

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

SIXTH REPORT
(Presented on the 17th March, 1978)



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1978/Phalguna, 1899 (Saka)

Price : Rs. 2.80

Corrigenda to the Sixth Report of the
 Committee on Subordinate Legislation
 (Sixth Lok Sabha) (Presented on the
 17th March, 1978)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1977-78)

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15. Shri Sachindralal Singha.

SECRETARIAT

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

REPORT

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 Sixth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 3rd September, 20th December, 1977, 7th January and 28th January, 1978. At their sitting held on the 28th January, 1978 the Committee took evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) regarding printing and publication of the Compilation containing General Statutory Rules and Orders.

3. The Committee considered and adopted this Report at their sitting held on the 14th, March, 1978. The Minutes of the sittings, which form part of the Report, are appended to it.

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

{ II

Printing and Publication of Compilation containing General Statutory Rules and Orders [(Implementation of recommendations contained in paras 103 and 104 of the Twentieth Report of Committee on Subordinate Legislation (Fifth Lok Sabha)]

5. In paras 47-49 of their Third Report (Second Lok Sabha), presented to the House on 2-5-1958, the Committee on Subordinate Legislation had observed as follows :—

“47. On important subjects the Ministers bring out manuals which contain all the relevant Acts and the rules made thereunder, e.g. Income-tax Manual, Election Manual, Central Excise Manual etc., but very often these manuals do not give upto-date information about the ‘Orders’.

48. Apart from this there is no other official publication which makes readily available the following information regarding statutory rules and orders to the public :

- (i) What amendments are made from time to time in the Schedules to various Acts ;
- (ii) Whether a particular rule is still in operation, if so, whether it has been amended subsequently and if so where such amendments could be found ;
- (iii) Whether any rules have been framed at all under an Act.

49. It was, therefore, felt that there should be some publication of statutory rules and orders on the lines of the U.K.'s annual publication of Statutory Instruments for the convenience of the public"

6. In para 51 of the said Report, the Committee on Subordinate Legislation 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 of Statutory Instruments, for the convenience of the public, would be brought out as soon as all the volumes of India Code were published.

7. To know the progress made in the printing and publication of the above Compilation, the Ministry of Law, Justice and Company Affairs (Legislative Department) were asked on 3-10-1972 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 in paras 70-74 of their Tenth Report (Fifth Lok Sabha) *inter-alia* observed 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, during the later 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 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.

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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 reports regarding the publication of the main compilation as well as of the Supplements, to keep them abreast of the latest position."

8. After considering the progress report for the year 1974, submitted by the Ministry of Law, Justice and Company Affairs (Legislative Department), the Committee were not satisfied with the slow progress made in this regard. The Committee in paras 139-140 of Eighteenth Report (Fifth Lok Sabha), presented on 12-1-76, reiterated 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.

9. After considering the progress report for the year 1975, the Committee in paras 103 and 104 of their Twentieth Report (Fifth Lok Sabha), presented on 3-11-76, observed as under :—

"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.

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."

10. In their action taken note dt. 1-12-1976 on the above recommendation of the Committee, the Ministry of Law, Justice and Company Affairs (Legislative Department) stated as under:—

"During the year 1976 this Ministry has checked, finalised and returned the page proofs of G.S.R.O. Vol. XXII covering the remaining Acts under the subject-heading "Revenue" [from the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 19 61 to the Beedi Workers Welfare Cess Act, 1976 (56 of 1976)] to the Nasik Press for final printing. The Press has been requested to take up final printing of the said volume on a top priority basis and complete the same by the end of December, 1976. It is expected that this Volume will be published in early 1977.

Manuscripts of G.S.R.O. Volume XXIII covering the subject-headings "Road Transport" and "Shipping and Navigation

{upto and including the Making of Heavy Packages Act, 1951 (39 of 1951)]” have also been processed and brought up-to-date in the light of the comments and material furnished by the Ministry of Shipping and Transport. Though some information relating to notifications issued under the Indian Ports Act, 1908 is pending with the Ministry of Shipping and Transport, yet in order to expedite the work these manuscripts have been sent to the Nasik Press for furnishing of galley proofs. The pending information will be incorporated at the proof stage.

Preparation of manuscripts of GSRO Volume XXIV covering the subject-heading “Shipping and Navigation” [upto and including the Merchant Shipping Act, 1958 (44 of 1958)] was completed and the compilation was referred to the administrative Ministry for scrutiny and confirmation. The same has been received back and is being examined in the light of the comments and material furnished by that Ministry. It is expected to be sent to the Press by the end of December, 1976, for furnishing of galley proofs.

Sufficient progress has also been made in preparation of manuscripts of G.S.R.O. Volume XXV covering the remaining portion under subject heading “Shipping and Navigation” and upto the subject-heading “Trade” (Partially). These manuscripts will be referred to the administrative Ministries concerned as soon as they are completed.

It may be mentioned that the work relating to final publication of a G.S.R.O. Volume is spread over a long period of time. It has to pass through various stages, e.g., preparation of manuscripts and checking of proofs in this Ministry, scrutiny and confirmation of Manuscripts and clarification of various legal and technical points involved therein by the concerned administrative Ministries, supply of galley and page proofs and final printing of the Volumes by the Press. As such the quick processing of the GSRO work depends to a large extent also on the administrative Ministries concerned as well as the Government of India Press, Nasik where the G.S.R.O. volumes are being printed. This Ministry has been consistently inviting the attention of the administrative Ministries concerned and the Government of India Press, Nasik to the earlier recommendations of the Committee and the need to expedite the processing of the work at their end. However, it appears that the administrative Ministries are finding difficulties in proper scrutiny of the G.S.R.O. manuscripts and clarification of the legal and technical points involved therein in the absence of requisite trained staff for this peculiar type of work. The Government of India Press, Nasik has also been finding difficulties in furnishing proofs within a reasonable period and expediting the final printing of the Volumes presumably due to other important jobs, it may be handling.

During the period under review the Department had to cope with an unprecedented volume of legislative proposals on an urgent and top priority basis.

The progress of work mentioned.....above has been achieved mainly with the help of staff already deployed on the job, namely two assistants (one of whom is a non-technical hand). Pending regular recruitment to the newly created two posts of Assistants (Legal) through Union Public Service Commission, *ad-hoc* arrangements have been made (appointments having been made in May and July, 1976) in order to accelerate the pace of work of G.S.R.O. compilation. This Ministry will, no doubt, continue to make all endeavours to achieve the maximum progress in bringing out further G.S.R.O. Volumes. However, in view of the procedural requirements and the consequent unavoidable delays in getting the sanction of the said two posts of Assistant (Legal) and the subsequent administrative difficulties in recruiting suitable staff with requisite qualifications on regular basis, it has become difficult to adhere to the schedule of work as planned. Moreover the work relating to G.S.R.O. Volumes XXIII, XXIV and XXV will require further processing by this Ministry during 1977. The progress in the work of preparation of manuscripts of further G.S.R.O. Volumes may, therefore, be rather slow during 1977. In view of the circumstances explained above it will not be possible for this Ministry to adhere to the earlier target date for completing the main G.S.R.O. Compilation by the end of 1977. *The entire work of reprocessing and final publication of G.S.R.O. Volumes is likely to extend upto the end of 1980 if no further obstacles arise.* This Ministry is, therefore, constrained to request the Committee on Subordinate Legislation of the Lok Sabha to extend the target date to the end of 1980."

11. The position as given by the Ministry in their O.M. dt. 17-9-77 is as follows :—

"General Statutory Rules and Orders Volume XXII covering the remaining Acts under the subject-heading "Revenue" [from the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961 to the Beedi Workers Welfare Cess Act, 1976 (56 of 1976)] has been printed by the Nasik Press and its release for sale is expected shortly.

Galley proofs of General Statutory Rules and Orders Volume XXIII covering the subject heading "Road Transport" and "Shipping and Navigation" [upto and including the Marking of Heavy Packages Act, 1951 (39 of 1951)] were brought upto date and sent to Nasik Press on the 1st July, 1977 for making page proofs. The said proofs are still awaited from that Press.

In order to further expedite the work relating to the publication of remaining G.S.R.O. Volumes, this Ministry on an experimental basis, decided to dispense with galley proofs of General Statutory Rules and Orders Volumes XXIV and directly call for page proofs. The page proofs of the said Volume covering the subject-heading "Shipping and Navigation" [upto and including section 282 of the Merchant Shipping Act, 1958 (44 of 1958)] are now being checked in this Ministry.

Manuscripts of General Statutory Rules and Orders Volume XXV covering the remaining Acts under the subject-heading "Shipping and Navigation" and Acts under the subject-headings "Societies", "Succession" and "Tolls" are being given final touches before being sent to Press for proofs."

12. In a further communication dated the 23rd January, 1978, the Ministry have stated as under :-

- (1) 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 to the Beedi Workers Welfare Cess Act, 1976 (56 of 1976)]" has been published and put on sale;
- (2) Page proofs of G.S.R.O. Volume XXIII covering the subject-heading "Road Transport" and "Shipping and Navigation [upto and including the Marking of Heavy Packages Act, 1951 (39 of 1951)]" are being checked and finalised in this Ministry;
- (3) Page proofs of G.S.R.O. Volume XXIV covering the subject-headings "Shipping and Navigation [upto and including section 282 of the Merchant Shipping Act, 1958 (44 of 1958)]" where returned to the Nasik Press for final printing on 2-11-1977. Manuscripts of Addenda to this Volume have been prepared. The same will be brought further uptodate and sent to that Press on receipt of information therefrom regarding commencement of final printing of the said Volume;
- (4) Page proofs of G.S.R.O. Volume XXV covering the subject-headings "Shipping and Navigation (remaining portion)", "Societies", "Succession" and "Tolls" have been received from the Press and are being checked in this Ministry;
- (5) Manuscripts of notifications issued under certain Acts falling under the subject-heading "Trade [from the Cotton Cloth Act, 1918 to the Imports and Exports (Control) Act, 1947]" have been prepared and referred to the administrative Ministries concerned for scrutiny and confirmation. Manuscripts of notifications issued under the Essential Commodities Act, 1955 are under preparation."

13. As regards the Committee's recommendation regarding bringing out of Supplements to earlier Volumes, the Ministry of Law, Justice and Company Affairs (Legislative Department) have urged as follows:—

"In so far as the Volumes of the Supplement to G.S.R.O. are concerned, it may be mentioned that the last such Volume, i. e., Volume IV covering the subject-headings upto "Companies" (Corresponding to the main G.S.R.O. Volume V) was issued in 1971. Thereafter the work relating to further Volumes of the Supplement to G.S.R.O. could not be taken up in view of staff position mentioned above and the priority given to the publication of main G.S.R.O. Volumes. Though in the report for the year 1975 this Ministry had stated that the work relating to the Supplements to main Volumes will be taken up as soon as the

newly sanctioned posts of Assistants are filled up and the incumbents get acquainted with the work, yet on reappraisal of the scheme it is felt that after a gap of 12 years (the next Volume of the Supplement will correspond to main G.S.R.O. Volume VI which was issued in 1964), it will not be useful to publish the Supplementary Volumes in their present form. So far we had included in these volumes the amending notifications (as published in the Gazette) to the principal notifications, rules and orders included in the main G.S.R.O. Volumes together with other principal notifications issued subsequent to the publication of the main Volumes. As such a reader is expected to consult the main volume and its Addenda portion together with volume of the Supplement to G.S.R.O. and its addenda portion in order to find out upto-date version of any given set of rules or orders. Even after such a strenuous effort a reader may not be able to lay his hands on all the amendments as there is bound to be some time gap between the date of publication/sale of the Volume and the date upto which the volume is upto-date. Thus it is felt that the scheme of issuing Supplements at this late stage will not be purposeful or economical and the Volumes so issued may not have the desired effect or sale in view of the difficulties to the reader enumerated above. The Committee on Subordinate Legislation of the Lok Sabha, is, therefore, requested to kindly dispense with the requirement of publication of these Supplement Volumes. After the present series of the main G.S.R.O. Volumes is completed, this Ministry will take up the next revised edition of G.S.R.O. compilation."

14. In this connection, the Committee heard oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) on the 28th January, 1978. Explaining the reasons for delay in printing the remaining volumes of the Compilation of General Statutory Rules and Orders, the representative of the Ministry Stated that volumes of subordinate legislation are being issued by them with reference to India Code Volumes. Twenty-two volumes have been finally published. Twenty-third and Twenty-fourth volumes have been sent to press for final printing. Out of the eight volumes of the India Code, seven have been covered, Volume eight has been taken up and partly covered.

15. Regarding difficulties in completing the work, the representative of the Ministry stated that the first difficulty is in getting the material from the administrative Ministries. The Ministries have to compile it from the past records and by correspondence with the State Governments. Secondly, there is want of experienced technical staff. He admitted that more streamlining is called for regarding publication work. There was feeling that it was not important and could be done by a junior officer—a subordinate non-gazetted officer. But after he had taken over the charge of the Ministry, a senior Joint Secretary had been associated with the work. The representative of the Ministry assured the Committee that the remaining work would be completed by 1980. He also pleaded that they may be permitted to discontinue the printing of supplementary volumes. He further stated that if they are permitted to recruit Junior Law Officers, between the ranks of Under Secretaries and Superintendents, it will go a long way in expediting the work.

16. When asked about the difficulty in publishing the annual publication of the rules published in the Gazette during the course of the year, the representative of the Ministry stated that in England they have Statutory Instruments Act and they have fixed the responsibility on the Printer and the procedure to be followed by the administrative Ministries for bringing out the annual volumes but even there the subordinate legislation has been found to be in such a vast quantity that it is difficult to keep upto date any publication containing it.

17. In reply to another question as to when rules are published in the Gazette, why the Ministry of Law should consult the administrative Ministries and not publish it itself, the representative of the Ministry stated that they consult the administrative Ministry to check up the information given by them. He further stated that it is unfortunate that the rules are not available in an upto date form. The only remedy is to introduce a system taking into account the existing arrangements for making rules. According to the Allocation of Business Rules, the various enactments passed by Parliament are allocated for administrative purposes to different Ministries. They make the rules and publish them. Rules made by the Central Government are sent to Law Ministry for scrutiny and those made by other agencies like Corporations do not come to the Law Ministry for scrutiny. The Committee could issue instructions that every year, the administrative Ministries/Departments should publish an index to the rules issued under particular enactments. Another difficulty arises by reason of section 24 of the General Clauses Act under which rules made under a repealed enactment can continue indefinitely under the new enactment. As a result of this, there has been a lot of difficulty in compiling the G.S.R. volumes. Illustrating his point, the witness stated that there were certain Acts dating from 1838 which had been repealed, but some of the rules made thereunder still continued to be in force. So far making the Compilation, they had to go through all the records since 1838 to ensure that it was accurate. According to him, the difficulty could be minimised if the rules under repealed Acts are not allowed to continue for more than such period as may be considered reasonably necessary.

18. Referring to the practice in the United States, the witness stated that they have a separate office, the Federal Registry, specially for this purpose and all federal agencies have to send copies of their rules and regulations to them for registration. Then there is a duty cast on the Public Printer and there is also a Committee charged with the responsibility of bringing out the consolidated volumes. A system has to be introduced here. He suggested that when amending rules are published in the Gazette, there can be a footnote indicating the Gazette(s) in which the original rules and previous amendment if any were published so that it becomes easy for one to locate the various sources.

19. In reply to a further question, the representative of the Ministry stated that it will not be possible to finish the work before 1980. He again requested the Committee to dispense with the publication of Supplements for the time being. The Ministry were then asked to submit a note regarding issue of Supplements to the main volumes of G.S.R.Os indicating, in particular, the subjects which have been covered so far and the subjects which are yet to be covered. The representative of the Ministry promised to furnish the requisite note. The Ministry have furnished the said note on the 18th February, 1978 (*vide* Appendix No. IV).

20. In Para 49 of their Third Report (Second Lok Sabha), presented to the House on the 2nd May, 1958, the Committee on Subordinate Legislation had desired Government to bring out some publication of Statutory Rules and Orders, on the lines of U.K.'s annual publication of Statutory Instruments for the convenience of the public Pursuant to this, Government assured the Committee to bring out an upto-date publication of the General Statutory Rules and Orders in force as soon as all the Volumes of the India Code were published. The Ministry of Law brought out the first Volume of the Compilation of General Statutory Rules and Orders in July, 1960, and according to their programme, the whole work comprising 30 Volumes was to be completed by the end of 1977. During the first five years, 1960 to 1964, 9 Volumes were printed and released. But thereafter the pace of work slackened. During the period 1966 to 1973, 11 more volumes were printed. In 1974 only one volume was released, and during the years 1975 and 1976 not a single complete volume was brought out. In September, 1977, Volume XXII was printed, leaving a balance of 8 volumes to be published. Thus, more than 17 years after the first volume was published in July, 1960, over one-fourth of the work still remains to be done. The Committee are constrained to observe that the work was not done with the vigour seriousness and urgency it deserved. The Committee, are particularly unhappy that instead of accelerating the pace work as repeatedly urged by the Committee the pace of work had gradually slackened; the fall-down being particularly steep after 1973.

21. Apart from the fact that there is still a long way for the Compilation to be completed, its utility has been further impaired by the fact that the bulk of the work has already become out of date. Out of the 22 Volumes so far published, 18 were published during the period 1960 to 1969. To keep these volumes upto-date, the Ministry issued 4 Supplements during the period August, 1968 to October 1971. Thereafter, the work of issuing Supplements was discontinued. To day no person referring to the Compilation can say with certainty whether a particular rule or set of rules contained therein still in force, whether in original or amended form. The Committee need hardly point out that a book of reference has value only if it can be relied upon. The Committee have no hesitation in observing that the purpose with which they had asked Government to bring out the Compilation has not yet been served.

22. The Ministry of Law have requested the Committee for the extension of the target date for the completion of the main Compilation up to the end of 1980. They have also made a request for dispensing with the requirement of publication of Supplements on the ground that consultation of the main volume and its addenda and then of the Supplement and the addenda thereto would be inconvenient to the public. The Ministry have instead proposed to bring out revised editions of the G.S.R.O. Compilation after the work of the main Compilation has been completed. While the Committee agree with the Ministry's view that the revised editions of the Compilation will be more convenient to the public, they feel that the period of three years for the Ministry to take up this work is too long. The Committee will like the Ministry to make earnest

efforts to complete the main Compilation well ahead of the new target date suggested by them. They will also like the Ministry to go ahead, without any further loss of time, with the issue of the revised editions of the Volumes already published. In view thereof, the Committee do not insist on the publication of Supplements.

23. A Major constraint in the way of the expeditious completion of the Compilation has been stated to be the paucity of staff. The Committee will draw the attention of the Ministry to para 71 of their Teath Report (Fifth Lok Sabha) wherein they had desired the Ministry to restore the original staff strength so that the work did not suffer for want of technical personnel who were competent to do it. The Committee will like to emphasise that they have asked the Ministry to bring out the Compilation with a purpose. Government should not hesitate in increasing the staff strength as such a course is considered necessary for the achievement of the end in view..

24. According to the Ministry of Law, another constraint in the way of expeditious completion of the work is the difficulty in getting the material from the agencies issuing the rules. Under the Allocation of Business Rules, administrative Ministries are responsible for making and publishing the rules under the enactments administered by them. While the rules made by the Ministries/Departments of Central Government are sent to the Law Ministry for scrutiny, those made by other agencies like Corporations etc., are not sent to the Law Ministry for scrutiny. The Committee have been given to understand that in the United States, there is a separate office—the Federal Registry—specially, for this purpose & all federal agencies are required to send copies of their rules and regulations to the Federal Registry for registration. The Committee will like the Ministry of Law to examine whether some similar system cannot be introduced here. In the meanwhile, instructions should be issued to the administrative Ministries/Departments for expeditious supply of material for inclusion in the Compilation, as it is one of the factors responsible for delay in the publication of the Compilation.

25. Another difficulty, according to the Ministry of Law, arises by reason of section 24 of the General Clauses Act, 1897 under which rules made under a repealed enactment can continue indefinitely under the new enactment. As a result of this, there has been a lot of difficulty in compiling the G.S.R.O. Volumes. For ensuring the accuracy of the Compilation, they have to go through all the records since the framing of the original rules under the repealed Acts. To overcome this difficulty, the Committee will like the Ministry of Law to examine the feasibility of amending section 24 of the General Clauses Act so that the rules under the repealed Acts are not allowed to continue for more than a certain period after the commencement of the new Acts.

26. Another snag in the expeditious publication of the Compilation is delay in printing. The Committee will like the Ministry of Works and Housing to issue instructions to the Government of India Press to accord priority to the printing of the Compilation.

27. In view of the large volume of Subordinate Legislation that has to be issued, the Committee feel that even after the issue of the revised editions of the Compilation, it may be difficult to keep the entire gamut of Subordinate Legislation upto date. To supplement the Compilation, and to help in its preparation, the Committee desire that—

- (i) Steps should be taken to publish Monthly or quarterly Compilation of Rules (including amending rules) issued during the preceding six months as also rules currently published.
- (ii) An Index to the rules (including amending rules) issued by Government under various enactments should be published every year.
- (iii) In case of amending rules published in the Gazette, references by means of footnotes should be given to a the earlier relevant rules published in the Gazette.

The Committee desire the Ministry of Law to take appropriate decision with regard to above as soon as possible.

III

The Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1977 (as passed by the Rajya Sabha on the 17th November, 1977 and laid on the Table of Lok Sabha on the 18th November, 1977).

28. The requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1977, as passed by the Rajya Sabha on the 17th November, 1977, was laid on the Table of Lok Sabha on the 18th November, 1977. The Bill sought further to amend the Requisitioning and Acquisition of Immovable Property Act, 1952 and to repeal the Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance, 1977. The Bill was examined under Direction 103(2) of the Directions by the Speaker, and it was noticed that Section 22(1) of the principal Act empowers the Central Government to make rules by notification for carrying out the purposes of the Act and Section 22(3) thereof provides that 'all rules made under the provisions of this Act shall be laid as soon as may be, before Parliament'. Thus the principal Act contains a provision for laying the rule made under the Act by the Central Government before Parliament, but this provision does not conform to the laying provision, approved by the Committee on Subordinate Legislation in paras 33-34 of their Second Report (Fifth Lok Sabha) which reads as follows:—

“Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall

thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

29. Apart from the fact that the laying provision contained in the principal Act does not specify the period for which the rules are required to be laid, it also does not provide for modification of the rules by Parliament.

30. The Committee on Subordinate Legislation of Lok Sabha had recommended in para 37 of their Third Report, (First Lok Sabha) presented to the House on the 3rd May, 1955, that in all future Bills which may seek to amend earlier Acts giving power to make rules, regulations, etc. suitable provisions to lay them on the Table should be included therein. The above recommendation was reiterated by the Committee on Subordinate Legislation (Fifth Lok Sabha) *vide* paras 46-50 of their Ninth Report, presented to the House on the 19th November, 1973, wherein they had desired the Ministry of Law, Justice and Company Affairs (Legislative Department) in particular, to issue general instructions in this behalf to all Ministries/Departments so that inclusion of the laying provision as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha), in original Bills as well as amending Bill did not escape their attention in future.

31. It was noticed that while the Requisitioning and Acquisition of Immovable Property Act, 1952, was amended five times by amending Acts, in 1960, 1968, 1970, 1973 and 1975 after the presentation of the Third Report (First Lok Sabha), provisions for laying in Section 22(3) thereof were not amended suitably. Even the Amendment Bill under reference did not make any provision to this end.

32. The matter was taken up with the Ministry of Works and Housing who were asked to state the reasons for not complying with the aforesaid recommendations of the Committee through the five previous amending Acts as well as the present Bill and whether they had any objection to making an amendment to the said Bill on the lines suggested by the Committee.

33. The Ministry of Works and Housing in their reply dated the 12th December, 1977 *inter alia*, stated as under:

".....this Ministry agree to making appropriate provisions in the Act to remove the lacunae pointed out by them with reference to Section 22(3) of the Requisitioning and Acquisition of Immovable Property Act, 1952 which has remained unrectified. This could not be done earlier due to oversight.

.....The requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1977 was passed by the Rajya Sabha on the 17th November, 1977. If a further amendment needed for removing the lacunae pointed out by the Lok Sabha Secretariat, has to be incorporated in the present Bill,

it will have once again to be placed for consideration of the Rajya Sabha before it can be considered by the Lok Sabha. It is felt that it will not be possible to get the 'Amendment' considered by both the Houses of the Parliament within the short space of next 10 days, *i.e.* before the present Session comes to a close. As the Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance, 1977, published on the 23rd September, 1977 is required to be passed by both the Houses of Parliament, in any case before the expiry of 6 months that is upto 22nd March, 1978, and as the Parliament is not likely to have time to consider *de novo* any fresh Amendment and as the Parliament in the midst of its heavy schedule of business in its next session which happens to be Budget Session, is not likely to consider any Amendment Bill on the subject, it is suggested that the Amendment Bill already passed by the Rajya Sabha and the lacunae pointed out by the Lok Sabha Secretariat may be removed as and when the Act is to be amended again thereafter....."

34. The Committee observe that as far back as May, 1955, the Committee on Subordinate Legislation in para 37 of their Third Report, (First Lok Sabha) has desired that in all future Bills which may seek to amend earlier Acts giving power to make rules, regulations, etc., suitable provision for their laying and modification should be included therein. This recommendation was accepted by Government *vide* paras 78-79 of their Sixth Report (First Lok Sabha). The Committee are, however, constrained to note that although the Ministry of Works and Housing have during the intervening period of 22 years approached Parliament six times for the amendment of the Requisitioning and Acquisition of Immovable Property Act, 1952, they have all along failed to comply with the above recommendation of the Committee. The plea of oversight advanced by the Ministry for their repeated failure in this regard only shows that the above recommendation of the Committee has not been taken by the Ministry with the seriousness it deserved.

35. The Committee note the assurance of the Ministry to amend the laying provision in this Act when it is next amended. The Committee however, desire the Ministry to bring forward the necessary amending Bill for this purpose within the next six months at the latest.

IV

The Central Civil Services (Revised Pay) Twenty-Fifth Amendment Rules, 1974 (G.S.R. 732-E of 1274)

36. Retrospective effect has been given to the Central Civil Services (Revised Pay) Twenty-fifth Amendment Rules, 1974. The explanatory memorandum appended to the Rules did not contain a clarification to the effect that no one would be adversely affected by giving retrospective effect. In this connection attention of the Ministry of Finance (Department of Expenditure) was invited to following recommendation of the Committee

on Subordinate Legislation contained in para 102 of their Ninth Report (Fifth Lok Sabha) :—

“..... The Committee feel that once the propriety of not issuing the Rules retrospectively is accepted, it does seem necessary to indicate in the explanatory note that the interest of no one are prejudicially affected by retrospective effect.”

37. The Ministry of Finance (Department of Expenditure) who were asked to state the reasons for not giving the above clarification in the explanatory memorandum have stated as under :—

“.....CCS (RP) Rules, 1973 have been issued following the recommendations of the Third Pay Commission. The Third Pay Commission itself had recommended retrospective effect of one month in respect of its recommendations on pay scales and retirement benefits. The employees' representatives on the Staff side of the J.C.M. wanted this period to be increased further by several months. After discussions with the Staff side, Government ultimately decided to give retrospective effect to the Commission's recommendations on these matters from 1-1-1973 i.e. retrospective effect of two months only in addition to the retrospective effect of one month recommended by the Commission. The decision of Government on giving further retrospective effect to these recommendations *has benefited the overwhelming majority of Government servants. There might, however, be some cases in which application of recommendations even by one day might have some adverse effect. It was, therefore, not considered possible to say categorically that by giving retrospective effect to the Commission's recommendations in respect of pay scales as promulgated in the C.C.S. (R.P.) Rules, 1973 that the interest of no employee would be affected adversely.* It was, therefore, mentioned in the Explanatory Memorandum to the C.C.S. (R.P.) Rules, 1973 and the amendments thereto issued subsequently from time to time that even though the Commission has recommended the revision of pay scales from 1-3-1973, Government has decided to give effect to such recommendations from 1st January, 1973, in order to provide greater benefit to the Government servants in general. It may be mentioned in this connection that under rule 5 of the C.C.S. (R.P.) Rules, 1973, persons in position on 1-1-73 have the option to retain the pre-revised scales of pay or to come over to the revised scales from the date of any subsequent increment as may be advantageous to them. These persons would not, therefore, be adversely affected by retrospective revision in respect of posts held by them on 1-1-1973. In the case of persons appointed after 1-1-1973 the question as to how far it is necessary for Government to allow further concessions to such of them as might have been adversely affected by giving the rules retrospective effect was examined in consultation with Law Ministry keeping in view the recommendations of Committee on Subordinate Legislation and orders have been issued in this Ministry's O.M. No. 67/II/74-IC dated 1-6-1974

(*copy enclosed) giving further benefits like protection of drop in emoluments and non-recovery of any over payments which might arise up to the date of the issue of the orders laying down revised scales of the posts held by them.”

38. The omission of not giving a clarification in explanatory memorandum to the effect that no body has been adversely affected due to retrospective effect given to rules has been observed in 14 other cases listed in Appendix II.

39. The Committee have repeatedly emphasised that if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given by way of an explanation to the effect that no one will be adversely affected as a result of retrospective effect given to such rules. The Committee note that although the rules in question have been given retrospective effect, the affirmation that no one will be adversely affected as a result of such retrospective effect has not been given.

40. The Committee will like to make it clear that the idea underlying the aforesaid affirmation is that no one should be affected retrospectively. The Committee note that retrospective effect in the instant case has benefited an overwhelming majority of Government servants. Under rule 5 of the Central Civil Services (Revised Pay) Rules, 1973, persons in position on 1-1-1973, have been given to the option to retain the pre-revised scales of Pay or to come over to the revised scales from the date of any subsequent increment as may be advantageous to them. Further, even in case of persons appointed after 1-1-1973, Government, keeping in view the recommendations of the Committee on Subordinate Legislation, have issued orders giving further benefits like protection of drop in emoluments and non-recovery of any over-payments which might arise up to the date of the issue of the orders laying down revised scales of the posts held by them.

In view of the foregoing, the Committee, as an exception, do not press for the amendment of the explanatory memorandum to include the requisite affirmation in this case.

V

The Interest-tax Rules, 1974 (S.O. 740-E of 1974).

41. Note below Form No. 5 (Form of memorandum of cross objections to the Appellate Tribunal) given in the Appendix to the Interest-tax Rules, 1974 (S. O. 740-E of 1974) provides that memorandum of cross objections should be written in English.

The note, as worded, appeared to prohibit the use of Hindi for the memorandum and thus went against the spirit of the provision of the Constitution relating to the National Language. The Ministry of Finance (Department of Revenue and Banking) with whom the above point was taken up stated that steps had already been taken by the Income-tax Appellate Tribunal which is also the Appellate Tribunal for the purposes of Interest-tax

*See Appendix III

Act, to permit the use of Hindi for purposes of proceedings before the Benches of the Tribunal sitting in Gujarat, Maharashtra, Uttar Pradesh, Punjab, Madhya Pradesh, Rajasthan, Bihar, Chandigarh and Delhi.

42. In a further communication, the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) have stated as under :—

“The position regarding presentation of documents in Hindi before the Income-tax Appellate Tribunal and the use of Hindi in the proceedings and judgments of the Tribunal is indicated below:—

- (a) According to Rule 5-A of the Income-tax (Appellate Tribunal) Rules, 1963, the parties may file documents in Hindi, if they so desire, in the Benches of the Tribunal located in such States as may be notified by the President, Income-tax Appellate Tribunal, in this behalf ; from time to time.

In accordance with Notification No. F. 186-Ad(AT)/71 dated 5-3-1974..... of the Income-tax Appellate Tribunal, the following Benches of the Tribunal in the States of Gujarat, etc., were notified for the purposes of Rule 5-A above :—

- (1) Ahmedabad (2) Nagpur (3) Amritsar (4) Delhi (5) Jabalpur (6) Bombay (7) Allahabad (8) Chandigarh (9) Indore (10) Jaipur and (11) Patna.

- (b) According to Rule 5-B of the aforesaid Rules, the Tribunal in its discretion may permit the use of the Hindi in its proceedings or may pass orders in Hindi, in such States as may be notified by the President, Income-tax Appellate Tribunal, in this behalf, from time to time :

Provided that where the order is passed in Hindi, it shall be accompanied by an authorised English translation thereof.

In accordance with Notification No. F.71-Ad (AT)/74 dated 5-5-1975.....the President, Income-tax Appellate Tribunal, has notified the following Benches of the Tribunal located in the States of Gujarat etc., for the purposes of Rule 5-B above :—

- (1) Ahmedabad (2) Bombay (3) Nagpur (4) Allahabad (5) Amritsar (6) Chandigarh (7) Delhi (8) Indore (9) Jabalpur (10) Jaipur and (11) Patna.

The provisions contained in Rules 5-A and 5-B of the Income-tax (Appellate Tribunal) Rules, 1963 are not specific to the cases (i.e. Memoranda, Cross-objections, Appeals, reference, etc., arising out of a particular Act/Rules) but of general application covering all matters coming before the Tribunal.

From the facts stated above, it will be observed that in so far as Income-tax Appellate Tribunal is concerned, there is no bar in the use of Hindi, for filing of documents—and in proceedings and orders in certain specified Benches located in Hindi-Speaking States as well as in Punjab, Maharashtra and Gujarat, for the purposes of interest-tax Rules, 1974.”

43. The Committee note from the reply of the Ministry of Law, Justice & Company Affairs (Department of Legal Affairs) that under Rules 5-A and 5-B of the Income-tax Appellate Tribunal Rules, 1963, the Income-tax Appellate Tribunal, which is also the Appellate Tribunal for the purposes of the Interest Tax Act has notified certain Benches of the Tribunal where the parties may file documents in Hindi, if they so desire or where the use of Hindi may be permitted in its proceedings. The Benches of the Tribunal at Ahmedabad, Nagpur, Amritsar, Delhi, Jabalpur, Bombay, Allahabad, Chandigarh, Indore, Jaipur and Patna have been notified for this purpose. In view of this, the Committee feel that it is not necessary to retain the Note below Form No. 5 given in the Appendix to the Rules which provides that the Memorandum of cross objections to the Appellate Tribunal should be written in English. As worded, it will unnecessarily give an impression that it seeks to prohibit the use of Hindi for the Memorandum of cross objections. The Committee, therefore, desire the Ministry of Finance (Department of Revenue and Insurance) to delete the said Note from the rules at a very early date.

VI

The Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975)

(A)

44. Paragraph 9 of the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 reads as under :—

“Provisions respecting existing officers and other employees of the dissolved company, every officer or other employee (excluding the Directors of the dissolved company) employed immediately before the appointed day in the dissolved company, shall, as from the a pointed day, become an officer or other employee, as the case may be, of the company resulting from the amalgamation and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as he would have held the same under the dissolved company, if this order had not been made, and shall continue to do so unless and until he is duly removed from the employment in the company resulting from the amalgamation or *until his terms and conditions of employment are duly altered by that company.*”

45. In terms of the above provision the company resulting from the amalgamation had been empowered to alter the terms and conditions of the employees.

46. In this connection, attention of the Ministry of Law (Department of Company Affairs) was invited to the recommendation made by the Committee on Subordinate Legislation in paras 21-24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage.

47. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) sent the following reply :—

“.....All similar Central Acts have guaranteed to the employees the existing terms and conditions of service and also provide for the alteration of such terms and conditions of the service in accordance with due process of law. It is not possible to ensure, in the case of an insolvent company which becomes amalgamated with another company that the existing terms and conditions will not be altered to the disadvantage of the employee. The employee has been given an assurance that the alteration will be made in accordance with due process of law and consequently the employee will have a say with regard to the proposed alteration. In these circumstances, no amendment appears to be called for in the Order in question.”

48. During the scrutiny of another Amalgamation Order, namely the Balmer Lawrie & Co. Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976), it was seen that paragraph 9 thereof provided for alteration of terms and conditions of service of employees by ‘*mutual consent*’.

49. Attention of the Ministry was invited to the above provision and they were requested to state whether in view of this they had any objection to amending the Order so as to bring it in accord with the later Order.

50. In their reply, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have stated that the suggestions of the COMMITTEE will be given effect to in the future orders to be made by the Board. They have also stated that since the Order was issued quite sometime back, no useful purpose would be served by its amendment now.

51. The Committee note that the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have agreed to provide in all future amalgamation orders that the terms and conditions of service of the employee of the dissolved company/companies will be altered by the Company resulting from amalgamation only by ‘*mutual consent*’ as has been provided for in the Balmer Lawrie and Company Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976). The Committee, however, see no reason for not providing a similar safeguard in the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 also. The Committee therefore, desire the Department of Company Affairs to amend para 9 of the Order in question so as to provide for the alteration in the terms and conditions of service of employees of the dissolved company only by ‘*mutual consent*.’

(B)

52. Sub-section (4) of Section 396 of the Companies Act, 1956, under which the Indian Consortium for Power Projects Private Ltd. and

the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 has been issued provides that an Order shall not be issued under that Section unless:—

- (a) a copy of the proposed Order has been sent in draft form to each of the companies concerned;
- (b) two months time has been given to the companies to submit their suggestions and objections on the draft order; and
- (c) the Central Government has considered and made such modification, if any, in the draft as may seem to it desirable in the light of the suggestions/objections received from the companies or from any class of shareholders therein or from any creditors or class of creditors.

53. It was felt that there should be an indication in the preamble to the Order that the above statutory conditions had been satisfied before the issue of the Order.

54. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) with whom the above matter was taken up, replied as under :—

“.....the order of amalgamation has been made under section 396 of the Companies Act, 1956 and it is to be taken the Order has been made after compliance with the procedure laid down in that section. Hence it is not considered necessary to mention compliance thereof in the preamble.”

55. During the scrutiny of another Amalgamation Order, namely, the Balmer Lawrie and Co. Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976), it was seen that its preamble specifically stated that a copy of the draft Order was sent to the Companies in question and their suggestions/objections were considered.

56. Attention of the Ministry was invited to the above provision and they were requested to state whether, in view of this they had any objection to amending the preamble of the order, so as to bring it in accord with that in the later Order.

57. In their reply, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have stated that they will give effect to the suggestions of the Committee in future Orders to be made by the Board. They have also pointed out that no useful purpose would be served by the amendment of the Order now, as it had been issued quite sometime back.

58. The Committee note with satisfaction that, on being pointed out, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have assured that in all similar (Amalgamation Orders to be issued in future, it will be specifically mentioned in the preamble thereof that a copy of the draft Order has been sent to the companies in question and their suggestions/objections have been considered, as required by sub-section (4) of section 396 of the Companies Act, 1956.

VII

**The All India Services (Leave Travel Concession)
Rules 1976 (G. S. R. 225 of 1975)**

59. Rule 3 of the All India Services (Leave Travel Concession) Rules, 1976 states as under :—

“Regulation of Leave Travel Concession:—The leave travel concession of a member of the service shall be regulated in the same manner, and subject to the same conditions, as are applicable to the Officers of Central Civil Services, Class I.”

60. Attention of the Cabinet Secretariat (Department of Personnel and Administrative Reforms) was drawn to the recommendation made by the Committee on Subordinate Legislation in paras 12-13 of their First Report (Fourth Lok Sabha) that rules should be self-contained and legislation by reference should be avoided as far as possible. They were requested to state whether they had any objection to making the above Rules self-contained by omitting reference to the Rules governing Central Civil Services, Class I.

61. In their reply, the Cabinet Secretariat (Department of Personnel and Administrative Reforms) have stated as under :—

“.....the matter has been examined carefully in consultation with the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs).

‘Legislation by reference’ can be assailed mainly on the ground : (i) it has resulted in excessive legislation of the Subordinate Legislative Authority and (ii) it causes inconvenience to the consumers i.e., people who are frequently required to refer to the legislation. Since in both the cases, it is the Central Government which issues the orders, there is no question of delegation of the Authority. The All India Services (Leave Travel Concession) Rules, is a very small rule, and makes reference to only one set of orders, copies of which have been/will be supplied to the State Governments and the Accountants General, who are frequently required to refer to these orders. Further, it would not be feasible to make self-contained rules by incorporating the various instructions issued from time to time in respect of officers of Central Civil Services, Class I. Even if such a set of rules were to be framed, then as and when the executive instructions are modified, the statutory rules would require to be amended. There would invariably be a time-lag between the date of issue of executive instructions and the date of the amendment to the statutory rules. On the other hand, the All India Services (Leave Travel Concession) Rules, 1975, as they stand, obviate the need for such amendments and have also the advantage of providing for the automatic application, to the members of the All India Services, of the instructions, issued in respect of officers of the Central Civil Services, Class I, from time to time.

The Ministry of Law, Justice and Company Affairs (Department Legal Affairs) have advised that it is a well-accepted legislative practice to incorporate by reference if the legislature so chooses,

the provisions of some other Act in so far as they are relevant for the purpose of and in furtherance of the scheme and objectives of that Act. This has been recognised by the Supreme Court in *A.T. Corporation Vs. Assistant Collector of Customs* (1972 S.C. 648 at 654). In the present case all the provisions regarding Leave Travel Concession applicable to Central Services, Class I have been made applicable to the members of the All India Services. That being so, there would be no difficulty to the public in locating and referencing the rules. Moreover, as these rules are of interest only to members of the All India Services, the members of public would not require and may not be interested to know the details. There would also be no difficulty to the service personnel, advocates and courts in locating these rules.

n view of the considerations mentioned above, it is felt that the All India Services (Leave Travel Concession) Rules, 1975 (G.S.R. 225 of 1975) do not call for any modification.”

62. The Committee are not satisfied with the reply of the Department of Personnel and Administrative Reforms that they have not framed self-contained rules regarding leave travel concession of All India Services by incorporating therein the various instructions issued from time to time in respect of officers of the Central Civil Service, Class I with a view to obviate the necessity of amending them as and when the executive instructions are amended. The Committee feel that this is not a plausible reason for regulating through executive instructions matters which should be governed by statutory rules under the All-India Services Act, 1951. The Committee need hardly point out that the executive instructions are no substitute for statutory rules, for, whereas the rules framed under the Act are required to be laid before Parliament and are subject to modification or annulment by Parliament, this requirement is not fulfilled in the case of executive orders. Further, whereas the rules are also published in the Gazette, the executive orders, are not so published and, therefore, do not come to the notice of the Committee on Subordinate Legislation. As such, the Committee are unable to examine whether they contain any provision which is apt to be abused. The Committee will, therefore, like the Department of Personnel and Administrative Reforms to make the rules in question self-contained by incorporating the relevant executive instructions therein.

VIII

The Iron Ore Mines Labour Welfare Cess (Amendment) Rules 1974 (G. S. R. 1007 of 1974).

(A)

63. The Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 were published in the Gazette of India, Part II, Section 3(i), on the 23rd September, 1974, but were enforced from the 15th June, 1974, *vide* sub-rule (2) of rule 1 thereof. The parent Act did not empower the Central Government to give retrospective effect to the rules framed thereunder.

64. The attention of the Ministry of Labour was invited to the following observation of the Attorney General :—

“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.....”(vide para 49 of 7th Report—Fourth Lok Sabha).

65. The Ministry of Labour in their reply have stated as under:—

“As regards giving retrospective effect of the rules, it is the result of an accidental mistake in the failure to correct sub-rule (2) of rule 1 of the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974, while the same was notified. The original intention was to bring into force the Iron Ore Mines Labour Welfare Cess (Amendment) Act, 1970 and the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 simultaneously on 15-6-1974. Subsequently, it was decided to bring the Amendment Act into force with effect from 1-10-1974. Both the Notifications bringing the Amendment Act into force and the Amendment Rules were published simultaneously in the Gazette dated 14-9-1974.

While publishing, the date given in sub-rule (2) of rule 1 of the Amendment Rules should have been corrected to 1-10-1974. But since the rules are being replaced by new rules under the new Act, there may not perhaps be any need to pursue the matter further. The Lok Sabha Secretariat may kindly advise.”

66. The Committee are not satisfied with the reply of the Ministry of Labour that as the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974, are being replaced by the new rules under the new Act, there is no need to issue a corrigendum to sub-rule (2) of rule 1 correcting the date of its coming into force from 15-6-74 to 1-10-74. The Committee feel that as the retrospective effect in this case, although erroneously given, was without due legal authority, the Ministry should have at their earliest issued a corrigendum correcting the date of effect of the rules. This, unfortunately, was not done. The Committee desire the Ministry of Labour to issue the necessary corrigendum without any further delay as it may take time to issue the new rules under the new Act.

(B)

67. Rules 39(2)(b), 40(2) and 41 of the Iron Ore Mines Labour Welfare Cess Rules, 1963, as substituted by the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 (G.S.R. 1007 of 1974) provide for an imposition of fine on the occupier of a metallurgical factory which extend to five hundred rupees. Section 8(3) of the parent Act—the Iron Ore Mines Labour Welfare Cess Act, 1961—did not specify the

maximum amount of fine that could be imposed but merely laid down that the breach of any rule 'shall be punishable with fine'.

68. The Ministry of Labour were asked if they had any objection to amending the parent Act so as to specify the maximum amount of fine in the Act.

69. In their reply, the Ministry have stated that the said Act has since been repealed and replaced by the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 (Act No. 55 of 1976). In section 14(3) of the new Act, the maximum amount of fine that can be imposed has been specified. This section reads as under:

“(3) In making any rule under clause (c) of sub-section (2), the Central Government may direct that a breach thereof shall be punishable with fine which may extend to *five hundred rupees*.”

70. The Committee note that while the Iron Ore Mines Labour Welfare Cess Act, 1961, under which the rules in question were framed, did not specify the maximum amount of fine that could be imposed for breach of rules, the same has been specified in section 14(3) of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976, which has repealed the old Act.

(C)

71. In para 2 of Forms, H, K, N & Q attached to the above rules regarding 'Demand Notice' it had been mentioned that the relevant amount will be recoverable 'as an arrear of land revenue'. It was pointed out to the Ministry that power to recover 'as an arrear of land revenue' was a substantial power which should flow more appropriately from the parent Act.

72. In their reply, the Ministry have stated that in Section 9 of the new Act an express provision empowering Government to recover dues 'as an arrear of land revenue' has been made. This section reads as under:—

“9. Any amount due under this Act (including the interest or penalty if any payable under section 7 or section 8, as the case may be) from any occupier of a metallurgical factory or any owner of an iron ore, mine or a manganese ore mine may be recovered by the Central Government in the same manner as an arrear of land revenue.”

73. The Committee note with satisfaction that an express provision for recovering the dues 'as an arrear of land revenue, has been made in section 9 of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976, which has repealed the old 1961 Act.

74. The Committee will like the Ministries/Departments to ensure that any rule, regulation, etc., providing for recovery as an arrear of land revenue, which is in the nature of an extreme step, should invariably be backed by an express authorisation to this effect from the parent statute.

IX

**The Salt (Assam Reserve Stock) Order, 1973
(S. O. 158 of 1974).**

(A)

75. Under Clause 6 of the Salt (Assam Reserve Stock) Order, 1973, powers of inspection, entry, search, seizure, etc. were vested in 'any officer authorised by the Central Government in this behalf'. The minimum rank of an officer who could exercise the above powers was not specified in the Order, as required by the oft-repeated recommendation of the Committee on Subordinate Legislation in this regard.

76. Attention of the Ministry of Industry (Department of Industrial Development) was invited to the following recommendation of the Committee contained in para 15 of their Fifth Report (Third Lok Sabha):

"The Committee, after having considered the matter at some length, are of the view that it should specifically be stated in the Order that a Government servant not below a specified rank or equivalent officer might be authorised to conduct searches and seizures etc. under the aforesaid Order. It should not be left worded in a manner which would give the Executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the aforesaid order."

(B)

77. Clause 7 of the Salt (Assam Reserve Stock) Order, 1973, *inter alia*, provided as under:

"Expenditure incurred in storing the reserve stock of salt to be borne by the importer.—All expenses in connection with the storage of salt in the salt depot towards the reserve stock of salt.....shall be borne by the importer. The importer shall also pay rent for storage of the reserve stock of salt in the salt depot at the rates approved by the Salt Commissioner, for the entire period of storage, that is, from the date of its storage upto the date of its actual removal. On no account shall the importer be eligible to claim any reimbursement of the expenses incurred by him in connection with the storage and maintenance of the reserved stock of salt or for the wastage of salt and deterioration of the condition of the containers of such salt, etc."

78. There appeared to be no authority in the parent Act—the Essential Commodities Act 1955—for charging of the above expenses from the importer.

(C)

79. Clause 8 of the Salt (Assam Reserve Stock) Order, 1973, provided as under:

"Power to exempt.—Notwithstanding anything contained in this Order, the Salt Commissioner may, by an order in writing and

subject to such conditions as may be specified therein, exempt any consignment of salt which is brought solely for industrial purposes, from the provisions of this Order.”

80. It was felt that the conditions subject to which exemption could be granted should be specified in the Order for the information of all concerned and to avoid any scope for discriminatory treatment.

81. The Ministry of Industry (Department of Industrial Development) to whom the above points were referred for comments on 29-8-74, in their reply dated the 2nd August, 1976, stated as under:

“The points raised by the Lok Sabha Secretariat have been examined in consultation with the Salt Commissioner and the Ministry of Law. As there was some difference of opinion about the legality of the recovery of rent charges from the traders, Law Ministry referred the issue to one of their Senior Law Officers for opinion. The opinion of the Senior Law Officer has recently been received and action to amend the Order in the light of the observations of Lok Sabha Secretariat and the comments of the Law Ministry is being taken, in consultation with the Salt Commissioner and Law Ministry. The file has been referred to Salt Commissioner for suggesting a draft amendment Order in the light of Law Ministry’s opinion and Lok Sabha Secretariat’s observations. Our detailed comments on the various observations of the Lok Sabha Secretariat would be furnished in a months time. We are sorry for the unavoidable delay.”

82. In a further communication dated 25-5-1977, the Ministry of Industry (Department of Industrial Development) have stated as under:

“.....while the points raised by the Lok Sabha Secretariat *vide* their O.M..... dated the 29th August, 1974 were being examined in consultation with the Ministry of Law and the Salt Commissioner, the Government of Assam informed this Ministry that they have appointed the Assam State Cooperative Marketing and Consumer Federation Ltd. for import of the entire quantity of their salt requirement and the Federation could itself set apart a part of its imports as reserve stock. The State Government had, therefore, suggested that the depot need not be opened. Accordingly, this Ministry has in consultation with the Salt Commissioner and Ministry of Law rescinded the Salt (Assam Reserve Stock) Order, 1973 *vide* Order No. S.O. (362) Ess. Com./Salt (3) dated the 7th January, 1977—(Published in Gazette dated 29-1-1977)”.

83. The Committee are unhappy to note that the Ministry of Industry (Department of Industrial Development) who were asked to give their comments on certain points arising out of the Salt (Assam Reserve Stock) Order, 1973 on the 29th August, 1974, had sent their final reply on the 25th May, 1977, i.e. after a lapse of nearly three years during which period the Order in question has been rescinded. The Committee need hardly point out that

such delays not only hamper the work of the Committee but also result in unnecessary prolongation of infirmities in Orders. The Committee, therefore, desire that any communication addressed to a Ministry/Department of the Government of India by a Parliamentary Committee should be promptly attended to and reply thereto sent quickly.

84. As the Order in question has already been rescinded there is now no question of amending the Order on the lines suggested by the Committee. The Committee, however, desire that in case the Ministry of Industry (Department of Industrial Development) have to issue such an order in future, they should bear the following points in mind :

- (i) As repeatedly stressed by the Committee, the minimum rank of officers empowered to conduct searches, seizures, etc. should be specified in the Order.
- (ii) No charges should be levied unless there is express authorisation therefor in the parent law.
- (iii) To avoid any scope for discriminatory treatment, the conditions subject to which an exemption may be given should be specified in the Order.

X

THE TYRES AND TUBES (MOVEMENT CONTROL) ORDER, 1974 (S.O. 273-E OF 1974)

85. The Committee on Subordinate Legislation (1974-75), examined the Tyres and Tubes (Movement Control) Order, 1974 at their sitting held on the 6th November, 1974 and desired that comments of the Ministry of Industry might be invited on the following two points :

- (i) Criteria or guidelines on the basis of which permit is to be issued or refused to a person other than manufacturers under clause 2 *ibid.*, should be incorporated in the Order to avoid any scope for discrimination being made between persons similarly placed.
- (ii) Minimum rank of the officers other than police officers who may be authorised to conduct searches/seizures under clause 4 *ibid.*, should be specified in the Order.

86. The Ministry of Industry (Department of Industrial Development) in their reply have stated as under :—

“.....the Tyres and Tubes (Movement Control) Order, 1974 has since been rescinded with effect from 5th February, 1976.

As the Tyres and Tubes (Movement Control) Order, 1974 has been rescinded, the question of taking action on the suggestions made by the Lok Sabha Secretariat.....viz., incorporating the

criteria or guidelines on the basis of which a permit is issued or refused to a person, other than a manufacturer in the Order does not arise. In the circumstances, it is presumed that the matter need not be pursued further. This may kindly be confirmed. However, the suggestions made by the Lok Sabha Secretariat will be kept in view if any necessity arises in future to issue a similar Control Order.

* * * * *

The suggestion for specifying the minimum rank of the officers, other than police officer, who may be authorised under clause 4 of the order to conduct searches/seizures has been accepted. The Tyres and Tubes (Movement Control) Order, 1974 has since been amended *vide* the Tyres and Tubes (Movement Control) Amendment Order, 1975 dated the 7th August, 1975."

87. The Committee note that before rescinding the Tyres and Tubes (Movement Control), Order, 1974, the Ministry of Industry (Department of Industrial Development), on a suggestion from the Committee, had amended it so as to specify the minimum rank of the officers who might be authorised to conduct searches, seizures, etc. under clause 4 of the Order.

88. As regards the suggestion of the Committee for incorporating in the Order criteria or guidelines on the basis of which a permit is issued or refused to a person other than a manufacturer under clause 2, the Committee observe that as the Order in question has already been rescinded, the question of amending the Order on the lines suggested by the Committee does not arise. The Committee, however, note with satisfaction that the Ministry of Industry (Department of Industrial Development) have assured to keep the aforesaid suggestion of the Committee in view, in case necessity arises in future to issue a similar control order.

XI

THE INDIAN FOREIGN SERVICE BRANCH 'B' (RECRUITMENT, CADRE, SENIORITY AND PROMOTION) AMENDMENT RULES, 1974 (G.S.R. 819 OF 1974)

(A)

89. Rule 18A(5) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, as inserted by above amending rules, reads as under :—

"Vacancies in Grade III of the 'Stenographers' sub-Cadre shall be filled :

- (i) by direct recruitment on the basis of competitive examination held for the purpose by the Institute of Secretariat Training and Management, limited to Officers of Grades V and VI of the General Cadre; and
- (ii) by recruitment of Hindi Steno-typists working in the scale of Rs. 110-180 with a special pay, in the Ministry of External Affairs from a date earlier than the 28th November, 1972 and

who are considered suitable for appointment to the Grade by the Government:

Provided that to the extent a sufficient number of candidates are not available for appointment under clause (i) or clause (ii), the vacancies may be filled provisionally or on regular basis, in such manner as may be determined by the Controlling Authority."

90. It was felt that in order to make the rules self-contained and for the information of all concerned the manner of filling up of vacancies referred to in the proviso to rule 18-A(5), should be laid down in the rules, rather than be left to be determined by the Controlling Authority.

91. The Ministry of External Affairs, with whom the matter was taken up, have stated as under :—

"The Stenographers' Sub-Cadre of the IFS 'B' was reorganised with effect from 1st August, 1969 *vide* this Ministry's Notification dated 19th March, 1971. This re-organisation was effected consequent on similar re-organisation of the Central Secretariat Stenographers' Service with effect from 1st August, 1969 by the Department of Personnel and Administrative Reforms. There also existed in this Ministry one ex-cadre post of Hindi stenotypist which had been filled up on regular basis w.e.f. 13-7-1971. Subsequently this ex-cadre post of Hindi Stenotypist was encadred in the Stenographers' Sub-Cadre of this Ministry with effect from 29th November, 1972. Though the post had been encadred, there was no provision in the rules whereby the incumbent of the said post, who held it on regular basis, could be appointed in the Stenographers' Sub-Cadre of the IFS 'B'. It was therefore, considered necessary to amend the relevant rule suitably with a view to absorbing the regularly appointed Hindi Stenotypist in Grade III of the Stenographers' Sub-Cadre of the IFS 'B'. The rule was accordingly amended in consultation with the Department of Personnel and Administrative Reforms *vide* this Ministry's Notification No. 94/GA/74 dated 16th July, 1974, published in the Gazette of India as G.S.R. 819.

As would be seen, the amendment to rule 18 (A) (5) was limited to the addition of sub-rule (ii) thereunder for the purpose of absorption into Grade III of Stenographers' Sub-Cadre of the IFS 'B' of one Hindi Stenotypist appointed before the encadrement of the post of Hindi stenotypist. The proviso referred to..... has been in effect since 1-8-1969 consequent on the reorganisation of the Stenographers' Sub-Cadre on the pattern of the similar reorganisation in the CSSS and has so far been used only for making stop-gap arrangements."

(B)

92. Rule 25(5) *ibid*, *inter alia*, provided that the seniority of persons appointed in accordance with sub-rule (5) (ii) of rule 18A, shall be such as may be determined by the Government.

93. It was felt that the principles of determining seniority of persons appointed in accordance with sub-rule (5) (ii) of rule 18A should be laid down in the rules rather than be left to be determined by Government.

94. The Ministry of External Affairs with whom the matter was taken up have stated as under :—

“.....the rule was incorporated with a view to regularising the appointment of a Hindi Stenotypist regularly appointed but not covered by the rules as promulgated from 1-8-1969. To absorb such a person into the Stenographers' Sub-Cadre from a date earlier than that of the amendment would not have been in order. At the same time, it was not considered appropriate to commit the Government to assign him seniority from the date of the amendment without examining whether the incumbent fulfilled the essential conditions of his appointment to Grade III of the Sub-Cadre. The Competent Authority was, therefore, authorised to assign suitable seniority without prejudice to the service rights of those holding posts in the said Grade from dates earlier than the date of the amendment. Incidentally, the person appointed in accordance with the provisions of Rule 18(A) (5) (ii) of the IFS 'B' (RCSP) Rules, 1964, has been assigned seniority with effect from the 16th July 1974, i.e., the date of issue of this Ministry's Notification No. 94/GA/74.”

95. The Committee note from the reply of the Ministry of External Affairs that the purpose of rule 18-A(5) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 was to absorb into Grade III of Stenographers' sub-cadre of the Indian Foreign Service Branch 'B' one Hindi Stenotypist who had been appointed before the encadrement of the post of Hindi Stenotypist in the Stenographers' sub-cadre. Like-wise rule 25(5) was incorporated with a view to determine the seniority of the said Stenotypist in the Service. The Committee do not want to disturb the appointment and seniority of the said Hindi Stenotypist. However, having regard to the fact that the manner of filling vacancies and principles of determining seniority are basic ingredients of any service rules, the Committee desire that these should be incorporated in the rules. The Committee will like the Ministry of External Affairs to amend the rules in question to this end with prospective effect.

XII

The Mica Mines Labour Welfare Fund (Amendment) Rules, 1974 (G.S.R. 971 of 1974).

96. Rule 14 (2) of the Mica Mines Labour Welfare Fund Rules, 1948, as it stood before amendment, read as under :—

“The Advisory Committee shall also consider the budget and any matter that may be laid before it by the Chairman. It shall be obligatory on the Chairman to place before the Advisory Committee any matter at the request of not less than five members.

Rule 14 (2), as amended by the above amending rules, read as under :—

“The Advisory Committee shall also consider the budget and any matter that may be laid before it by the Chairman. It shall be obligatory on the Chairman to place before the Advisory Committee any matter at the request of not less than five members, *provided that the Chairman may reject any such matter if he is satisfied that it is perverse, malafide or against public decency or morals.*”

97. Under the original rule, it was obligatory on the Chairman to place before the Advisory Committee any matter at the request of not less than five members. Under the amended rule, the Chairman could reject any matter if he was satisfied that it was perverse, *malafide* or against public decency or morals.

98. The Ministry of Labour were asked to state the considerations for amending the above rule so as to empower the Chairman not to place a matter before the Advisory Council even though a request by not less than five members might have been made.

99. In their reply, the Ministry have stated that rule 14(2) has been further amended *vide* G. S. R. No. 1457 dt. 22-9-76 by inserting the following proviso:

“Provided further that while rejecting such a matter the Chairman shall record in writing his reasons for rejecting it and if objected to by any member the said matter shall be placed before the Committee for final decision.”

100. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have further amended rule 14 (2) of the Mica Mines Labour Welfare Fund (Amendment) Rules, 1974, to provide that in cases where the Chairman reject a matter in respect of which not less than five members have made a request, on the ground that it is perverse, *malafide* or against public decency or morals, the Chairman shall record in writing his reasons for rejecting it and if objected to by any member he shall place the said matter before the Committee for final decision.

XIII

The Radiation Protection (Amendment) Rules 1974 (G.S.R. 762 of 1974)

101. Rule 5 of the Radiation Protection Rules, 1971, as substituted by the Radiation Protection (Amendment) Rules, 1974, provides as under:—

“5. *Prohibition of employment of persons below the age of eighteen years:—* No person under the age of eighteen years shall be employed as a radiation worker:

Provided that the competent authority may in special cases, permit persons under the age of 18 years but not under the age of 16 years to be so employed.”

102. It was felt that a provision should be made in the Rules requiring the appointing authority to record reasons in writing before appointing any person below 18 years of age as a radiation worker.

The Department of Atomic Energy with whom the above matter was taken up have replied as under :—

“The special provision in respect of the age below 18 years but not under the age of 16 years for a radiation worker was included in the Radiation Protection (Amendment) Rules, 1974, in order to facilitate taking in persons within this age group for any training programme, though not specifically as radiation workers. In the light of experience and needs, this Department felt in 1976 that it would be in order if this special exemption is deleted and the age for any radiation worker stipulated as 18 years and above. The Ministry of Labour who were consulted in the matter, had confirmed that they had no objection to our deleting the provision of special exemption for the employment of persons under the age of 18 years. We had accordingly, with the concurrence of the Ministry of Law, and also with the approval of the Prime Minister, issued a notification No. F. 14/2(5)/71-P dated May 15, 1976 (G.S.R. 756) substituting Rule 5 of the Radiation Protection Rules.

** ** ** ** ***”

103. Rule 5 of the Rules in question, as substituted by G.S.R. 756 of 1976, reads as under :—

“5. *Prohibition of employment of persons below the age of eighteen years:—* No person under the age of eighteen years shall be employed as a radiation worker.”

104. The Committee note with satisfaction that, on being pointed out, the Department of Atomic Energy have amended rule 5 of the Radiation Protection Rules, so as to provide that no persons under the age of 18 years will be allowed to work as a radiation worker.

XIV

“The Ministry of Finance (Department of Expenditure) Defence Division staff car Driver Recruitment Rules, 1974 (G.S.R. 2397 of 1975).

105. Rule 6 of the Ministry of Finance (Department of Expenditure) Defence Division Staff Car Driver Recruitment Rules, 1974, reads as under :—

“Saving:—Nothing in these rules shall affect reservations and other concessions required to be provided for the Scheduled Tribes and other special categories of persons in accordance with the Orders issued by the Central Government from time to time in this regard.”

There was no mention of the Scheduled Castes in the above Rules.

106. The matter was taken up with the Ministry of Finance (Department of Expenditure) who issued an amendment so as to include 'Scheduled Castes' also in Rule 6 of the above Rules (*vide* G.S.R. No. 1404 dated 2-10-1976).

107. These Rules were published in September, 1975 but the year given in the short title of the Rules was 1974.

108. The matter was taken up with the Ministry of Finance (Department of Expenditure) who issued an amendment substituting '1975' for '1974' in the short title to the rules (*vide* G.S.R. 1404 dated 2-10-1976).

109. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have amended the rules in question so as to include "Scheduled Caste" in Rule 6 which sought to save the reservations and concessions for certain weaker sections.

110. The Committee also note that the Ministry have amended the rules in question so as to give the correct year in the short title.

SOMNATH CHATTERJEE,

NEW DELHI ;
The 14th March, 1978.

Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide para 4 of the Report)

Summary of main recommendations/observations made by the Committee

| S. No. | Para No. | Summary |
|--------|----------|---|
| (1) | (2) | (3) |
| 1(i) | 20 | <p>In para 49 of their Third Report (Second Lok Sabha), presented to the House on the 2nd May, 1958, the Committee on Subordinate Legislation had desired Government to bring out some publication of Statutory Rules and Orders, on the lines of U.K.'s annual publication of Statutory Instruments for the convenience of the public. Pursuant to this, Government assured the Committee to bring out an upto-date publication of the General Statutory Rules and Orders in force as soon as all the Volumes of the India Code were published. The Ministry of Law brought out the first Volume of the Compilation of General Statutory Rules and Orders in July, 1960, and, according to their programme, the whole work comprising 30 Volumes was to be completed by the end of 1977. During the first five years, 1960 to 1964, 9 Volumes were printed and released. But thereafter the pace of work slackened. During the period 1966 to 1973, 11 more volumes were printed. In 1974 only one volume was released, and during the years 1975 and 1976 not a single complete volume was brought out. In September, 1977, Volume XXII was printed, leaving a balance of 8 Volumes to be published. Thus, more than 17 years after the first volume was published in July, 1960, over one-fourth of the work still remains to be done. The Committee are constrained to observe that the work was not done with the vigour, seriousness and urgency it deserved. The Committee are particularly unhappy that, instead of accelerating the pace of work, as repeatedly urged by the Committee, the pace of work had gradually slackened; the fall-down being particularly steep after 1973.</p> |

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- | (1) | (2) | (3) |
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| I(ii) | 21 | Apart from the fact that there is still a long way for the Compilation to be completed, its utility has been further impaired by the fact that the bulk of the work as already become out of date. Out of the 22 Volumes so far published, 18 were published during the period 1960 to 1969. To keep these volumes upto-date, the Ministry issued 4 Supplements during the period August, 1968 to October, 1971. Thereafter, the work of issuing Supplements was discontinued. Today no person referring to the Compilation can say with certainty whether a particular rule or set of rules contained therein is still in force, whether in original or amended form. The Committee need hardly point out that a book of reference has value only if it can be relied upon. The Committee have no hesitation in observing that the purpose with which they had asked Government to bring out the Compilation has not yet been served. |
| I(iii) | 22 | The Ministry of Law have requested the Committee for the extension of the target date for the completion of the main Compilation up to the end of 1980. They have also made a request for dispensing with the requirement of publication of Supplements on the ground that consultation of the main volume and its addenda and then of the Supplement and the addenda thereto would be inconvenient to the public. The Ministry have instead proposed to bring out revised editions of the G.S.R.O. Compilation after the work of the main Compilation has been completed. While the Committee agree with the Ministry's view that the revised editions of the Compilation will be more convenient to the public, they feel that the period of three years for the Ministry to take up this work is too long. The Committee will like the Ministry to make earnest efforts to complete the main Compilation well ahead of the new target date suggested by them. They will also like the Ministry to go ahead, without any further loss of time with the issue of the revised editions of the Volumes already published. In view thereof, the Committee do not insist on the publication of Supplements. |
| I(iv) | 23 | A major constraint in the way of the expeditious completion of the Compilation has been stated to be the paucity of staff. The Committee will draw the attention of the Ministry to para 71 of their Tenth Report (Fifth Lok Sabha) wherein they had desired |
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the Ministry to restore the original staff strength so that the work did not suffer for want of technical personnel who were competent to do it. The Committee will like to emphasise that they have asked the Ministry to bring out the Compilation with a purpose. Government should not hesitate in increasing the staff strength as such a course is considered necessary for the achievement of the end in view.

- I(v) 24 According to the Ministry of Law, another constraint in the way of expeditious completion of the work is the difficulty in getting the material from the agencies issuing the rules. Under the Allocation of Business Rules, administrative Ministries are responsible for making and publishing the rules under the enactments administered by them. While the rules made by the Ministries/Departments of Central Government are sent to the Law Ministry for scrutiny, those made by other agencies like Corporations etc., are not sent to the Law Ministry for scrutiny. The Committee have been given to understand that in the United States, there is a separate office—the Federal Registry—especially, for this purpose and all federal agencies are required to send copies of their rules and regulations to the Federal Registry for registration. The Committee will like the Ministry of Law to examine whether some similar system cannot be introduced here. In the meanwhile, instructions should be issued to the administrative Ministries/Departments for expeditious supply of material for inclusion in the Compilation, as it is one of the factors responsible for delay in the publication of the Compilation.
- 1(vi) 25 Another difficulty in the way of expeditious completion of the work, according to the Ministry of Law, arises by reason of section 24 of the General Clauses Act, 1897 under which rules made under a repealed enactment can continue indefinitely under the new enactment. As a result of this, there has been a lot of difficulty in compiling the G.S.R.O. Volumes. For ensuring the accuracy of the Compilation, they have to go through all the records since the framing of the original rules under the repealed Acts. To overcome this difficulty, the Committee will like the Ministry of Law to examine the feasibility of amending section 24 of the General Clauses Act so that the rules under the repealed Acts are not allowed to continue for more than a certain period after the commencement of the new Acts.
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| 1(vii) | 26 | Another snag in the expeditious publication of the Compilation is delay in printing. The Committee will like the Ministry of Works and Housing to issue instructions to the Government of India Press to accord priority to the printing of the Compilation. |

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| 1(viii) | 27 | In view of the large volume of Subordinate Legislation that has to be issued, the Committee feel that even after the issue of the revised editions of the Compilation, it may be difficult to keep the entire gamut of Subordinate Legislation upto date. To supplement the Compilation, and to help in its preparation, the Committee desire that— |
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(i) Steps should be taken to publish monthly or quarterly Compilation of Rules (including amending rules) issued during the preceding six months as also rules currently published.

(ii) An index to the rules (including amending rules) issued by Government under various enactments should be published every year.

(iii) In case of amending rules published in the Gazette, references by means of footnotes should be given to all the earlier relevant rules published in the Gazette.

The Committee desire the Ministry of Law to take appropriate decision with regard to above as soon as possible.

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| 2(i) | 34 | The Committee observe that as far back as May, 1955, the Committee on Subordinate Legislation in para 37 of their Third Report (First Lok Sabha) had desired that in all future Bills which may seek to amend earlier Acts giving power to make rules, regulations, etc., suitable provisions for their laying and modification should be included therein. This recommendation was accepted by Government <i>vide</i> paras 78-79 of their Sixth Report (First Lok Sabha). The Committee are, however, constrained to note that although the Ministry of Works and Housing have during the intervening period of 22 years approached Parliament six times for the amendment of the Requisitioning and Acquisition of Immovable Property Act, 1952, they have all along failed to comply with the above recommendation |
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| | | of the Committee. The plea of oversight advanced by the Ministry for their repeated failure in this regard only shows that the above recommendation of the Committee has not been taken by the Ministry with the seriousness it deserved. |
| 2(ii) | 35 | The Committee note the assurance of the Ministry of Works and Housing to amend the laying provision in the Requisitioning and Acquisition of Immovable Property Act, 1952, when it is next amended. The Committee however, desire the Ministry to bring forward the necessary amending Bill for this purpose within the next six months at the latest. |
| 3(i) | 39 | The Committee have repeatedly emphasised that if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given by way of an explanation to the effect that no one will be adversely affected as a result of retrospective effect given to such rules. The Committee note that although the Central Civil Services (Revised Pay) Twenty-fifth Amendment Rules, 1974 and 14 other Rules listed in Appendix II have been given retrospective effect, the affirmation that no one will be adversely affected as a result of such retrospective effect has not been given. |
| 3(ii) | 40 | The Committee will like to make it clear that the idea underlying the affirmation that no one will be adversely affected as a result of retrospective effect is that no one should be affected retrospectively. The Committee note that retrospective effect in the instant case has benefited an overwhelming majority of Government Servants. Under rule 5 of the Central Civil Services (Revised Pay) Rules, 1973, persons in position on 1-1-1973 have been given the option to retain the pre-revised scales of Pay or to come over to the revised scales from the date of any subsequent increment as may be advantageous to them. Further, even in case of persons appointed after 1-1-1973, Government, keeping in view the recommendations of the Committee on Subordinate Legislation, have issued orders giving further benefits like protection of drop in emoluments and non-recovery of any overpayments which might arise up to the date of the issue of the orders laying down revised scales of the posts held by them. |

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| 5(ii) | 58 | The Committee note with satisfaction that, on being pointed out, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have assured that in all similar Amalgamation Orders to be issued in future, it will be specifically mentioned in the preamble thereof that a copy of the draft order has been sent to the companies in question and their suggestions/objections have been considered, as required by sub-section (4) of section 396 of the Companies Act, 1956. |
| 46 | 62 | The Committee are not satisfied with the reply of the Department of Personnel and Administrative Reforms that they have not framed self-contained rules regarding leave travel concession of All India Services by incorporating therein the various instructions issued from time to time in respect of officers of the Central Civil Service, Class I with a view to obviate the necessity of amending them as and when the executive instructions are amended. The Committee feel that this is not a plausible reason for regulating through executive instructions matters which should be governed by statutory rules under the All India Services Act, 1951. The Committee need hardly point out that the executive instructions are no substitute for statutory rules, for, whereas the rules framed under the Act are required to be laid before Parliament and are subject to modification or annulment by Parliament, this requirement is not fulfilled in the case of executive orders. Further, whereas the rules are also published in the Gazette, the executive orders are not so published, and, therefore, do not come to the notice of the Committee on Subordinate Legislation. As such, the Committee are unable to examine whether they contain any provision which is apt to be abused. The Committee will, therefore, like the Department of Personnel and Administrative Reforms to make the All India Services (Leave Travel Concession) Rules, 1976 self-contained by incorporating the relevant executive instructions therein. |
| 7(i) | 66 | The Committee are not satisfied with the reply of the Ministry of Labour that as the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974, are being replaced by the new rules under the new Act, there is no need to issue a corrigendum to sub-rule (2) of rule 1 correcting the date of its coming into force from 15-6-74 to 1-10-74. The Committee feel that |

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| | | as the retrospective effect in this case, although erroneously given, was without due legal authority, the Ministry should have at their earliest issued a corrigendum correcting the date of effect of the rules. This, unfortunately, was not done. The Committee desire the Ministry of Labour to issue the necessary corrigendum without any further delay as it may take time to issue the new rules under the new Act. |
| 7(ii) | 70 | The Committee note that while the Iron Ore Mines Labour Welfare Cess Act, 1961, under which the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 were framed, did not specify the maximum amount of fine that could be imposed for breach of rules, the same has been specified in section 14(3) of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976, which has repealed the old Act. |
| 7(iii) | 73 | The Committee note with satisfaction that an express provision for recovering the dues 'as an arrear of land revenue' has been made in section 9 of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976, which has repealed the old 1961 Act. |
| 7(iv) | 74 | The Committee will like the Ministries/Departments to ensure that any rule, regulation, etc., providing for recovery as an arrear of land revenue, which is in the nature of an extreme step, should invariably be backed by an express authorisation to this effect from the parent statute. |
| 8(i) | 83 | The Committee are unhappy to note that the Ministry of Industry (Department of Industrial Development) who were asked to give their comments on certain points arising out of the Salt (Assam Reserve Stock) Order, 1973 on the 29th August, 1974, had sent their final reply on the 25th May, 1977, i.e., after a lapse of nearly three years during which period the Order in question has been rescinded. The Committee need hardly point out that such delays not only hamper the work of the Committee but also result in unnecessary prolongation of infirmities in Orders. The Committee, therefore, desire that any communication addressed to a Ministry/Department of the Government of India by a Parliamentary Committee should be promptly attended to and reply thereto sent quickly. |

| (1) | (2) | (3) |
|-------|-----|--|
| 8(ii) | 84 | <p>As the Salt (Assam Reserve Stock) Order, 1973 has already been rescinded, there is now no question of amending the Order on the lines suggested by the Committee. The Committee, however, desire that in case the Ministry of Industry (Department of Industrial Development) have to issue such an order in future, they should bear the following points in mind:</p> <ul style="list-style-type: none"> (i) As repeatedly stressed by the Committee, the minimum rank of officers empowered to conduct searches, seizures, etc. should be specified in the Order. (ii) No charges should be levied unless there is express authorisation therefor in the parent law. (iii) To avoid any scope for discriminatory treatment, the conditions subject to which an exemption may be given should be specified in the Order. |
| 9(i) | 87 | <p>The Committee note that before rescinding the Tyres and Tubes (Movement Control) Order, 1974, the Ministry of Industry (Department of Industrial Development), on a suggestion from the Committee, had amended it so as to specify the minimum rank of the officers who might be authorised to conduct searches, seizures, etc. under clause 4 of the Order.</p> |
| 9(ii) | 88 | <p>As regards the suggestion of the Committee for incorporating in the Tyres and Tubes (Movement Control) Order, 1974 criteria or guidelines on the basis of which a permit is issued or refused to a person other than a manufacturer under clause 2, the committee observe that as the Order in question has already been rescinded, the question of amending the Order on the lines suggested by the Committees does not arise. The Committee, however, note with satisfaction that the Ministry of Industry (Department of Industrial Development) have assured to keep the aforesaid suggestion of the Committee in view, in case necessity arises in future to issue a similar control order.</p> |
| 10 | 95 | <p>The Committee note from the reply of the Ministry of External Affairs that the purpose of rule 18-A(5) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 was to absorb into Grade III of Stenographers' sub-cadre of the Indian Foreign Service Branch 'B' one Hindi Stenotypist who had been appointed before the</p> |

| (1) | (2) | (3) |
|---------|-----|---|
| | | <p>encadrement of the post of Hindi Stenotypist in the Stenographers' sub-cadre. Likewise, rule 25(5) was incorporated with a view to determine the seniority of the said Stenotypist in the Service. The Committee do not want to disturb the appointment and seniority of the said Hindi Stenotypist. However, having regard to the fact that the manner of filling vacancies and principles of determining seniority are basic ingredients of any service rules, the Committee desire that these should be incorporated in the rules. The Committee will like the Ministry of External Affairs to amend the rules in question to this end with prospective effect.</p> |
| 111 | 100 | <p>The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have further amended rule 14(2) of the Mica Mines Labour Welfare Fund (Amendment) Rules, 1974, to provide that in cases where the Chairman rejects a matter, in respect of which not less than five members have made a request, on the ground that it is perverse, malafide or against public decency or morals, the Chairman shall record in writing his reasons for rejecting it, and if objected to by any member, he shall place the said matter before the Committee for final decision.</p> |
| 112 | 104 | <p>The Committee note with satisfaction that, on being pointed out, the Department of Atomic Energy have amended rule 5 of the Radiation Protection Rules, 1974 so as to provide that no person under the age of 18 years will be allowed to work as a radiation worker.</p> |
| 113(i) | 109 | <p>The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have amended the Ministry of Finance (Department of Expenditure) Defence Division Staff Car-Driver Recruitment Rules, 1974 so as to include "scheduled castes" in Rule 6 which sought to save the reservations and concessions for certain weaker sections.</p> |
| 113(ii) | 110 | <p>The Committee also note that the Ministry have amended the Ministry of Finance (Department of Expenditure) Defence Division Staff Car Driver Recruitment Rules, 1974 so as to give the correct year in the short title.</p> |

APPENDIX II

(Vide para 38 of the Report)

List of Orders to which retrospective effect has been given but a clarification in the explanatory memorandum to the effect that no body has been adversely affected due to retrospective effect has not been given.

| S.No. | Description of 'Order' | Name of Ministry |
|-------|---|--------------------------------------|
| (1) | (2) | (3) |
| 1. | The Civilians in Defence Services (Revised Pay)— Fifth Amendment Rules, 1975 (S.R.O. 2-E of 1976). | Defence. |
| 2. | The Civilians in Defence Services (Revised Pay) Amendment Rules, 1976 (S.R.O. 4-E of 1976). | Defence |
| 3. | The Civilians in Defence Services (Revised Pay) Second Amendment Rules, 1976 (S.R.O. 13-E of 1976). | Defence |
| 4. | The Central Civil Services (Revised Pay) Amendment Rules, 1976 (G.S.R. 96-E of 1976). | Finance (Deptt. of Expenditure) |
| 5. | The Civilians in Defence Services (Revised Pay) 8th Amendment Rules, 1974 (S.R.O. 52-E of 1976). | Defence |
| 6. | The Civilians in Defence Services (Revised Pay) Fourth Amendment Rules, 1975 (S.R.O. 20-E of 1975). | Do. |
| 7. | The Civilians in Defence Services (Revised Pay) Third Amendment Rules, 1975 (S.R.O. 17-E of 1975). | Do. |
| 8. | The Central Civil Services (Revised Pay) 24th Amendment Rules, 1974 (G.S.R. 683-E of 1974). | Finance (Department of Expenditure). |
| 9. | The Central Civil Services (Revised Pay) Fifth Am- endment Rules, 1975 (G.S.R. 307-E of 1975). | Do. |
| 10. | The Central Civil Services (Revised Pay) Sixth Am- endment Rules, 1975 (G.S.R. 370-E of 1975). | Do. |
| 11. | The Central Civil Services (Revised Pay) (Eighth Am- endment) Rules, 1975 (G.S.R. 432 of 1975). | Do. |
| 12. | The Central Civil Services (Revised Pay) Ninth Amend- ment Rules, 1975 (G.S.R. 469-E of 1975). | Do. |
| 13. | The Central Civil Services (Revised Pay) 10th Am- endment Rules, 1975 (G.S.R. 506-E of 1975). | Do. |
| 14. | Central Civil Services (Revised Pay) 11th Amend- ment Rules, 1975 (G.S.R. 565-E of 1975). | Do. |

APPENDIX III

(Vide para 37 of the Report)

Copy of Ministry of Finance (Department of Expenditure) O. M. dated
1-6-1974.

No. 87/CII/30/74/IC

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Expenditure)

Implementation Cell

New Delhi, the 1st June, 1974/11th Jy.istha, 1896 (SAKA)

OFFICE MEMORANDUM

SUBJECT : *Central Civil Services (Revised Pay) Rules, 1973—Fixation of Pay of persons appointed/promoted to a post after the 1st January, 1973.*

The undersigned is directed to say that the revised scales of pay introduced under the Central Civil Services (Revised Pay) Rules, 1973, take effect from the 1st January, 1973. Under the proviso to rule 5 of these Rules, a Government servant has the option to retain the existing scale *i.e.* the scale of the post held by him on the 1st January, 1973 until the date on which he earns his next or any subsequent increment in that scale, or until he vacates that post, or ceases to draw pay in that scale. This option is not available to persons appointed to a post after the 1st January, 1973 whether for the first time in Government service, or by transfer or promotion from another post and they are necessarily to be allowed pay in the revised scales only. Until the notification of the revised scales of the posts to which such persons are appointed, they would draw or would have drawn pay in the pre-revised scales. On issue of the notification, however, their pay would be fixed in the revised pay scale of the post with effect from the date of such appointment. In some of these cases the fixation of pay in the revised scales may involve drop in emoluments. Drop in emoluments may also occur in the case of some persons who were promoted after the 1st January, 1973, but before the date of the issue of the relevant notification revising the scales, to the higher of two grades which have been merged and a single revised scale prescribed for both. As the revised scales take effect from the 1st January, 1973, and the higher grade will have ceased to exist on and

from that date, such promotions become non-effective. The question as to the extent of protection that may be allowed in such cases has been examined and it is considered that it is not correct in principle to allow a person any option to retain the pre-revised scale of pay in respect of a post to which he was not actually appointed on or before 1st January, 1973, or which ceased to exist after that date. Accordingly, all persons recruited after the 1st January, 1973, or appointed by transfer or promotion to posts after that date, should be allowed pay only in the revised scales as admissible under the Central Civil Services (Revised Pay) Rules, 1973.

2. However, to mitigate the adverse effect of the retrospective application of the rules resulting in drop in emoluments in the types of cases referred to in paragraph 1 above, the President is pleased to decide as follows:-

- (i) Where a single existing scale has been replaced by a single revised scale, the difference between the existing emoluments (i.e. the basic pay, dearness pay, dearness allowance and interim reliefs at the rates in force on 31-12-72, and special pay where admissible) actually drawn or that would have been drawn in the pre-revised scales as on the date of the notification revising the scale of the higher post, and the emoluments in the revised scale i.e. pay in the revised scale of that post, and special pay thereon, if any, may be allowed as personal pay to be absorbed in future increases in pay.
- (ii) In respect of persons promoted from a lower to a higher existing scales, where the two existing scales have been merged into a single revised scale, the pay in the revised scale may, on the written request of the employee concerned made within three months of the date of issue of these orders or the notification of the revised pay scale of the post, whichever is later, be refixed on the date of promotion at a stage which is equal to the existing emoluments, as defined in sub-para (i) above in the higher existing scale on that date, and if there is no such stage in the revised scale, at the stage next below in that scale and the difference allowed as personal pay to be absorbed in future increases in pay. The next increment in the revised scale will be allowed on the date it would have been drawn in the higher existing scale had the revised scale not been introduced. This protection will, however, be allowed only in cases where the Government servant had been continuously officiating for a period of not less than one year on the date of issue of the notification revising the scale of the higher post, or in case he has not completed one year's service on that date, the appointing authority certifies that the Government servant would have continued to officiate in the higher post for the period by which the service rendered in it fell short of one year on that date, had the revised scale not been introduced.
- (iii) In cases covered both by sub-paragraphs (i) and (ii) above, no adjustment will be made on account of overpayments, if any, in respect of the existing emoluments as defined in sub-para (i) above actually drawn for the period between the date of appointment in such cases and the date of issue of the relevant notification revising the pay scale of the post in question.

3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

Hindi version of this Office Memorandum will issue separately.

Sd/- V. S. RAJAGOPALAN,
Deputy Secretary to the Government of India.

APPENDIX IV

(Vide para 19 of the Report)

Note regarding issue of Supplements to the main Volume of G.S.R.Os

No. F.14/72-G.S.R.O.

GOVERNMENT OF INDIA/BHARAT SARKAR

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
Vidhi, Nyaya Aur Kampani Karya Mantralaya

Legislative Department/Vidhaye Vibhag

NEW DELHI, THE 18th February, 1978
29th Magha, 1899 (Saka)

OFFICE MEMORANDUM

SUBJECT : *Implementation of recommendations contained in paras 103 & 104 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha)—Printing & Publication of Compilation containing General Statutory Rules and Orders.*

The undersigned is directed to refer to the Lok Sabha Secretariat O. M. No. 42/17/CII/76 dated the 6th February, 1978 on the above subject and to forward herewith a Note regarding issue of Supplements to the main volumes of General Statutory Rules and Orders for the information of the Committee on Subordinate Legislation.

Sd/-

(S. NARAYANAN)
Deputy Secretary to the Government of India
Tel. No. 384603

With encl:

To

The Lok Sabha Sectt.
Committee Branch II, Room No. 317,
(Sh. Y. Sahai, Chief Legislative Committee Officer),
Parliament House Annexe,
New Delhi-110001.

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(*Legislative Deptt.*)

SUBJECT: *Note regarding issue of Supplements to the main Volumes of General Statutory Rules and Orders.*

This Department has so far brought out 22 Volumes of General Statutory Rules and Orders. Volumes XXIII-XXV are under various stages of processing. It is estimated that another five volumes have to be brought out to complete the issue of the main volumes relating to statutory rules and orders.

2. The following supplements to G.S.R.O. main volumes have so far been issued :—

| Vol. No. | Subject-headings covered | As modified upto |
|--------------------|--|------------------|
| Supplement to GSRO | | |
| Vol. I | Accountants to Arbitration | 1-9-67 |
| Vol. II | Armed Forces upto and including Act 62 of 1957, section 184 (part 1) | 1-1-68 |
| Vol. III. | Armed Forces from Act 62 of 1957, section 184 onwards | 1-1-68 |
| Vol. IV | Arms and Explosives to Companies. | 1-3-71 |

It will be observed that after 1971, this Department has not issued further supplements. Even these supplements which have been issued are out of date. Apart from constraints of staff, time available, etc., the main point to be considered is whether it would be useful to publish the supplementary volumes in the present form. The supplements included amending notifications (as published in the Gazette) to the principal notifications, rules and orders in the main G.S.R.O. volumes, together with other principal notifications issued subsequent to the publication of the main volumes. As such, a reader is expected to consult the main volume and its addenda and supplement to G.S.R.O. and its addenda in order to find out the up to date version of any given set of rules or orders. Even then a reader may not be able to lay his hands on all the amendments. It will not, therefore, be purposeful or economical to issue supplements in view of the inherent delays in the compilation and publication of such supplements and the volumes so issued may not have the desired result or sale in view of the difficulties of the reader mentioned above. It was, therefore, suggested in this Department's O.M. No. 14/72-G.S.R.O. dated 1-12-1976 that the requirement of publication of the supplementary volumes may be dispensed with.

3. Once the remaining main volumes are published, the question of bringing out supplements or revised edition of the G.S.R.O. volumes can be taken up. The supplements may contain particular rules etc. in full when the principal rules have undergone extensive changes. The revised edition will cover all the amendments issued from the year of its original publication to the year of its re-issue.

MINUTES

APPENDIX V

(Vide para 3 of the Report)

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

(1977-78)

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

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

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

* * * * *

SECRETARIAT

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

Para 2 to 22

* * * * *

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

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

| S. No. | Memo No. | Subject | | | |
|---------------------------------------|----------|---|----|----|----|
| 1 | 10 | ** | ** | ** | ** |
| 2 | 11 | ** | ** | ** | ** |
| 3 | 12 | The Central Civil Services (Revised Pay) Twenty-fifth Amendment Rules, 1974 (G.S.R. 702-E of 1974). | | | |
| 4 | 13 | ** | ** | ** | ** |
| 5 | 14 | ** | ** | ** | ** |
| 24 | | ** | ** | ** | ** |
| 25 | | ** | ** | ** | ** |
| | | (iii) The Central Civil Services (Revised Pay) Twenty-fifth Amendment Rules, 1974 (G.S.R. 702-E of 1974). | | | |
| 26 | | The Committee considered the above memorandum and felt that, having regard to the fact that retrospective effect given to the rules in question had benefited an overwhelming majority of Government servants and an option had been given to persons appointed before 1-1-73 to retain the existing scale, they need not press for the affirmation that no one is likely to be adversely affected as a result of retrospective effect to the rules in this case. | | | |
| 27 | | ** | ** | ** | ** |
| 28 | | ** | ** | ** | ** |
| <i>(The Committee then adjourned)</i> | | | | | |

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

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

The Committee met on Tuesday, the 20th December, 1977 from 17.00 hours to 17.35 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

- 2 Shri Bhagirath Bhanwar
- 3 Shri Durga Chand
- 4 Chaudhary Hari Ram Makkasar Godara
- 5 Kumari Maniben Vallabhbbhai Patel.
- 6 Shri Saeed Murtaza

SECRETARIATE

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

2. The Committee considered Memoranda Nos. 53 to 63 on the following subjects :—

| S. No. | Memo No. | Subject | | | | |
|-----------|-------------|---------|---|---|---|---|
| (1) | (2) | (3) | | | | |
| (i) | 53 | * | * | * | * | * |
| (ii) | 54 | * | * | * | * | * |

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

| (1) | (2) | (3) |
|---------------|-----|--|
| (iii) | 55 | * * * |
| (iv) | 56 | * * * |
| (v) | 57 | * * * |
| (vi) | 58 | * * * |
| (vii) | 59 | * * * |
| (viii) | 60 | * * * |
| (ix) | 61 | The Salt (Assam Reserve Stock) Order, 1973 (S.O. 158 of 1974). |
| (x) | 62 | The Mica Mines Labour Welfare Fund (Amendment) Rules, 1974 (G. S.R. 971 of 1974). |
| (xi) | 63 | The Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1977 (as passed by the Rajya Sabha on the 17th November, 1977 and laid on the Table of Lok Sabha on the 18th November, 1977). |
| (i) to (viii) | | * * * |
| 3 to 17 | | * * * |

(ix) *The Salt (Assam Reserve Stock) order, 1973 (S.O.158 of 1974)—(Memorandum No. 61).*

18. The Committee considered the above Memorandum and noted that the Salt (Assam Reserve Stock) Order, 1973 had since been rescinded and, as such, there did not arise any question of amending the order at this stage. The Committee, however, decided to recommend to the Ministry of Industry (Department of Industrial Development) that in case they had to issue such an order in future, they should bear the following points in mind:—

- (i) As repeatedly stressed by the Committee, the minimum rank of officers empowered to conduct searches, seizures, etc., should be specified in the order.
- (ii) No charges should be levied, unless there is an express authorisation therefor in the parent law.

- (iii) To avoid any scope for discriminatory treatment, the conditions subject to which an exemption may be given, should be specified in the order.

19. The Committee were unhappy to note that the Ministry of Industry (Department of Industrial Development) who were asked on 29-8-74 to give their comments on certain points arising out of the order, had sent their final reply on 2-8-1977, i.e., after a lapse of nearly three years. The Committee need hardly stress that any communication addressed to a Ministry/Department of the Government of India by a Parliamentary Committee should be promptly attended to and reply sent quickly.

- (x) *The Mica Mines Labour Welfare Fund (Amendment) Rules, 1974 (G.S.R. 971 of 1974)—(Memorandum No. 62).*

20. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Labour had further amended Rule 1 (2) to provide that in cases where the Chairman rejects a matter, in respect of which not less than five members have made a request, on the ground that it is perverse, mala fide or against public decency or morals, the Chairman shall record in writing his reasons for rejecting it, and if objected to by any Member, he shall place the said matter before the Committee for final decision.

- (xi) *The Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1977 (as passed by the Rajya Sabha on the 17th November, 1977 and laid on the Table of Lok Sabha on the 18th November, 1977)—(Memorandum No. 63).*

21. The Committee were constrained to note that although the Ministry of Works and Housing had approached Parliament six times for the amendment of the Requisitioning and Acquisition of Immovable Property Act, 1952 after the Committee had in their Third Report (First Lok Sabha) presented to the House on the 3rd May, 1955 asked Government to make suitable provision in amending Acts for laying and modification of rules to be framed under the Acts, the Ministry had all along failed to comply with the recommendation of the Committee. The plea of oversight advanced by the Ministry for their repeated failure in this regard only showed that the recommendation of the Committee had not been taken by the Ministry with the seriousness it deserved.

The Committee noted the promise of the Ministry to amend the laying provision in the Act, when it is next amended. While the Committee decided not to insist for bringing forward an amendment to the aforesaid effect during the current session for the reasons stated by the Ministry in their reply, the Committee desired the Ministry to bring forward the amending Bill for this purpose within the next six months at the latest.

The Committee then adjourned to meet again on the 7th January, 1978.

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

The Committee met on Saturday, the 7th January, 1978 from 11.00
to 12.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

2. Shri Durga Chand
3. Shri Santoshrao Gode
4. Shri Tarun Gogoi
5. Shri Ram Sewak Hazari
6. Shri K.T. Kosalram
7. Shri P. Rajagopal Naidu
8. Shri Trepan Singh Negi
9. Kumari Maniben Vallabhbai Patel.

SECRETARIAT

10. Shri H.S. Kohli—*Legislative Committee Officer*.

2. The Committee considered Memoranda Nos. 64 to 74 on the
following subjects :

| S. No. | Memo No. | Subject |
|-----------|-------------|---|
| (1) | (2) | (3) |
| 1 | 64 | The Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1974 (G.S.R. 819 of 1974). |
| 2 | 65 | All India Services (Leave Travel Concession) Rules, 1976 (G.S.R. 225 of 1975). |
| 3 | 66 | The Radiation Protection (Amendment) Rules, 1974 (G. S. R. 762 of 1974). |

| (1) | (2) | (3) |
|-----|-----|--|
| 4 | 67 | The Interest-tax Rules, 1974 (S.O. 740-E of 1974). |
| 5 | 68 | The Tyres and Tubes (Movement Control) Order, 1974 (S.O. 273-E of 1974). |
| 6 | 69 | * * * * * |
| 7 | 70 | The Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974. (G.S.R. 1007 of 1974). |
| 8 | 71 | * * * * * |
| 9 | 72 | * * * * * |
| 10 | 73 | The Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975). |
| 11 | 74 | The Ministry of Finance (Department of Expenditure) Defence Division Staff Car Driver Recruitment Rules, 1974 (G.S.R. 2397 of 1975). |

(i) *The Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1974 (G.S.R. 819 of 1974) (Memorandum No. 64).*

3. The Committee considered the above Memorandum and noted from the reply of the Ministry of External Affairs that the purpose of rule 18(a)(5) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 was to absorb into Grade III of Stenographers' sub-cadre of the Indian Foreign Service Branch 'B' one Hindi Stenotypist who had been appointed before the encadrement of the post of Hindi Stenotypist in the Stenographers' sub-cadre. Like-wise, rule 25(5) was substituted with a view to determine the seniority of the said stenographer in the service. The Committee decided not to disturb the appointment and seniority of the aforementioned Hindi Stenotypist. However, having regard to the fact that the manner in filling vacancies and principles of determining seniority are basic ingredients of any service rules and should be incorporated therein with a view to minimising the chances of the possible abuse of power, the Committee decided to ask the Ministry to amend the rules prospectively to that end.

(ii) *All India Services (Leave Travel Concession) Rules, 1976 (G.S.R. 225 of 1975) (Memorandum No. 65).*

4. The Committee considered the above Memorandum and were not convinced with the reply of the Department of Personnel and Administrative Reforms that they had not framed self-contained rules regarding Leave Travel Concession by incorporating the various instructions issued from time to time in respect of officers of Central Civil Service, Class I with a view to obviate the necessity of amending them as and when the executive instructions were amended. The Committee felt that this was not a plausible reasons for acting through executive instructions matters which should be governed by statutory rules under the All India Services Act, 1951. The Committee felt that executive instructions were no substitute for statutory rules. Moreover, the rules framed under the Act are required to be laid before Parliament and are subject to modification or annulment by Parliament. This requirement was not fulfilled in the case of executive orders. Further, the Rules are also published in the Gazette whereas executive Orders are not. It is not possible for the Committee on Subordinate Legislation to scrutinize them as they are not published in the Gazette. The Committee, therefore, decided to ask the Department of Personnel and Administrative Reforms to make the rules in question self-contained by incorporating the relevant executive instructions therein.

(iii) *The Radiation Protection (Amendment) Rules, 1974 (G.S.R. 762 of 1974) (Memorandum No. 66).*

5. The Committee considered the above Memorandum and were satisfied to note that on being pointed out, the Department of Atomic Energy had amended rule 5 of the Radiation Protection Rules so that no person under the age of 18 years was allowed to work as a radiation worker.

(iv) *The Interest-tax Rules, 1974 (S.O. 740-E of 1974) (Memorandum No. 67).*

(A)

6. The Committee considered the above Memorandum and noted the opinion of the Ministry of Law, Justice & Company Affairs (Legislative Department) that in terms of sub-section (1) of Section 27 of the Interest-tax Act, 1974 the approval of the Central Government is not a condition precedent to the making of rules by the Central Board of Direct Taxes. The Committee also noted that the expression 'subject to the control of the Central Government' occurring in sub-section (1) of section 27 was intended to enable the Central Government to give, wherever necessary, guidelines to the Board as to questions of policy which the Board should take into consideration in making rules under the Act. In view of this, the Committee decided that it was not necessary to indicate in the preamble to the rules that they had been framed subject to the control, of the Central Government.

(B)

7. The Committee noted from the reply of the Ministry of Law, Justice & Company Affairs (Department of Company Affairs) that under Rules 5A and 5B of the Income-tax Appellate Tribunal Rules, 1963, the Income-tax Appellate Tribunal which was also the Appellate Tribunal for the purposes of the Interest-tax Act had notified certain Benches of the Tribunal where the parties might file documents in Hindi, if they so desired or where the use of Hindi might be permitted in its proceedings. In view of this, the Committee felt that there it was not necessary to retain Note below Form No. 5 (Form of cross objections to the Appellate Tribunal) given in the Appendix to the Rules which provided that the Memorandum of cross objections to the Appellate Tribunal should be written in English. The Committee decided to ask the Ministry of Law, Justice & Company Affairs (Department of Company Affairs) to delete the said note.

(v) *The Tyres and Tubes (Movement Control) Order, 1974 (S.O. 273-E of 1974) (Memorandum No. 68).*

8. The Committee considered the above Memorandum and noted that on being pointed out, the Ministry of Industry (Department of Industrial Development) had amended the Tyres and Tubes (Movement Control) Order so as to specify the minimum rank of the officers who might be authorised to conduct searches and seizures under the Order, but the Order had since been rescinded.

9. In regard to their suggestion for incorporating in the Order the criteria or guidelines on the basis of which a permit was issued or refused to a person other than a manufacturer under clause 2, the Committee felt that as the Order had since been rescinded, the question of amending the Order as per their suggestion did not arise. The Committee were however, satisfied to note that the Ministry of Industry (Department of Industrial Development) had assured to keep their suggestion in view, in case necessity arose in future to issue a similar Control Order.

(vi) * * *

10. * * *

(vii) *The Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 (G.S.R. 1007 of 1974) (Memorandum No. 70).*

(A)

11. *Rule 1(2)*: The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Labour that as the rules in question were being replaced by the new rules under the new Act, there was no need to issue a corrigendum to sub-rule (2) of rule 1 of the Iron Ore Mines Labour Welfare Cess (Amendment) Rules, 1974 correcting the date of coming into force of the rules from 15-6-74 to 1-10-74. The Committee felt that as the retrospective effect, although erroneously given,

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

was without due legal authority the Ministry should have at their earliest issued a corrigendum correcting the date of effect of the rules which unfortunately was not done. Although it was late now, the Committee desired the Ministry of Labour to issue the corrigendum without any further delay as it might take time to issue the new rules under the new Act.

(B)

12. *Rules 39(2) (b), 40(2) and 41* : The Committee noted with satisfaction that while the old Act did not specify the maximum amount of fine that could be imposed for breach of rules, the same had been specified in section 14(3) of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 which had repealed the old Act.

(C)

13. *Forms H.K. N. and Q, para 2* : The Committee noted with satisfaction that a provision for recovery of amount 'as an arrear of land revenue' had been made in the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 which had repealed the old Act.

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| (VIII) | * | * | * |
| 14 | * | * | * |
| (IX) | * | * | * |
| 15 | * | * | * |

(X) *Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975) (Memo No. 73).*

(A)

Paragraph No. 9

16. The Committee considered the Memorandum and noted that on being pointed out, the Ministry of Law, Justice & Company Affairs (Department of Company Affairs) had agreed to give effect to their suggestion in future amalgamation orders so as to provide therein that the terms and conditions of service of the employees of the dissolved Company could be altered by the Company resulting from amalgamation only by 'mutual, consent', as had been provided for in the Balmer Lawrie and Company Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976). The Committee, however, saw no reason for not providing similar safeguards in the above Order also. The Committee, therefore, desired the Ministry to amend para 9 of the Order so as to provide for alteration the terms and conditions of service of employees only by mutual consent.

(B)

Preamble :

17. The Committee considered the Memorandum and noted with satisfaction that on being pointed out, the Ministry of Law, Justice &

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Company Affairs (Department of Company Affairs) had agreed to give effect to their suggestion in future orders for specifically stating in the Preamble to the Amalgamation Order that a copy of the draft Order had been sent to the companies in question and their suggestions/objections had been considered, as required under sub-section (4) of section 396 of the Companies Act, 1956. The Committee, however, decided not to press for the amendment of the above Order in this regard.

(C)

Paragraph 11(b)

18.

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(XI) *The Ministry of Finance (Department of Expenditure) Defence Division Staff Car Driver Recruitment Rules, 1974 (G.S.R. 2397 of 1975) (Memorandum No. 74).*

19. The Committee considered the Memorandum & noted with satisfaction that on being pointed out, the Ministry of Finance had issued an amendment to the rules *vide* G.S.R. No. 1404 dt. 2-10-1976 so as to provide for the following :

- (i) Inclusion of Scheduled Castes in Rule 6 *ibid.*, Saving Clause.
- (ii) Change of the year in short title from 1974 to 1975.

The Committee then adjourned to meet again on the 28th January, 1978.

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

The Committee met on Saturday, the 28th January 1978 from 11.00 hours to 13.30 hours.

PRESENT

1. Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Tarun Gogoi
8. Shri Ram Sewak Hazari
9. Shri K. T. Kosalram
10. Shri N. Sreekantan Nair
11. Shri Trepan Singh Negi
12. Shri Saeed Murtaza

*I. Representatives of the Ministry of Law, Justice and Company Affairs
(Legislative Department)*

1. Shri K. K. Sundaram, Secretary.
2. Shri R.V.S. Peri Sastri, Joint Secretary.

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SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

*Printing and Publication of Compilation containing General Statutory
Rules and Orders*

2. The Committee first heard Oral evidence of the representatives of the Ministry of Law, Justice & Company Affairs (Legislative Department) in connection with the implementation of recommendations contained in paras 103 & 104 of the Twentieth Report (Fifth Lok Sabha) regarding printing & Publication of Compilation containing General Statutory Rules and Orders (Memo. No. 75).

3. Explaining the reasons for delay in printing the remaining volumes of the Compilation of General Statutory Rules and Orders, the representative of the Ministry stated that volumes of subordinate legislation are being issued by them with reference to India Code Volumes. Twenty two volumes have been finally published. Twenty-third and twenty-fourth volumes have been sent to press for final printing. Out of the eight volumes of the India Code, seven have been covered. Volume eight has been taken up and partly covered.

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

4. Regarding difficulties in completing the work, the representative of the Ministry stated that the first difficulty is in getting the material from the administrative Ministries. The Ministries have to compile it from the past records and by correspondence with the State Governments. Secondly, there is want of experienced technical staff. He admitted that more streamlining is called for regarding publication work. There was a feeling that it was not important and could be done by a junior officer—a subordinate non-gazetted officer. But after he had taken over the charge of Ministry, a senior Joint Secretary had been associated with the work. The representative of the Ministry assured the Committee that the remaining work would be completed by 1980. He also pleaded that they may be permitted to discontinue the printing of supplementary volumes. He further stated that if they are permitted to recruit Junior Law Officers, between the ranks of Under Secretaries and Superintendents, it will go a long way in expediting the work.

5. In reply to a question as to the steps taken by the Ministry to expedite the work pursuant to the repeated recommendation of the Committee on Subordinate Legislation in this regard, the representative of the Ministry stated that they have approached the Ministry of Finance for extra staff. That Ministry agreed for the creation of two posts of Assistants (Legal) and one L.D.C. These posts were filled in July, 1976 on an *ad hoc* basis and the regular incumbents were available only in November, 1977. Apart from this, the new volumes were bulkier. He further stated that despite their best efforts they could not do more because of tremendous increase in the other legislative work during the last few years.

6. The Committee pointed out that even 17 years after the first volume was published in 1960, 8 volumes are still to be published. The representative of the Ministry replied that he could not vouch for 17 years; the work had attained some pace only after the Committee had taken interest in the matter.

7. In reply to a question that law which is meant for the People should be known to them, the witness stated that in case of some of the taxation measures, the departments themselves bring out their manuals. The Compilation of General Statutory Rules and Orders is a regular series and with this supplementing, the demands of the public have been met to some extent.

8. When asked about the difficulty in publishing the annual publication of the rules published in the Gazette during the course of the year, the representative of the Ministry stated that in England they have Statutory Instruments Act and they have fixed to the responsibility on the Printer and the procedure to be followed by the administrative Ministries for bringing out the annual volumes but even there the subordinate legislation has been found to be in such a vast quantity that it is difficult to keep up to date any publication containing it.

9. In reply to another question as to when rules are published in the Gazette, why the Ministry of Law should consult the administrative Ministries and not publish it itself, the representative of the Ministry stated that they consult the administrative Ministry to check up the information given by them. He further stated that it is unfortunate that the rules are not available in an upto-date form. The only remedy is to introduce a system taking into account the existing arrangements for making rules. According to the Allocation of Business Rules, the various enactments passed by Parliament are allocated for administrative purposes to different Ministries. They make the rules and publish them. Rules made by the Central Government are sent to Law Ministry for scrutiny and those made by other agencies like Corporations do not come to the Law Ministry for scrutiny. The Committee could issue instructions that every year, the administrative Ministries/Departments should publish an index to the rules issued under particular enactments. Another difficulty arises by reason of section 24 of the General clauses Act under which rules made under a repealed enactment can continue indefinitely under the new enactment. As a result of this, there has been a lot of difficulty in compiling the G.S.R. volumes. Illustrating his point, the witness stated that there were certain Acts dating from 1838 which has been repealed, but some of the rules made thereunder still continued to be in force. So for making the Compilation, they had to go through all the records since 1838 to ensure that it was accurate. According to him, the difficulty could be minimised if the rules under repealed Acts are not allowed to continue for more than such period as may be considered reasonably necessary.

10. Referring to the practice in the United States the witness stated that they have a separate office, the Federal Registry, specially for this purpose and all federal agencies have to send copies of their rules and regulations to them for registration. Then there is a duty cast on the Public Printer and there is also a Committee charged with the responsibility of bringing out the consolidated volumes. A system has to be introduced here. He suggested that when amending rules are published in the Gazette there can be a footnote indicating the Gazette(s) in which the original rules and previous amendments if any were published so that it becomes easy for one to locate the various sources.

11. In reply to a further question, the representative of the Ministry stated that it will not be possible to finish the work before 1980. He again requested the Committee to dispense with the publication of Supplements for the time being. The Ministry were then asked to submit a note regarding issue of Supplements to the main volumes of G.S.R.Os. indicating, in particular, the subjects which have been covered so far and the subjects which are yet to be covered. The representative of the Ministry promised to furnish the requisite note.

(The witnesses then withdrew).

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

The Committee met on Tuesday, the 14th March, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

2. Shri Somjibhai Damor
3. Shri Durga Chand
4. Shri Santoshrao Gode
5. Chaudhary Hari Ram Makkasar Godara
6. Shri Ram Sewak Hazari
7. Shri P. Rajagopal Naidu
8. Shri Trepan Singh Negi
9. Kumari Maniben Vallabhbai Patel

SECRETARIAT

Shri Y. Sahai—*Chief Legislative
Committee Officer*

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

3. The Committee authorised the Chairman and, in his absence, Shri Santoshrao Gode to present the Sixth Report to the House on their behalf on the 17th March, 1978.

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