

COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

TWENTIETH REPORT

(Presented on the 3rd November, 1976)



LOK SABHA SECRETARIAT
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Shri P. K. Patnaik—*Additional Secretary*

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

REPORT

I

INTRODUCTION

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

2. The Committee have held eleven sittings—on the 17th June (both in the forenoon and afternoon), 13th and 14th July, 5th August (both in the forenoon and afternoon), 19th and 31st August, 16th and 17th September and the 12th October, 1976.

3. The Committee considered and adopted this Report at their sitting held on the 12th October, 1976. The Minutes of the sittings which form part of the Report are appended to it.

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

II

Conduct of Elections (Amendment) Rules, 1974 (S.O. 286-E of 1974)

5. Rule 39A of the Conduct of Election Rules, 1961, as substituted by the above amending Rules, provides as under:

“39A. Maintenance of secrecy of voting by electors within polling station and voting procedure.

(1) Every elector to whom a ballot paper has been issued under rule 38A or under any other provision of these rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure herein-after laid down.

(2) The elector on receiving the ballot paper shall forthwith—

(a) proceed to one of the voting compartments;

(b) record his vote in accordance with sub-rule (2) of rule 37A with the article supplied for the purpose;

(c) fold the ballot paper so as to conceal his vote;

- (d) insert the folded paper into the ballot box; and
 - (e) quit the polling station.
- (3) Every elector shall vote without undue delay.
 - (4) No elector shall be allowed to enter a voting compartment when another elector is inside it.
 - (5) If an elector to whom a ballot paper has been issued, refuses, after warning given by the presiding officer to observe the procedure as laid down in sub-rule (2), the ballot paper issued to him shall, whether he has recorded his vote thereon or not, be taken back from him by the presiding officer or a polling officer under the direction of the presiding officer.
 - (6) After the ballot paper has been taken back, the presiding officer shall record on its back the words "Cancelled: Voting procedure violated" and put his signature below those words.
 - (7) All the ballot papers on which the words "cancelled: voting procedure violated" are recorded, shall be kept in a separate cover which shall bear on its face the words "Ballot papers: voting procedure violated."
 - (8) Without prejudice to any other penalty to which an elector, from whom a ballot paper has been taken back under sub-rule (5), may be liable, vote, if any, recorded on such ballot paper shall not be counted."

6. In terms of sub-rule (8) of the above Rule, the cancellation of a ballot paper taken back from a voter under sub-rule (5) was regarded as a penalty *without prejudice to any other penalty* to which the voter may be liable. Provision for imposition of penalty being of a substantive nature, the Ministry of Law, Justice and Company Affairs (Legislative Department) were requested to state the precise section of the Representation of the People Act, 1951 under which power had been given to the Presiding Officer to cancel ballot papers.

7. In their reply, the Ministry of Law, Justice and Company Affairs (Legislative Department) have stated as under:

".....it is not correct to construe the cancellation of a ballot paper under sub-rule (8) of rule 39A of the Conduct of Elections Rules, 1961, as imposition of a penalty as explained below.

The amendments to rule 39A of the Conduct of Elections Rules, 1961, were made for the following reasons:

- (i) The Returning Officers at some of the biennial elections to the Council of States and the Legislative Councils reported to the Election Commission that a number of electors deliberately attempted to violate the secrecy of the ballot. The Electors resorted to two methods for the purpose. In some cases they marked their ballot with pencils of their own, with a colour different from the pencils supplied by the Returning Officer under rule 31(3) of the Conduct of Elections Rules, 1961 so that at the time of counting, it could be easily seen for which of the contesting candidates they had voted. In other cases, the electors after coming out of the voting compartment, exhibited the markings on the ballot paper to the persons present in the polling station before inserting the ballot papers into the ballot box.
- (ii) Rule 39 of the Conduct of Elections Rules, 1961, makes provision for the maintenance of the secrecy of voting by electors within a polling station at voting in parliamentary and assembly constituencies. This rule provides that if an elector refuses to observe the voting procedure, the ballot paper issued to him shall be taken back from him and cancelled for violation of the voting procedure.

The Election Commission proposed that the procedure prescribed by the rules for voting in parliamentary and assembly constituencies and for voting at elections by Assembly members and in Council constituencies should be uniform.

Section 59 of the Representation of the People Act, 1951, which relates to the manner of voting at elections, *inter alia*, provides that at every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed. There cannot be any doubt that the expression ballot, in this section means secret ballot. The decisions of the Supreme Court and of various High Courts support this view. In Civil Appeal No. 233 of 1973 (Shri Baldev Singh Vs. Teja Singh Swatantra) decided on January 24, 1975, the Supreme Court observed that the secrecy of vote is the sanctified prin-

ciple of free election and is sacrosanct. The whole Scheme of the election law has been so designed as to achieve this object.

In this connection, the provisions of sections 94, 128, 136(1) (e) to (g) and 169 of the Representation of the People Act, 1951 and Rules 33, 38A(2) (c), (4), (5), 40A, 44B, 46 read with rule 70, 54 read with rule 72, 92 and 93 of the Conduct of Elections Rules, 1961 may be seen. Having regard to these considerations, rule 39A is meant for carrying out the purposes underlying section 59 and other provisions of the Representation of the People Act, 1951."

8. The Committee do not question the need for the provision enshrined in Rule 39A that in cases where a voter fails to observe the prescribed procedure for recording of votes, his vote shall be liable to be cancelled. The limited point raised by the Committee is that the provision for cancellation of a ballot paper amounts to a penal provision for which the authority should flow from an express provision in the parent Act. The view of the Ministry of Law that the cancellation of a ballot paper should not be construed as a penalty is not acceptable to the Committee. The expression "any other penalty" used in sub-rule (8) of Rule 39A lends support to the Committee's view that the cancellation of a vote is tantamount to a penalty. Even otherwise, the Committee feel that the cancellation of the vote of a citizen is a substantial matter, authority for which should flow from an express provision in the parent Act. The Committee therefore, desire that Government should take early steps for the amendment of the Representation of the People Act, 1951 to include a provision therein for cancellation of a ballot paper when the voter fails to observe the prescribed procedure for recording his vote.

III

The Indian Post Office (Third Amendment) Rules, 1974 (G.S.R. 281-E of 1974)

9. Item VI of Rule 5 of the above rules regarding insured boxes and item VII thereof regarding parcels provides that the Director General shall, from time to time, declare in the Post Office Guide, Part II, the countries and places to which insured boxes/parcels can

be transmitted by the Foreign Post and the rates of post chargeable in each case.

10. It was felt that empowering the Director General to declare places and rates chargeable for transmitting by foreign post amounted to sub-delegation of legislative power. It was also felt that the rates of transmitting parcels and the names of countries should be mentioned in the rules to make them self-contained and for the information of all concerned.

11. The Ministry of Communications (D.G.P&T) to whom the matter was referred have stated as under:—

“Section 75 of the Indian Post Office Act provides that the Central Government may, by notification in the Official Gazette authorise either absolutely or subject to conditions, the Director General to exercise any of the powers conferred upon the Central Government by this Act, other than a power to make rules. It may thus be seen that the Director General has no powers to make rules but he can carry on other functions of the Central Government under this provision of the Indian Post Office Act.

‘Declare’ means ‘to make known’, ‘to announce’ and would not ‘rule making’. ‘Declaring’ the rates of postal parcels is different from rate fixing. It may be clarified here that rates are always fixed by Government, in exercise of the power of Central Government. Similarly availability of particular Services with foreign countries is regulated by UPU Agreements by bilateral Agreements which are executed on the basis of the powers conferred by the Indian Post Office Act. Thus merely empowering Director General to ‘declare’ i.e. ‘make known’ or ‘announce’ the parcel postage rates or names of countries to which a particular service is available would not, we feel, amount to, ‘rule making’ and sub-delegation of powers to Director General for which there is no authority in the Indian Post Office Act.

Rates of parcel postage depend among other things on the terminal shares fixed by the country of destination and the transit shares every transitting country is entitled to. If any change is announced in their shares by either of the two, (transit country or country of destination) the rates have to undergo change. Such occasions, obviously,

are very frequent. If the rates are included in the rules themselves, it would necessitate very frequent amendment of the Rules. Similarly, the List of countries to which insured boxes|parcels service is available also undergoes change very frequently. The *status quo* in this respect would, appear to be better."

12. The matter was also referred to the Ministry of Law, Justice and Company Affairs (Legislative Department) for their comments. In their reply dated 19-8-75, the Ministry of Law stated as under:—

"Section 10 of the Indian Post Office Act, 1898, confers on the Central Government the power to declare the rates of foreign postage chargeable in respect of postal articles and empowers the Central Government to make rules as to the scale of weight, terms and conditions subject to which the rates so declared, shall be charged. So strictly speaking, the power to declare the rates is not included among the rule-making power. If that is the position, then section 75, which deals with delegation of powers (other than a power to make rules) would enable the Government to delegate this power to declare the rates of foreign postage to the Director-General. The distinction is perhaps understandable because with reference to the rates of foreign postage, it would depend on the arrangements in force with their respective country and the same cannot be unilaterally modified. In a sense, with regard to these matters, apart from the declaration of rates, the question of fixing the rates may not arise. That is possibly the reason why the power to declare the same has been delegated to the Director-General.

The doubt has possibly arisen because the delegation of the Central Government in favour of the Director-General has been done in exercise of the rule-making power instead of placing reliance on the power to delegate under section 75. This, however, would not make any difference since the legal position is as explained above. It is settled law that if there is the requisite power, the quoting of a wrong provision would not affect it.

Further in so far as the payment of fees on insured boxes is concerned, the rates are required to be fixed by notification under section 30 of the Act. Rules have been made under this provision read with the general power to make

rules. Under rule 5 of the Indian Post Office Rules, 1933, the rates of fees in respect of insured boxes, when they are transmitted to foreign countries, have been indicated in the Table. The only power given to the Director-General is to declare the countries and places to which insured boxes may be transmitted by a foreign letter. The intention is that as and when a country is declared, the rates indicated in the Table will be applicable to the transmission of insured boxes to that country. If different rates are proposed to be charged, suitable amendments will be made in the columns. The declaration is made after arrangements as referred to in section 10 of the Act are entered into by the Government of India with foreign countries. Hence, the power to declare the countries and places as contained in rule 5 of the Indian Post Office Rules, 1933, is relatable to section 10 of the Act. This power is to be exercised by the Director-General by virtue of section 75. It would also be seen that the power to declare under section 10 is not required to be done in any specified manner. It is now settled that a mere omission to a particular provision of law would not render any rule, notification, etc., invalid so long as the power exists.

The provision relating to parcels is also relatable to section 10 read with section 75 of the Act and there seems to be no objection in including such a provision in the rules."

13. A further reference was made to the Ministry of Law, Justice and Company Affairs (Legislative Department) whether in view of the provisions of Section 10 of the Indian Post Office Act, it would not be appropriate to lay down the rates of parcels etc. in the rules rather than to leave them to be regulated separately by Government.

14. The Ministry of Law, Justice and Company Affairs (Legislative Department) in their reply dated 23-10-1975 have stated as under:—

"...section 10 of the Indian Post Office Act, 1898 only enables the Central Government to declare the postage rates and other sums to be charged in respect of postal articles. Rules are required to be made under that section only regarding the scale of weight, terms and conditions subject to which the rates so declared shall be char-

ged. Section 10 does not require the postage rates to be specified in the rule made under the Act. The question whether the rates of parcels, etc. may be included in the rules or should be left to be regulated separately by Government is a matter which may be considered by the P & T Department."

15. The Committee are not convinced by the reply of the Ministry of Law, Justice and Company Affairs (Legislative Department) that section 10 of the Indian Post Office Act, 1898, does not require the postage rates to be specified in the rules and that it requires rules to be made only regarding scales of weight and terms and conditions subject to which the declared rates shall be charged. The Committee feel that the Ministry of Law, Justice and Company Affairs (Legislative Department) have taken only a narrow view of the matter. In the opinion of the Committee, the rates cannot be divorced from scales of weight and as, conceded even by the Law Ministry, the scales have to be prescribed through the rules, the rates being inseparable from the scales of weight, have also to be prescribed through the rules. The Committee also feel that the power to prescribe the scales of weight, together with the rates, being a power envisaged to be exercised through the rules, could not be sub-delegated under section 75 of the Indian Post Office Act, which empowers the Government to sub-delegate powers other than rule-making powers. The Committee therefore, desire the Ministry of Communications to amend the Indian Post Office Rules so as to lay down the rates for sending the parcels to various countries, together with the relevant scales of weight, in the rules.

IV

The Medical Termination of Pregnancy Rules, 1975 (G.S.R. 2543 of 1975)—Power of seizure to flow from the parent Act.

16. Rule 5 of the above rules framed under section 6 of the Medical Termination of Pregnancy Act, 1971 (34 of 1971) provides as under:—

"5. Inspection of a place. (1) A place approved under rule 4 may be inspected by the Chief Medical Officer of the District, as often as may be necessary with a view to verify whether termination of pregnancies is being done therein under safe and hygienic conditions.

(2) If the Chief Medical Officer has reason to believe that there has been death of, or injury to, a pregnant woman

at the place or that termination of pregnancies is not being done at the place under safe and hygienic conditions, he may call for any information or may seize any article, medicine, ampule, admission register or other document, maintained, kept or found at the place."

17. The Committee, at their sitting held on the 30th January, 1976, examined the above rules, which were published on the 18th October, 1975, under G.S.R. 2543 of 1975, and laid on the Table of Lok Sabha on the 8th January, 1976. The Committee felt that the power of seizure conferred on the Chief Medical Officer by sub-rule (2) of rule 5 *ibid* was a substantial power, which should more appropriately flow from the parent Act. As desired by the Committee, the matter was taken up with the Ministry of Health and Family Planning (Department of Family Planning).

18. The Ministry have furnished the following explanatory note containing the opinion of the Law Ministry also at the end:—

"Rule 5(2) of the Medical Termination of Pregnancy Rules (1975) is the same as Rule 8(2) of the Medical Termination of Pregnancy Rules (1972) with only this difference that the powers given to an authorised member of the Board has now been vested in the Chief Medical Officer of the District, consequent on abolition of the Boards, which existed in the previous rules.

The purpose however remains the same *viz.*, to ensure that the 'place' approved by Government continues to provide facilities for 'safe and hygienic termination of pregnancy' as was the case when the 'place' was initially approved by Government.

However in view of the fact that evidence may have to be produced in certain cases such as:—

- (i) Those reaching a court of law involving breach of the provisions of M.T.P. Act (1971).
- (ii) Those reaching Government for review involving questions of cancellation or suspension of the certificate of approval:

that it was felt necessary to give certain powers to the Chief Medical Officer of the District to enable him to collect such evidence. Sub-rule (2) of Rule 5 was therefore made keeping in view the necessity of obtaining evidence for such purposes.

The matter had also been referred to the Ministry of Law and Justice who have opined as under:

‘While it is agreed that the power of seizure is a substantial power, which should more appropriately flow from the parent Act, it may be stated that the present provision for seizure made in rule 5(2) of the Medical Termination of Pregnancy Rules, 1975 had necessarily to be made as a provision ancillary to proving of the case of the types referred to in that sub-rule in courts.’

19. The Committee note that the Ministry of Law, Justice and Company Affairs have admitted that the power of seizure was a substantial power, which should more appropriately flow from the parent Act. As the Medical Termination of Pregnancy Act, 1971, under which the rules in question have been framed, does not contain an express provision conferring the power of seizure on the Chief Medical Officer, the Committee desire that either the Act should be amended so as to expressly confer the power of seizure on the Chief Medical Officer, or in the alternative, the provision for seizure should be omitted from the rules.

V

Disciplinary action against IAS/IPS Officers

20. During the course of evidence before the Committee on 28-5-1974 by the representatives of the Department of Personnel and Administrative Reforms on Regulation 13 of the IAS/IPS (Appointment by Competitive Examination) Regulations, the Committee enquired as to what action was taken against an IAS/IPS Officer if he became indifferent to his duties and responsibilities. The representative of the Department of Personnel and Administrative Reforms explained that the IAS/IPS cadres were State-based. If an officer did something objectionable while serving in a State, it was for the State Government concerned to take action. If he did something objectionable while serving at the Centre, it was for the Central Government to take action.

21. When it was suggested that a provision might be made to enable the Central Government to deal with delinquent officers when the State Government was not willing to take action against them the representative of the Department stated that they would consult the State Governments.

22. The Department of Personnel and Administrative Reforms in their reply, after consultations with the State Governments, have stated as under:

"Some members of the Committee on Subordinate Legislation had suggested *inter alia* that suitable provision should be made in the rules empowering the Central Government to deal with State based IAS/IPS officers in cases where the State Governments fail to take action against them for delinquency.

In pursuance of this, the State Governments were consulted on 28th June, 1974 on the question of amending the All India Services (Discipline and Appeal) Rules, 1969 empowering the Central Government also to take disciplinary action against a member of the Service working under the State Government, for delinquency, inefficiency or lack of spirit and dedication to service. Only seven State Governments *viz.*, Manipur, Tripura, Uttar Pradesh, Gujarat, Rajasthan, Andhra Pradesh and Bihar agreed to the proposed amendment. The Government of Punjab have **stated that the matter is under their consideration and their concurrence should not be presumed.** Government of Nagaland also have stated that the matter is under their consideration. Twelve State Governments, *viz.*, Himachal Pradesh, Haryana, Assam, Kerala, Tamil Nadu, Karnataka, Maharashtra, Orissa, West Bengal, Meghalaya, Jammu and Kashmir and Madhya Pradesh have opposed the proposed amendment.

* The main objection of the dissenting State Governments is that the proposed amendment to the rules puts the officers under the dual disciplinary control of the State Governments and the Central Government, which according to them, is not desirable for the smooth functioning of an All India Service, which is common to the States and the Union. Some State Governments have argued that the proposed amendment tends to run counter to the entire federal structure whereby the State Governments enjoy a degree of autonomy in respect of their affairs. It has further been stated that the proposed amendment is likely to create difficulties and confusion whenever there happens to be a difference of opinion between the Central Government and State Governments on the question of taking disciplinary action in any particular case.

It has also been argued that for the acts of omission and commission while an officer is serving under the State Government, it is the State Government who would be the best judge and the Central Government will in any case have to depend on the State Governments as the source of information. It has also been stated that the proposed amendment may smack of lack of trust in the State Government also.

The converse proposal of giving more disciplinary powers to the State Governments over the members of the All India Services has also been a subject matter of discussion in Parliament and in the Consultative Committee attached to the Ministry of Home Affairs. While discussing the Annual Report of the Union Public Service Commission in the Lok Sabha on 10-4-1972, Shri Sivanath Singh, M.P. suggested that the officers who were deputed from the I.A.S. to the State Governments should *not* be under the control of the Central Government or the Union Public Service Commission, but instead they should be under the control of the State Governments so that they do not do anything against the interests of the State Governments. Again, in the meetings of the Consultative Committee attached to the Ministry of Home Affairs held on 18th August, 1972 and 17th December, 1973, S|Shri Jyotirmoy Bosu and Niren Ghosh, M.Ps., emphasised the need for giving absolute disciplinary powers to the State Governments over the members of the Indian Administrative Service and the Indian Police Service. Thus the suggestion made by some members of the Committee on Subordinate Legislation to amend the Rules empowering the Central Government also to take disciplinary action against Indian Administrative Service and Indian Police Service officers working under the State Governments for delinquency, inefficiency or lack of spirit and dedication to the Service, runs counter to the demand made by some M.Ps. in Parliament and in the Consultative Committee Meetings, as indicated above.

The existing rules oblige the State Governments and the Central Government to assist each other in the conduct of disciplinary proceedings against the members of the All India Services. The Central Government are competent to institute proceedings against a member of the

Service serving under the State Government if the alleged acts and/or omission were committed when he served under the Central Government. The State Government also have similar powers over the members of the All India Services on deputation with the Central Government for acts and/or omission relating to the period while they were serving under the State Government. However, the penalty of dismissal, removal or compulsory retirement from Service, can be imposed on a member of the Service only by an order of the Central Government only. The present procedure, it is felt, strikes a happy balance between the autonomy of the State Governments and the ultimate disciplinary control of the Central Government over the members of the All India Services.

In view of what has been stated in the preceding paragraphs, it has been decided not to pursue the question of amendment to the Rules empowering the Central Government also to initiate disciplinary proceedings against the members of All India Services for their conduct while serving in connection with the affairs of the States.

This issues with the approval of the Minister of State in the Department of Personnel and Administrative Reforms."

23. The Committee have considered the matter in all its aspects. They note that there are conflicting views of State Governments in regard to the suggestion to amend the All India Services (Discipline and Appeal) Rules so as to empower the Central Government to deal with delinquent officers belonging to the IAS/IPS Cadres when the State Governments were not willing to take action against them. In view of the fact that the IAS/IPS Cadres are primarily State-based cadres, the Committee feel that the present position may continue.

VI

Water (Prevention and Control of Pollution) Rules, 1975 (G.S.R. 58-E of 1975).

(i)

24. Rules 3 and 4 of the above Rules read as under:

"3. Salaries, allowances and other conditions of service of the Chairman.—

(1) The Chairman shall be paid a fixed monthly salary of Rs. 3000/-.

- (2) The other terms and conditions of service of the Chairman, including allowances payable to him, shall be such as may be specified in his order of appointment and in the absence of being so specified, such terms and conditions shall be, as far as may be, the same as are applicable to a Grade I officer of corresponding status of the Central Government.
- (3) Notwithstanding anything contained in sub-rule (1) and (2), where a Government servant is appointed as Chairman, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time.

4. Salaries, allowances and other conditions of service of Member-Secretary:—

- (1) The Member-Secretary shall be paid a monthly pay in the scale of Rs. 2250-125-2500.
- (2) The other terms and conditions of service of the Member-Secretary including allowances payable to him shall be, as far as may be, the same as are applicable to a Grade I Officer of corresponding status of the Central Government.
- (3) Notwithstanding anything contained in sub-rules (1) and (2) where a Government servant is appointed as Member-Secretary, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time."

25. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 17th May, 1975, felt that the terms and conditions of service of the Chairman and the Member-Secretary should be provided for in the Rules, as envisaged by Section 63(2)(e) of the parent Act rather than be left to be regulated by Government through administrative orders.

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

"From a perusal of the qualifications of the Chairman mentioned in clause (a) of sub-section (2) of Section 3 of the Water (Prevention and Control of Pollution) Act, 1974, it will appear that the Chairman can be either a serving Government officer or a retired Government officer or a non-official. In addition, this subject of water pollution

control is somewhat new in the country and the field of choice would necessarily have to be wide enough in the circumstances, it was felt that there should be some latitude and discretion on the part of the Government in the matter of giving the necessary terms so that a suitable candidate can be selected. The privileges which the chairman would enjoy especially in matters of travelling allowance etc. should be relatable to that available for a Government officer of his status. It is with this intention only, it is stated in the rules that the terms and conditions shall be, as far as may be, the same as are applicable to a grade I officer of corresponding status of the Central Government. The words 'as far as may be' has been included because the Chairman would not be entitled to all the privileges of a Government Servant of his status as in the matter of government accommodation from general pool, etc. Hence, it is considered that the rule may be allowed to be retained as it is.

The observation made under rule 3 would apply in the case of the Member Secretary also."

27. The Committee are not convinced by the explanation of the Ministry of Works and Housing for not incorporating the terms and conditions of service of the Chairman and Member-Secretary in the rules. Section 63(2)(e) of the Water (Prevention and Control of Pollution) Act, 1974, envisages rules to be framed regarding these terms and conditions. In view of this, the Committee recommend that the terms and conditions of service of the Chairman and Member-Secretary of the Board should either be incorporated in the Rules or, in the alternative, the Act should be amended to empower the appropriate Government to regulate the terms and conditions of their service through administrative orders.

(ii)

28. Rule 7(3) provides as under:

"Subject to rules, if any, made under sub-section (3) of section 12, the Chairman shall have full powers in matters of promotion, confirmation, transfer and termination of service of the officers and employees of the Board.

Section 12(3) of the Act reads as under:

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Govern-

ment in this behalf, the Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions and the rules so made may provide for the salaries and allowances and other terms and conditions of service of such officers and employees."

29. The section envisages that rules should be framed to govern the salaries and allowances and other terms and conditions of service of the employees while under Rule 7(3) the Chairman has been given unguided power in matters of promotion, confirmation, transfer and termination of service of officers.

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

"The rule does not give un-guided powers to the Chairman in as much as these powers are subject to the rules to be framed under section 12(3) which will cover the overall service conditions of the officers and the employees of the Central Board. Hence it is considered that this rule may be allowed to stand as it is."

31. The Committee are not happy over the wording of Rule 7(3) which, in the absence of rules under section 12(3) of the Act, appears to confer unguided power on the Chairman in matters of promotion, confirmation, transfer and termination of service of the employees of the Board. The Committee take a serious note of the fact that rules relating to conditions of service of the employees of the Board under section 12(3) of the Act, which should have been framed within a period of six months from the commencement of the Act, have not yet been framed. They desire the Ministry of works and Housing to frame these rules without any further delay,

(iii)

32. Rule 9(5) of the above Rules *inter alia* reads as under:—

"The Member-Secretary may withhold any payment:—

Provided that as soon as may be after such withholding of payment the matter shall be placed before the Central Board for its approval:"

33. The Committee on Subordinate Legislation felt that a time-limit should be specified in the Rules within which the cases wherein payments have been withheld should be placed before the Central Board.

34. The matter was taken up with the Ministry of Works and Housing who had accepted the suggestion of the Committee.

35. The Committee note with satisfaction that on being pointed out, the Ministry of Works and Housing have agreed to amend Rule 9(5) so as to provide therein a time-limit within which the cases in which payments have been withheld would be placed before the Central Board. The Committee desire the Ministry to issue the amendment at an early date.

IV

36. Rule 10(2), (3), (4), provide for payment of allowances to persons associated with the Central Board. The Committee on Subordinate Legislation desired to know the precise legal authority in the parent Act which authorised payment of such an allowance.

37. The Ministry of Works and Housing in their reply have stated as under:—

“Regarding legal authority in the Parent Act, attention is invited to sub-section (1) of section 10 and clause (d) of sub-section (2) of section 63 by which the Central Government have been empowered to prescribe the manner in which and the purposes for which persons can be associated with the Central Board for performing any of its functions under the Act. However, to make the position more clear, earliest opportunity will be taken to amend section 10(1) and clause (d) of sub-section (2) of section 63 to specifically provide for the making of rules in regard to the payment of allowances to persons associated with the Central Board.”

38. The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend the Water (Prevention and Control of Pollution) Act at the earliest opportunity to specifically provide therein for making of rules in regard to the payment of allowances to persons associated with the Central Board.

V

39. Rule 12 of the above Rules provides as under:

“12. Power to terminate appointment—Notwithstanding the appointment of a consulting engineer for a specified period under rule 11, the Central Board shall have the right to terminate the services of the consulting engineer

before the expiry of the specified period, if, in the opinion of the Board, the consulting engineer is not discharging his duties properly or to the satisfaction of the Board or such a course of action is necessary in the public interest."

40. The Committee on Subordinate Legislation on examining the Rules desired that opportunity of representation should be given to the consulting engineer before termination of his services.

41. The Ministry of Works and Housing with whom the matter was taken up have accepted the suggestion of the Committee.

42. The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend Rule 12 to provide for giving of an opportunity of representation to the consulting engineer before his services are terminated under this Rule. They desire the Ministry to issue the necessary amendment at an early date.

VII

The Homoeopathy Central Council (Election) Rules, 1975 (G.S.R 611 of 1975)

43. The Committee on Subordinate Legislation (1975-76), at their sitting held on the 14th November, 1975, examined the Homoeopathy Central Council (Election) Rules, 1975, which were published in the Gazette of India on 17-5-1975 under G. S. R. 611 of 1975 and laid on the Table of Lok Sabha on 21-7-1975. During the course of examination, the Committee raised the following two points, which were referred to the Ministry of Health and Family Planning (Department of Health) for furnishing their comments thereon:—

- (i) rule 13(4), *ibid*, provides for sending of election papers to the electors under certificate of posting. There is no guarantee that election papers will be delivered to the elector under this system. Having regard to the importance of the papers to the electors, there should be a provision for sending the election papers under Registered Post; and
- (ii) rule 14, *ibid*, provides that all voting papers received by unregistered post shall be rejected. The considerations

for making such a provision were asked from the Ministry.

44. The Ministry of Health and Family Planning (Department of Health) have stated in their reply as under:

“...the points raised on the two rules have been examined in consultation with the Ministry of Law and the following views are for consideration of the Committee on Subordinate Legislation:—

Rule 13(4)—In lieu of obtaining a certificate of posting in respect of such letter of intimation, the sub-rule will be amended so as to send the letter of intimation by ‘Registered Post’.

Rule 14—The requirement of returning the voting papers by Registered Post is being deleted and such papers being received by unregistered post will not be rejected. Accordingly, the following amendments to rule 14 are suggested:—

- (a) The word “registered” occurring between “outer cover by” and “post at the elector’s own cost” in line 7 of the rule 14 on page 7 shall be deleted.
- (b) The words ‘or received by unregistered post’ in the last line shall also be deleted.

Necessary amendments to the respective rules on the above lines will be issued on receipt of concurrence of the committee on Subordinate Legislation to the above proposal.”

45. The Committee note with satisfaction that, on being pointed out; the Ministry of Health and Family Planning (Department of Health) have agreed to amend rule 13(4) of the Homoeopathy Central Council (Election) Rules, 1975, to provide that election papers, will be sent to the electors by registered post, instead of under certificate of posting as at present. The Ministry have also agreed to so amend Rule 14 that voting papers received by unregistered post will not be rejected. The Committee desire that amendments to the above effect should be issued at an early date.

VIII

The Central Warehousing Corporation (Staff) (Second Amendment) Regulations, 1975 (S. O. 1553 of 1975).

46. Clause (2) of Regulation 15 of the Central Warehousing Corporation (Staff) Regulations, 1966, as it stood before its amend-

ment by the above amending Regulations, provided for the rates of House Rent Allowance admissible to the staff. After its amendment, the Regulation reads as under:—

"Regulation 15(2):

Unless otherwise stipulated in the terms and conditions of employment, every employee shall be entitled to house rent allowance at such rates as the Board of Directors may, with the previous approval of the Central Government, by order, determines."

47. The Ministry of Agriculture and Irrigation (Department of Food) were requested to state the reasons for empowering the Board of Directors to determine the rates of House Rent Allowance instead of specifying them in the Regulations as was done before the amendment of the Regulation.

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

"Staff Regulation 15(2), as it existed before the amendment made under S. O. 1553 of 17-5-1975 provided for rates of H.R.A. to employees posted in 'A' class cities. It also provided that employees posted at Stations other than 'A' class cities would be entitled to H.R.A. at such rates as are admissible to employees of Central Government of the corresponding grade from time to time. The Central Warehousing Corporation were paying H.R.A. to their employees in 'A' class cities at rates some what different than those prescribed in the earlier regulation but which were nevertheless in accordance with the guidelines issued by Bureau of public Enterprises in their Memo. dated 6-9-68. The need for amending regulation 15(2) arose to see that the rates of H.R.A. to Central Warehousing Corporation employees are in accordance with the guidelines issued by B.P.E. If such rates were to be prescribed in the Staff Regulations themselves, these regulations may have to be amended every time there is change in the H.R.A. It is with a view to avoid the need for effecting amendments to the staff regulations consequent on the revision of H.R.A. from time to time, that the regulations have been amended in the manner they have been done.

The amended regulations do not empower the Board of Directors themselves to determine the rates of H.R.A.

It is necessary for C.W.C. Board to obtain previous approval of Central Government before they can determine H.R.A. This would ensure that C.W.C. do not adopt rates of H.R.A., which do not have the approval of Government or which are not in accordance with the guidelines of B.P.E.”.

49. The Committee note the argument advanced by the Ministry of Agriculture and Irrigation (Department of Food) that if the rates of House Rent Allowance were prescribed in the Regulations, they would have to be amended every time there was a change in the House Rent Allowance. In the opinion of the Committee, the above argument advanced by the Ministry is an argument based merely on expediency. The Committee would like to draw the attention of the Ministry to Section 42(2)(a) of the Warehousing Corporation Act, 1962, which envisages the conditions of service and the remuneration payable to the officers and other employees of the Corporation to be regulated through regulations. In view of this, the Committee desire that the rates of the House Rent Allowance should be laid down in the Regulations.

IX

The Packaged Commodities (Regulation) Order, 1975 (S.O. 443-E of 1975)

50. Paragraph 12 of the above Order reads as under:

“12. *Power to exempt.*—The Central Government may, if it is of opinion that it is necessary or expedient so to do, exempt any manufacturer, packer or class of manufacturers or packers from all or any of the provisions of this Order.”

51. It was felt that the power to grant exemption should be available in respect of only a class of manufacturers or packers and not an individual manufacturer or packer to avoid any possibility of discrimination being made between persons similarly placed.

52. The Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) with whom the above matter was taken up have replied as under:

“The proposal of the Lok Sabha has been examined pros and cons. In so far as paragraph 12 of the Packaged Com-

modities (Regulation) Order, 1975 is concerned, it may be stated that no exemption has been granted to any individual manufacturer/packer or class of manufacturers so far. The power has been conferred on the Central Government and that Government will exercise the power only when it is not possible for any particular industry or class of industries to comply with all or any of the provisions of the said order by reason of technical or mechanical difficulties.

Packaged Commodities (Regulation) Order is of temporary duration and on the cessation of operation of Defence of India Rules, 1971 the order will cease to be operative.

In these circumstances, it is felt that there is no need of amendment".

53. The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) that as no exemption has been granted to any individual manufacturer/packer so far, and the 'Order' is of a temporary duration, there is no need of its amendment on the lines suggested by the Committee. In the opinion of the Committee, the fact that no exemption has so far been granted to an individual manufacturer/packer is no guarantee that such an exemption will not be given in future also. The Committee would like to make it clear that they are not against the principle of exemption as such. They only want that the benefits of exemption should be available to all manufacturers/packers similarly placed. With this end in view, they desire that paragraph 12 of the above Order should be amended so as to omit therefrom the power to grant exemption to individual manufacturers/packers, as contradistinguished from classes of manufacturers/packers.

X

The Delhi Motor Vehicles (Second Amendment) Rules, 1975 Notification No. SECE. 3(45/74-TPT/4369 dated 29-3-75)

54. Sub-clause (v) of Rule 2.24 of the Delhi Motor Vehicles Rules, 1940, as added by the above amendment Rules, reads as under:

"The Licensing Authority, may in its discretion lay down the rates at which the fees shall be charged from the pupils

by the Driving Training Schools for giving instructions in driving."

55. The Ministry of Shipping and Transport who were requested to state whether they had any objection to the fees being prescribed by the Rules instead of through an executive order, have replied as under:

"...Delhi Administration have intimated that they have no objection to the fees to be charged by the Driving Training Schools being prescribed by Rules, instead of through an executive order of the Licensing Authority. That Administration have been advised to take action to amend the Delhi Motor Vehicle Rules suitably for the purpose."

56. The Committee note with satisfaction that, on being pointed out, the Delhi Administration have agreed to prescribe the fees to be charged by the Driving Training Schools for giving instructions in training by rules, instead of through executive orders, as at present. The Committee desire the Delhi Administration to amend the Delhi Motor Vehicle Rules accordingly at an early date.

XI

The Drugs and Cosmetics (Amendment) Rules, 1975 (G.S.R. 116 of 1975)

57. Rules 134A and Rule 144A of the Drugs and Cosmetics Rules, 1945, as inserted by the above amending Rules, provide as under:

"134A. *Prohibition of import of cosmetic containing Hexachlorophene.*—

No cosmetic containing hexachlorophene shall be imported."

"144A. *Prohibition of manufacture of cosmetic containing Hexachlorophene.*—

No cosmetic containing Hexachlorophene shall be manufactured."

58. According to the preamble to the Notification, the rules had been framed in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940, which were the general rule-making provisions in the Act. Prohibition imposed under Rules 134A and 144A did not seem to be authorised by sections 12 and 33 only of the Drugs and Cosmetics Act, 1940.

59. The matter was taken up with the Ministry of Health and Family Planning (Department of Health) and their attention was

invited to the following recommendation of the Committee made in paras 27—29 of their Fourteenth Report (Fifth Lok Sabha):—

- “27. While examining various rules, the Committee have very often faced an uphill task of locating the section of the Act under which the particular rules have been framed. Where the section pertaining to rule-making power is only generally worded, the Committee is absolutely left guessing whether there is clear authority for the rule or not. Where in addition to generally worded sub-section (1), there is also a sub-section (2) enumerating matters on which the rules can be made, it has sometimes been found that such enumeration has left out some of the matters mentioned in other sections of the same Act. On the other hand, on account of the fact that preamble of the rules ordinarily makes mention only of the general rule-making power, the preamble is also of no help in the examination of rules.
28. The Committee do appreciate that sub-section (2) is not restrictive of sub-section (1) as indeed is expressly stated by the words ‘without prejudice to the generality of the powers conferred by sub-section (1)’. But it is sound common sense that at least all those matters on which rules have to be framed under various sections of the same statute are enumerated in sub-section (2). This would be in conformity with the Ministry’s own observation that ‘inclusion of sub-section (2) in the rule making section is intended to focus attention on the several matters in respect of which rules are clearly contemplated by the Act’. The Committee also feel that such an enumeration will not interfere with the flexibility of the rule-making power.
29. The Committee, therefore, recommend that (i) either sub-section (2) of the rule-making power section should enumerate all matters on which rules have to be framed under various sections of a statute and quote the section to which that matter relates as has been done in section 27 of the Interest Tax Act, 1974 or (ii) in the alternative, the preamble to the rules should refer not only to the general rule-making power section of the Act but also other sections of the Act under which the rules have been framed.”

60. In their reply, the Ministry of Health and Family Planning (Department of Health) have replied as under:

“ . . Chapter III of the Drugs and Cosmetics Act relates to the imports. Section 10 in that Chapter empowers the Central Government to prohibit the import of any drug or cosmetic. Section 12 empowers the Central Government to frame rules for the purpose of giving effect to provisions of that Chapter. Accordingly, although rule 134A, which prohibits the import of any cosmetic containing hexachlorophene, is relatable to section 10 of the Act, it had to be framed under the powers conferred by Section 12.

Similarly Chapter IV of the Act regulates the manufacture, sale and distribution of drugs and cosmetics and section 18 thereof empowers the Government to prohibit the manufacture for sale of any drug or cosmetic. The powers to frame rules to give effect to provisions of that Chapter are conferred under Section 33. Accordingly, rule 144A, although relatable to the provisions of Section 18, was framed under Section 33.

In view of the rule-making powers contained in sections 12 and 33, it was not considered necessary to cite sections 10 or 18 in the enacting formula.”

61. The Committee note that the Ministry of Health and Family Planning (Department of Health) have admitted in their reply that Rule 134A of the Drugs and Cosmetics Rules, 1945, was relatable to section 10 and Rule 144A, *ibid.*, was relatable to section 18 of the Drugs and Cosmetics Act, 1940. As the subject-matter of these rules was not mentioned in the relevant rule-making power sections 12 and 33, the Committee feel that, in accordance with the recommendation of the Committee contained in paragraph 29 of their 14th Report (Fifth Lok Sabha), sections 10 and 18 should also have been cited in the preamble to the above Rules for facility of referencing. Unfortunately, the Ministry of Health and Family Planning failed to do this. The Committee would like to re-stress their earlier recommendation made in para 29 of the Fourteenth Report (Fifth Lok Sabha) that either the rule-making power section should enumerate all matters on which rules have to be framed under various sections of the Act or in the alternative, the preamble to the rules should refer not only to the rule-making power section but also to other sections of the Act which relate to the subject-matter of the rules framed thereunder.

**Giving of retrospective effect to the 'Orders' framed
under various Acts of Parliament**

62. While examining the eight 'Orders' mentioned in Appendix II, it was noticed that retrospective effect had been given to them. The parent Acts under which those orders had been framed did not authorise the giving of retrospective effect to the 'Orders'. Two of these 'Orders' related to the Ministry of Defence, two to the Ministry of Labour and one each to the Ministries of Education and Social Welfare (Department of Education), Commerce, Industrial Development and Law, Justice and Company Affairs (Department of Company Affairs).

63. The matter was taken up with the Ministries concerned whose attention was invited to paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where they had noted the following observations of the Attorney-General in this regard:

"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 itself further empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect....."

64. A gist of the replies of the Ministries of Education and Social Welfare (Department of Education), Law, Justice and Company Affairs (Department of Company Affairs), Labour and Defence is given in column 4 of Appendix II. Final replies from the Ministries of Commerce and Industrial Development have not been received.

65. The Committee note with concern that retrospective effect to the eight 'Orders' mentioned in Appendix II has been given without an authorisation to this effect in the parent statutes. As without such an authorisation, no subordinate legislation can operate retrospectively, the Committee feel that the retrospective effect given to the 'Orders' in question was without due legal authority. The Committee, therefore, desire the Ministries/Departments concerned either to give effect to the 'Orders' in question from the dates of their publication in the Gazette, or, alternatively, to take steps to im-

corporate a provision in the relevant Acts empowering Government to give retrospective effect to these 'Orders'.

66. The Committee note that final replies have not yet been received from the Ministries of Commerce and Industrial Development although the matter was taken up with them more than two years back. The Committee cannot help expressing unhappiness over non-receipt of final replies from these Ministries, despite reminders. The Committee need hardly point out that Ministries/Departments of Government are expected to give prompt replies to the points raised by Parliamentary Committees.

XIII

Giving of retrospective effect to the 'Orders' framed under Article 309 of the Constitution

67. In para 10 of their Second Report (Fourth Lok Sabha), presented on the 14th December, 1968, the Committee on Subordinate Legislation had recommended as follows:—

“.....all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.”

68. In their subsequent Reports, the Committee have repeatedly stressed the above recommendation. While examining the 28 'Orders' mentioned in Appendix III, it was noticed that retrospective effect had been given to the Orders, but no explanatory memorandum to the effect that no one will be adversely affected as a result of retrospective effect to the Orders, was appended to the 'Orders'. The matter was, therefore, taken up with the Ministries/Departments concerned.

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

70. The Committee have repeatedly stressed that if in a particular case the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. The Committee are distressed to note that despite their repeated recommendation, the requisite clarification was not given in as many as 29 cases listed in Appendix III. The Committee take a serious view of non-compliance with an oft-repeated recommendation of the Committee in such a large number of cases. The Committee re-stress their earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha) and desire the Department of Parliamentary Affairs to bring this recommendation to the notice of all the Ministries/Departments of Government of India for strict compliance in future.

71. The Committee are not satisfied with the explanation of the Ministry of Finance (Department of Expenditure) that the requisite explanatory memorandum was added to the 'Order', while sending it to the Press, but it was not printed along with the 'Order' in the Gazette. The Committee need hardly re-emphasise their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department does not cease with their sending an 'Order' to the Press. After an 'Order' has been published in the Gazette, the Ministry/Department concerned should take immediate steps to examine whether it has been correctly printed, and, if necessary, to issue a corrigendum thereto.

XIV

The Income-tax (Third Amendment) Rules, 1975 (S.O. 534-E of 1975)—Non-appending of a certificate regarding retrospective effect given to the rules

72. The Committee on Subordinate Legislation (1975-76), at their sitting held on the 23rd February, 1976, examined the Income-tax (Third Amendment) Rules, 1975, which were published in the Gazette of India on 24th September, 1975, *vide* S.O. 534-E of 1975 and laid on the Table of Lok Sabha on 6th January, 1976. It came to their notice that sub-clause (i) of Clause (c) of rule 2A was substituted retrospectively *w.e.f.* 1st April, 1975. Similarly, rule 2B was inserted by the said Amendment Rules, *w.e.f.* 1st April, 1975. However, the requisite explanatory memorandum certifying that no body would be adversely affected as a result of retrospective effect was not appended to the rules. The matter was taken up with the Ministry of Finance and they were asked to state the reasons for not appending the requisite explanatory memorandum.

73. In their reply, the Ministry of Finance (Department of Revenue and Banking) have stated as under:—

“...the point raised...has been examined in consultation with the Ministry of Law, Justice and Company Affairs (Legislative Department). Attention in this connection is invited to sub-section (4) of section 295 of the Income-tax Act, 1961 which provides that the power to make rules conferred on the Central Board of Direct taxes by that section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of that Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees. The provisions of rules 2 and 3 of the Income-tax (Third Amendment) Rules, 1975 do not adversely affect the interests of assesseees and retrospective effect has been given to the said rules by virtue of the specific provision contained in section 295(4) of the Income-tax Act. It will thus be observed that the recommendation of the Committee on Subordinate Legislation that a rule, if given retrospective effect, should not adversely affect any person, is already reflected in section 295(4) of the Income-tax Act. The provisions of rules 2 and 3 of the Income-tax (Third Amendment) Rules, 1975 are also in conformity with this recommendation and section 295(4) of the Income-tax Act. In view thereof, it was not considered necessary to append an Explanatory Memorandum to the Income-tax (Third Amendment) Rules, 1975 when certain provisions thereof were given retrospective effect.”

74. The Committee note that the explanation of the Ministry of Finance (Department of Revenue and Banking) for not appending the requisite explanatory memorandum to the rules is that section 295(4) of the Income-tax Act 1961, which empowers the Central Board of Direct Taxes to give retrospective effect to the rules to be framed thereunder also provides that, unless the contrary is permitted (whether expressly or by necessary implication) no retrospective effect shall be given to any rule so as to prejudicially affect the interests of the assesseees. In the opinion of the Committee, the above provision of the Income-tax Act, which they consider as a salutary one, does not take away the need for appending the

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requisite explanatory memorandum to the rules, when retrospective effect is given. They would in this connection like to make it clear that the purpose underlying the appending of the explanatory memorandum is not only to assure the public that no one is likely to be adversely affected as a result of retrospective effect being given to the rules but also to apprise them of the circumstances in which the retrospective effect has become necessary. The Committee, therefore, desire that explanatory memorandum should be appended in all cases where retrospective effect is given to the rules, irrespective of whether the parent Act contains a provision on the lines contained in section 295(4) of the Income-tax Act. The Committee also desire the Department of Parliamentary Affairs to bring this recommendation of the Committee to the notice of all the Ministries/Departments of Government of India for guidance and strict compliance in future.

XV

The National Test House, Calcutta and Bombay, Assistant Director (Administration) (Grades I and II) Recruitment Rules, 1975 (G.S.R. 363 of 1975)

75. Column 13 of the Schedule to the above Rules is in regard to the 'circumstances in which U.P.S.C. is to be consulted in making recruitment' and the entry given therein is 'as required under the Rules'. It was not clear as to which 'rules' were referred to in the entry under that column.

76. The Ministry of Supply and Rehabilitation (Department of Supply) with whom the matter was taken up have replied as under:—

".....the entry in column 13 of the Recruitment Rules relates to the circumstances in which the U.P.S.C. is to be consulted in making recruitment to that post. While making recruitment to a post, the UPSC are to be consulted as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. Hence the rules referred to in the entry under column 13 of the Recruitment Rules are the U.P.S.C. (Exemption from Consultation) Regulations, 1958. However, this Department will have no objection to amend the entry under column 13 of the Recruitment Rules by specifying the rules, if the Lok Sabha Secretariat desires so."

77. The Committee note that the 'rules' referred to in the entry under column 13 of the Schedule to the above Rules are the 'Union Public Service Commission (Exemption from Consultation) Regulations, 1958'. The Committee desire the Ministry of Supply and Rehabilitation (Department of Supply) to amend the entry under column 13 so as to specifically mention these Regulations. The Committee further desire that if, while framing subordinate legislation, the Ministries/Departments find it necessary to refer to other rules, they should invariably mention the precise names of such rules, so that the public are not kept aguessing as to the identity of the rules to which a reference has been made.

XVI

The National Fitness Corps. Directorate (Class I and Class II posts) Recruitment Rules 1972 (G.S.R. 261 of 1972).

78. According to the method of recruitment to the post of Deputy Director and Assistant Director as given in column 10 of the Schedule to the above Rules, 50 per cent of the posts were to be filled by promotion, failing which by transfer/deputation and failing both by direct recruitment. It was, however, seen that there was only one post each of the Deputy Director and the Assistant Director. The Ministry of Education and Social Welfare (Department of Education) were, therefore, asked to state how one post would be divided fifty-fifty percent.

79. In their reply, dated 13th August, 1973, the Ministry of Education and Social Welfare (Department of Education) stated as under:

"...The Recruitment Rules for the Class I and Class II posts of the NFC Directorate were framed in 1964 in consultation with the Union Public Service Commission. These Rules were framed keeping in view the then anticipated future requirements of the NFC Directorate. These were, however, not notified immediately after their approval by the U.P.S.C. The method of recruitment for the posts of Deputy Director and Assistant Director in fact relates to the period when there were more than one post each of the Deputy Director and Assistant Director. Consequent upon Government of India's decision in 1965 to decentralise the NFC Organisation and transfer the NDS

personnel to States for their absorption in the State Cadre of Physical Education teachers, there was a gradual reduction in the number of posts in the NFC Directorate. When the Recruitment Rules were actually notified in 1972 there was only one post each of the Deputy Director and Assistant Director. It may be added that with the winding up of the NFC Directorate even these two posts have been abolished."

80. The Ministry were asked to give further elucidation on the following points:

- (i) reasons for a time-lag of about 8 years between the framing of the Rules and their notification in the Gazette;
- (ii) reasons for not modifying the entry under col. 10 when there was only one post each of Deputy Director and Assistant Director; and
- (iii) whether any amendment to the Rules had been issued consequent upon abolition of the two posts of Deputy Director and Assistant Director.

81. In their further reply dated the 19th November, 1973, the Ministry have stated as under:

"(i) Although a decision was taken in 1965 by the Government of India to decentralise the National Fitness Corps Scheme and to transfer the Instructional Staff of the NDS Directorate to the respective State Governments for their absorption in the State's service it was possible to implement this decision in April, 1972 when the States were informed vide this Ministry's letter No. F. 22/6/71 YSI(3) dated 4th April 1972 about the Government of India's decision to transfer to them the administrative control over the NDS Instructors. This could not be implemented earlier because the terms of transfer were under negotiation with the State Governments and even had to be modified on a number of occasions. In view of the impending winding up of the NFC Directorate and the consequent transfer of NDS Instructors to States, the Ministry was of the view that it may not serve any useful purpose to notify these Recruitment Rules.

- (ii) Inadvertently, no amendment under col. 10 against S. Nos. 3 and 4 in the Recruitment Rules was made be-

fore notifying these Rules. This is regretted. In view of the fact that the NFC Directorate has since been wound up *vide* this Ministry's Notification No. 11011/1/72 YSI (3) dated 29th June, 1972 and all the posts have been abolished it is not considered necessary to modify these Rules."

82. The Committee are not happy over the casual manner in which the Ministry of Education and Social Welfare (Department of Education) had acted in this case. Although the rules in question were framed by the Ministry in 1964, these were notified only in 1972—after a time-lapse of nearly 8 years. In the meantime, the matters were apparently regulated by executive orders. The Ministry have ascribed the delay in the notification of the rules to the impending winding up of the National Fitness Corps Directorate, but ironically the rules were notified only shortly before the Directorate was wound up. And even when the notification was issued, the Ministry did not take care to see whether the rules, which had been framed 8 years back, took note of the changed conditions. The Committee feel that this was a case of gross carelessness.

83. In the opinion of the Committee, the proper course for the Ministry was to notify the rules after these had been approved by the U.P.S.C., and to modify or annul them, as and when the necessity arose. This unfortunately was not done. The Committee trust that the Ministry of Education and Social Welfare will take care to avoid such lapses in future.

XVII

The Delhi Sikh Gurdwaras (Amendment) Bill, 1974 (As Introduced in Lok Sabha on 26-7-1974)

84. The Delhi Sikh Gurdwaras (Amendment) Bill, 1974, was introduced in Lok Sabha on the 26th July, 1974. The Bill which sought further to amend the Delhi Sikh Gurdwaras Act 1971, was examined, under direction 103(2) of the Directions by the Speaker. While examining the above Bill, it was noticed that the laying formula contained in sub-section (4) of section 39 of the Principal Act had not been brought into conformity with the formula since revised by the Committee on Subordinate Legislation, *vide* paras 33-34 of their Second Report (Fifth Lok Sabha), presented to the House on the 10th December, 1971. The Ministry of Law, Justice and Company Affairs (Legislative Department) had

circulated the revised laying formula to all Ministries/Departments for their information and compliance in future, *vide* their O.M. No. 4(7) 71-LI, dated 4th February, 1972.

85. The matter was taken up with the Ministries of Home Affairs, and Law, Justice and Company Affairs (Legislative Department) who were asked to state the reasons for not revising the laying formula contained in sub-section (4) of section 39, *ibid.*, and whether they had any objection to making amendments to the said Bill on the lines suggested above.

86. While accepting the above suggestion, the Ministry of Home Affairs have *inter alia* stated in their reply as under:—

“...the recommendations of the Committee on Subordinate Legislation referred to therein were inadvertently lost sight of at the time of drafting the Delhi Sikh Gurdwaras (Amendment) Bill, 1974. The matter has now been considered in consultation with the Ministry of Law, Justice and Company Affairs (Legislative Department) and it is proposed to move an amendment for revising the rule-laying formula contained in sub-section (4) of section 39 of the principal Act...”

87. The Bill was subsequently amended to incorporate in the parent Act the revised rule-laying formula, as approved by the Committee.

88. The Committee note that, on being pointed out, the Delhi Sikh Gurdwaras (Amendment) Bill, 1974 has been amended so as to incorporate in the principal Act the revised rule-laying formula, as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha).

XVIII

Printing Errors in 'Orders'

- (i) The Central Secretariat Stenographers' Service (First Amendment) Rules, 1974 (G.S.R. 281 of 1974).
- (ii) The Central Power Engineering (Class I) Service (Second Amendment) Rules, 1974 (G.S.R. 1059 of 1974).
- (iii) The Andaman Lakshadweep Harbour Works (Chief Engineer) Recruitment Rules 1974 (G.S.R. 489 of 1974).

A

89. Retrospective effect has been given to the Central Secretariat Stenographers' Service (First Amendment) Rules, 1974 and the Central Power Engineering Class I Service (Second Amendment) Rules, 1974. However, the requisite Explanatory Memorandum that no one will be adversely affected as a result of retrospective effect given to the rules as recommended by the Committee on Subordinate Legislation in para 10 of their Second Report (Fifth Lok Sabha) has not been appended to the rules.

90. The Department of Personnel and Administrative Reforms and the Ministry of Energy (Department of Power) to whom the matter was referred have stated as under:—

Department of Personnel and Administrative Reforms:

"Explanatory Memorandum (both in English and Hindi) to the Central Secretariat Stenographers' (First Amendment) Rules, 1974, was sent to the Manager, Government of India Press, Mayapuri, New Delhi for publication in the *Gazette of India* Part II, section 3(i). While Hindi version of the Explanatory Memorandum has been published in the *Gazette of India*, dated 23rd March, 1974, English version of the same has not been published by the Press, by oversight. English version of the same is now being published in the *Gazette of India*, Part II, Section 3(i), as an Addendum to the CSSS (First Amendment) Rules, 1974."

Ministry of Energy (Department of Power):

".....the Explanatory Memorandum giving the reasons for retrospective effect to the Notification was duly cyclostyled for publication in the *Gazette*. It has, however, been checked up from the Government of India Press, Mayapuri Enclave, New Delhi that while cyclostyling, the Explanatory Memorandum did not appear on the reverse side of the copy of Notification sent to the Press for publication. In view of this, the Explanatory Memorandum was not printed by the Press along with the Notification in the *Gazette*.

The reasons for giving retrospective effect to the Notification are explained in the Explanatory Memorandum, a copy

of which is now* sent herewith. The post of Secretary, Indo-Bangladesh Joint Power Coordination Board was included in the Central Power Engineering (Class I) Service from 28th August, 1973, the date on which the post was created. The time-lag between the date of effect of the orders and the date of their publication in the Gazette, occurred as the method of filling the post had to be decided and thereafter draft amendment to the Central Power Engineering (Class I) Service Rules had to be processed in consultation with the Department of Personnel, Union Public Service Commission and the Ministry of Law. It is confirmed that giving retrospective effect to the amendment did not or will not adversely affect any one."

B

91. The disqualification clause on account of plural marriage and saving clause regarding candidates belonging to Scheduled Castes/Tribes has not been given in the Andaman Lakshadweep Harbour Works (Chief Engineer) Recruitment Rules, 1974.

92. The Ministry of Shipping and Transport (Transport Wing) to whom the matter was referred have stated as under:—

"...the notification No. 18-PE(2)/73, dated the 26th April, 1974 notifying the Recruitment Rules for the post of Chief Engineer, ALHW to be published in the *Gazette of India* contained the disqualification clause and saving clause as usual but these have been omitted by the Press while printing through an oversight. This Ministry have been advised that an amending notification should be issued to rectify the omission. Action has been initiated in this regard."

.. 93. The Committee regret to note that neither the Department of Personnel and Administrative Reforms nor the Ministry of Shipping and Transport (Transport Wing) had taken any action to rectify the printing errors in their respective notification till the Committee took up the matter with them. The Committee have repeatedly stressed that the responsibility of a Ministry/Department does not cease with the sending of a notification to the Press. After the rules, regulations, etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto. The Committee are

*Not printed.

constrained to observe that a serious view will have to be taken of such lapses in future. The Committee would also like the Department of Parliamentary Affairs to bring the observations of the Committee made in this paragraph to the notice of all the Ministries/Departments of Government for strict compliance in future.

94. The Committee cannot help expressing regret over the negligence shown by the Ministry of Energy in the publication of the Central Power Engineering (Class I) Service (Second Amendment) Rules, 1974. Before sending the notification to the Press, the Ministry had failed to ensure that it was complete in all respects and subsequently, they had not cared to see whether it had been properly published. The Committee would like the Ministry of Energy to take care to avoid such lapses in future.

95. The Committee note that while the Department of Personnel and Administrative Reforms and the Ministry of Shipping and Transport (Transport Wing) have either initiated or are initiating corrective action by issuing a corrigendum/addendum, the Ministry of Energy (Department of Power) have not given any indication in this regard. The Committee desire the Ministry of Energy (Department of Power) to take necessary corrective action without any further delay.

XIX

Giving of Short Title to the 'Orders'

96. During the examination of the 14 'Orders' mentioned in Appendix IV, it was noticed that they did not bear short title. In this connection, the Committee on Subordinate Legislation in para 21 of their Second Report (Fourth Lok Sabha) had observed as under:—

“....The Committee would like to emphasise that giving of short titles, to the rules, whether principal or amending, is very essential for facility of reference and tracing by all concerned.”

97. In their subsequent Reports the Committee have repeatedly restressed the above recommendation. A gist of replies of the Ministries/Departments concerned with whom the matter was taken up is given in column 4 of Appendix IV.

98. The Committee regret to note that in spite of their repeated recommendations, short titles were not given to the 14 'Orders' men-

tioned in Appendix IV. As the 'Orders' in question were issued as early as 1971-1972, the Committee feel that no purpose will be served by issuing the amendments at this stage for giving short titles to these 'Orders'. They would however, like the Department of Parliamentary Affairs to re-emphasise on all the Ministries/Departments of Government of India the need of invariably giving short titles to rules, whether principal or amending, for facility of reference and tracing by all concerned.

XX

Implimentation of Recommendations

- (i) Printing and publication of compilation containing General Statutory Rules and Orders (Paras 70—74 of Tenth Report and paras 139-140 of Eighteenth Report—Fifth Lok Sabha).

99. The Committee on Subordinate Legislation had noted the assurance given by the Ministry of Law that an up-to-date publication of the General Statutory Rules and Orders in force, on the lines of the U.K.'s annual publication Statutory Instruments, for the convenience of the public, would be brought out as soon as all the volumes of India Code were published (Vide paras 51-52 of the Third Report—Second Lok Sabha—presented on 2nd May, 1958).

100. To know the progress made in the printing and publication of the above Compilation during all these years, the Ministry of Law, Justice and Company Affairs (Legislative Department) were asked to furnish the relevant information as to the total number of volumes already printed, the number of remaining volumes to be brought out and the target date by which all the volumes would be published and put on sale to the public. After processing the information supplied by the Ministry, the Committee recommended in paras 70—74 of their Tenth Report (Fifth Lok Sabha) as follows:—

“While the Committee are glad to note that 2/3rd of the main Compilation of General Statutory Rules and Orders and four Supplements thereto have been brought out by the Ministry of Law, Justice and Company Affairs (Legislative Department), they cannot help observing that whereas during the first five years (1960 to 1964), as many as nine volumes were printed and released for sale, dur-

ing the latter nine years (1965 to 1973), only eleven volumes of the main publication and four Supplements could be printed and released. The Committee regret the slackening of the pace with the passage of time. In the opinion of the Committee, too long a period (more than 15 years) has been taken by the Ministry in publishing twenty volumes and four Supplements. The Ministry of Law should have at least periodically informed the Committee of the progress in the matter. They feel that if the Ministry had taken a little more care, at least the main Compilation would have been published by now.

One of the difficulties in early completion of the work as put forth by the representative of the Ministry during evidence was lack of adequate technical staff. If so, the Committee fail to understand why the Ministry should have reduced the strength of the staff deployed on the job from 4 Assistants to 2 Assistants (one of which is a non-technical hand) and now express the difficulty in raising the staff strength. The Committee feel that the work would have been completed, if it had not been neglected in this manner. They desire the Ministry to restore the original staff strength and if needed to further increase staff strength, so that the work does not suffer for want of technical personnel who are competent to do it.

The Committee need hardly emphasise the usefulness of this compilation which when completed, would make the whole subordinate legislation available at one place (in approximately 30 volumes). The Committee would, in this connection, like to point out that it is not only the Executive Authorities but also public at large, especially the Advocates as well as the Courts, who are concerned with the rules and orders in the form of writ petitions, etc. It is indeed difficult, if not impossible, for an ordinary citizen to lay hands upon all the amendments to a given set of rules that might have been issued by the Executive from time to time. The said compilation would go a long way in obviating the difficulty and inconvenience caused to the public in location and referencing.

The Committee trust that the main compilation will be completed and released for sale by the end of 1977—the target

date fixed by the Ministry. They also desire that simultaneous action should be taken to bring out all the necessary Supplements to earlier volumes of the main compilation, so that they are kept up-to-date as far as possible.

The Committee would further like to be furnished with yearly progress report regarding the publication of the main compilation as well as of the Supplements, to keep them abreast of the latest position."

101. The Committee considered the progress report for the year 1974, submitted by the Ministry of Law, Justice and Company Affairs (Legislative Department), and were not satisfied with the slow progress made in this regard by them. The Committee observed in paras 139-140 of their Eighteenth Report as follows:

"The Committee note that during the year 1974, only one Volume (XXI) of the General Statutory Rules and Orders covering the subject heading 'Revenue' (up to and including Income-tax Act, 1961) has been released for sale to the public. They further note that fifty per cent of the work involved in volume XXII has been completed and manuscripts have been sent to the Press. According to the Ministry of Law, Justice and Company Affairs (Legislative Department), approximately 30 volumes of this compilation are to be brought out by the end of 1977—the target date fixed by them for the completion of the work. The Committee are not satisfied with the slow progress made in this regard, as only one volume has been issued in one year and 9 more volumes still remain to be released. The Committee desire that steps should be taken to accelerate the pace of work so that all the 30 volumes are released within the target period.

The Committee are also not satisfied with the reply of the Ministry in regard to the publication of Supplements to earlier volumes of the main Compilation. According to the Ministry this work will be taken up as soon as possible, as priority is being given to the work relating to main volumes of the General Statutory Rules and Orders. The Committee reiterate their earlier recommendation made in para 73 of Ninth Report (Fifth Lok Sabha) that simultaneous action should be taken to bring out all the necessary supplements to earlier volumes of the main

Compilation, so that they are kept up-to-date as far as possible”.

102. In their progress report for the year 1975, the Ministry have stated as under:

“During the year 1975, about seventy-five per cent of the work involved in G.S.R.O. Volume XXII covering the remaining Acts under the subject-heading “Revenue” [from the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961 (46 of 1961) to the Customs Tariff Act, 1975 (51 of 1975)] has been completed. The galley proofs of this Volume have been checked and brought further up-to-date and sent to the Press for furnishing page proofs. Manuscripts of the G.S.R.O. Volume XXIII covering the subject headings ‘Road Transport’ and ‘Shipping and Navigation’ [up to and including the Marketing of Heavy Packages Act, 1951 (39 of 1951)] have been prepared and are being checked and finalised in consultation with the Ministry of Shipping and Transport. Further about seventy-five per cent of the work involved in the preparation of manuscripts of G.S.R.O. Volume XXIV covering the subject-heading ‘Shipping and Navigation’ [up to and including the Merchant Shipping Act, 1958 (44 of 1958)] has also been completed. These manuscripts will be referred to the administrative Ministry for scrutiny and confirmation as soon as they are completed.

The above-mentioned items of work have been completed during the year with the existing staff deployed on the job viz., two Assistants (one of whom is a non-technical hand). In the light of recommendations made by the Committee on Subordinate Legislation in para 71 of their Tenth Report, the question of augmenting strength of the staff for this work, was taken up with the Ministry of Finance. After intensive internal work study, it was considered that additional staff of three Legal Assistants and one typist would be needed for bringing the entire work up-to-date by the end of 1977. In view of the ban imposed on creation of new posts and the orders relating to strict economy in civil expenditure, approval of the Government at the highest level had to be obtained for creation of extra posts for this work after obtaining the concurrence of the Ministry of Finance. After fulfilment of all the necessary formalities involved, including con-

sultation with the Staff Inspection Unit of the Ministry of Finance, sanction could be secured only for two additional posts of Legal Assistants for this work. The question of recruiting suitable persons with the required qualifications and experience has been taken up with the Union Public Service Commission and the posts are likely to be filled up shortly. The work relating to bringing out supplements to the main volumes will be taken up as soon as the newly sanctioned posts are filled up and the incumbents get acquainted with the work. Every effort will be made to complete the work as quickly as possible and thereafter maintain the volumes up-to-date by the issue of supplements from time to time."

103. The Committee are concerned over the slow progress in the publication of the remaining Volumes of the Compilation containing General Statutory Rules and Orders. They note that as against the total of 30 Volumes proposed to be brought out by the Ministry of Law, Justice and Company Affairs (Legislative Department) by the end of 1977, the Ministry had published only 21 Volumes by the end of 1974. During the year 1975, not a single complete Volume could be brought out; only part of the work in respect of three Volumes—Nos. XXII—XXIV— was done. The Committee have no doubt that the Ministry will have to speed up their pace of work considerably if they are to adhere to the target date of December 31, 1977. The Committee urge the Ministry to make all-out efforts to ensure that the remaining work is completed by the target date.

104. The Committee also re-urge that simultaneous action should be taken to bring out all the necessary Supplements to earlier Volumes of the main Compilation so that they are kept up-to-date as far as possible.

(ii) Implementation of recommendation made in para 135 of Eighteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Registration of Electors Third Amendment) Rules, 1969 (Paras 42-43 of Ninth Report—Fifth Lok Sabha).

105. Rule 12 of the Registration of Electors Rules, 1960, as it stood prior to its amendments by S.O. 4540 of 1969, provided that every claim for the inclusion of a name in the electoral roll for a constituency and every objection to an entry therein shall be lodged within a period of 30 days from the date of publication of the roll in draft. The said S.O. amended the original rule 12 to provide that every claim for the inclusion of a name in the electoral roll and

every objection to an entry therein shall be lodged within a period of 30 days from the date of publication of the roll in draft or such shorter period as may be fixed by the Election Commission in this behalf.

106. The Committee objected to the reduction of this period and after considering the reply of the Ministry of Law, Justice and Company Affairs (Legislative Department) observed in paras 42-43 of their Ninth Report (Fifth Lok Sabha) as follows:—

“The Committee are not satisfied with the drastic reduction in the period of 30 days allowed for lodging claims and objections. In one case (Orissa), the period was reduced to just one day and in two cases (West Bengal), it was reduced to 7 days. In another case (Jammu and Kashmir), the period was reduced to 8 days. The Committee strongly feel that while the Election Commission should have the power to reduce the normal period of 30 days for filing claims and objections in case of actual emergency, the reduced period should not be so short as to deprive the electors of a fair opportunity for filing claims and objections.

The Committee, therefore, desire the Ministry of Law, Justice and Company Affairs (Legislative Department) to take early steps to amend the Registration of Electors Rules, 1960, for fixing a reasonable minimum period which should be available to the electors for filing claims and objections.”

107. Government did not accept the recommendation of the Committee. The Committee, after considering the matter in all its aspects, *inter alia*, observed as follows in para 135 of their Eighteenth Report (Fifth Lok Sabha):

“The Committee are not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Legislative Department) contained in para 134 of the Report. They feel that to avoid undue reduction of the prescribed period for filing claims and objections, rule 12 of the Registration of Electors Rules, 1960, should be amended so as to clearly indicate therein that the power to reduce the normal period of 30 days will be exercised by Election Commission in case of special revision only ordered under section 21(3) of the Representation of the People

Act, 1950, and that even in such a case, the reduced period should not be so short as to deprive the electors of a fair opportunity of filing claims and objections.

108. The Ministry have not accepted the above recommendation of the Committee and have explained the position as under:—

“...Section 21(3) of Representation of the People Act, 1950, provides that notwithstanding anything contained in subsection (2) the Election Commission may at any time for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency *in such manner as it may think fit*. Consequently it is not necessary for the Commission to follow the procedure prescribed in the Registration of Electors Rules, 1960 for the special revision of the electoral roll for any constituency or part of a constituency under this section. The manner of revision is left to the discretion of the Commission by statute. This statutory discretion cannot obviously be restricted by the provisions in the Registration of Electors Rules or by any other rule.

The special revision under section 21(3) is usually undertaken at very short notice, quite often on the eve of a general election, in order to rectify errors in the electoral roll due to inadvertent omission of the names of a large number of electors from a particular locality. In such cases, a house-to-house enumeration of the names left out of the electoral rolls is conducted and the list of such persons is published as the draft roll pertaining to a particular part of a constituency. In view of this there would be no cause for any claim or objection in respect of the entries in the draft rolls. If the further revision of the rolls and the final publication of the part in respect of which the list pertains is delayed, the persons included in the part will not be able to vote at the election at all and the purpose of the special revision will be defeated. In view of this, the period of lodging claims and objections in such cases is fixed at a very short period, so that the part of electoral roll subject to the special revision can be finally published before the date of the poll. In fact, the Commission has taken the view on past occasions that

special revision under section 21(3) is not even subject to the provision in section 23(3) which says that no amendment, transposition or deletion of any entry shall be made under section and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under section 23, after the last date for making nominations for an election in a constituency. Consequently the recommendation of the Committee on Subordinate Legislation that the power to reduce the normal period of 30 days will be exercised by the Commission only in the case of a special revision ordered under section 21(3) and even in such cases the reduced period should not be unduly short, will seriously prejudice the Commission in the performance of the Constitutional responsibility vested in it under article 324 of the Constitution regarding the superintendence, direction and control of the revision of the electoral rolls for all elections to Parliament and to the Legislature of every State.

In the case of ordinary revision under section 21(1) and (2) the revision has to be conducted in accordance with the Registration of Electors Rules, 1960. In such cases, normally the period allowed for lodging claims and objections in respect of a draft roll is 30 days whether the revision is intensive or summary. In no case the period in such cases would be fixed by the Commission at less than 15 days. Consequently, there would be sufficient time and fair opportunity for the electors to lodge claims and objections, if any to the draft roll. The rule, as it stands at present, does not therefore require any amendment.

As already pointed out the superintendence, direction and control of the revision of the electoral rolls for all elections to Parliament and Legislatures of States is vested in the Commission under article 324 of the Constitution and it would not be correct to impose any restriction on this Constitutional power of the Commission. The proposed amendment would also fetter the statutory discretion vested in the Commission for a special revision of the electoral rolls under section 21(3) and in any case, this statutory power cannot be curtailed or restrained by rules.

It is requested that the above facts may be placed before the Committee on Subordinate Legislation for its consideration."

109. The Committee note the assurance given by the Ministry of Law that in case of ordinary revisions, the Election Commission will in no case fix a period of less than 15 days for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein. The Committee desire the Ministry of Law to amend the rules at an early date for placing this assurance on a statutory footing.

110. As regards special revisions, the Committee are not convinced by the argument advanced by the Ministry of Law that fixation of a minimum period for lodging claims and objections would fetter the statutory discretion vested in the Election Commission by Section 21(3) of the Representation of the People Act, 1950, which empowers the Commission, for reasons to be recorded in writing, to direct at any time a special revision of an electoral roll "in such manner as it may think fit". In the opinion of the Committee, the discretionary power vested in the Commission by section 21(3) cannot be construed to empower the Commission to deny to a citizen an opportunity of lodging claims and objections.

111. A distinction has been sought to be made between the power of Government to provide for (ordinary) revisions "in the prescribed manner" under Section 21(1) of the Representation of the People Act, 1950, and the power of the Election Commission to direct a special revision "in such manner as it may think fit" under section 21(3) of the said Act. The Committee would like to point out that both the powers are delegated powers, and their exercise by the delegates should not only be in consonance with the objects of the parent law but should also conform to the principles of natural justice. The Committee note that in one case, the Election Commission have reduced the period allowed for lodging claims and objections to just one day. In the opinion of the Committee, this has not been a proper exercise of the delegated power by the Election Commission. The Committee desire that in case of special revisions under section 21(3), the period allowed for lodging claims and objections should not be less than 7 days.

- (iii) Implementation of recommendation made in para 83 of Eleventh Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Tourist Baggage (Amendment) Rules, 1971.

112. Rule 4A of the Tourist Baggage Rules, 1958, as inserted by the Tourist Baggage (Amendment) Rules, 1971, reads as under:—

“Exemption from customs duty on gifts, souvenirs, etc., imported by persons of Indian origin.—Persons of Indian origin who have been resident outside India for over two years may be allowed to import free of duty at the discretion of the proper officer, those articles which are to be given away as gifts, if such articles are such as could be passed free of duty under the Baggage Rules, 1970.”

113. It was felt that the words ‘*at the discretion of the proper officer*’ could result in different treatment to different persons and thus lead to discrimination.

114. The Ministry of Finance (Department of Revenue and Insurance) who were requested to state whether with a view to minimising the possibility of discriminatory treatment, they had any objection to laying down the guidelines that might be followed while giving exemptions under the above rule, stated under: —

“As regards the observation of the Committee that the words ‘*at the discretion of the proper officer*’ may result in different treatment to different persons leading to discrimination and the suggestion that guidelines to be followed while giving exemption should be laid, it may be stated that the exemptions contemplated under the rule are normally granted if the conditions laid down are satisfied, No discriminatory treatment is possible on account of words ‘*at the discretion of the proper officer*’ which is meant only to give the discretion to the officer to deny the concession to those persons who do not satisfy all the required conditions laid down for the exemption. However, in order to remove doubts, after consultation with the Ministry of Law, it is proposed to modify the text of rule 4A of the Tourist Baggage Rules, 1958, in the following manner which does not include the words ‘*at the discretion of the proper officer*’:

‘4A. Exemption from customs duty on gifts, souvenirs, etc., imported by persons of Indian origin.—Persons of Indian origin who have been resident outside India for

over two years may be allowed to import free of duty gifts including souvenirs if the proper officer is satisfied that such articles should be passed free of duty under the Baggage Rules, 1970.'"

115. The Committee on Subordinate Legislation were not satisfied with the above reply of the Ministry and recommended in para 83 of their Eleventh Report (Fifth Lok Sabha) as follows:—

"The Committee are not satisfied with the proposed Rule 4-A of the Tourist Baggage Rules, 1958, as the substitution of words 'if the proper officer is satisfied' for the words 'at the discretion of the proper officer' did not eliminate the possibility of discriminatory treatment. They desire the Ministry of Finance (Department of Revenue and Insurance) to delete the words 'the proper officer is satisfied that' from the proposed Rule 4A."

116. The Ministry of Finance (Department of Revenue and Insurance) have proposed another draft Rule 4-A in place of the existing one and have stated as under:—

"...the exemptions contemplated under the rule are normally granted if the conditions laid down are satisfied. While conferring administrative discretion upon an officer, it is necessary that some kind of guidelines should be laid down so that the action taken in such cases may not be arbitrary or discriminatory. This is also necessary so that the courts may also be in a position to exercise judicial scrutiny of such actions. However, in order to remove all doubts, after consultation with the Ministry of Law, it is proposed to modify the text of Rule 4(A) of the Tourist Baggage Rules, 1958, in the following manner to omit reference to the words 'at the discretion of the proper officer':—

"4A. Exemption from Customs duty on gifts, souvenirs etc. imported by persons of Indian origin.

Persons of Indian origin who have been resident outside India for over two years may be allowed to import free of duty gifts, including souvenirs, provided the proper officer, after taking into account all the circumstances, is satisfied that such articles are bonafide intended to be used as gifts, and further, that such articles could be passed free of duty under the Baggage Rules, 1970."

117. The Committee have considered the proposed revised draft of Rule 4A of the Tourist Baggage Rules, 1958, in all its aspects. The Committee agree with the proposed amendment as it substantially, though not wholly, meets the requirements of the earlier recommendations of the Committee.

NEW DELHI;
The 12th October, 1976.

C. M. STEPHEN,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

1

APPENDIX I

(Vide para 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.		Para No.	Summary
1	2	3	
1	8		<p>The Committee do not question the need for the provision enshrined in Rule 39A of the Conduct of Elections Rules, 1961, that in case where a voter fails to observe the prescribed procedure for recording of votes, his vote shall be liable to be cancelled. The limited point raised by the Committee is that the provision for cancellation of a ballot paper amounts to a penal provision for which the authority should flow from an express provision in the parent Act. The view of the Ministry of Law, Justice and Company Affairs (Legislative Department) that the cancellation of a ballot paper should not be construed as a penalty is not acceptable to the Committee. The expression "any other penalty" used in sub-rule (3) of Rule 39A lends support to the Committee's view that the cancellation of a vote is tantamount to a penalty. Even otherwise, the Committee feel that the cancellation of the vote of a citizen is a substantial matter, authority for which should flow from an express provision in the parent Act. The Committee, therefore, desire that Government should take early steps for the amendment of the Representation of the People Act, 1951 to include a provision therein for cancellation of a ballot paper when the voter fails to observe the prescribed procedure for recording his vote.</p>

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The Committee are not convinced by the reply of the Ministry of Law, Justice and Company Affairs (Legislative Department) that section 10 of the Indian Post Office Act, 1898, does not require the postage rates to be specified in the rules and that it requires rules to be made only regarding scales of weight and terms and conditions subject to which the declared rates shall be charged. The Committee feel that the Ministry of Law, Justice and Company Affairs (Legislative Department) have taken only a narrow view of the matter. In the opinion of the Committee, the rates cannot be divorced from scales of weight and as, conceded even by the Law Ministry, the scales have to be prescribed through the rules, the rates being inseparable from the scales of weight, have also to be prescribed through the rules. The Committee also feel that the power to prescribe the scales of weight, together with the rates, being a power envisaged to be exercised through the rules, could not be sub-delegated under section 75 of the Indian Post Office Act, which empowers the Government to sub-delegate powers other than rule-making powers. The Committee therefore, desire the Ministry of Communications to amend the Indian Post Office Rules so as to lay down the rates for sending the parcels to various countries, together with the relevant scales of weight, in the rules.

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The Committee note that the Ministry of Law, Justice and Company Affairs have admitted that the power of seizure was a substantial power, which should more appropriately flow from the parent Act. As the Medical Termination of Pregnancy Act, 1971, under which the Medical Termination of Pregnancy Rules, 1975, have been framed, does not contain an express provision conferring the power of seizure on the Chief

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Medical Officer, the Committee desire that either the Act should be amended so as to expressly confer the power of seizure on the Chief Medical Officer, or in the alternative, the provision for seizure should be omitted from the rules.

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The Committee have considered the matter in all its aspects. They note that there are conflicting views of State Governments in regard to the suggestion to amend the All India Services (Discipline and Appeal) Rules so as to empower the Central Government to deal with delinquent officers belonging to the IAS/IPS cadres when the State Governments were not willing to take action against them. In view of the fact that the IAS/IPS Cadres are primarily State-based cadres, the Committee feel that the present position may continue.

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The Committee are not convinced by the explanation of the Ministry of Works and Housing for not incorporating the terms and conditions of service of the Chairman and Member-Secretary of the Board in the Water (Prevention and Control of Pollution) Rules, 1975. Section 63(2) (e) of the Water (Prevention and Control of Pollution) Act, 1974, envisages rules to be framed regarding these terms and conditions. In view of this, the Committee recommend that the terms and conditions of service of the Chairman and Member-Secretary of the Board should either be incorporated in the rules or, in the alternative, the Act should be amended to empower the appropriate Government to regulate the terms and conditions of their service through administrative orders.

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The Committee are not happy over the wording of Rule 7(3) of the Water (Prevention and Control of Pollution) Rules, 1975 which in the

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absence of rules under section 12(3) of the Act, appears to confer unguided power on the Chairman in matters of promotion, confirmation, transfer and termination of service of the employees of the Board. The Committee take a serious note of the fact that rules relating to conditions of service of the employees of the Board under section 12(3) of the Act, which should have been framed within a period of six months from the commencement of the Act, have not yet been framed. They desire the Ministry of Works and Housing to frame these rules without any further delay.

7 35 The Committee note with satisfaction that on being pointed out, the Ministry of Works and Housing have agreed to amend Rule 9(5) of the Water (Prevention and Control of Pollution) Rules, 1975, so as to provide therein a time-limit within which the cases in which payments have been withheld would be placed before the Central Board. The Committee desire the Ministry to issue the amendment at an early date.

8 38 The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend the Water (Prevention and Control of Pollution) Act, 1974, at the earliest opportunity to specifically provide therein for making of rules in regard to the payment of allowances to persons associated with the Central Board.

9 42 The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend Rule 12 of the Water (Prevention and Control of Pollution) Rules, 1975, to provide for giving of an opportu-

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nity of representation to the consulting engineer before his services are terminated under this Rule. They desire the Ministry to issue the necessary amendment at an early date.

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The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Planning (Department of Health) have agreed to amend rule 13(4) of the Homoeopathy Central Council (Election) Rules, 1975, to provide that election papers will be sent to the electors by registered post, instead of under certificate of posting, as at present. The Ministry have also agreed to so amend Rule 14 that voting papers received by unregistered post will not be rejected. The Committee desire that amendments to the above effect should be issued at an early date.

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The Committee note the argument advanced by the Ministry of Agriculture and Irrigation (Department of Food) that if the rates of House Rent Allowance were prescribed in the Central Warehousing Corporation (Staff) Regulations, 1966, they would have to be amended every time there was a change in the House Rent Allowance. In the opinion of the Committee, the above argument advanced by the Ministry is an argument based merely on expediency. The Committee would like to draw the attention of the Ministry to Section 42(2) (a) of the Warehousing Corporation Act, 1962, which envisages the conditions of service and the remuneration payable to the officers and other employees of the Corporation to be regulated through regulations. In view of this, the Committee desire that the rates of the House Rent Allowance should be laid down in the Regulations.

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12	53	<p>The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) that as no exemption has been granted to any individual manufacturer/packer so far, and the Packaged Commodities (Regulation) Order, 1975, is of a temporary duration, there is no need of its amendment on the lines suggested by the Committee. In the opinion of the Committee, the fact that no exemption has so far been granted to an individual manufacturer/packer is no guarantee that such an exemption will not be given in future also. The Committee would like to make it clear that they are not against the principle of exemption as such. They only want that the benefits of exemption should be available to all manufacturers/packers similarly placed. With this end in view, they desire that paragraph 12 of the Packaged Commodities (Regulation) Order, 1975 should be amended so as to omit therefrom the power to grant exemption to individual manufacturers/packers, as contradistinguished from classes of manufacturers/packers.</p>
13	56	<p>The Committee note with satisfaction that, on being pointed out, the Delhi Administration have agreed to prescribe the fees to be charged by the Driving Training Schools for giving instructions in training by rules, instead of through executive orders, as at present. The Committee desire the Delhi Administration to amend the Delhi Motor Vehicle Rules accordingly at an early date.</p>
14	61	<p>The Committee note that the Ministry of Health and Family Planning (Department of Health) have admitted in their reply that Rule 134A of the Drugs and Cosmetics Rules, 1945, was relatable to section 10 and Rule 144A, <i>ibid.</i>, was rela-</p>

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table to section 18 of the Drugs and Cosmetics Act, 1940. As the subject-matter of these rules was not mentioned in the relevant rule-making power sections 12 and 33, the Committee feel that, in accordance with the recommendation of the Committee contained in paragraph 29 of their 14th Report (Fifth Lok Sabha), sections 10 and 18 should also have been cited in the preamble to the above Rules for facility of referencing. Unfortunately, the Ministry of Health and Family Planning (Department of Health) failed to do this. The Committee would like to re-stress their earlier recommendation made in para 29 of the Fourteenth Report (Fifth Lok Sabha) that either the rule-making power section should enumerate all matters on which rules have to be framed under various sections of the Act or, in the alternative, the preamble to the rules should refer not only to the rule-making power section but also to other sections of the Act which relate to the subject-matter of the rules framed thereunder.

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The Committee note with concern that retrospective effect to the eight 'Orders' mentioned in Appendix II has been given without an authorisation to this effect in the parent statutes. As without such an authorisation, no subordinate legislation can operate retrospectively, the Committee feel that the retrospective effect given to the 'Orders' in question was without due legal authority. The Committee, therefore, desire the Ministries/Departments concerned either to give effect to the 'Orders' in question from the dates of their publication in the Gazette, or, alternatively, to take steps to incorporate a provision in the relevant Acts empowering Government to give retrospective effect to these 'Orders'.

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The Committee note that final replies have not yet been received from the Ministries of

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		Commerce and Industrial Development although the matter was taken up with them more than two years back. The Committee cannot help expressing unhappiness over non-receipt of final replies from these Ministries, despite reminders. The Committee need hardly point out that Ministries/Departments of Government are expected to give prompt replies to the points raised by Parliamentary Committees.
17	70	The Committee have repeatedly stressed that if in a particular case the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. The Committee are distressed to note that despite their repeated recommendation, the requisite clarification was not given in as many as 29 cases listed in Appendix III. The Committee take a serious view of non-compliance with an oft-repeated recommendation of the Committee in such a large number of cases. The Committee re-stress their earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha) and desire the Department of Parliamentary Affairs to bring this recommendation to the notice of all the Ministries/Departments of Government of India for strict compliance in future.
18	71	The Committee are not satisfied with the explanation of the Ministry of Finance (Department of Expenditure) that the requisite explanatory memorandum was added to the Supplementary (Second Amendment) Rules, 1972, while sending them to the Press, but it was not printed along with the rules in the Gazette. The Committee need hardly re-emphasise their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility

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of a Ministry/Department does not cease with their sending an 'Order' to the Press. After an 'Order' has been published in the Gazette, the Ministry/Department concerned should take immediate steps to examine whether it has been correctly printed, and, if necessary, to issue a corrigendum thereto.

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The Committee note that the explanation of the Ministry of Finance (Department of Revenue and Banking) for not appending the requisite explanatory memorandum to the Income-tax (Third Amendment) Rules, 1975, is that section 295(4) of the Income-tax Act 1961, which empowers the Central Board of Direct Taxes to give retrospective effect to the rules to be framed thereunder also provides that, unless the contrary is permitted (whether expressly or by necessary implication) no retrospective effect shall be given to any rule so as to prejudicially affect the interests of the assessee. In the opinion of the Committee the above provision of the Income-tax Act, which they consider as a salutary one, does not take away the need for appending the requisite explanatory memorandum to the rules, when retrospective effect is given. They would in this connection like to make it clear that the purpose underlying the appending of the explanatory memorandum is not only to assure the public that no one is likely to be adversely affected as a result of retrospective effect being given to the rules but also to apprise them of the circumstances in which the retrospective effect has become necessary. The Committee, therefore, desire that explanatory memorandum should be appended in all cases where retrospective effect is given to the rules, irrespective of whether the parent Act contains a provision on the lines contained in section 295(4) of the Income-tax Act. The Committee also

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desire the Department of Parliamentary Affairs to bring this recommendation of the Committee to the notice of all the Ministries/Department of Government of India for guidance and strict compliance in future.

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The Committee note that the 'Rules' referred to in the entry under column 13 of the Schedule to the National Test House, Calcutta and Bombay, Assistant Director (Admn.) (Grade I & II) Recruitment Rules, 1975, are the 'Union Public Service Commission (Exemption from Consultation) Regulations, 1958'. The Committee desire the Ministry of Supply and Rehabilitation (Department of Supply) to amend the entry under column 13 so as to specifically mention these Regulations. The Committee further desire that if, while framing subordinate legislation, the Ministries/Departments find it necessary to refer to other rules, they should invariably mention the precise names of such rules, so that the public are not kept aguessing as to the identity of the rules to which a reference has been made.

21 (i)

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The Committee are not happy over the casual manner in which the Ministry of Education and Social Welfare (Department of Education) had acted in this case. Although the National Fitness Corps Directorate (Class I and Class II Posts) Recruitment Rules were framed by the Ministry in 1964, these were notified only in 1972—after a time-lapse of nearly 8 years. In the meantime, the matters were apparently regulated by executive orders. The Ministry have ascribed the delay in the notification of the rules to the impending winding up of the National Fitness Corps Directorate, but ironically the rules were notified only shortly before the Directorate was wound up. And even when the notification was issued, the Ministry did not take care to see whether the rules, which had been framed 8 years back, took

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		note of the changed conditions. The Committee feel that this was a case of gross carelessness.
21 (ii)	83	In the opinion of the Committee, the proper course for the Ministry of Education and Social Welfare (Deptt. of Education) was to notify the rules after these had been approved by the U.P.S.C., and to modify or annul them, as and when the necessity arose. This unfortunately was not done. The Committee trust that the Ministry of Education and Social Welfare will take care to avoid such lapses in future.
22	88	The Committee note that, on being pointed out, the Delhi Sikh Gurdwaras (Amendment) Bill, 1974 has been amended so as to incorporate in the principal Act the revised rule-laying formula, as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha).
23 (i)	93	The Committee regret to note that neither the Department of Personnel and Administrative Reforms nor the Ministry of Shipping and Transport (Transport Wing) had taken any action to rectify the printing errors in their respective notifications till the Committee took up the matter with them. The Committee have repeatedly stressed that the responsibility of a Ministry/Department does not cease with the sending of a notification to the press. After the rules, regulations, etc., have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto. The Committee are constrained to observe that a serious view will have to be taken of such lapses in future. The Committee would also like the Department of Parliamentary Affairs to bring the observations of the Committee made in this paragraph to the notice of all the Ministries/Department of Government for strict compliance in future.

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(ii)	94	The Committee cannot help expressing regret over the negligence shown by the Ministry of Energy in the publication of the Central Power Engineering (Class I) Service (Second Amendment) Rules 1974. Before sending the notification to the Press, the Ministry had failed to ensure that it was complete in all respects and subsequently, they had not cared to see whether it had been properly published. The Committee would like the Ministry of Energy to take care to avoid such lapses in future.
(iii)	95	The Committee note that while the Department of Personnel and Administrative Reforms and the Ministry of Shipping and Transport (Transport Wing) have either initiated or are initiating corrective action by issuing a corrigendum/addendum, the Ministry of Energy (Department of Power) have not given any indication in this regard. The Committee desire the Ministry of Energy (Department of Power) to take necessary corrective action without any further delay.
24	98	The Committee regret to note that in spite of their repeated recommendations, short titles were not given to the 14 'Orders' mentioned in Appendix IV. As the 'Orders' in question were issued as early as 1971-72, the Committee feel that no purpose will be served by issuing the amendments at this stage for giving short titles to these 'Orders'. They would, however, like the Department of Parliamentary Affairs to re-emphasise on all the Ministries/Departments of Government of India the need of invariably giving short titles to rules, whether principal or amending, for facility of reference and tracing by all concerned.
25 (i)	103	The Committee are concerned over the slow progress in the publication of the remaining

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Volumes of the Compilation containing General Statutory Rules and Orders. They note that as against the total of 30 Volumes proposed to be brought out by the Ministry of Law, Justice and Company Affairs (Legislative Department) by the end of 1977, the Ministry had published only 21 Volumes by the end of 1974. During the year 1975, not a single complete Volume could be brought out; only part of the work in respect of three Volumes—Nos. XXII—XXIV—was done. The Committee have no doubt that the Ministry will have to speed up their pace of work considerably if they are to adhere to the target date of December 31, 1977. The Committee urge the Ministry to make all-out efforts to ensure that the remaining work is completed by the target date.

(ii) 104

The Committee also re-urge that simultaneous action should be taken to bring out all the necessary Supplements to earlier Volumes of the main Compilation so that they are kept up-to-date as far as possible.

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The Committee note the assurance given by the Ministry of Law that in case of ordinary revisions, the Election Commission will in no case fix a period of less than 15 days for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein. The Committee desire the Ministry of Law to amend the rules at an early date for placing this assurance on a statutory footing.

27(i) 110

As regards special revisions, the Committee are not convinced by the argument advanced by the Ministry of Law that fixation of a minimum period for lodging claims and objections would fetter the statutory discretion vested in the Election Commission by Section 21(3) of the Representation of the People Act, 1950, which

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empowers the Commission, for reasons to be recorded in writing, to direct at any time a special revision of an electoral roll "in such manner as it may think fit". In the opinion of the Committee, the discretionary power vested in the Commission by section 21(3) cannot be construed to empower the Commission to deny to a citizen an opportunity of lodging claims and objections.

(ii) 111

A distinction has been sought to be made between the power of Government to provide for (ordinary) revision "in the prescribed manner" under section 21(1) of the Representation of People Act, 1950, and the power of the Election Commission to direct a special revision "in such manner as it may think fit" under section 21(3) of the said Act. The Committee would like to point out that both the powers are delegated powers, and their exercise by the delegates should not only be in consonance with the objects of the parent law but should also conform to the principles of natural justice. The Committee note that in one case, the Election Commission have reduced the period allowed for lodging claims and objections to just one day. In the opinion of the Committee, this has not been a proper exercise of the delegated power by the Election Commission. The Committee desire that in case of special revisions under section 21(3) of the Representation of the People Act, 1950, the period allowed for lodging claims and objections should not be less than 7 days.

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The Committee have considered the proposed revised draft of Rule 4A of the Tourist Baggage Rules, 1958, in all its aspects. The Committee agree with the proposed amendment as it substantially, though not wholly, meets the requirements of the earlier recommendations of the Committee.

APPENDIX II

(Vide paras 62, 64-65 of the Report)

List of 'Orders' to which retrospective effect has been given without an authorisation in the parent statute.

S.No.	Short title and No. of 'Order'	Min./Deptt.	Gist of reply
(1)	(2)	(3)	(4)
1.	The U.G.C. (Disqualification, Retirement and Conditions of Service of members) 2nd Amendment Rules, 1973 (G.S.R. 1006 of 1973).	Education and Social Welfare (Deptt. of Education)	The Ministry of Law have advised to delete provision regarding giving of retrospective effect so as to bring it in force from the date when these were published in the Gazette.
2.	The Central Silk Board (Research and Service Stations) Consolidated Recruitment (Amendment) Rules, 1972 (G.S.R. 736 of 1972).	Commerce	No reply received.
3.	The Cement Control (2nd Amendment) Order, 1973 (S.O. 246-E of 1973).	Industrial Development	Interim reply received.
4.	The Cost Accounting Records (Tractors) Rules, 1971 (G.S.R. 1700 of 1971).	Law, Justice and Company Affairs (Deptt. of Company Affairs)	The Notification was sent to the Press on 28-6-71. For various technical reasons, the Press could not publish the rules in the Gazette till 13-11-71.
5.	The Coal Mines Labour Welfare Fund (1st Amendment) Rules, 1973 (G.S.R. 504 of 1973)	Labour	The Coal Mines Labour Welfare Fund Act, 1947 and the Rules framed thereunder, of course, do not contain any specific provisions conferring powers on the Executive to amend the Rules with retrospective effect. The necessity to amend rule 3(1) (a) (i) of the Coal Mines Labour Welfare Fund Rules, 1949 arose as the Joint Secretary who was Chairman of the Coal Mines Labour Welfare Fund Advisory Committee was promoted as Additional Secretary with effect from 25-8-1972. The said rule as it stood then did

(1)	(2)	(3)	(4)
			<p>not provide for appointment of Additional Secretary to the Government of India as Chairman of the said Committee. The Government's intention had been to allow him to continue as Chairman. This clearly explains the necessity to amend the rule with effect from the date the officer took over as Additional Secretary.</p>
<p>6. The Apprenticeship Rules, 1971 (G.S.R.1426 of 1971).</p>	Labour		<p>It had been the impression all the time that the power to make a rule having retrospective effect, was inherent in the Apprentices Act, 1961. Unfortunately the ruling of the Attorney General on the question of giving retrospective effect to Rules/Orders had not come to the notice of this Department. This ruling and the fact that the Apprentices Act 1961 does not confer any powers to make rules with retrospective effect has been noted for strict compliance in future.</p>
<p>7. The Territorial Army (Amendment) Rules 1974 (S.R.O. 70 of 1974).</p>	Defence		<p>Government order, partially modifying rules 20-A and 20-B of Territorial Army Rules, 1948, was issued on 19th November, 1971, vide Government of India, Ministry of Defence letter No. 68416/TA/2560/S.O. II/D(GS-III). Since the above Government Order has mandatory status, it was necessary that the amendments proposed vide S.R.O. should be granted retrospective effect i. e., the date of issue of the Government letter.</p>
<p>8. The Naval Ceremonial Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 (S.R.O. 54 of 1973).</p>	Defence		<p>The Order was based on the authority of the Government orders issued on 16-5-70. No candidate was adversely affected. The incorporation of the provisions of Government order was necessary in the statutory rules also for technical requirements and this could be done only on 3-3-1973.</p>

APPENDIX III

(Vide paras 68-69 & 70 of the Report)

List of 'Orders' framed under proviso to Article 309 of the Constitution to which retrospective effect has been given.

S.No.	Short title and No. of 'Order'	Min. /Deptt.	Gist of reply	Remarks
(1)	(2)	(3)	(4)	(5)
1.	The Civil Service (13th Amdt.) Regulations, 1972 (G.S.R. 749 of 1972).	Finance (Defence)	The reason for giving retrospective effect to the 'Order' is that the provision contained in it had already been implemented in the form of Government Orders. It only indicated what was actually being done.	The Explanatory memo. has not been printed along with the order in the Gazette.
2.	The Supplementary (2nd Amendment) Rules, 1972 (G.S.R. 642 of 1972).	Finance (Deptt. of Exp.)	Explanatory memo was added below the Order but not published by the Press along with the Order.	Do.
3.	The Indian Railway Service of Engineers Recruitment (2nd Amdt.) Rules, 1971 (G.S.R. 593 of 1971).	Railways	All these were amendments which were issued in pursuance of certain general policy decisions taken by the Government from time to time. The retrospective effect to the amendments was only by a few months. The explanatory note, as desired by the Committee on Subordinate Legislation, is now published simultaneously with the amendments.	Do.
4.	The Indian Railway Service of Electrical Engineers Recruitment (2nd Amdt.) Rules 1971 (G.S.R. 594 of 1971).			
5.	The Indian Railway Service of Signal Engineers Recruitment (2nd Amdt.) Rules, 1971 (G.S.R. 595 of 1971).			

(1)	(2)	(3)	(4)	(5)
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| 6. | The Indian Railway Stores Service Rectt. (2nd Amdt.) Rules, 1971 (G.S.R. 596 of 1971). | | | |
| 7. | The Indian Railway Service of Mechanical Engineers Rectt. (2nd Amdt.) Rules, 1971 (G.S.R. 597 of 1971). | | | |
| 8. | Indian Railway Service of Engineers Rectt. (Amdt.) Rules, 1972 (G.S.R. 722 of 1972). | | | |
| 9. | Indian Railway Service of Signal Engineers Rectt. (Amendment) Rules, 1972 (G.S.R. 723 of 1972). | | | |
| 10. | Indian Railway Service of Electrical Engineers Rectt. (Amdt.) Rules, 1972 (G.S.R. 724 of 1972). | | | |
| 11. | Indian Railway Stores Service Rectt. (Amdt.) Rules, 1972 (G.S.R. 725 of 1972). | | | |
| 12. | Indian Railway Traffic Service Rectt. (2nd Amdt.) Rules, 1972 (G.S.R. 1640 of 1972). | | | |
| 13. | Indian Railway Accounts Service (Rectt.) Third Amendment Rules, 1972 (G.S.R. 1641 of 1972). | | | |
| 14. | The Coal Mines Provident Fund (2nd Amdt.) Scheme, 1970 (G.S.R. 14 of 1971). | | | |
| 15. | The Andhra Pradesh Coal Mines Provident Fund (2nd Amdt.) Scheme, 1970 (G.S.R. 15 of 1971). | | | |
| 16. | The Rajasthan Coal Mines Provident Fund (2nd Amdt.) Scheme, 1970 (G.S.R. 16 of 1971). | | | |

Railways

Labour

All these were amendments which were issued in pursuance of certain general policy decisions taken by the Government from time to time. The retrospective effect to the amendments was only by a few months. The explanatory note, as desired by the Committee on Subordinate Legislation, is now published simultaneously with the amendments.

The explanatory memo. has not been printed along with the order in the Gazette.

Omission regretted.

17. The Neyveli Coal Mines Provident Fund (and Amdt.) Scheme, 1970 (G.S.R. 17 of 1971).					
18. The Employees' Family Pension (First Amdt.) Scheme, 1972 (G.S.R. 978 of 1972).					
19. The Coal Mines Provident Fund (Amdt.) Scheme, 1972 (G.S.R. 1187 of 1972.)	Labour	Omission regretted			
20. The Employees' Family Pension (2nd Amdt.) Scheme, 1972 (G.S.R. 1188 of 1972).					
21. The Personal Injuries (Compensation Insurance) Amdt. Scheme, 1973 (S.O. 141-E of 1973).					
22. Amendment to Notification No. S.O. 1762 dated 26-4-69 (S.O. 2185 of 1972).	Works and Housing (Directorate of Estates)		Giving of retrospective effect did not adversely affect any person. Every care is now being taken to see that retrospective effect is not given to such notifications.	The Explanatory Memorandum has not been printed along with the Order in the Gazette.	71
23. The Central Engineering Service (Roads) of the Ministry of Transport and shipping (Roads Wing) Class I, Recruitment (Amendment) Rules, 1973 (G.S.R. 684 of 1973).	Shipping and Transport (Roads Wing).		The Explanatory memorandum was incorporated below the main notification. This does not appear to have been published due to some mistake on the part of the press. Omission regretted.		
24. The Indian Statistical Service (Third Amendment) Rules, 1971 (G.S.R. 75 of 1972).	Cabinet Sectt. (Deptt of personnel & Administrative Reforms).		Retrospective effect has been given to the rules for correcting the position of posts of the Town and Country Planning Organisation encadred in Grade IV of the Indian Statistical Service.	The explanatory memorandum has not been printed along with the Order in the Gazette.	
25. The Redeployment of Surplus staff against vacancies in the Central Service and posts, Class III (Amendment) Rules, 1972 (G.S.R. 669 of 1972).	do		Retrospective effect has been given to provide a statutory cover to the redeployment of surplus staff against the promotional posts.	do.	

(1)	(2)	(3)	(4)	(5)
26.	The Central Civil Services (Classification, Control and Appeal) Second Amendment Rules, 1972 (S.O. 1600 of 1972).	Cabinet Secretariat (Deptt. of Personnel and Administrative Reforms)	The amendment was issued to rectify an omission.	The Explanatory Memorandum has not been printed along with the Order in the Gazette.
27.	The National Defence Academy (Class I and Class II posts) Recruitment (Second Amendment) Rules, 1971 (S.R.O. 292 of 1971).	Defence	Explanatory memorandum could not be issued. Necessary action to publish the same is being taken.	Do.
28.	The Indian Foreign Service (Recruitment Cadre, Seniority and Promotion) Amendment Rules, 1973 (G.S.R. 211 of 1973).	External Affairs	—	No reply from the Ministry.
29.	The Central Food Laboratory, Calcutta (Class III) posts of Technical Assistant and Stenographer (Junior) Recruitment Rules, 1972 (G.S.R. 745 of 1972).	Health and Family Planning (Deptt. of Health)	Non-publication of Explanatory memorandum regretted.	—

APPENDIX IV

(Vide paras 96—98 of the Report)

List of 'Orders', which do not bear a short title

S. No.	Short title and No. of 'Orders'	Ministry/ Department	Gist of Reply
(1)	(2)	(3)	(4)
1	The Central Electrical Engineering Service Class II (Amdt.) Rules, 1971 (G.S.R. 269 of 1971).	Works & Housing (Works Division)	The Ministry proposes to revise the recruitment rules relating to the Central Engineering Services and notify comprehensive recruitment rules with appropriate short titles after decisions on changes to be made in the cadre structure have been taken. Thereafter, all amendments will be issued with appropriate short titles.
2	The Central Engineering Service Class I (Amendment) Rules, 1971 (G.S.R. 270 of 1971).		
3	The Central Electrical Engineering Service (Class I post) Recruitment (Amendment) Rules, 1971 (G.S.R. 271 of 1971).		
4	The Central Engineering Service (Class II) (Amendment) Rules, 1971 (G.S.R. 272 of 1971).		
5	The Central Engineering Service, Class I Recruitment Rules, 1971 (G. S.R. 1702 of 1971).		
6	The Central Engineering Service Class II Recruitment (Amendment) Rules, 1971 (G.S.R. 1703 of 1971).		
7	The Central Electrical Engineering Service Class I Recruitment (Amendment) Rules, 1971 (G. S.R. 1704 of 1971).		
8	The Central Electrical Engineering Service Class II Recruitment (Amendment) Rules, 1971 (G.S.R. 1705 of 1971).		

(1)	(2)	(3)	(4)
9 The Levy of Octroi on Goods and Animals brought within the limits of Ferozepur Cantonment Bye-laws (S.R.O. 133 of 1971).	} Defence	No final reply received.	
10 Imposition of Entertainment Tax in the Kanpur Cantonment Bye-laws (S.R.O. 366 of 1971).			
11 Amendment to Notification No. S.O. 1762 dated 26-4-1969 in the Ministry of Health and Family Planning and Works and Housing and Urban Development (S.O. 2185 of 1972).	Works & Housing (Directorate of Estates).	It is admitted that this was not in consonance with the recommendations of the Committee. The Notification was an amendment to an earlier Order which does not contain short title. The Ministry consider that an amendment to the notification for purpose of indicating short title now is not really necessary.	
12 The Regional Offices and Field Publicity Mobile Units (Recruitment to Class III & Class IV posts) Recruitment (Amendment) Rules, 1971 (G.S.R. 1833 of 1971).	Information and Broadcasting.	The amendment made by the Order shall be deemed to have been carried out in the principal rules and the notification ceased to have any separate existence. In view of this it is not considered necessary to issue any amendment. The recommendations of the Committee about giving of short title to the 'Orders' have been noted for compliance in future.	
13 The Extension of Coal Mines Provident Fund Scheme to the State of Jammu and Kashmir (G.S.R. 1451 of 1971).	Labour	It is observed that at least as many as 9 notifications were issued subsequent to this notification. In case the short title clause is now added in the notifications in question, amendments will also have to be issued to the notifications issued subsequently during 1971 so far as their amendment number is concerned. However, the recommendation of the Committee will be borne in mind while sending notifications for publication in future.	

(1)	(2)	(3)	(4)
14	Amendments to the Rules Regulating the Workmen's Contributory Provident Fund (S. Cs. 2159, 2160 and 2161 of 1972).	Finance (Deptt. of Expenditure).	The notifications were issued with a view to make certain entries in the late Finance Department Resolution No. F. 33(3)-R11/44, dated 16-4-45 under which a Contributory Provident Fund was introduced for workmen in Central Government employment. It is, therefore, not considered necessary to indicate the short title to the Rules.

MINUTES

1778 LS-6.

APPENDIX V

(Vide para 3 of the Report)

XCIV

MINUTES OF THE NINETY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77).

The Committee met on Thursday, the 17th June, 1976 from 11.00 to 12.30 hrs.

PRESENT

Shri C. M. Stephen—*Chairman*.

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri S. A. Shamim
12. Shri P. Ranganath Shenoy
13. Shri Satyendra Narayan Sinha
14. Shri Karan Singh Yadav

SECRETARIAT

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

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee (Annexure).

3. A point was raised that, in the absence of relevant extracts from the original 'Orders' the amending 'Orders' laid on the Table of the Lok Sabha, which were circulated to members did not serve the underlying purpose. The Committee decided that such of the 'Orders', as might be selected by the Chairman for being placed before the Committee, should be accompanied by the relevant extracts from the original 'Orders' and the parent statutes. Copies of other 'Orders' might continue to be circulated to members as before.

The Committee then adjourned to meet again at 15.30 hours.

ANNEXURE

Address by the Chairman to the Members of the Committee on Subordinate Legislation (1976-77)

(17th June, 1976)

Friends,

It gives me great pleasure to welcome you to this first sitting of the newly-constituted Committee on Subordinate Legislation of Lok Sabha.

2. These days when in the context of the Welfare State, the nature and range of the functions of Government are fast changing, the responsibilities of the Legislatures are also getting increasingly onerous. There is hardly any walk of a citizen's life which is not regulated by the State in one way or the other. In such a situation, it is impossible for any body of legislators to deliberate upon, discuss and approve every little detail of legislation which may be necessary for proper administration. Apart from the pressure on parliamentary time, the technicality of the subject-matter, the need to meet unforeseen contingencies, the requirement of flexibility etc., make delegated legislation a necessity. The Legislature can only lay down the broad policy and principles of a legislation, leaving the details to be worked out by the executive.

3. Delegation of legislative power, 'inevitable and indispensable' as it is, has certain risks inherent in it. One of the risks pointed out is that the parliamentary statute may tend to be skeletal, containing only the barest general principles omitting matters of substance which may have a vital bearing on the life of the citizen. Another risks pointed out is that the powers delegated might be so wide as to subject the citizen to harsh or unreasonable action by the adminis-

tration. The third risk is that some powers may be so loosely defined that the areas they are intended to cover may not be clearly known. All these risks are there. Our job is to evolve safeguards against these risks.

4. The Committee's responsibility starts right from the stage a Bill is introduced in the House. Under one of the Directions by the Speaker, the Committee has been empowered to examine all Bills providing for rule-making power to see whether suitable provisions for laying and modification of rules to be framed thereunder have been made in the Bills.

Under another Direction, the Speaker may refer a Bill containing provisions for delegation of legislative powers to the Committee on Subordinate Legislation. When a Bill is so referred, the Committee is required to examine, *inter alia*, the extent of the powers sought to be delegated; and if the Committee is of opinion that the provisions contained in the Bill delegating legislative powers should be annulled in whole or in part, or should be amended in any respect, it may report that opinion and the grounds therefor to the House before the Bill is taken up for consideration in the House. The members of this Committee owe a special responsibility to see that full use is made of this Direction.

5. The broad principles which are to govern the work of the Committee are enshrined in Rule 320. In addition, the Committee has over the years evolved some further guiding principles. To mention some of these:

- (i) It is a well-known maxim that no fee can be levied under a rule unless the parent Act expressly authorises such a levy. However, the Committee has from time to time come across cases where fees had been levied under the rules without an express authorisation in the parent law. In such cases, the Committee has invariably been insisting that either the provision for fee in the rules should be omitted or alternately Government should come before Parliament for obtaining an express power for the levy of the fees through an amendment of the relevant Act.
- (ii) Sometimes for ensuring compliance with the provisions of the law, the power of search and seizure has to be vested in the Executive. The Committee has desired that in all such cases, not only the minimum rank of the Government officer empowered to exercise the power should

be specified but that such safeguards as presence of witnesses, preparation of inventories and giving a copy thereof to the persons concerned should be provided for in the Rules.

- (iii) There is another well-known maxim that a delegate cannot sub-delegate his legislative power unless there is an express authorisation to that effect in the parent law.

As we come across new problems, new solutions are to be found and new guide-lines evolved; and this is a continuous process.

6. The root of abuse of subordinate legislation lies in unfettered, unguided discretionary powers. It is our duty to see that such powers are circumscribed within well-defined limits and adequate safeguards provided against their possible abuse. The Committee on Subordinate Legislation of Lok Sabha has made a number of recommendations to this end. The following are some of the broad principles underlying the recommendations of the Committee:

- (i) As far as possible, guidelines/criteria to be followed by the authority vested with the discretionary powers should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm, it should be required to record in writing the reasons for such deviation.
- (iii) Before any adverse action is taken against a party it should be given a reasonable opportunity of being heard and after a decision adversely affecting a party has been taken, it should have the right of appeal or representation, as the case may be.
- (iv) In cases where an authority concerned is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (v) The provisions of rules which may make a citizen liable to a penalty should be well-defined and not worded vaguely. [The expression such as 'reasonable distance' 'adequate space' and 'adequate height' contained in the Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970 were objected to by the Committee who insisted that the bye-laws should be amended to indicate precise measurements.]

- (vi) In case of rules relating to disciplinary proceedings, not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority also laid down in the rules.

7. The Committee is concerned not merely with legality of rules. It bears in mind that the ultimate aim of all legislation (including subordinate legislation) is the larger public good. The Committee, therefore, sees that the subordinate legislation framed by the executive not only does not transgress the limits laid down in the parent law but it also conforms to the canons of equity and natural justice and does not result in unnecessary harassment to the general public.

8. It is well known that the parties which are affected by a given set of rules are in a better position to say how the rules work in actual operation. Likewise, persons who have to deal with the working of rules in their professional capacity, such as lawyers, accountants, actuaries, etc. have some special knowledge which can profitably be made use of. As a result of consultation with them, not only unnecessary rigours of a subordinate law can be removed but such law made more purposive, and in tune with the needs of the times. Keeping this in view, the Committee on Subordinate Legislation of Lok Sabha has started inviting comments/suggestions of Chambers of Commerce, trade unions, professional bodies, etc. on the provisions of the rules with which they may be concerned, wherever considered necessary.

9. One of the functions of the Committee on Subordinate Legislation is to examine whether a rule gives retrospective effect to any of the provisions in respect of which the parent law does not expressly give any such power. It is now well understood that a law made by the Legislature may itself empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect. The Committee on Subordinate Legislation of Lok Sabha has recommended that retrospective effect to a rule should be given only in unavoidable circumstances, and when given, the rule should be accompanied by an explanatory memorandum affirming that no one is likely to be adversely affected as a result of retrospective effect.

10. The Committee has taken a serious view of delays by Ministries/Departments in laying 'Orders' on the Table and has pointed out that such delays are against the spirit of the relevant provisions

in the Act which require that 'Orders' should be laid before Parliament as soon as possible after they are published. The Committee has urged that in case it is not possible, due to any unavoidable reason, for a Ministry or Department to lay an 'Order' on the Table within the prescribed time-limit of 15 days after its publication, a statement showing reasons for delay should also be laid along with the 'Orders'. The Committee has also started calling the Secretaries of the concerned Departments to orally explain the delay in cases where it exceeds six months. This has resulted in considerable improvement in position.

11. Although under the Directions of the Speaker, Lok Sabha Secretariat is to examine all 'Orders' and prepare memoranda for consideration by the Committee, it does not preclude the Members from examining the 'Orders' and giving suggestions. For this purpose, copies of all the 'Orders' laid on the Table of the House are circulated to Members.

12. Before I conclude, I would like to stress that, in discharging our duties, we would not be acting in hostility to the Executive. Our job is the implementation of the will of Parliament and our efforts should be complementary.

13. It is the tradition of the Committee that all its decisions are arrived at unanimously and party considerations never affect our deliberations. I hope this tradition would be continued by us too.

Thank you.

XCV

MINUTES OF THE NINETY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Thursday, the 17th June, 1976 from 15.30 to 17.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai

5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri P. Ranganath Shenoy
12. Shri Satyendra Narayan Sinha
13. Shri Karan Singh Yadav

SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

2. The Committee considered Memoranda Nos. 361 to 363 on the following subjects:

Sl. No.	Memo. No.	Subject
(i)	361	The Delhi Sikh Gurdwaras (Amendment) Bill, 1974 (as introduced in Lok Sabha on 26-7-1974).
(ii)	362	* * *
(iii)	363	Printing and Publication of Compilation containing General Statutory Rules and Orders (Paras 70—74 of Tenth Report and paras 139-140 of Eighteenth Report (Fifth Lok Sabha).

(i) The Delhi Sikh Gurdwaras (Amendment) Bill, 1974 (as introduced in Lok Sabha on 26-7-1974).

(Memorandum No. 361)

3. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out by them, the Delhi Sikh Gurdwaras (Amendment) Bill, 1974 had been amended so as to incorporate in the parent Act the revised Rule-laying formula, as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha).

(ii) * * * *

4&5. ** **

(iii) Printing and publication of compilation containing General Statutory Rules and Orders Paras 70—74 of Tenth Report and Paras 139-140 of Eighteenth Report—(Fifth Lok Sabha).

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

(Memorandum No. 363)

6. The Committee considered the above Memorandum and expressed their concern over the slow progress in publication of the remaining volumes of the Compilation containing General Statutory Rules and Orders. The Committee decided to urge the Ministry of Law, Justice and Company Affairs (Legislative Department) to take all possible steps so that the work was completed by the target date viz., by the end of 1977.

The Committee then adjourned to meet again on the 13th and 14th July, 1976.

XCVI

MINUTES OF THE NINETY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA 1976-77)

The Committee met on Tuesday, the 13th July, 1976, from 15.00 to 16.45 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri Jagannath Mishra
9. Shri H. M. Patel
10. Ch. Ram Prakash
11. Shri P. Ganga Reddy
12. Shri S. A. Shamim
13. Shri P. Ranganath Shenoy
14. Shri Satyendra Narayan Sinha
15. Shri Karan Singh Yadav

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 362 and 364 to 368 on the following subjects:—

Sl. No.	Memo No.	Subject
1.	362	*
2.	364	The Indian Post Office (Third Amendment) Rules, 1974 (G.S.R. 281-E of 1974).
3.	365	(i) The Central Secretariat Stenographers' Service (First Amendment) Rules, 1974 (G.S.R. 281 of 1974). (ii) The Central Power Engineering (Class I) Service (Second Amendment) Rules, 1974 (G.S.R. 1059 of 1974). (iii) The Andaman-Lakshadweep Harbour Works (Chief Engineer) Recruitment Rules, 1974 (G.S.R. 489 of 1974).
4.	366	Giving of retrospective effect to the 'Orders' framed under various Acts of Parliament.
5.	367	Giving of short title to the 'Orders'.
6.	368	*

(i) *

(ii) The Indian Post Office (Third Amendment) Rules, 1974 (G.S.R. 281-E of 1974)—(*Memorandum No. 364*).

4. The Committee considered the above Memorandum and were not convinced by the reply of the Ministry of Law, Justice and Company Affairs (Legislative Deptt.) that section 10 of the Indian Post Office Act, 1898, does not require the postage rates to be specified in the rules; it requires rules to be made only regarding scales of weight and terms and conditions subject to which the declared rates shall be charged. The Committee felt that the Ministry of Law had taken only a narrow view of the matter. In the opinion of the Committee, as the rates could not be divorced from scales of weight, these had to be prescribed through the rules. The Committee also felt that the power to prescribe rates, together with scales of weight, being a power envisaged to be exercised through the rules, could not be sub-delegated under Section 75 of the Act, which empowered Gov-

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

ernment to sub-delegate powers other than rule-making powers. Accordingly, the Committee decided to recommend to the Ministry of Communications to lay down the rates for sending parcels to various countries, together with the relevant scales of weight, in the rules.

(iii) (a) The Central Secretariat Stenographers' Service (First Amendment) Rules, 1974 (G.S.R. 281 of 1974);

(b) The Central Power Engineering (Class I) Service (Second Amendment) Rules, 1974 (G.S.R. 1059 of 1974); and

(c) The Andaman-Lakshadweep Harbour Works (Chief Engineer) Recruitment Rules, 1974 (G.S.R. 489 of 1974)—(Memorandum No. 365).

5. The Committee considered the above Memorandum and decided to re-emphasise their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department did not cease with their sending of a Notification to the Press. After the rules, regulations, etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, wherever necessary, to issue a corrigendum thereto. The Committee also decided that henceforth they would take a serious view of such mistakes. The Committee also decided to urge the Department of Parliamentary Affairs to bring the aforesaid recommendation of the Committee to the notice of all the Ministries/Departments of Government for strict compliance in future.

6. The Committee noted that while the Department of Personnel and Administrative Reforms and the Ministry of Shipping and Transport had either initiated or were initiating corrective action by 'issuing a corrigendum/addendum, the Ministry of Energy (Department of Power) had not indicated anything in this regard. The Committee decided that the Ministry of Energy (Department of Power) might be asked to take necessary corrective action without any further delay.

(iv) Giving of retrospective effect to the 'Orders' framed under various Acts of Parliament—(Memorandum No. 366).

7. The Committee considered the above Memorandum and noted that retrospective effect to all the 'Orders' set forth in the Annexure*

*Please See Appendix II.

had been given, without due authorisation in the parent statutes. They decided that the Ministries concerned should be asked either to give effect to the 'Orders' in question from the dates of their publication in the Gazette, or, alternatively, to take steps to incorporate a provision in the relevant Acts empowering Government to give retrospective effect to these 'Orders'.

8. The Committee also noted that final replies from the Ministry of Commerce and Ministry of Industry and Civil Supplies (Department of Industrial Development) had not yet been received even though D.O. reminders were sent to them. The Committee took a serious note of non-receipt of replies from the aforesaid Ministries.

(v) Giving of short title to the 'Orders'—(*Memorandum No. 367*).

9. The Committee considered the above Memorandum and desired that the D.P.A. might be asked to issue fresh instructions to all Ministries/Departments regarding giving of short title to all 'Orders' published in the Gazette.

(vi) * * * * *

10. * * * * *

The Committee then adjourned to meet again on 14-7-1976.

XCVII

MINUTES OF THE NINETY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Wednesday, the 14th July, 1976, from 11.00 to 13.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai

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

5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri Jagannath Mishra
9. Shri H. M. Patel
10. Ch. Ram Prakash
11. Shri P. Ganga Reddy
12. Shri S. A. Shamim
13. Shri P. Ranganath Shenoy.
14. Shri Satyendra Narayan Sinha
15. Shri Karan Singh Yadav

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 369 and 370 on the following subjects:

Sl. No.	Memo No.	Subject
(1)	(2)	(3)
1	369	Implementation of recommendation made in para 83 of Eleventh Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Tourist Baggage (Amendment) Rules, 1971.
2	370	Implementation of recommendation made in para 135 of Eighteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Registration of Electors (Third Amendment) Rules, 1969 (paras 42-43 of Ninth Report)—(Fifth Lok Sabha).

(i) Implementation of recommendation made in para 83 of Eleventh Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Tourist Baggage (Amendment) Rules, 1971—(Memorandum No. 369).

3. The Committee considered the above Memorandum at length, and decided not to pursue the matter further.

(ii) Implementation of recommendation made in para 135 of Eighteenth Report of Committee on Subordinate Legis-

lation (Fifth Lok Sabha) regarding the Registration of Electors (Third Amendment) Rules, 1969 (paras 42-43 of Ninth Report)—(Fifth Lok Sabha)—(Memorandum No. 370).

4. The Committee considered the above Memorandum for some time and decided to consider the matter further at a future sitting. In the meantime, the Committee desired that particulars of cases in which a period shorter than 30 days under rule 12(1) of the Registration of Electors Rules, 1960, had been fixed, together with the reasons therefore, should be circulated to the members of the Committee.

The Committee then adjourned.

XCVIII

MINUTES OF THE NINETY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Thursday, the 5th August, 1976 from 11.00 to 12.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Dinesh Joarder
6. Shri I. H. Khan
7. Shri Jagannath Mishra
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri S. A. Shamim

- 12 Shri P. Ranganath Shenoy
- 13. Shri Satyendra Narayan Sinha
- 14. Shri Karan Singh Yadav

SECRETARIAT

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

2. The Committee considered Memorandum No. 370 regarding implementation of recommendation made in para 135 of Eighteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Registration of Electors (Third Amendment) Rules, 1969 (Paras 42-43 of Ninth Report—Fifth Lok Sabha).

3. The Committee noted the assurance given by the Ministry of Law that in case of ordinary revisions, the Election Commission will in no case fix a period of less than 15 days for lodging a claim for inclusion of a name in the electoral roll or lodging an objection to an entry therein. The Committee desired that the rules should be amended to incorporate this assurance.

As regards special revisions, the Committee were not convinced by the argument advanced by the Ministry of Law that fixation of a minimum period for lodging claims and objections would fetter the statutory discretion vested in the Election Commission by Section 21(3) of the Representation of the People Act, 1950, which empowered the Commission, for reasons to be recorded in writing, to direct at any time a special revision of an electoral roll "in such manner as it may think fit". In the opinion of the Committee, the discretionary power vested in the Commission by Section 21(3) could not be construed to empower the Commission to deny to a citizen an opportunity of lodging claims and objections. In their opinion, the delegated authority to be exercised by a delegate was not only to be in consonance with the objects of the parent law but was also to conform to the principles of natural justice. The Committee, accordingly, decided to recommend that the rules should be amended to provide that in case of special revisions, the period allowed for lodging claims and objections shall not be less than 7 days.

4. The Committee then adjourned to meet again at 15.00 hours.

XCIX**MINUTES OF THE NINETY-NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)**

The Committee met on Thursday, the 5th August, 1976 from 15.00 to 16.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. N. Barman
3. Shri Ram Singh Bhai
4. Shri Dinesh Joarder
5. Shri I. H. Khan
6. Shri Jagannath Mishra
7. Shri H. M. Patel
8. Ch. Ram Prakash
9. Shri P. Ganga Reddy
10. Shri P. Ranganath Shenoy
11. Shri Satyendra Narayan Sinha
12. Shri Karan Singh Yadav

SECRETARIAT

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

2. The Committee considered Memo. Nos. 371—373 on the following subjects:

S. No.	Memo No.	Subject
1	371	• • • • •
2	372	Water (Prevention and Control of Pollution) Rules, 1975. (G. S. R. 58-E of 1975).
3	373	Giving of Retrospective effect to the Orders framed under Article 309 of the Constitution.

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

(i) * * * *

3. * * * *

(ii) *Water (Prevention and Control of Pollution) Rules, 1975*
(G.S.R. 58-E of 1975).

I

4. *Rules 3 and 4:* The Committee considered the above Memorandum and were of the view that either the terms and conditions of service of the Chairman and Member-Secretary of the Central Board should be specified in the rules, as envisaged by Section 63(2) (e) of the *Water (Prevention and Control of Pollution) Act, 1974*, or, in the alternative, Government should approach Parliament for an amendment of the Act to empower the appropriate Government to regulate the terms and conditions of the Chairman and Member-Secretary through administrative orders.

II

5. The Committee were not happy over the wording of rule 7(3) of the *Water (Prevention and Control of Pollution) Rules, 1975* which, in the absence of rules under Section 12(3) of the Act, seemed to confer unguided power on the Chairman in matters of promotion, confirmation, transfer and termination of service of the employees of the Board. The Committee took a serious note of the fact that rules relating to conditions of service of the employees of the Board under Section 12(3) of the Act, which should have been framed within a period of six months from the commencement of the Act, had not yet been framed. The Committee decided to ask the Ministry to frame rules under Section 12(3) of the Act without any further delay.

III

6. The Committee were satisfied with the reply of the Ministry of Works and Housing regarding powers vested in the Board in regard to creation and abolition posts under rule 8 of the *Water (Prevention and Control of Pollution) Rules, 1975*.

IV

7. The Committee noted with satisfaction that on being pointed out, the Ministry had agreed to amend rule 9(5) of the *Water*

(Prevention and Control of Pollution) Rules so as to provide therein a time-limit within which the cases wherein payments had been withheld would be placed before the Central Board.

V

8. *Rule 10(2), (3) and (4)*: The Committee noted with satisfaction that on being pointed out, the Ministry of Works and Housing had agreed to take the earliest opportunity to amend the Water (Prevention and Control of Pollution) Act to specifically provide for the making of rules in regard to the payment of allowances to persons associated with the Central Board.

VI

9. The Committee noted with satisfaction that on being pointed out, the Ministry of Works and Housing had agreed to amend rule 12 of the Water (Prevention and Control of Pollution) Rules to provide for giving of an opportunity of representation to the consulting engineer before the termination of his services.

VII

10. The Committee were satisfied with the reply of the Ministry regarding charging of fees for analysis of samples of water, sewage or trade effluent provided for in rule 28 of the Water (Prevention and Control of Pollution) Rules.

(iii) Giving of Retrospective effect to rules, regulations, etc.

11. The Committee considered the above Memorandum and noted that although the Committee on Subordinate Legislation had repeatedly stressed that if in a particular case the rules had to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules, in as many as 29 cases listed in the Annexure* where retrospective effect had been given to the rules, the necessary clarification desired by the Committee had not been given. The Committee took a serious view of non-compliance with an oft-repeated recommendation of the Committee in such a large number of cases. The Committee decided to re-stress their earlier recommendation and also decided to ask the Department of Parliamentary Affairs to bring its said recommendation to the notice of all the Ministries/Departments for strict compliance in future.

The Committee were not satisfied with the explanation of the Ministry of Finance (Department of Expenditure) that the requi-

*Please see Appendix III

site explanatory memorandum was added to the 'Order', while sending it to the Press, but it was not printed along with the 'Order' in the Gazette. The Committee decided to re-emphasise their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry|Department did not cease with their sending it to the Press. After an 'Order' had been published in the Gazette, the Ministry|Department concerned should take immediate steps to examine whether it had been correctly printed, and, if necessary, to issue a corrigendum thereto.

The Committee then adjourned *sine die*.

C

MINUTES OF THE HUNDREDTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Thursday, the 19th August, 1976 from 15.30 to 16.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. V. Bade
3. Shri Annasaheb Gotkhinde
4. Shri I. H. Khan
5. Shri P. Ganga Reddy
6. Shri P. Ranganath Shenoy

SECRETARIAT

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

2. The Committee considered Memorandum No. 378 regarding laying of Statutory Rules, Notifications, Orders, etc. issued under Articles 166 and 309 of the Constitution in respect of a State under President's Rule.

3. The Committee considered the letter from the Ministry of Home Affairs wherein they had enquired, in the context of the State of Nagaland which was under President's Rule, whether there was any convention or Direction by the Speaker for laying of rules

framed under Articles 166 and 309 of the Constitution in respect of States under President's rule. The Committee desired that the Ministry of Home Affairs might be informed that there was neither any convention nor any Direction by the Speaker Lok Sabha that the notifications issued under the provisions of Articles 77 (corresponding to Article 166) and 309 should be laid on the Table of the House.

The Committee then adjourned.

CI

MINUTES OF THE HUNDRED-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Tuesday, the 31st August, 1976 from 15.30 to 16.00 hours.

PRESENT

Shri C. M. Stephen—*Chairman*

MEMBERS

2. Shri R. N. Barman
3. Shri Ram Singh Bhai
4. Shri Annasaheb Gotkhinde
5. Shri Dinesh Joarder
6. Shri I. H. Khan
7. Shri Jagannath Mishra
8. Shri P. Ganga Reddy
9. Shri P. Ranganath Shenoy
10. Shri Satyendra Narayan Sinha

SECRETARIAT

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

2. The Committee considered their future programme of work. They decided to meet again on Thursday, the 16th and Friday, the 17th September, 1976.

The Committee then adjourned.

CII

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

(1976-77)

The Committee met on Thursday, the 16th September, 1976 from 15.00 to 16.00 hours.

PRESENT

Shri C. M. Stephen—Chairman

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Annasaheb Gotkhinde
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri S. A. Shamim
12. Shri P. Ranganath Shenoy
13. Shri Satyendra Narayan Sinha
14. Shri Karan Singh Yadav

SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

2. The Committee considered Memorandum Nos. 374—377 and 379—384 on the following subjects:—

Sl. Memo. No.	Subject
(1) (2)	(3)
1	374 The Conduct of Elections (Amendment) Rules, 1974 (S. O. 286-E of 1974).
2	375 The Income-tax (Third Amendment) Rules, 1975 (S. O. 534-E of 1975)— Non-appending of a certificate regarding retrospective effect given to the rules.

(1)	(2)	(3)
3	376	* * *
4	377	The Delhi Motor Vehicles (Second Amendment) Rules, 1975 [Notification No. SECE. 3(45)/74-TPT/4369 dated 29-3-75].
5	379	The Drugs and Cosmetics (Amendment) Rules, 1975 (G. S. R. 116 of 1975).
6	380	The Central Warehousing Corporation (Staff) (Second Amendment) Regulations, 1975 (S.O. 1553 of 1975).
7	381	The Homoeopathy Central Council (Election) Rules, 1975 (G. S. R. 611 of 1975).
8	382	* * *
9	383	* * *
10	384	* * *

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

(i) The Conduct of Elections (Amendment) Rules, 1974 (S.O. 286-E of 1974). (Memorandum No. 374).

3. The Committee considered the above memorandum and felt that the provision for cancellation of a ballot paper under sub-rule (8) of Rule 39A of the Conduct of Elections Rules, 1961, amounted to a penal provision for which the authority should flow from an express provision in the parent Act. The Committee, therefore, decided to recommend to the Ministry of Law, Justice and Company Affairs (Legislative Department) to make a provision in the Representation of the People Act, 1951, for cancellation of a ballot paper when the voter refused to observe the prescribed procedure for recording his vote.

(ii) The Income-tax (Third Amendment) Rules, 1975 (S.O. 534-E of 1975)—Non-appending of a certificate regarding retrospective effect given to the rules (Memo. No. 375).

4. The Committee considered the above memorandum and noted from the reply of the Ministry of Finance (Department of Revenue and Insurance) that sub-section (4) of section 295 of the Income-tax Act itself provided that no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assessees. The Committee were, however, not convinced that in view of the above provision of the Income-tax Act, it was not necessary to append an Explanatory Memorandum to the Rules. As

observed by the Committee in para 11 of their Nineteenth Report (Fifth Lok Sabha), the purpose of appending an explanatory memorandum to subordinate legislation was also to apprise the public of the circumstances in which retrospective effect had been given. The Committee, therefore, decided to recommend, for future guidance, that explanatory memorandum should be appended to Rules, etc. even in those cases where the Act under which they had been framed itself provided that retrospective effect would not be given to Rules so as to affect any person adversely. The Committee also desired the Department of Parliamentary Affairs to bring this recommendation to the notice of all Ministries/Departments of Government of India.

(iii) * * * * *

(iv) The Delhi Motor Vehicles (Second Amendment) Rules, 1975 (Notification No. SECE. 3(45)/74-TPT/4369 dt. 29-3-75) (Memorandum No. 377).

6. The Committee considered the above memorandum and noted with satisfaction that, on being pointed out, the Delhi Administration had agreed to prescribe the fees to be charged by the Driving Training Schools by rules instead of through executive order. The Committee desired the Delhi Administration to amend the Rules accordingly at an early date.

(v) The Drugs and Cosmetics (Amendment) Rules, 1975 (G.S.R. 116 of 1975) (Memorandum No. 379).

7. The Committee considered the above memorandum and noted that the Ministry of Health and Family Planning (Department of Health) had admitted in their reply that Rule 134A of the Drugs and Cosmetics Rules, 1945 was relatable to section 10 and Rule 144A was relatable to section 18 of the Drugs and Cosmetics Act, 1940. As the subject matter of these Rules was not mentioned in the general rule-making sections 12 and 33, the Committee felt that sections 10 and 18 should also have been cited in the preamble to the above Rules for facility of referencing. The Committee decided to reiterate their earlier recommendation made in para 29 of the Fourteenth Report (Fifth Lok Sabha) that either the rule-making section should enumerate all matters on which rules have to be framed under various Sections of the Act or in the alternative, the preamble should refer not only to the general rule-making power

section but also other sections of the Act which relate to the subject matter of the Rules framed thereunder.

(vi) The Central Warehousing Corporation (Staff) (Second Amendment) Regulations, 1975 (S.O. 1553 of 1975) (Memo. No. 380).

8. The Committee considered the above memorandum and were not convinced with the reply of the Ministry of Agriculture and Irrigation (Department of Food) that if the rates of House Rent Allowance were prescribed in the Regulations themselves, they would have to be amended every time there was a change in the House Rent Allowance. The Committee noted that section 42(2) (a) of the Warehousing Corporation Act, 1962 envisaged the conditions of service of and the remuneration payable to the officers and other employees of the Corporation to be regulated through Regulations and felt that in view of this, the provision empowering the Board to determine the House Rent Allowance through administrative orders was tantamount to sub-delegation of legislative power. The Committee, therefore, decided to recommend that the rates of the House Rent Allowance should be incorporated in the Regulations.

(vii) The Homoeopathy Central Council (Election) Rules, 1975 (G.S.R. 611 of 1975) Memo. No. 381).

9. The Committee considered the above memorandum and noted that, on being pointed out, the Ministry of Health and Family Planning (Department of Health) had proposed to amend Rule 13(4) and Rule 14 of the Homoeopathy Central Council (Election) Rules, 1975 as under:—

(i) Rule 13(4)—Election papers to be sent to the electors by registered post instead of under certificate of posting as at present

(ii) Rule 14 —Voting papers received by unregistered post will not be rejected.

The Committee concurred with the proposed amendments and desired the Ministry to issue them at an early date.

(viii) to (x)	**	**	**
10 to 12	**	**	**

The Committee adjourned to meet again on the 17th September, 1976 at 11.00 hours.

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

CIII

MINUTES OF THE HUNDRED THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1976-77)

The Committee met on Friday, the 17th September, 1976 from 11.00 to 12.00 hours.

PRESENT

Shri C. M. Stephen—Chairman

MEMBERS

2. Shri R. V. Bade
3. Shri R. N. Barman
4. Shri Ram Singh Bhai
5. Shri Annasaheb Gatkhide
6. Shri Dinesh Joarder
7. Shri I. H. Khan
8. Shri H. M. Patel
9. Ch. Ram Prakash
10. Shri P. Ganga Reddy
11. Shri P. Ranganath Shenoy
12. Shri Satyendra Narayan Sinha
13. Shri Karan Singh Yadav

SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer

2. The Committee considered Memorandum Nos. 385 to 388, 223, and 320 and 329 on the following subjects:—

Sl. No.	Memo. No.	Subject
(1)	(2)	(3)
1	385	The Packaged Commodities (Regulation) Order, 1975 (S. O. 443-B of 1975).
2	386	The Medical Termination of Pregnancy Rules, 1975 (G.S.R. 2543 of 1975)—Power of seizure to flow from the Parent Act.

(1)	(2)	(3)
3	387	The National Test House, Calcutta and Bombay, Assistant Director (Administration) (Grade I and II) Recruitment Rules, 1975 (G. S. R. 363 of 1975).
4	388	Disciplinary action against IAS/IPS Officers.
5	223	National Fitness Corps Directorate (Class I and Class II posts) Recruitment Rules, 1972 (G. S. R. 261 of 1972).
6	320	** ** *
7	329	** ** *

(i) The Packaged Commodities (Regulation) Order, 1975 S.O. 443-E of 1975)—(Memorandum No. 385).

3. 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 no exemption had been granted to any individual manufacturer/packer or class of manufacturers so far. The Committee felt that this did not guarantee that exemption to an individual manufacturer or packer will not be given in future also. The Committee, therefore, decided to recommend amendment of paragraph 12 of the above Order so as to delete therefrom the power to grant exemption to an individual manufacturer or packer as contradistinguished from classes of manufacturers or packers so that the benefits of exemption were available to all manufacturers or packers suitably placed.

(ii) The Medical Termination of Pregnancy Rules, 1975 (G.S.R. 2543 of 1975)—Power of seizure to flow from the parent Act. (Memorandum No. 386).

4. The Committee considered the above Memorandum and noted that the Ministry of Law and Justice in their opinion had agreed that the power of seizure made in Rule 5(2) of the above Rules was a substantial power which should appropriately flow from the parent Act. As the Medical Termination of Pregnancy Act, 1971, under which the Rules in question have been framed does not contain any express provision to conferring the power of seizure etc. on the Chief Medical Officer, the Committee decided to recommend that either the provision for seizure should be incorporated in the Act or the provision for seizure omitted from the Rules.

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

- (iii) The National Test House, Calcutta and Bombay, Assistant Director (Administration) (Grade I and II) Recruitment Rules, 1975 (G.S.R. 363 of 1975) (Memorandum No. 387).

5. The Committee considered the above Memorandum and noted that the 'rules' referred to in the entry under column 13 of the Schedule to the above Rules were the U.P.S.C. (Exemption from Consultation) Regulations, 1954. The Committee desired the Ministry of Supply and Rehabilitation (Department of Supply) to specify these Regulations by amending the entry accordingly.

- (iv) Disciplinary action against IAS/IPS Officers (Memorandum No. 388).

6. The Committee considered the above Memorandum and noted that there were conflicting views, of State Governments in regard to the suggestion to amend the AIS (Discipline and Appeal) Rules so as to empower the Central Government to deal with delinquent officers belonging to IAS/IPS Cadres when the State Government was not willing to take action against them. In view of the majority of State Governments not favouring such an amendment, the Committee decided that the present position might continue.

- (v) The National Fitness Corps Directorate (Class I and Class II posts) Recruitment Rules, 1972 (G.S.R. 261 of 1972) (Memo. No. 223).

7. The Committee considered the above Memorandum in respect of which the previous Committee (1974-75) had decided to hear oral evidence of the representatives of the Ministry of Education and Social Welfare. As the question of delay in framing of the above Recruitment Rules was generally covered by the observations of the Committee contained in paras 7.79 of their Thirteenth Report (Fifth Lok Sabha) where the Committee had comprehensively dealt with the whole question of non-framing delay in framing of recruitment rules by Ministries/Departments of Government of India, the Committee felt that no useful purpose would be served by hearing the oral evidence of the representatives of the Ministry of Education and Social Welfare in this case.

(vi) & (vii)

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The Committee then adjourned

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

CIV

MINUTES OF THE HUNDRED-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA).

The Committee met on Tuesday, the 12th October, 1976 from 15.00 to 15.30 hours.

PRESENT

Shri Annasaheb Gotkhinde—*In the Chair.*

MEMBERS

2. Shri R. V. Bade
3. Shri Ram Singh Bhai
4. Shri Dinesh Joarder
5. Shri I. H. Khan
6. Shri H. M. Patel
7. Ch. Ram Prakash
8. Shri P. Ganga Reddy
9. Shri S. A. Shamim
10. Shri P. Ranganath Shenoy
11. Shri Satyendra Narayan Sinha
12. Shri Karan Singh Yadav

SECRETARIAT

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

2. In the absence of the Chairman, Shri Annasaheb Gotkhinde was chosen to act as Chairman for the sitting in terms of Rule 258 (3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered their draft Twentieth Report and adopted it.

4. The Committee authorised the Chairman and in his absence, Shri Annasaheb Gotkhinde to present the Twentieth Report to the House on their behalf on the date convenient to the Chairman.

* * *

The Committee then adjourned.

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

Sl. No.	Name of Agent	Sl. No.	Name of Agent
WEST BENGAL		32.	Lakshmi Book Store, 42, Municipal Market, Janpath, New Delhi.
21.	Grantholoka, 5/1, Ambica Mookherjee Road, Belgharia, 24-Parganas.	33.	Bahree Brothers, 188, Lajpat Rai Market, Delhi-6.
22.	W. New Man & Company Ltd 3, Old Court House Street, Calcutta.	34.	Jayna Book Depot, Chhapparwala Kuan, Karol Bagh, New Delhi.
23.	Firma K. L. Mukhopadhyay, 6/1-A, Banchharam Akrur Lane Calcutta-12.	35.	Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi.
24.	Mrs. Manimala, Buys & Sells 128, Bow Bazar Street, Calcutta-12.	36.	People's Publishing House, Rani Jhansi Road, New Delhi.
25.	M/s. Mukerji Book House, Book Seller, 8B, Duff Lane, Calcutta.	37.	The United Book Agency, 43, Amrit Kaur Market, Pahar Ganj, New Delhi.
DELHI		38.	Hind Book House, 82, Janpath, New Delhi.
26.	Jain Book Agency, Connaught Place, New Delhi	39.	Book Well, 4, Sant Nirankari Colony, Kingsway Camp, Delhi-9.
27.	Sat Narain & Sons, 3141, Mohd. Ali Bazar, Mori Gate, Delhi.	40.	M/s. Saini Law Publishing Co., 1899, Chandni Chowk, Delhi.
28.	Atma Ram & Sons, Kashmere Gate, Delhi-6.	MANIPUR	
29.	J. M. Jaina & Brothers, Mori Gate, Delhi.	41.	Shri N. Chaob Singh, News Agent, Ram Lal Paul High School Annexe, Imphal.—MANIPUR.
30.	The Central News Agency, 23/80, Connaught Place, New Delhi.		
31.	The English Book Store, 7-L, Connaught Circus, New Delhi.		

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