.	The Visakhapatnam Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 2712 dt. 17-7-71)	} Shipping and Transport (Transport Wing)	} Mistake regretted
20.	The Kandla Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S. O. 2713 dt 17-7-71)		
21.	The Bombay Unregistered Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 2714 dt. 17-7-71)		
22.	The Visakhapatnam Unregistered Dock Workers (Regulation of Employment Amdt. Scheme, 1971) (S.O. 2715 dt. 17-7-71).		
23.	The Kandla Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 2716 dt. 17-7-71)		

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24.	The Bombay Unregistered Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 872 dt. 20-2-71).	}	Mistake regretted.	
25.	The Madras Unregistered Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 873 dt. 20-2-71).			
26.	The Kandla Unregistered Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 877 dt. 20-2-71)			Shipping and Transport (Transport Wing)
27.	The Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Amdt. Scheme, 1971 (S.O. 879 dt. 20-2-71)			
28.	The Industrial Employment (Standing Orders) Central (Amdt.) Rules, 1970 (G.S.R. 732 dt. 22-5-71).	Labour	Omission was due to inadvertence and lapse regretted.	
29.	The Delhi Motor Vehicles (2nd Amdt.) Rules, 1972 [F. 3(28)/72-Tpt. dt. 1-1-73].	}	Noted for compliance in future.	
30.	The Delhi Motor Vehicles (6th Amdt.) Rules, 1972 (F. 3(80)/72-Tpt. dated 2-1-73).			Shipping and Transport (Transport Wing)
31.	The Textile Committee (Amdt.) Rules, 1973 (G.S.R. 629 dt. 16-6-73).	Commerce	Apologised for the lapse.	
32.	The Textile Committee (2nd Amdt.) Rules, 1973 (G.S.R. 244 of 1974).	Commerce	Omission was due to oversight and deeply regretted.	

APPENDIX IV

[Vide para 100 of Report]

Statement showing the action taken by Government on the recommendations made by and assurances given to the Committee on Subordinate Legislation

S.No.	Reference to para No. of Report	Summary of recommendations/ assurances	Gist of Government's reply
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1. Fourth Report
(51.S)
57

The Committee are not convinced by the argument advanced by the Ministry of Industrial Development for not accepting the recommendation of the Committee contained in para 22 of their Second Report (Fifth Lok Sabha). The Committee would like to reiterate that the period allowed for making representations, etc. should be reckoned with reference to the dates of receipt of notices by the members/creditors concerned and, in case they refuse

The rules have since been amended suitably
(See G.S.R. 2306 of 1975, dt. 30-8-75)

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to receive the notices or sign the acknowledgement, with reference to the date of such refusal. The Committee desire that the relevant provision in the new rules to be framed by the Government under the Industries (Development and Regulation) Amendment Act, 1971 should be in accord with the above-mentioned recommendation of the Committee.

2. Fourth Report
(5LS)
63

The Committee are not convinced by the arguments of the Ministry of Foreign Trade contained in paragraph 62 of the Report and would like to reiterate their earlier recommendation contained in para 28 of their Second Report (Fifth Lok Sabha) that there should not only be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts.

Both the rules have since been amended suitably (See S.Os. 1168 and 1169 of 1974.)
dt. 11-5-1974).

4

3. Fifth Report
(5LS)
62

The Committee note that the Ministry of Labour and Rehabilitation (Department of Labour and employment) have amended rule 14 of the Minimum Wages (Control) Rules, 1950 so as to add the further proviso that the date and time of an adjourned meeting shall be intimated to the absentee members by telephone, by telegram or by a written communication.

The proviso has since been substituted accordingly (See G.S.R. 751 of 1974, dt. 13-7-1974).

They desire that the new proviso should be further amended to provide that not only date and time but also the place of such adjourned meeting be intimated to the absentee members by telegram or by a written communication and the words "by telephone" be omitted therefrom.

4. Fifth Report
(5 LS)
69

The Committee note that the Department of Labour and Employment have agreed to incorporate the provision relating to the procedure of the working of the Board of Mining Examinations in the Metalliferous Mines Regulations, 1961. They desire that necessary action in this regard should be taken at an early date.

The provision relating to the procedure of the working of the Board of Mining Examinations has been incorporated in the Regulations (See G.S.R. 1009 of 1974, dt. 14-9-1974)

5. Sixth Report
(5 LS)
19—20

(i) It is true that under Section 57 of the Mines Act, 1952, the Central Government is empowered to frame regulations apart from the other matters enumerated in that section, for regulating the manner of ascertaining, by examination or otherwise the qualifications of managers of mines and persons acting under them and the grant and renewal of certificates of competency, etc. It is further appreciated that there had to be some agency for conducting examinations. But, at the same time, it would not be proper to construe that the Act intended such an agency to oust the jurisdiction of the Courts. The Committee therefore, desire that Regulation

(i) Sub-regulation (7) of regulation 11 has since been omitted (See G.S.R. 513 of 1975 dt. 19-4-1975).

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11(7) of the Metalliferous Mines Regulations, 1961 as worded at present, should either be omitted or the parent Act should be amended so as to provide for the setting up of the Board of Mining Examinations and other matters relating thereto.

(ii) The Committee also note that no provision has been made in the Regulations, in regard to quorum for meetings of the Board of Mining Examinations. They desire that this should be prescribed in the Regulations at an early date.

(ii) The provision of quorum for meetings of the Board of Mining Examinations has been made in the Regulations (See G.S.R. 1009 of 1974, dt. 14-9-74).

6. Sixth Report
(5 LS)

25

The Committee note with satisfaction the reply of the Department of Posts and Telegraphs and desire that the Department should take early steps to amend the Indian Post Office Rules, 1933 so as to provide for refund of the excess charged commission in cases where a foreign currency Money Order exceeding the prescribed limit is accepted by a Post Office.

Sub-rule (2) of rule 146 has since been amended suitably (See S.O.1574 of 1974, dt. 22-6-1974).

7. Sixth Report
(5 LS)

28

The Committee note with satisfaction the reply of the Department of Personnel and desire them to take early steps to amend (i) The I.A.S. (Seniority of Special Recruits) Regulations, 1960 and (ii) The I.P.S. (Seniority of

All the relevant rules and regulations have been amended suitably (See G.S.Rs.11-13, 38-44 and 46-56 of 1975, dt. 18-1-1975).

Special Recruits) Regulations, 1960 and all other Rules and Regulations as stated by them to bring them in line with the All India Services (Discipline and Appeal) Rules, 1969.

8. Sixth Report
(5 LS)
49

The Committee note the reply furnished by the Ministry of Commerce and desire that the Tea Waste (Control) Amendment Order, 1972 should be amended within a period of three months so as to provide therein (i) guidelines to be followed by the Licensing Authority in giving exemption under the Order; and (ii) that reasons for granting exemption under clause 21 from any of the provisions of the Order should be recorded in writing by the Licensing Authority.

The needful has since been done (See G.S.R. 457 of 1975, dt. 12-4-1975).

9. Seventh Report
(5LS)
70

The Committee regret to note that the Ministry of Shipping and Transport did not publish the Kandla Harbour Craft (Amendment) Rules, 1969 in draft form for inviting objections/suggestions from the public as required by Section 6(2) of the Indian Ports Act, 1908. They trust that necessary steps will be taken to avoid such an omission in future. The Committee desire the Ministry to take early action for re-issuing the Rules after their pre-publication in draft form to comply with the requirement of the Act.

G.S.R. 2285 of 1969 has since been rescinded *vide* G. S. R. 1393 of 1974, dated 21-12-74 and revised notification issued after pre-publication in the draft form under-G.S.R. 1419 of 1973, dt. 29-12-1973,

10. Seventh Report
(5LS)
74

The Committee note with satisfaction that the Ministry of Shipping and Transport have agreed to make a provision in the Kandla

This has since been done (See G.S.R. 1419 of 1973, dt. 29-12-73).

Harbour Craft (Amendment) Rules, 1969 for an opportunity of being heard to the person concerned before his licence is for feited under the Rules. The Committee desire the Ministry to amend the Rules to this end at an early date.

11. Eighth Report
(SLS)
70

The Committee note with satisfaction that the Ministry of Industrial Development have agreed to incorporate the requisite age limit and educational and other qualifications in the Schedule to the Directorate General Technical Development (Class I Posts) Recruitment Rules for the existing entries under column (5) and (6), in order to make the Rules self-contained. The Committee desire the Ministry to take further necessary action in the matter at an early date.

The needful has since been done (See G.S.R. 2344 of 1975, dt. 6-9-1975).

12. Eighth Report
(SLS)
75

The Committee note that on being pointed out the Ministry of Defence have decided to amend bye-law 4 of the Morar Cantonment Bye-laws so as to indicate that the amount of Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors respectively, with the Cantonment Board before their names are included in the list of approved contractors are deposits, which are refundable

The Bye-laws have since been amended suitably (See S.R.O. 288 of 1974, dt. 7-9-1974).

and not fees as mentioned at present in the bye-law. The Committee desire the Ministry to take early steps to amend the bye-law suitably.

13 Eighth Report
(SLS)
79

The Committee note that the Ministry of Defence have agreed to the suggestion of making a provision in bye-law 5 of the Morar Cantonment Bye-laws that the earnest money equal to 2 per cent of the estimated cost of the work, deposited with the Cantonment Board, would be refunded in the event of the contract not being awarded to the tenderer. The Committee desire the Ministry to amend the bye-law at an early date.

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14 Eighth Report
(SLS)
96

The Committee note with satisfaction that the Ministry of Steel and Mines have accepted the suggestion and agreed to indicate in clause 9 of the Aluminium (Control) Order, 1970 the minimum rank of persons to be authorised by the Government to inspect books of account and to conduct search of the premises where aluminium is produced, manufactured or sold. The Committee desire the Ministry to amend the Order suitably at an early date. They also desire to impress upon all other Ministries/Departments the need for amending their Rules to indicate the minimum rank of persons where the power of inspection search and seizure has been given.

(i) Para 9 of the 'Order' has been amended suitably (*see* S.O. 440-E of 1974, dt. 17-7-1974).

(ii) The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments for information and appropriate action *vide* their O.M. No. F.32(57)/73-R&C, dt. 22-9-1973.

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15 Ninth Report

(SLS)
13-18

The Committee are unhappy that Government have failed in their duty to Parliament by not complying with the statutory requirement of laying 47 'Orders' on the Table. They are surprised that these 'Orders', which were issued during the years, 1971 to February 1973 by various Ministries/Departments had not been laid till the Eighth Session, which ended on the 5th September, 1973. In their opinion, there has been a serious error on the part of Government in that they have failed to appreciate the importance of the statutory requirement. Had the Committee not pointed out this error, the Members of Parliament would have been deprived of their statutory right of making modifications to these 'Orders'. The Committee would like to emphasise that the importance should be attached to Government's duty towards Parliament when Parliament ordains Government to lay statutory rules as soon as possible after their being framed on the Table of both the Houses.

The Committee note that on being pointed out, the Ministries of Labour and Rehabilitation, Commerce, Home Affairs, Shipping and Transport and Department of Personnel have initiated action to lay the 'Orders' issued by them on the Table in the ensuing session.

(i) The relevant 'Orders' were laid on 15-11-73, 22-11-73 and 29-11-73, together with the statement for delay. The recommendations and suggestions made by the Committee have been brought to the notice of all concerned for information and guidance. The Ministry have taken steps to ensure that the lapses pointed out by the Committee do not recur, *vide* Ministry of Labour O.M. No. H-11013/6/73(i) P.U., dt. 21-12-1973. The Ministry have also forwarded a copy of their office Order No. 312 of 1973, dt. 5-11-1973, wherein they have laid down the procedure to be adhered to strictly to avoid recurrence of lapses. Branch Officers/Deputy Directors/Section Officers have been asked to exercise special precaution to ensure that in future there is no lapse in laying papers on the Table of both the Houses of Parliament within the prescribed period. In case of any lapse in future action will be taken against the persons responsible.

(ii) The relevant 'Order' was laid on 21-12-73 together with the statement for delay. Necessary steps have been taken to avoid

There having been an omission to comply with the requirements of relevant Acts, the Committee feel that Government should make a specific mention of non-compliance of the statutory provision occurred so far in these cases in the statement showing reasons for delay to be laid along with the Orders' referring therein to the error having been pointed out by the Committee.

The Committee note that no final replies in the matter have been received so far from the Ministries of Agriculture (Department of Food) and Petroleum and Chemicals, in the absence of which they could not comment upon the 'Orders' issued by these two Ministries which have also not been laid on the Table. The Committee take a serious note of the lapse on the part of the above Ministries. They deplore this carelessness on the part of these two Ministries and desire them to be more prompt in future in sending replies to the communications of the Committee.

The Committee further desire that in cases of errors creeping in the notifications at the printing stage, the Ministries/Departments concerned should not wait for the corrigendum being published in the Gazette. They should on the other hand carry out corrections in the relevant notifications and lay them on the Table. To avoid such omissions in future,

non-compliance with the statutory requirement of laying 'Orders' before Parliament, vide Ministry of Commerce O.M.No. H-11013/2/74-Parl., dt. 11-3-1974. The Ministry have also furnished a copy each of their office Order No. 37 (1973 series), dt. 17-12-1973, and Memorandum No.H-11013/1/74-Parl., dt. 2-2-1974, wherein they have set out the detailed procedure to be followed by all concerned for strict compliance. Secretary (Commerce) has decided that it would be the responsibility of the officers signing the Gazette notification to ensure that it is laid on the Table of the two Houses of Parliament within the prescribed time-limit of 15 days.

(iii) The relevant 'Orders' were laid on 14-11-73, together with the statement for delay. The Cabinet Secretariat (Department of Personnel and Administrative Reforms) have revised instructions regarding laying of 'Orders' before Parliament, and circulated them to all concerned in that Department, vide their O.M.No. H-11013/16/73-Parl., dt. 30-1-1974. In this circular, the Secretary of that Department has desired that the instructions should be strictly followed in letter and spirit at all levels so that in future there is no omission or delay in fulfilling the statutory obligation to lay papers before Parliament.

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the Committee recommend that each Ministry/Department should take specific steps in this direction on the lines indicated by the representative of the Ministry of Labour and Rehabilitation (Department of Labour and Employment during the course of his evidence.

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Any lapse in this respect will be very seriously viewed. The Section Officers should personally ensure that these instructions are complied with. The Parliament section should bring any lapse immediately to the notice of the Joint Secretary concerned.

(iv) The relevant 'Orders' were laid on 21-11-73 and 28-11-73, together with the statement for delay. The Ministry of Home Affairs have brought the recommendation of the Committee to the notice of all Sections and Branch Officers and issued detailed instructions to them for complying with statutory requirement of laying 'Orders' before Parliament, *vide* their O.M. No. H-11013/2/74-Parl., dt. 2-2-1974.

(v) The relevant 'Orders' were laid on 4-3-74 together with the statement for delay as desired by the Committee. Action has also been taken on the lines suggested by the Committee to maintain registers to guard against such lapses in future, *vide* Ministry of Food and Agriculture

(Department of Food) O.M. No. H-11018/2/73-Parl. (B), dt. 15-2-1974

(vi) The Drugs (Prices Control) Amendment Order, 1971, was laid on 6-8-74; together with the statement showing reasons for delay. The Ministry of Petroleum and Chemicals have issued necessary instructions to all concerned in that Ministry so as to ensure that rules and regulations required to be made under a statute are framed and laid in the Parliament within the prescribed time-limit, *vide* their O.M. No. H-11013/6/75-Parl., dt. 19-4-1975.

(vii) The Indian Merchant Shipping (Medical Examination) Amendment Rules 1972, were laid on 26-11-1973, together with the statement showing reasons for delay. Other instructions to avoid such lapses in future have been noted by them, *vide* Ministry of Shipping and Transport (Transport Wing) O.M. No. 67-MA(2)/68, dt. 26-4-1974.

(viii) The Department of Parliamentary Affairs have circulated the observations/recommendations of the Committee to all the Ministries/Departments of Government of India for information and appropriate action, *vide* their O.M. No. F. 32

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(50) /73-R&C, dt. 18-12-73. They have also asked the Ministries/Departments that directions should be issued that each Branch Officer should look into all the enactments with which the Ministry is concerned and not the sections which require the laying of an 'Order' before Parliament. A register should be maintained for the purpose of entering notifications issued under the various Acts so that their copies are sent simultaneously for being laid before Parliament. Parliament Section of each Ministry should also be asked to get periodical returns from the various Sections regarding the papers to be laid on the Table.

16. Ninth Report (LS) 31-35
The Committee on Subordinate Legislation have time and again deprecated the delay in laying of 'Orders' on the Table of the House. The Committee regret to note that subsequent to the presentation of their Fifth Report (Fifth Lok Sabha), in which they had adversely commented upon the delay during First and Second Sessions, there had been no perceptible improvement in this regard. Out of 282 'Orders' laid on the Table during the Third to eighth Sessions, 258 'Orders' were laid after

(i) The Ministry of Labour have brought the recommendations and suggestions made by the Committee to the notice of all concerned in that Ministry for information and guidance. The Ministry have also taken steps to ensure that the lapses pointed out by the Committee do not recur, vide their O. M. No. H-11013/6/73 (i) -P.U, dt. 21-12-73. They have also forwarded a copy of their office Order No. 312 of 1973 dt. 5-11-73, wherein they have laid down

the Prescribed time-limit. The delay in these cases ranged from 15 days to over 3 years. The Committee take a serious view of such delays. It is hardly necessary for them to point out that inordinate delays in laying are against the spirit of the relevant provisions in the Acts which require that the 'Orders' should be laid before Parliament as soon as possible, after they are made.

The Committee note that their recommendations/observations made in this regard after examining the representatives of the Ministries of Home Affairs, Education and Social Welfare and Works and Housing in paras 40 to 43 of Fifth Report (Fifth Lok Sabha) were brought to the notice of all Ministries/Departments for strict compliance in future, *vide* Department of Parliamentary Affairs O.M. No.F. 32 (9)/73- R & C, dated 24-3-73. The Committee further note that in the above O. M., the Department of Parliamentary Affairs had also invited the attention of the Ministries/Departments to D.O. No. F.S. RII (45-46) 59- CB dt. 13-7-59 from the then Minister of Parliamentary Affairs addressed to all Ministers of the Central Government, wherein he had asked them to 'Issue strict instructions to your Ministry to ensure that the recommendation of the Committee which had already been accepted by the Government is complied with'. The Committee are surprised that even though the matter had been taken up at the

the Procedure in detail to be adhered to strictly to avoid recurrence of lapses. In the above office Order, Branch Officers/ Deputy Directors/ Section Officers have been asked to exercise special precaution to ensure that in future there is no lapse in laying papers on the Table of both the Houses of Parliament within the prescribed period. In case of any lapse in future, action will be taken against the persons responsible.

(ii) Necessary instructions have been issued by the Ministry of Works and Housing to all its Organisations and Sections to maintain a register for the purpose of entering notifications issued under the various Acts and Parliament Section of the Ministry has been entrusted with the task of getting periodical returns from various Sections regarding papers to be laid on the Table of the Houses and of keeping a watch on the progress of the cases till such time as the papers are laid on the Table, *vide* their O.M.No. O-17036/28 (2)/73 Coord, dt. 19-6-74.

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highest level by the Department of Parliamentary Affairs, as far back as in 1959, the delays have continued to occur all these years. The Committee feel that the Ministries/ Department have not cared to attach importance to timely laying of 'Orders' on the Table and have failed to evolve a procedure by which such delays could be easily avoided. The Committee, therefore, recommend that each Ministry/Department should take specific steps in this direction, on the lines indicated by the representative of the Ministry of Labour and Rehabilitation (Department of Labour and Employment) during the course of his evidence.

The Committee also note that out of 258 cases in which the delay had occurred, statements showing reasons for delay had been laid only in 85 cases. On a perusal of these statements, the Committee feel that with little more care on the part of the Ministries/Departments, the delay could have been avoided in most cases.

The Committee are not happy with the explanation given by the representative of the Ministry of Works and Housing during his evidence that the statement showing reasons for delay

(ii) the Ministry of Commerce have taken necessary steps to avoid noncompliance with the statutory requirement of laying 'Orders' on the Table of both Houses of Parliament. Every officer signing the Gazette notification relating to an 'Order' has been made personally responsible for ensuring timely laying the 'Order', vide their O. M. No. H-11013/2/74-Parl., dt. 11-3-74. The Ministry have also forwarded a copy each of their Memo. No. H-11013/2/74-Parl. dated 19-3-74

had been prepared, but before it could be sent, the Regulations had already been laid. The Committee cannot help deplore the lapse on the part of the Ministry in this case in not sending the statement, along with the Regulations for laying it on the Table. As regards other 84 cases, they feel strongly about non-observance of their recommendation. They again urge that in case, due to any unavoidable reasons, it is not possible for a Ministry/Department to lay an 'Order' on the Table within the prescribed time-limit, they should make it a point to lay a statement showing reasons for delay alongwith the 'Orders'. The Committee would henceforth take as serious note of this omission.

and 3-5-74, with which the recommendations of the Committee have been circulated to all the Officers/Sections in that Ministry. They have laid down the detailed procedure therein to be followed for strict compliance by the Sections/Officers in that Ministry. A reference has also been made to D.O. letter No. 6/1/2/74-CF, dt. 9-4-74, addressed by the Cabinet Secretary to Commerce Secretary on the subject as per instructions from the Prime Minister.

One of the main reasons for delay given by the Ministries/Departments was that copies of the relevant Gazette/intimation regarding G.S.R. numbers, etc. were not received in time from the Government of India Press. The Committee note that to obviate such delays, the Controller of Printing and Stationery has since introduced a new procedure for supply of G.S.R. numbers, etc. *vide* his O.M. No. H-11013/1/72-P, dated 9-2-1972, addressed to all Ministries/Departments for strict observance. The Committee fail to understand the difficulties of the Ministries/

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Departments in adhering to the procedure laid down in the said O.M. The Committee desire that the Ministries/Departments should strictly follow that procedure in future so that the 'Orders' are laid on the Table promptly.

(iv) The Ministry of Industrial Developments have circulated the recommendations/observations of the Committee to all Sections for information and appropriate action, *vide* their Memo No. 10(2)/74-Parl., dated 5-2-1974.

(v) The Department of Parliamentary affairs have circulated the observations/recommendations of the committee to all the Ministries/Departments for their information and appropriate action, *vide* their O.M. No. F. 32(50)/73-R & C, dated 18-12-73. In this connection, the Department has also invited the attention of all Ministries/Departments to their earlier Circular No. F. 32-(9)/73-R&C, dated 24-3-1973, wherein they enjoined on the Ministries to lay all such 'Orders' within the stipulated period of 15 days so that such inordinate delays do not take place.

17 Ninth Report (5LS)
60-61

The Committee note with satisfaction that no individual drug manufacturing unit has in fact been exempted from the application of the Drugs (Prices Control) Order, 1970. In all the three cases, in which exemptions have been made so far, it is only a class of drug manufacturing units, which has been exempted. The Committee, however, feel that under the Orders as worded, the possibility of discrimination between drug manufacturing units similarly placed cannot be ruled out.

To obviate such a possibility, the Committee would like the Ministry of Petroleum and Chemicals to omit the words "any drug manufacturing unit or" from para 25(1) of the above Order.

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18 Tenth Report (5LS)
56

The Committee are distressed at the lackadaisical manner in which both the Ministry of Defence and the Allahabad Cantonment Board have acted in this case. It appears strange to the Committee that a period of more than 16 years should have been allowed to elapse before initiating action to amend the Bye-laws for the regulation of herding of animals and their registration in the Allahabad Cantonment, in pursuance of the assurance given by the Ministry. They deplore the carelessness on the part of the Ministry who did not take any action to implement the assurance, till the matter was again taken up with them in September, 1972. The Committee note that the Ministry have now

The Order has since been amended suitably (see S.O. 485 -E of 1974, dated 8-8-74).

The Bye-laws have since been amended suitably (see S.R.O. 30 of 1975, dated 25-1-1975).

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sent a reply only after their displeasure was conveyed to them in May, 1973. The Committee desire the Ministry to amend the Bye-laws without any further delay.

19 Tenth Report (S LS) The Committee are surprised that the Ministry of Defence have repeated the same reply which they had sent more than 15 years ago in November, 1958. It appears strange to the Committee that the Ministry should have continuously waited all these years for other major amendments to the National Cadet Corps Act, which were nowhere in sight. The Committee cannot help deploring the casual manner in which the Ministry have treated their recommendation. They feel that if they had not taken up the matter afresh, the Ministry would have continued to sleep over it for many years to come. The Committee desire the Ministry to initiate action in the matter in right earnest now so that the Bill to amend the N.C.C. Act, 1948, in implementation of their recommendation is actually introduced in the Monsoon session of 1974.

The N.C.C. Act, 1948 has since been amended by Act No. 50 of 1975, as recommended by the Committee.

20 Tenth Report (SLS) While the Committee are in agreement with the As many as 13 amendments are proposed to reply of the Ministry dated 23rd October, 1972 Section 282 of the Cantonments Act, 1924 that it is not possible to further reduce super- which lays down various matters in which

vision charges in Belgium Cantonment, they note the assurance given by the Ministry of Defence that they propose to set up a Committee to go into these matters. They desire that the Committee to be appointed should be directed to go into the question of rationalisation of supervision charges in all the Cantonments.

In this case also, the Committee regret a delay of 7 years in forwarding information to them. The Committee will like the Ministry of Defence to take care to give prompt replies to the Committee in future.

the Board is competent to make bye-laws. After the amendments to the Act, which are at present under examination in consultation with the Ministry of Law are introduced through a legislation, it is proposed to entrust the work of standardisation of bye-laws to a cell to be set up in the ML & C Directorate. This Cell will also be asked to go into the question of rationalisation of supervision charges in all the Cantonments.

As regards para 126, the recommendation of the Committee has been noted for compliance. [Ministry of Defence O. M. No. F. 10 (29)/72/D (Q&C), dated 28-8-1974.]

24 Eleventh Report
(5LS)
108

The Committee note with satisfaction that on being pointed out the Ministry of Tourism and Civil Aviation have agreed to amend the rule 135-C of the Aircraft Rules, 1937 so that its wording does not give an impression on the minds of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire the Ministry of Tourism and Civil Aviation to amend above Rules at an early date.

The Rules have since been amended suitably (see G.S.R. 2386 of 1975, dt. 13-9-75.)

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22 Eleventh Report
(5LS)
140

The Committee note with satisfaction that on being pointed out the Ministry of Finance (Dept. of Revenue and Insurance) have agreed to amend Rule 96 ZO (3) of the Central Excise Rules to give discretionary powers to the Collectors of Central Excise to relax where deemed fit, the period of preclusion, after considering the merits of each case on the lines of discretion vested in Rule 96ZO (4). The Committee desire the Ministry of Finance (Dept. of Revenue and Insurance) to take early steps to amend above Rules.

The Central Excise Rules have since been amended suitably (see G.S.R. 528 of 1974, dt. 1-6-1974).

23

Twelfth Report
(5LS)
24-26

The Committee are not convinced with the reply of the Ministry of Finance that explanatory note regarding retrospective effect given to the Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order, No. 2 of 1970 was not published as the Taxation Laws (Extension to Union Territories) Regulations, 1963 under which it was issued did not have any provision for its being laid on the Table. The Committee feel that the Ministry of Finance is under misapprehension in this regard. They would like to point out that the requirement of an explanatory note to an order is not dependent upon whether it is required to be laid on the Table or not. According to the recommendation of the Committee made in para 10 of their

(i) Noted for future guidance. Instructions have been issued to all Commissioners of Income-tax to the effect that instances of difficulties arising in giving effect to the provisions of any Act, Order, Regulation, etc. which empowers the Central Government or the Central Board of Direct Taxes to remove such difficulties should be promptly brought to the notice of the Central Board of Direct Taxes so that immediate remedial action can be taken in the matter, *vide* Ministry of Finance (Dept. of Revenue and Insurance) O.M. No. F. 153(1) / 74 - TPL, dt. 29-8-1974.

Second Report (Fourth Lok Sabha), the explanatory note is required to be given in all cases where due to unavoidable circumstances retrospective effect has to be given to an Order.

The Committee would also like to draw attention to their observations made in para 102 of their Ninth Report (Fifth Lok Sabha) that the recommendation regarding giving of explanatory note in cases of retrospective effect had been made by them not because of any legal necessity but because of propriety and check on abuse of power. The Committee desire the Department of Parliamentary Affairs to issue general instructions in this behalf to all Ministries/Departments to remove their misapprehension regarding the necessity for explanatory note in cases where retrospective effect is given to Rules, Regulations, etc. ¶

(ii) The Department of Parliamentary Affairs have circulated the observations of the Committee to all Ministries/Departments with the request to take note of it for their guidance. Their attention has also been drawn to D.P.A. O.M. No. F.32(1)/69-R&C dt. 22-3-74, issued on the subject, *vide* D.P.A. O.M. No. F. 32(6)/74 R&C, dt. 11-6-1974.

The Committee also regret to note from the reply of the Ministry that the difficulties in applying the Income-tax Act to the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry were brought to the notice of the Central Government very late by the field officers as a result of which retrospective effect was given to the Order from as far back as seven years. The Committee desire the Ministry of Finance to be careful about such matters in future and issue necessary instructions in this regard

so that retrospective effect to Orders is avoided.

24 Twelfth Report
(5 LS)
37

Although the Committee have no objection to amendment issued to Rule 15 (2) of the Car-damom Rules, they are not happy at the Ministry of Commerce having issued the same without waiting for the comments of the Committee thereon, particularly when it was proposed to meet the objection raised by them. The Committee desire the Department of Parliamentary Affairs to issue necessary instructions in this regard to all Ministries/Departments for compliance in future.

The D.P.A. have circulated the observations/recommendations of the Committee to all Ministries/Departments with the request to note them for information and compliance, *vide* their O.M. No. F 32(6) 76-R&C dt. 11-6-1974.

25 Twelfth Report
(5 LS)
78

The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 15(2) of the Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 to provide for recording of reasons in writing by Government before varying the percentage of vacancies to be filled by each method specified in Rule 5(1). The Committee desire the Ministry to amend the Rules accordingly at an early date.

The needful has since been done (see G.S.Rs. 1322 and 1369 of 1974, dt. 14-12-74 and 28-12-1974).

26 Twelfth Report
(5 LS)
83

The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 11 of the Delhi and Andamans & Nicobar

The Rules have since been amended suitably (see G.S.Rs. 1322 and 1369 of 1974 dt. 14-12-74 and 28-12-74.

Islands Civil Service Rules, 1971 to provide for recording the reasons in writing in cases where a person included in the list referred to in Rule 9 was not appointed. The Committee desire the Ministry to amend the Rule accordingly at an early date.

27 Twelfth Report
(SLS)
86

The Committee note with satisfaction that the Ministry of Home Affairs have agreed to amend Rule 15(3) of the Delhi and Andamans and Nicobar Island Civil Service Rules, 1971 to provide for recording of reasons in writing in cases where the Government did not agree with the change suggested in the List by the Union Public Service Commission. The Committee desire the Ministry to amend the Rule accordingly at an early date.

The needful has since been done (see G.S.Rs. 1322 and 1369 of 1974 dt. 14-12-74 and 28-12-74).

28 Twelfth Report
(SLS)
90

The Committee note with satisfaction that the Ministry of Home Affairs have decided to amend the proviso to Rule 22 of the Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 to provide that the Central Government may exempt, subject to such conditions as it might impose and keeping in view the past service experience/academic qualifications of the officer, either wholly or partly from such training or departmental examinations any person appointed under clause (b) of sub-rule (1) of Rule 5 or Rule 17 of above Rules. The Committee desire the Ministry to amend the Rules at an early date.

Proviso to rule 22 has since been substituted (see G.S.Rs. 1322 and 1369 of 1974 dt. 14-12-74 and 28-12-74).

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- 29 Twelfth Report
(GLS)
94
- The Committee note with satisfaction that the Ministry of Home Affairs have decided to delete proviso to Rule 33 of the Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 under which power exercisable by the Central Government could be delegated to the Administrator. The Committee desire the Ministry to carry out the amendment at an early date.
- 30 Twelfth Report
(GLS)
107
- The Committee note with satisfaction that the Ministry of Home Affairs have agreed to include in the Investigator (Planning Cell) Ministry of Home Affairs Rectt. Rules, 1969, the disqualification clause on account of plural marriage. They desire the Ministry to amend the Rules accordingly at an early date.
- 31 Twelfth Report
(GLS)
120-121
- The Committee note with satisfaction that the Department of Science and Technology have agreed to amend the National Atlas Organisation (Recruitment to Class III and Class IV) Posts Amendment Rules, 1972 to indicate distinctive serial number of the amendment. They desire the Department to issue the amendment at an early date and be careful about such matters in future.
- The Rules have been amended suitably (see G.S.R. 405 of 1974, dt. 6-4-1974).
- (i) The needful has since been done (see G.S.Rs. 634 and 635 of 1974, dt. 22-6-74).

The Committee had first made their recommendation regarding giving of titles to rules and amendments in para 44 of their Third Report (First Lok Sabha). They restress that recommendation and desired the Department of Parliamentary Affairs to issue necessary instructions to all Ministries/Departments of Government so that such omissions are not made in future.

(ii) The Department of Parliamentary Affairs have Circulated the recommendation of the Committee to all Ministries/Departments with the request to note it for information and compliance, *vide* their O.M. No. F. 32(6)/74-R&C, dt. 11-6-1974.

2 Twelfth Report
(SLS)
136

The Committee are of the opinion that precise method of recruitment to a post should be prescribed in the Recruitment Rules as a matter of principle. The Committee, are, however, satisfied with the reply of the Ministry of Home Affairs in regard to the Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 and feel that in view of the position explained therein it is not necessary to prescribe precise method of recruitment to the post of Additional Director. In the case of Border Security Force (Assistant Commandants) Recruitment Rules, 1969, the Committee note with satisfaction that the Ministry of Home Affairs have accepted the suggestion of adding a rider about the precise method of recruitment. The Committee desire the Ministry to make necessary amendments to the Rules at an early date.

The Border Security Force (Assistant Commandants) Recruitment Rules, 1969 have been repealed by G.S.R. 504-E of 1973, dt. 23-11-1973, as these rules were considered to be redundant. The provision regarding method of recruitment has been incorporated in para 3 (6) of Home Ministry letter No. 6/1/73-CLO/BSF (Pers. 1), dt. 16-1-74, *vide* their O. M. No. 14/8/74-Pers. I dt. 26-8-1974.

33 Twelfth Report
(SLS)
171

The Committee are glad to note that the Ministry have deleted the provision for de-registration

The provision regarding de-registration of workers has been deleted from all the

- of workers from the Calcutta Scheme. The Committee desire the Ministry to take similar action in regard to the other Dock workers Schemes.
- 34 Twelfth Report (5LS) 186
 The Committee note with satisfaction that the Ministry of Home Affairs have amended Rule 5 of the Deputy Fire Adviser Recruitment Rules, 1971 by adding the words "and in consultation with the U. P. S. C." They desire them to make similar amendment to the Commissioner for Linguistic Minorities, Allahabad (Administrative Officer) Recruitment Rules, 1972.
- 35 Fifteenth Report (5LS) 45
 The Committee note with satisfaction that both the Ministries of Law, Justice and Company Affairs (Legislative Department) and Labour have promised to amend at the earliest opportunity the rule-laying clause contained in the Payment of Bonus Act, 1968, so as to bring it in conformity with the formula approved by the Committee, in paras 33-34 of their Second Report (Fifth Lok Sabha).
- Schemes of Calcutta Dock Workers. The Schemes of other Dock Labour Boards do not contain the provision regarding de-registration, *vide* Ministry of Shipping and Transport [Transport Wing] O. M. No. H-11013/3/74-P&D/LD, dt. 20-1-1975].
- The Commissioner for Linguistic Minorities, Allahabad (Administrative Officer) Recruitment Rules, 1972, have since been amended suitably (*see* G.S.R. 325 of 1974, dt. 30-3-1974).
- The Payment of Bonus Act, 1968, has since been amended *vide* Act No. 23 of 1976.

36 Fifteenth Report
(5LS)
70

The Committee agree with the views of the Ministry of Labour that the power to permit variations in scales of appointment of surveyors should vest in the 'Chief Inspector of Mines' instead of in the 'Regional Inspector of Mines'. The Committee recommended that early action should be taken to amend regulation 35(3)(b) of the Coal Mines Regulations, 1957, accordingly.

37 Fifteenth Report
(5LS)
98-99

The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms have agreed to re-publish the Institute of Secretariat Training and Management (Class IV posts) Recruitment Rules, 1973, in appropriate Part of the Gazette, namely, in Part II, Section 3 (i) of the Gazette of India. The Committee desire that a copy of the notification as re-published in Part II, Section 3 (i) of the Gazette of India should be furnished to them for their information.

(i) The Rules have since been re-published in Part II, Section 3(i) of the Gazette (see G.S.R. 1263 of 1974, dt. 30-11-74). The observations of the Committee made in para 99 have also been noted for compliance in future, *vide* Deptt. of Personnel and Administrative Reforms O.M. No. 35/55/72-Estt.(B), dt. 19-7-1975.

The Committee also feel that as publication of 'Orders' in wrong Parts and Sections of the Gazette may cause unnecessary inconvenience to the public, Ministries/Departments should take care to publish the 'Orders' in appropriate Parts and Sections of the Gazettee.

(ii) The Department of Parliamentary Affairs have circulated the observations of the Committee to all Ministries/Departments with the request to note them for information and compliance *vide* their O. M. No. F 32 (3)/75-R&C, dt. 2-5-1975.

38 Fifteenth Report
(5LS),
104

The Committee are of the opinion that retrospective effect given to the Export Inspection Council Contributory Provident Fund

The Rules have since been amended suitably as desired by the Committee (see S. Os. 5344 and 5421 of 1975, dt. 20/27-12-1975).

Rules, 1969, was without due legal authority. The Committee desire that the Ministry of Commerce should either amend the rules so as to give effect to them from the date of their publication in the Gazette *viz.*, 21st June, 1969, or in the alternative, the Export (Quality Control and Inspection) Act, 1963, under which the said rules have been framed, should be amended to obtain an express authority from Parliament, in case it is considered necessary to give retrospective effect to these rules. The Committee desire that early action should be taken in the matter.

MINUTES

APPENDIX V

LXXVII

MINUTES OF THE SEVENTY-SEVENTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA)
(1974-75)

The Committee met on Friday, the 16th May, 1975 from 15.00 to 16.00 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri Md. Jamilurrahman
4. Shri Dinesh Joarder
5. Shri Kamala Prasad
6. Shri Paokai Haokip
7. Shri M. S. Sanjeevi Rao
8. Shri Tayyab Hussain

SECRETARIAT

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

2. The Committee examined in detail certain 'Orders' (vide Annexure) laid on the Table of Lok Sabha during the Thirteenth Session (Fifth Lok Sabha).

3. The Committee desired that comments of the Ministries/Departments concerned might be obtained in respect of the following 'Orders' on points shown against them:—

S. No.	Short title and No. of 'Order'	Points on which comments to be invited
(1)	(2)	(3)
1.	The Central Excise (3rd Amdt.) Rules, 1975 (G.S.R. 14-E of 1975).	(i) <i>Proviso to sub-rule (3) of Rule 224 :—</i> (a) The words 'assessee or' may be omitted, so that the benefit of exemption is available to classes of assesses as contradistinguished from individual assesses. (b) Whether the general or special order is published in the Gazette for general information ? (ii) * * *

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

(1)	(2)	(3)
2. The Ministers' (Allowance, Medical Treatment and other Privileges) 2nd Amdt. Rules, 1974. (G.S.R. 693-E of 1974).	Reasons for giving retrospective effect w.e.f. 10-10-74 without an express authorisation in the parent Act.	
3.	* * *	* * *
4. The Merchant Shipping (Crew Accommodation) Amdt. Rules, 1974 (G.S.R. 1390 of 1974).	(i) <i>Provisos to Rules 5(2), 12(3) and (4), 16(f), 21(7), 23(4), 31(7) and 38(2)(ii) :—</i>	
	(a) What are the considerations for empowering the Central Government to grant exemptions under the above provisos.	
	(b) In case Government feel that the above exemption provisions are absolutely necessary the reasons for exemption should be recorded in writing.	
5. The Mineral Concession (3rd Amdt.) Rules, 1974 (G.S.R. 1332 of 1974).	(i) * * *	
	(ii) Time limit within which the unexpended deposit amount should be refunded to the lessee should be specified in the rules.	
6. The Paper (Conservation and Regulation of Use) Amdt. Order, 1974 (S.O. 742-E of 1974).	<i>Clause 5(1) : Reasons should be recorded in writing for giving exemption for printing of diaries from the operation of this provisions.</i>	
7. The Paper (Control of Production) Amdt. Order, 1974 (S.O. 172 of 1974).	* * *	

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

(1)

(2)

(3)

8. The Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975. (G.S.R. 3-E of 1975).

(i) Rules 3(6) and 6(5) :

Reasons for not issuing a fresh notice for an adjourned meeting. In particular, the Ministry may indicate how in the absence of such a notice,

(ii) Rule 3(7) :

The wording of this sub-clause appears to bar the jurisdiction of Courts. This should either be deleted from the rules or it should be incorporated in the Act itself.

9. (i) The Board of Trustees of the Port of Bombay (Procedure at Board Meetings) Rules, 1975 (G.S.R. 27-E of 1975).

- (ii) The Board of Trustees of the Port of Calcutta (Procedure at Board Meetings) Rules, 1975. (G.S.R. 30-E of 1975).

- (iii) The Board of Trustees of the Port of Madras (Procedure at Board Meetings) Rules, 1975. (G.S.R. 33-E of 1975).

Rule 8 :

The procedure for informing the absentee member about the adjourned meeting should be laid down in the rules.

10.	*	*	*	*	*
11.	*	*	*	*	*

The Committee then adjourned to meet again on the 17th May, 1975 at 10.30 hours.

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

ANNEXURE

(Vide para 2 of the Minutes)

LIST OF 'ORDERS'

S. No.	Title & No. of Order	Date of laying
1.	The Central Excise (Third Amendment) Rules, 1975 (G.S.R. 14-E dated 21-1-75)	18-2-75
2.	The Ministers' (Allowances, Medical Treatment and other Privileges) Second Amendment Rules, 1974 (G.S.R. 693-E dated 23-12-74)	19-2-75
3.	The Interest-tax Rules, 1974 (S.O. 740-E dated 30-12-74)	19-2-75
4.	The Merchant Shipping (Crew Accommodation) Amendment Rules, 1974 (G.S.R. 1390 dated 28-12-74)	20-2-75
5.	The Mineral Concession (Third Amendment) Rules, 1974 (G.S.R. 1332 dated 14-12-74)	20-2-75
6.	The Fruit Products (Second Amendment) Order, 1974 (S.O. 741-E dated 27-12-74)	24-2-76
7.	The Cost Accounting Records (Infant Milk Foods) Rules, 1974 (G.S.R. 701-E dated 27-12-74)	25-2-75
8.	The All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1975 (G.S.R. 17-E dated 24-1-75)	26-2-75
9.	The Paper (Conservation and Regulation of Use) Amendment Order, 1974 (S.O. 742-E dated 31-12-74)	26-2-75
10.	The Paper (Control of Production) Amendment Order, 1974 (S.O. 172 dated 18-1-75)	26-2-75
11.	The Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975 (G.S.R. 3-E dated 10-1-75)	3-3-75
12.	The All India Services (Leave Travel Concession) Rules, 1975 (G.S.R. 225 dated 22-2-75)	5-3-75
13.	The Board of Trustees of the Port of Bombay (Procedure at Board Meetings) Rules, 1975 (G.S.R. 27-E dated 1-2-1975)	6-3-75

(1)	(2)	(3)
14.	The Port of Bombay (Payment of Fees and Allowances to Trustees) Rules, 1975 (G.S.R. 28-E dated 1-2-75) .	6-3-75
15.	The Port of Calcutta (Procedure at Board Meetings) Rules, 1975 (G.S.R. 30-E dated 1-2-75)	6-3-75
16.	The Board of Trustees of the Port of Calcutta (Payment of Fees and Allowances to Trustees) Rules, 1975 (G.S.R. 31-E dated 1-2-75)	6-3-75
17.	The Board of Trustees of the Port of Madras (Procedure at Board Meetings) Rules, 1975 (G.S.R. 33-E dated 1-2-75)	6-3-75
18.	The Board of Trustees of the Port of Madras (Payment of Fees and Allowances to Trustees) Rules, 1975 (G.S.R. 34-E dated 1-2-75)	6-3-75
19.	The Reserve Bank of India Employees' Gratuity and Superannuation Fund Regulations, 1975	7-3-75
20.	The Delhi Municipal Corporation (Election of Councilors) (Amendment) Rules, 1975 (Notification No. F. 2(30)/73 LSG dated 11-2-75)	13-3-75

LXVIII

MINUTES OF THE SEVENTY-EIGHTH SITTING OF THE
COMMITTEE ON THE SUBORDINATE LEGISLATION
(FIFTH LOK SABHA) (1974-75)

The Committee met on Saturday, the 17th May, 1975 from 10.30 to 11.30 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri Khemchandbhai Chavda
4. Shri Md. Jamilurrahman
5. Shri Dinesh Joardar
6. Shri Kamala Prasad
7. Shri Mohan Swarup
8. Shri Paokai Haokip
9. Shri M. S. Sanjeevi Rao
10. Shri Tayyab Hussain

SECRETARIAT

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

2. The Committee examined in detail eight 'Orders' (*vide* Annexure) laid on the Table of Lok Sabha during the Thirteenth Session (Fifth Lok Sabha).

3. The Committee desired that comments of the Ministries/Departments concerned might be obtained in respect of the following 'Orders' on points shown against them:—

S. No.	Short title and No. of 'Order'	Points on which comments to be invited
(1)	(2)	(3)
1.	*	*
2.	*	*
3.	Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975)	(i) * * * (ii) <i>Rule 28(9)</i> A time-limit within which the decisions taken by the Chairman should be got ratified by the Board or the Committee may be laid down in the rules.

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

(1)	(2)	(3)
4.	*	■
5.	*	■
6. The National Cooperative Development Corporation Rules, 1975 (GSR 477 of 1975).	Rule 9(1) : It empowers the Central Government to fix salary and allowances of the Managing Director, whereas under the parent Act these are required to be prescribed by Rules.	*

The Committee then adjourned.

ANNEXURE

(Vide para 2 of the Minutes)

LIST OF 'ORDERS'

S. No.	Name of Order	Date of laying
1.	The Water (Prevention and Control of Pollution) Rules, 1975 (G.S.R. 58-E dated 27-2-75)	7-3-75
2.	The Companies (Acceptance of Deposits) Rules, 1975 (GSR 43-E dt. 3-2-75)	21-3-75
3.	The Companies (Declaration of Beneficial Interest in Shares) Rules, 1975 (GSR 53-E dated 20-2-75)	21-3-75
4.	The Companies (Secretary's Qualifications) Rules, 1975 (GSR 144-E dt. 7-3-75)	21-3-75
5.	The Oil Industry (Development) Rules, 1975 (GSR 160-E dated 25-3-75)	9-4-75
6.	The Textile Committee (Cess) Rules, 1975 (GSR 172-E dated 31-3-75)	18-4-75
7.	The Foreign Exchange Regulation (Publication of Names) Rules, 1975 (GSR 417 dated 29-3-75)	25-4-75
8.	The National Cooperative Development Corporation Rules, 1975 (GSR 417 dated 12-4-75)	30-4-75

LXXXVI

MINUTES OF THE EIGHTY-SIXTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH
LOK SABHA)
(1975-76)

The Committee met on Tuesday, the 9th December, 1975 from 15.30 to 16.30 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shri R. N. Barman
3. Shrimati Premalabai Dajisaheb Chavan
4. Shri K. Chikkalingaiah
5. Shrimati Marjorie Godfrey
6. Shri Md. Jamilurrahman
7. Shri Kamala Prasad
8. Shri D. K. Panda
9. Shri Ram Singh Bhai
10. Shri M. S. Sanjeevi Rao
11. Shri M. Satyanarayan Rao
12. Shri Tayyab Hussain
13. Shri Shiv Shankar Prasad Yadav

SECRETARIAT

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

The Committee considered Memoranda Nos. 320 and 337 to 343 on the following subjects :—

Sl. No.	Memo No.	Subject
(1)	(2)	(3)
I	320	** **

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

(1)	(2)	(3)
2.	337	Central Excise (Seventh Amendment) Rules, 1974 (G. S. R. 336-E of 1974).
3.	338	Central Excise (Third Amendment) Rules, 1974 (G.S.R. 14-E of 1975).
4.	339	Giving of particulars of previous publication in the preamble to 'Orders'.
5.	340	The Civil Service (Second Amendment) Regulations 1974 (S. O. 1669 of 1974).
6.	341	The Railway Protection Force (Supervisor Officers) Recruitment Rules, 1974 (G. S. R. 832 of 1974).
7.	342	* * * *
8.	343	The Victoria Memorial (Amendment) Rules, 1973 (G. S. R. 45 of 1974).

(i)	*	*	*	*
3.	*	*	*	*

(ii) The Central Excise (Seventh Amendment) Rules, 1974 (G.S.R. 336-E of 1974)—(Memorandum No. 337).

4. The Committee considered the above Memorandum and noted that important information was invariably being sent by the Ministry under registered cover A/D. In view of this the Committee felt that there should be no difficulty in making a statutory provision for it by amending the relevant rules to the desired effect. The Committee desired the Ministry to amend the Rules accordingly

(iii) The Central Excise (Third Amendment) Rules, 1975 (G.S.R. 14-E of 1975)—(Memorandum No. 338).

5. The Committee considered the above Memorandum and noted the assurance of the Ministry of Finance (Department of Revenue and Insurance) that as far as possible, relaxation would be granted only to a class of assesses, and the power to grant relaxation to individual assesses would be used only in very genuine and deserving cases and where such a relaxation was warranted in public interest. The Committee desired that even in such cases of relaxation to individual assesses, the Ministry should, besides issuing Trade Notices through Associations, publish the orders in

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

the Gazette also so that they come to the notice of the general public and persons similarly placed might have the benefit of the relaxation.

- (iv) Giving of particulars of previous publication in the preamble to 'Orders'—(Memorandum No. 339).

6. The Committee considered the above Memorandum and noted that the Ministries of Shipping and Transport (Transport Wing), Labour and Commerce had regretted their lapse in not giving particulars regarding publication of draft Rules in the preamble to the final Rules. The Committee also noted the reply of the Ministry of Defence that the requisite information was being given by them since July 1972. The Committee reiterated their earlier recommendations made in para 28 of their First Report (Fourth Lok Sabha), para 49 of their Fifth Report (Fifth Lok Sabha) and para 33 of Eighth Report (Fifth Lok Sabha) respectively that adequate opportunity should be given to the public to go through the draft rules and offer their comments. To ensure the particulars about (i) the date of the Gazette in which the draft rules were published; (ii) the date on which the Gazette copies containing the draft rules were made available to the public; and (iii) the last date fixed for receipt of public comments thereon, should be specifically mentioned in the preamble to the final rules/bye laws.

7. The Committee also desired the Ministries/Departments to allow, to be on the safe side, 45 days instead of 30 days as at present from the date of publication of the Gazette for invitation of comments/objections from the public as generally there was a time lag between the date of publication of a Gazette and the date on which its copies were made available to the public.

- (v) The Civil Service (Second Amendment) Regulations, 1974 (S. O. 1669 of 1974)—(Memorandum No. 340).

8. The Committee considered the above Memorandum and noted the reply of the Ministry of Law that the expression "and of all other powers enabling him in this behalf" referred to Section 21 of the General Clauses Act. They were, however, not satisfied with the explanation that it would not be elegant to make an express reference to this Section as it was in the nature of a rule of construction. The Committee desired the Ministry of Law to see at the vetting stage that precise statutory authority was cited in the preamble to rules to enable one to know whether the rules had due legal backing and did not go beyond the scope of rule making power. The Committee further desired them to issue necessary instructions in this regard to all Ministries/Departments so that such mistakes did not recur in future.

- (vi) The Railway Protection Force (Supervisory Officers) Recruitment Rules, 1974 (G. S. R. 832 of 1974)—(Memorandum No. 341).

(A)

9. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Railways (Railway Board) had agreed to amend the Rules so as to incorporate the scale of pay for the post of I. G./R. P. F. in the Recruitment Rules for Railway Protection Force.

(B)

10. The Committee noted with satisfaction that on being pointed out, the Ministry of Railways (Railway Board) had agreed to amend the Rules so as to specifically mention the U. P. S. C. (Exemption from Consultation) Regulations in column 13 of the Schedule.

(vii)

11.

of tractors in term of clause 10 (1) on various grounds like lack of adequate agricultural land, financial difficulties, daughters' marriage etc. The Committee felt 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 persons in the waiting list. The price to be obtained on re-sale should also not exceed the original price after allowing for wear and tear of the tractor. The Committee desired that comments of the Ministry might be obtained on this point before the matter was considered further. The Ministry might also be asked about the existing procedure regarding sale and allotment of tractors and the agencies through which it was done.

(viii) The Victoria Memorial (Amendment) Rules, 1973 (G. S. R. 45 of 1974)—(Memorandum No. 343).

13. The Committee considered the above Memorandum and were not satisfied with the reply of the Department of Culture that power to frame Rules 15 (b) and 16 of the above Rules was derived from sub-sections (2) and (7) of Section 2 and Section 3 and 4 of the Victoria Memorial Act, 1903. The Committee felt that Section 2 (2) which empowered the trustees to do all acts necessary for purposes of the Act made too wide a delegation. The Committee desired that to avoid any ambiguity the limits of delegation should be well defined and the authority for important matters envisaged to be regulated through rules should clearly flow from the parent Act.

14.

(B)

15. The Committee were not convinced with the reply of the Department that the power to make rule 19 providing for ticket for admission to the Museum was derived from Section 5(2) (d) of the Act. The Committee felt that imposition of ticket was not merely a condition for entry into the Museum but was also a sort of a fee involving financial burden and as such should be specifically authorised by the parent Act.

The Committee then adjourned to meet again on Wednesday, the 10th December, 1975.

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

LXXX VII

MINUTES OF THE EIGHTY-SEVENTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA)
(1975-76)

The Committee met on Wednesday, the 10th December, 1975 from 11.30 to 12.30 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shri R.N. Barman
3. Shrimati Premalabai Dajisaheb Chavan
4. Shri K. Chikkalingaiah
5. Shrimati Marjorie Godfrey
6. Shri Md. Jamilurrahaman
7. Shri Ram Singh Bhai
8. Shri M.S. Sanjeevi Rao
9. Shri Tayyab Hussain
10. Shri Shiv Shankar Prasad Yadav

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 344 to 350 on the following subjects :

S.No.	Memo. No.	Subject
(1)	(2)	(3)
I	344	(i) The Board of Trustees of the Port of Bombay (Procedure at Board Meetings) Rules, 1975 (G.S. R.27-E of 1975). (ii) The Board of Trustees of the Port of Calcutta (Procedure at Board Meetings) Rules, 1975 (G.S.R. 30-E of 1975). (iii) The Board of Trustees of the Port of Madras (Procedure at Board Meetings) Rules, 1975 (G.S.R. 33-E of 1975).

(1)	(2)	(3)
2	345	The Mineral Concession (Third Amendment) Rules, 1974 (G.S.R. 1332 of 1974).
3	346	The Merchant Shipping (Crew Accommodation) Amendment Rules, 1974 (G.S.R. 1390 of 1974).
4	347	(i) The Ministers (Allowances, Medical Treatment and other Privileges) (Amendment) Rules, 1973 (G.S.R. 228-E of 1973). (ii) The Ministers (Allowances, Medical Treatment and other Privileges) (Amendment) Rules, 1974 (G.S.R. 13-E of 1974). (iii) The Ministers (Allowances, Medical Treatment and other Privileges) (Second Amendment) Rules, 1974 (G.S.R. 693-E of 1974).
5	348	The Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975).
6	349	The Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975 (G.S.R. 3-E of 1975).
7	350	The Paper (Conservation and Regulation of Use) Amendment Order, 1974 (S.O. 742-E of 1974).

- (i) (1) The Board of Trustees of the Port of Bombay (Procedure at Board Meetings) Rules, 1975 (G.S.R. 27-E of 1975).
 (2) The Board of Trustees of the Port of Calcutta (Procedure at Board Meetings) Rules, 1975 (G.S.R. 30-E of 1975).
 (3) The Board of Trustees of the Port of Madras (Procedure at Board Meetings) Rules, 1975 (G.S.R. 33-E of 1975). (Memorandum No. 344)

3. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to amend Rule 9 of the above Rules so as to provide for intimation of the date of adjournment of a meeting to absentee members in cases where the President announced at the meeting itself the date to which the meeting was adjourned. The Committee desired the Ministry to issue the necessary amendment at an early date.

- (ii) The Mineral Concession (Third Amendment) Rules 1974 (G.S.R. 1332 of 1974)—(Memorandum No. 345).

4. The Committee considered the above Memorandum and noted the reply of the Ministry of Steel and Mines (Department of Mines) that the

precise authority for levying the charges under Rule 29(2) vested in clause (i) of sub-section (2) of Section 13 of the Mines and Minerals (Regulation and Development) Act, 1957.

5. The Committee further noted that the Ministry had agreed to their suggestion for fixing a time-limit within which the money not expended would be refunded to the lessee. The Committee desired the Ministry to amend the Rules accordingly at an early date.

- (iii) The Merchant Shipping (Crew Accommodation) Amendment Rules, 1974 (G.S.R. 1390 of 1974)—(Memorandum No. 346).

The Committee noted the Ministry's reply that reasons for granting exemption from the provisions of the Rules were recorded in office records. In view of this, the Committee felt that there should be no difficulty in giving statutory shape to the existing procedure by making a provision in the rules. The Committee desired the Ministry to amend the rules accordingly at an early date.

- (iv) (1) The Ministers (Allowances, Medical Treatment and other privileges) (Amendment) Rules, 1973 (G.S.R. 228-E of 1973)
- (2) The Ministers (Allowances, Medical Treatment and other Privileges) (Amendment) Rules, 1974 (G.S.R. 13-E of 1974).
- (3) The Ministers (Allowances, Medical Treatment and other Privileges) (Second Amendment) Rules, 1974 (G.S.R. 693E of 1974)—(Memorandum No.347).

7. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Home Affairs. It was apparent from the reply that the Ministry was labouring under the impression that publication of explanatory memorandum in regard to retrospective operation of rules did away with the necessity of a specific provision in the Act empowering the Government to give retrospective effect to the Rules framed thereunder. This impression of the Ministry was not correct. The Committee decided to draw attention of the Ministry of Home Affairs to para 49 of their Seventh Report (Fourth Lok Sabha) containing the following observation of the Attorney-General in regard to giving retrospective effect to rules framed under an Act of Parliament :

“The Legislature may make a law with retrospective effect. A particular provision of a law made by the legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may further empower such legislation to be operative retrospectively. Without such a law no subordinate legislation can have any retrospective effect...”

8. The Committee pointed out that the purpose of an explanatory note was different. Its publication alongwith the rules had been recommended by the Committee in order to ensure that retrospective effect was given in only unavoidable cases and that too when no body was adversely affected as a result of retrospective effect.

of Works and Housing to amend the Rules to provide for a fresh notice in cases where the meeting adjourned to another date. If the meeting adjourned from day to day which was, however, not a normal feature, provision should be made for fresh notice to the local members either on telephone or through special messenger. Similarly in the case of adjourned meetings on account of lack of quorum, the Committee desired that provision should be made for issue of fresh notice to absentee members.

II

14. The Committee were not convinced with the reply of the Ministry in regard to Rule 3(7). The Committee felt that a provision seeking to protect proceedings of a meeting for which procedure regarding notice has not been followed should more appropriately be incorporated in the Act and not through subordinate legislation. The Committee decided to recommend to the Ministry of Works and Housing to make necessary amendment in the Rules.

(vii) The Paper (Conservation and Regulation of Use) Amendment Order, 1974 (S.O. 742-E of 1974)—(Memorandum No. 750).

15. The Committee considered the Memorandum and noted that Clause 5 of the above Order empowering the Government to grant exemption had been withdrawn and as such the question of amending the rule, as suggested by them, did not arise.

The Committee then adjourned to meet again on the 27th December, 1975.

XCI
MINUTES OF THE NINETY-FIRST SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA)
(1975-76)

The Committee met on Wednesday, the 24th March, 1976 from 10.15 to 10.45 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri K. Chikkalingaiah
4. Shrimati Marjorie Godfrey
5. Shri Ram Singh Bhai
6. Shri M.S. Sanjeevi Rao
7. Shri Shiv Shankar Prasad Yadav

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 351 to 360 on the following subjects:—

S.No.	Memo. No.	Subject
(1)	(2)	(3)
1	351	The Cement Control (Fifth Amendment) Order, 1974 (S.O. 464-E of 1974).
2	352	* * * *
3	353	The Indian Coinage Rules, 1974 (S.O. 2231 of 1974).
4	354	The Allotment of Government Residences in the Forest Research Institute and Colleges, Dehra Dun, Forest Research Laboratory, Bangalore, Southern Forest Rangers Colleges and Forest Research Centre, Coimbatore (Pool accommodation for Gazetted and Non-Gazetted Government Servants) Rules, 1974 (S.O. 892 of 1974).

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

(1)	(2)	(3)
5	355	Merchant Shipping (Prevention of Pollution of the sea by oil) Rules, 1974 (G.S.R. 516 of 1974).
6	356	* * * *
7	357	The National Cooperative Development Corporation Rules, 1975 (G.S.R. 477 of 1975).
8	358	Textiles Committee (Second Amendment) Rules, 1973 (G.S.R. 244 of 1974).
9	359	* * * *
10	360	Action taken by Government on the recommendations made by, and assurances given to, the Committee on Subordinate Legislation

(i) The Cement Control (Fifth Amendment) Order, 1974 (S.O.464-E of 1974)—(Memorandum No. 351).

3. The Committee considered the above Memorandum and were not convinced with the reply of the Ministry of Industry and Civil Supplies that the conditions subject to which a producer was allowed subsidy for using furnace oil were conveyed to the producers concerned as well as producers in general through letters addressed to them. The Committee noted that the order in question was no longer in force. They desired that in case such an 'Order' was promulgated in future, such conditions should be mentioned in the 'Order' itself.

(ii) * * * *

4. * * * *

(iii) The Indian Coinage Rules, 1974 (S.O. 2231 of 1974)—
(Memorandum No. 353).

(A)

5. The Committee considered the Memorandum and noted that the Ministry of Finance (Department of Economic Affairs) had regretted their mistake in not indicating in the short title the denomination and metallic composition of the coins covered by the notification. They desired the Ministry to be careful in future in this regard.

(B)

6. The Committee considered the reply of the Ministry and noted the circumstances under which retrospective effect had been given to the rules. They also noted the assurance of the Ministry that to obviate recurrence of

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

such cases in future, they would publish the Gazette Notifications before the date on which they became effective or otherwise the notification would be published in the Gazette Extraordinary. However, in view of the legal position that no Subordinate Legislation can have retrospective effect without a specific authority for it in the parent Act, the Committee desired the Ministry either to amend the Indian Coinage Act so as to incorporate a provision therein empowering the Government to give retrospective effect to the rules made thereunder or to give effect to the rules in question from the date of their publication in the Official Gazette.

- (iv) The Allotment of Government Residences in the Forest Research Institute and Colleges, Dehra Dun, Forest Research Laboratory, Bangalore, Southern Forest Rangers Colleges and Forest Research Centre, Coimbatore (Pool accommodation for Gazetted and Non-Gazetted Government Servants) Rules, 1974 (S.O. 892 of 1972)—(Memorandum No. 354)

(A)

7. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Agriculture (Department of Agriculture) had amended the above Rules so as to provide for reasons to be recorded in writing in cases where allotment was cancelled with effect from a date prior to the expiry of one month.

(B)

8. The Committee noted with satisfaction that on being pointed out the Ministry had issued amendment to the Rules providing for giving an opportunity of being heard to the person concerned before cancelling the allotment or charging licence fee at enhanced rate.

- (v) Merchant Shipping (Prevention of Pollution of the sea by oil) Rules, 1974 (G.S.R. 516 of 1974)—(Memorandum No. 355).

9. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to amend Rule 9 of the above Rules so as to prescribe an interval not exceeding two years between two inspections. The Committee desired the Ministry to issue the necessary amendment at an early date.

(vi) * * * *

10. * * * *

- (vii) The National Cooperative Development Corporation Rules, 1975 (G.S.R. 477 of 1975)—(Memorandum No. 357).

11. The Committee considered the above Memorandum and were not convinced with the reply of the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) that sub-rules (2) and (3) of Rule 9 laid down the broad principles that

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

should govern the determination of salary and allowances of the Managing Director of the National Cooperative Development Corporation and that it was neither practicable nor advisable to incorporate the precise terms about the actual pay scales, allowances, pension, etc. as they would necessarily vary according to the status, experience and seniority of the person holding the post.

12. The Committee noted that the basic principles laid down in the rules pertained only to such matters as leave, leave salary, gratuity, etc. No principles whatsoever had been laid down in regard to salary, allowances and other conditions of service. While section 22(2)(e) of the National Cooperative Development Corporation Act, 1962 envisaged that the conditions of service and the scale of pay of the Managing Director be governed by rules, the rules left it to the Central Government to fix any salary in their discretion.

13. The Committee felt that in case the Ministry felt any difficulty in laying down the salary and other conditions of service in the rules, they should get power to fix the salary, etc. by amending of the Act.

(viii) The Textiles Committee (Second Amendment) Rules, 1973 (G.S.R. 244 of 1974)—(Memorandum No. 358)

14. The Committee considered the above Memorandum and noted that the Ministry of Commerce had regretted their mistake in omitting from the preamble to the final rules the information regarding the (i) date of publication of rules in draft form (ii) date of supply of copies of the relevant Gazette to the public and (iii) the date for submission of comments/suggestions on the draft rules.

15. The Committee had first made their recommendation in this regard in para 28 of their First Report (Fourth Lok Sabha) in order to ensure that sufficient time (not less than 30 clear days) was given to the public to study the draft rules and send their comments thereon before the rules were finalised. The Committee desired the Ministry to be careful about such matters in future. They also desired the Department of Parliamentary Affairs to issue once more necessary instructions to all Ministries/ Departments to avoid such omissions in future.

(ix) * * * *

16. * * * *

(x) Action taken by Government on the recommendations made by, and assurances given to the Committee on Subordinate legislation—(Memorandum No. 360).

17. The Committee noted with satisfaction the action taken by Government on their earlier recommendations as indicated in the Appendix IV to the Report.

The Committee then adjourned.

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

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MINUTES OF THE NINETY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)

The Committee met on Wednesday, the 14th April, 1976 from 10.30 to 10.50 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri K. Chikkalingaiah
4. Shrimati Marjorie Godfrey
5. Shri Dinesh Joarder
6. Shri Ram Singh Bhai
7. Shri M. Satyanarayan Rao

SECRETARIAT

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

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

3. The Committee authorised the Chairman and in his absence, Shrimati Premalabai Dajisaheb Chavan to present the Nineteenth Report to the House on their behalf on the 15th April, 1976.

The Committee then adjourned.