

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

SEVENTH REPORT

(Presented on the 4th April, 1978)



**LOK SABHA SECRETARIAT
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CORRIGENDA TO THE SEVENTH REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTH LOK SABHA).

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

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3. Shri Somjibhai Damor
4. Shri Durga Chand
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14. Shri Saeed Murtaza
15. Shri Sachindralal Singha

SECRETARIAT

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

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 29th November, 1977, the 28th January, 9th February and 1st March, 1978. At their sitting held on the 28th January, 1978, the Committee heard oral evidence of the representatives of the Ministry of Industry (Department of Industrial Development) regarding the Petroleum Rules, 1976.

The Committee wish to express their thanks to the officers of the Ministry of Industry (Department of Industrial Development) for appearing before the Committee and furnishing the information desired by them.

3. The Committee considered and adopted this Report at their sitting held on the 30th 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 (Appendix I).

II

Laying of Regulations framed under Central Acts before Parliament

5. Central Acts containing provisions for delegation of legislative powers to subordinate authorities usually provide for rule-making by the Central and State Governments. But a number of Central Acts, in addition to rules, also provide for other instruments of subordinate legislation, such as regulations, bye-laws, etc. A study was made to find out points of diversity between the two principal forms of subordinate legislation, viz., rules and regulations. For this purpose, 19 Acts (Appendix II) of different years were selected. The study was made from the following angles:

- (i) Authority empowered to frame rules, regulations, etc.;
- (ii) whether rules, regulations, etc., framed under the various enactments were required to be published in the Gazette;

- (iii) whether there was a provision for laying them before Parliament; and
- (iv) whether these were subject to modification by the two Houses of Parliament.

6. The results of the study are at Appendix III. These may be summed up as follows:—

- (i) Under the Central enactments, rules are framed by the Central/State Governments, while regulations are generally framed by autonomous bodies like Boards, Councils, Commissions, Corporations or Institutes created by the statute. Only in three Acts, viz., (i) the Mines Act, (ii) the Navy Act, and (iii) the Civil Defence Act, the Central Government were empowered to frame regulations, as there was no autonomous body created by these statutes;
- (ii) The rules framed under all the statutes were required to be published in the Gazette while in the case of regulations, provisions for publishing them in the Gazette existed only under 11 statutes; and
- (iii)-(iv) In 12 cases there was a provision for laying of rules on the Table of the House while only in 10 cases the rules were subject to modification by the Houses within the time stipulated in the statutes. The Acts which did not contain any provision for laying of rules on the Table of the House pertained to the years prior to 1954 when the Committee on Subordinate Legislation first made their recommendation in this regard.

Regulations were generally not required to be laid on the Table of the Houses. Only in two cases, viz., the Navy Act, and the Civil Defence Act, there was a provision for their being laid on the Table and in these cases they were also subject to modification by the Houses.

7. So far as the rules framed by the Central Government are concerned, the enactments now passed by Parliament almost invariably contain the following provision for their laying and modification by Parliament:—

“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.

8. The matter was taken up with the Ministry of Law, Justice & Company Affairs (Legislative Department) who were asked to elucidate the distinction between various forms of subordinate legislation such as rules, regulations, bye-laws etc., and the principles followed by Government in deciding whether a particular matter should be regulated through rules, regulations or bye-laws. They were also asked to state the criteria followed by Government in deciding whether regulations framed under a particular enactment should or should not be statutorily required to be laid before Parliament. It was pointed out to them, for instance, that while regulations framed under the Delhi Development Authority Act, 1957 and the Civil Defence Act, 1968 were required to be laid before Parliament, regulations framed under some other Central enactments such as the Standard Institution (Certification Marks) Act, 1952 and the Mines Act, 1952 were not required to be so laid.

9. In their reply, the Ministry of Law, Justice and Company Affairs (Legislative Department) after drawing attention to certain extracts from the 'Australian Administrative Law' by Benjafield and Whitemore summed up the position as under:—

“...no scientific distinction or nomenclature is possible or has been adopted in India. Generally, the statutes provide for the power to make rules where the general policy has been specified in the statute but the details have been left to be specified by the rules. Usually, technical or other matters which do not affect the policy of the legislation are included in regulations, but where regulations contain any matter of legislative policy, provisions are made for laying such regulations before Parliament. Bye-laws are usually matters of local importance and the power to make by-laws is generally given to the local or self-governing authorities. Since the bye-laws are to be framed with a view to implementing the specific provisions of the statute and are not of general importance and have the local importance only, provisions for laying such bye-laws before Parliament are not usually included in the Bills.”

10. The question of making statutory provisions for laying of regulations before Parliament and/or their publication in the official Gazetteer was taken up with the Ministries/Departments concerned in case of 15 enactments which did not contain such a provision. A gist of the replies received from the Ministries/Departments is at Appendix III.

11. A perusal of Appendix III will show that in the case of the following four enactments, the concerned Ministries/Departments have no objection to making a provision for laying/publication of the regulations framed thereunder:—

1. The Customs Act, 1962.
2. The Post-Graduate Institute of Medical Education and Research, Chandigarh Act, 1966.
3. The Press Council Act, 1965.
4. The Road Transport Corporations Act, 1950.

12. In respect of the regulations framed under the following nine enactments, the Ministries/Departments concerned have not agreed to making of a provision for their laying/publication:—

1. The Employees' State Insurance Act, 1948.
2. The Unit Trust of India Act, 1963.
3. The University Grants Commission Act, 1956.
4. The Khadi and Village Industries Commission Act, 1956.
5. The Salar Jung Museum Act, 1961.
6. The Indian Medical Council Act, 1956.
7. The Warehousing Corporations Act, 1962.
8. The National Co-operative Development Corporation Act, 1962.
9. The Deposits Insurance Corporation Act, 1961.

13. In regard to the regulation-making power under the River Boards Act, 1956, the Ministry of Agriculture and Irrigation (Department of Irrigation) have stated that no River Boards have been set up so far. The question of making a provision for laying of regulations under this Act can be considered, as and when such Boards are set up.

14. Final reply has not yet been received in the remaining one case i.e. in the case of regulations framed under the Oil and Natural Gas Commission Act, 1959. The Ministry of Petroleum and Chemicals who were asked in January, 1975 whether they had any objection

to providing for the laying of the regulations framed under the said Act, stated in July, 1977 that the matter had been referred to the Ministry of Law but the file had not yet come back from them.

15. The question of incorporation of a provision for laying/publication of regulations was also taken up with the Ministries/Departments concerned in the case of the following three Bills which were examined under Direction 103(2) by the Speaker:—

- (1) The Delhi Urban Art Commission Bill, 1973.
- (2) The Public Financial Institutions Laws (Amendment) Bill, 1973.
- (3) The Rampur Raza Library Bill, 1974.

A gist of the replies received from the Ministries/Departments is at Appendix IV. In none of these cases, the Ministries/Departments have agreed to incorporate a provision for laying of regulations.

16. An important safeguard against the possible abuse of subordinate legislation is that such legislation is not only required to be laid before the legislature but that legislature has also the statutory right of modifying/annulling it. As far back as May, 1955, the Committee on Subordinate Legislation in para 37 of their Third Report (First Lok Sabha) had emphasised on Government to make a suitable provision for laying and modification in all future Bills which may seek to delegate power to make rules, regulations, etc. or which may seek to amend earlier Acts giving power to make rules, regulations etc. This recommendation was accepted by Government *vide* paras 78-79 of their Sixth Report (First Lok Sabha). But eighteen years after the presentation of the Third Report (First Lok Sabha), the Committee were surprised to note in paras 48—50 of their Ninth Report (Fifth Lok Sabha) that cases of omissions to make provisions for laying and modification in Bills providing for regulation-making power were still coming to notice. The Committee reiterated their earlier recommendations made in paras 36-37 of their 3rd Report (First Lok Sabha) and desired the Ministry of Law, Justice & Company Affairs (Legislative Department) to issue general instructions 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), did not escape their attention in all original Bills as well as amending Bills providing for regulation-making power.

17. In pursuance of the recommendation of the Committee made in para 49 of their Ninth Report (Fifth Lok Sabha), the Ministry of Law, Justice and Company Affairs (Legislative Department) issued

a circular letter dated the 9th March, 1974 to all Ministries/Departments of Government. This letter *inter alia* reads as follows:—

“Normally, rules under the Acts are made by the Central Government and regulations under the Acts are made by corporations and other autonomous bodies established thereunder. Of course, Acts, like the Navy Act, 1957, provide for the making of regulations only by the Central Government and Acts like the Mines Act, 1952, provide for the making of both rules and regulations by the Central Government. Rules and Regulations are made by the Central Government with respect to important matters and provision has invariably been made in the Acts for laying such rules and regulations before Parliament.

Autonomous bodies are normally empowered to make regulations with respect to matters pertaining to their day-to-day work, like procedure and transaction of business of the autonomous bodies, summoning of meetings, quorum at meetings, conditions of service of employees, etc. Such Regulations pertain essentially to the internal management of autonomous bodies. Before imposing a requirement as to laying of such regulations before Parliament it may be necessary to consider *inter alia* as to how far such a requirement would be consistent with Parliament's intention to empower the concerned bodies to function as autonomous bodies. However, in order to enable this Department to communicate the views of the Government on the question whether regulations made by autonomous bodies under the Act may also be laid before Parliament, as in the case of rules and regulations made by the Central Government, it is requested that the Ministry of Home Affairs, etc., may examine the Acts with which they are administratively concerned and which provide for the making of regulations by autonomous bodies and let us know their views in the matter at a very early date.”

18. Subsequently, on a suggestion to incorporate a provision for laying and modification of regulations under the Delhi Urban Art Commission Bill, 1973, the Ministry of Law, Justice & Company Affairs (Legislative Department) in January, 1975 *inter alia* replied as under:

“Where a statute confers powers, both to make rules and to make regulations, ordinarily provisions are made for the laying of the rules before both Houses of Parliament, but no provision is made for the laying of the regulations before both Houses of Parliament. Regulations made by

a statutory corporation with regard to its internal working are in the nature of bye-laws framed by it, the public in general is not interested as to how the internal working of the Corporation is carried on and, as such, it does not appear to be necessary to provide for the laying of such regulations before both Houses of Parliament.

* * * * *

However, the Ministries and Departments of the Secretariat have been consulted as this is a general question relating to statutory Corporations, Commissions and bodies with which they are administratively concerned and their views are still awaited."

19. Despite several reminders, the final reply of the Ministry of Law, Justice & Company Affairs (Legislative Department) has not so far been received.

The Committee regret to note that although more than adequate time has been taken by the Ministry of Law, Justice and Company Affairs (Legislative Department), they have not yet sent their reply.

20. A perusal of Appendix III will show that the reasons given by the Ministries/Departments for not incorporating a provision for laying/publication of regulations are generally on the lines of those given in the two communications of the Ministry of Law, Justice & Company Affairs (Legislative Department) mentioned in paras 17 and 18 above.

21. Similar arguments were given by the Ministry of Finance (erstwhile Department of Banking) for not incorporating a provision for laying of regulations framed under the State Bank Laws Amendment Bill, 1973. However, the Committee did not accept these arguments, and observed as follows in paras 86-87 of their Second Report (Sixth Lok Sabha):—

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

exercised, and the delegate does not transgress the limits laid down by it. Whether the delegate is the Central Government or a body subordinate to it, is not very material.

Nor do the Committee see any force in the argument that the laying of regulations relating to an undertaking before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As the Committee observe, even now the Committee on Subordinate Legislation can, and does, scrutinise the regulations framed by subordinate bodies. Laying of the regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. The Committee, therefore, desire the Ministry of Finance (Department of Banking) to bring forward without any further delay necessary legislation for laying of regulations framed under the remaining Acts administered by the Department of Banking, as has been done in the case of Regulations framed under the Reserve Bank of India Act, 1933."

22. As regards publication of rules, regulations, etc., in the Official Gazette, attention may be invited to paras 30 and 32 of the First Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) where commenting upon non-publication of certain rules and regulations under the Indian Railways Act, 1890, the Committee observed as follows:—

"The Committee would also like to emphasise that, besides publicity, the publication of the Rules in the Gazette has another important purpose to serve, viz., Parliamentary control over subordinate legislation. Unless a rule is published in the Gazette, it does not ordinarily come to the notice of the Committee, and they are, therefore, unable to examine whether the rule-making power conferred by Parliament on the Executive has been properly exercised.

* * * * *

Thus, after considering the matter in all its aspects, the Committee feel that, both in the interest of wider publicity and Parliamentary control over subordinate legislation, it is imperative that the rules and regulations framed by Government under the provisions of the Indian Railways Act should not only be published in the

Gazette but also laid before Parliament. The Committee, therefore, recommend that Government should suitably amend the Act to this end."

23. 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 emphasised on Government to make a suitable provision for laying and modification in all future Bills which may seek to delegate power to make rules, regulations, etc. or which may seek to amend earlier Acts giving power to make rules, regulations, etc. This recommendation was accepted by Government vide paras 78-79 of their Sixth Report (First Lok Sabha). The Committee note that, while in the case of rules, Government have by and large been complying with the above recommendation of the Committee, they have failed to comply with the said recommendation in so far as regulations are concerned. Of the 19 Acts enumerated in Appendix II, 15 were passed by Parliament after the Committee made the above recommendation. Only in two of these, where the regulation-making power has been conferred on the Central Government, a provision has been made for the laying of regulations before Parliament. In none of the remaining 13 Acts, where regulation-making power has been conferred on subordinate bodies, such as Corporations, Boards, Councils, etc., a provision has been made for laying of regulations framed thereunder before Parliament. The Committee are surprised that, after having accepted the above recommendation of the Committee, Government should have paid so scant a regard to it so far as regulations are concerned.

24. The main reasons now given by the Ministries/Departments for not incorporating a provision for laying of Regulations in Acts/Bills are:

- (i) the regulations are generally framed by autonomous bodies with regard to their internal working, and are, therefore, not of general public interest; and
- (ii) a provision for their laying before Parliament would not be consistent with the autonomous character of such bodies.

25. The Committee note that similar arguments were given by the Ministry of Finance for not incorporating a provision for laying of Regulations framed under the State Bank Laws Amendment Bill, 1973. The Committee which had gone into the matter in depth had seen no force in these arguments. As observed by the Committee in paras 86-87 of their Second Report (Sixth Lok Sabha), the body which delegates the power has a right to see that the power dele-

gated by it does not transgress the limits laid down by it. Whether the delegate is the Central Government or a body subordinate to it is not very material. Nor did the Committee see any force in the argument that the laying of regulations relating to an autonomous body before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As observed by the Committee, even now the Committee on Subordinate Legislation can, and does, scrutinise the regulations framed by subordinate bodies under delegated powers. Laying of such regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. So as not to leave any room for doubt, the Committee will like to make it clear that their whole purpose in asking Government to lay the regulations framed under delegated powers before Parliament is to enable Parliament to see that the regulations framed under such powers are within the limits laid down by it and do not contain any unreasonable or inequitable provision not intended by Parliament.

26. The Committee reiterate their earlier recommendations on the subject and desire that like rules, regulations should also be laid before Parliament and there should be a provision to this effect in the relevant statutes. Like-wise, there should invariably be a provision in the relevant statutes for publication of regulations to be framed thereunder. With this end in view, the Committee desire the Ministries/Departments of Government of India to examine all Acts delegating power to make regulations, with which they are administratively concerned, and to incorporate suitable provisions for publication and laying of regulations in those Acts which do not contain such provisions. The Committee desire the Ministry of Law/Department of Parliamentary Affairs to issue necessary instructions to all Ministries/Departments of the Government of India to this effect.

III

- (i) Petroleum Rules, 1976 (GSR 479-E of 1976).
- (ii) The Petroleum (Amendment) Rules, 1974 (GSR 1376 of 1974).
1974).

A

27. According to the preamble to the Petroleum Rules, 1976, the draft rules were published on 16-9-1972, inviting objections/suggestions till 11-11-1972, from all persons likely to be affected thereby, but the final rules were published on 26-7-1976, i.e., after a time-lag of about 4 years. The erstwhile Ministry of Industry and Civil Supplies (Department of Industrial Development) were asked to state

the reasons for a time-lag of about 4 years between the publication of the draft rules and final rules.

28. In reply, the Ministry of Industry (Department of Industrial Development) explained the delay as under:—

“The draft rules were published on 16-9-72. It would appear that the Gazette containing the draft rules was actually despatched late, so late that it reached the subscriber after 16-10-72—the date by which the objections and suggestions were re-required to be submitted. As the draft rules, in which major changes were involved, required sufficient time for consideration, the Ministry was approached by the Deptt. to grant extension of the prescribed time limit and in consultation with the Ministry the time limit was extended up to 31st December, 1972, when a Circular was issued by this office on 21st November, 1972, to a large number of organisations including Chief Secretaries of State Governments, State Transport Authorities, major oil companies, Chief Inspectors of Factories, Railways, Fertiliser Corporations etc. and officers of this Deptt. Elaborate suggestions/objections were received from most of the concerned parties and it was a voluminous task to shift the materials, arrange them in proper order rule-wise and consider the suggestions and objections and finalise the draft. A draft so finalised was submitted to the Ministry sometime in August, 1973 and the rules were scrutinised in consultation with the Chief Controller of Explosives by Shri M. Subramanyam, Under Secretary during, October, 1973, and the final draft was handed over to the Ministry in November, 1973. Thereafter it took quite a long time in the Law Ministry for vetting as it required clause by clause examination as compared with the old rules. During vetting the Chief Controller of Explosives was also required to be present as the rules were highly technical in nature. After the rules were vetted the rules had to be recast as advised by the Ministry of Law. At this stage the whole file was sent by the Ministry to Petroleum and Chemicals Ministry for their comments and suggestions. It took nearly six months for the Ministry of Petroleum and Chemicals to return the file with their comments. The comments had to be examined and the relevant rules had to be revised incorporating the suggestions made by the Petroleum and Chemicals Ministry. The rules so revised had to be shown again to the Law Ministry for their vetting which also took some time. At this stage the

rules were sent to the Official Languages Commission of the Ministry of Law for translation which also took more than 8 months. The above explains the delay in publication of the final rules."

29. Similarly, the Petroleum (Amendment) Rules, 1974 which were published in draft form on the 14th March, 1973 were finally published on the 28th December, 1974, nearly 20 months after the last date fixed for receipt of objections/suggestions on the draft rules.

30. The Ministry of Industry (Department of Industrial Development) who were asked to state the reasons for taking such a long time—nearly 20 months—in the final publication of the Petroleum (Amendment) Rules, 1974 stated as under:

"...the main reason for delay has been found to be the large number of stages through which the said notification had to pass before its publication. First the Chief Controller of Explosives, Nagpur, who is responsible for the administration of the Petroleum Rules, was requested to send the final draft of the notification in question, after no objections or suggestions were received from any quarters. After the draft was received from the CCE, it was referred to the Ministry of Law for vetting. That Ministry suggested some changes in the said draft and the revised draft had again to be referred to the CCE, Nagpur, to ensure that the revision suggested by the Ministry of Law met the requirements of the situation. After the CCE had conveyed his agreement to the revisions suggested by the Ministry of Law, the vetted draft was sent to the Official Languages (Legislative) Commission for making available its Hindi version. Only after the Hindi version became available, the fair copies of the notification could be sent to the Press on 22-11-1974. It was actually published on 28-12-1974.

Since the papers had to move through so many stages, the final publication of the notification was delayed. However, the delay in question is regretted and every effort will be made to minimise such delays in future."

31. At their sitting held on the 28th January, 1978, the Committee heard oral evidence of the representatives of the Ministry of Industry (Department of Industrial Development) in regard to the delay involved in final publication of the Petroleum Rules, 1976.

32. In his evidence, the representative of the Ministry conceded that the delay of nearly four years in the final publication of the rules was very difficult to explain. Giving a stage-wise break-up of the delay, he stated that the initial delay of about eight months

took place after the publication of the draft rules on 16th September 1972. Objections and suggestions were invited from the public upto 31st December 1972. The examination of the objections and suggestions and revision of the draft rules took about eight months. Subsequently, consultation with the Ministries of Law, and Petroleum & Chemicals also took some time. There was another 6 months delay from December 1975 to June 1976 in getting the rules translated in Hindi. The representative of the Ministry conceded that such delays should not occur and it would be avoided in future.

33. When asked what could be the reasonable period within which draft rules could be finally published, the representative of the Ministry stated that though the exact period taken in each case would depend upon the nature of the draft rules, the nature of objections received and the complexity of the matter, broadly speaking, 6 to 9 months' period should be adequate for the publication of any draft rules.

34. Regarding steps taken by the Ministry to expedite the publication of rules, he stated that they have come to the conclusion that when draft rules are prepared and published for inviting objections, they could be sent simultaneously to all the agencies without doing it in a serial order so that the comments of all concerned were available at the same time. For Hindi translation also the Official Languages Commission had asked them to send chapter by chapter. It can be sent for translation at draft stage also.

35. Regarding reduction of the time taken in inter-departmental consultation, the witness stated that it can be achieved through having meetings of the concerned Ministries. The views of the respective Ministries/Departments can be taken into account at the meeting itself and further processing done on that basis.

36. In reply to a question whether the Ministry had examined the feasibility of publishing the rules in English in the first instance followed by its Hindi translation so as to avoid delay in the final publication of the rules, the representative of the Ministry stated that the normal procedure was to send the manuscripts of both English and Hindi versions to the press together.

37. In reply to another question, the witness promised to impress upon the officers of the Ministry the need of expedition in the final publication of rules.

38. The Committee regret to note that the Petroleum Rules tion/objections from the persons affected thereby were finally which were published in draft form on 16-9-72 for inviting suggested after a time-lag of about 4 years. As conceded by the representative of the Ministry of Industry during the course of his

evidence before the Committee, broadly speaking, six to nine months' period should normally be adequate for the publication of any draft rules. As such, the delay of nearly four years in the final publication of the rules in this case was inexplicable. The Committee cannot help expressing concern at the lackadaisical manner in which the matter had been dealt with.

39. One of the reasons for delay in the finalisation of the rules is the large number of stages through which they had to pass before their publication. The Committee feel that in such cases rules may be finalised at meetings of officers of the Ministries/Departments concerned, instead of making frequent time-consuming to and fro references and waiting for their replies to be received in due course.

40. The Committee note that in order to expedite the publication of rules, the Ministry of Industry have decided that when draft rules are prepared and published for inviting objections, they would also be sent simultaneously to all the agencies instead of sending them to one agency at a time so that the comments of all concerned are available at the same time. Like-wise, in order that the final publication of the rules is not delayed on account of delay in receipt of Hindi translation from the Official Language Commission, the Committee desire that, in case of voluminous rules, instead of sending the entire rules at a time, the Ministries/Departments may send them in batches. The Committee hope that all these steps will go a long way in reducing delays in the finalisation of rules. The Committee trust that the Ministry of Industry will henceforth take care to see that such cases of inordinate delays do not recur.

(B)

41. The expressions appearing in the following rules appeared to be vague:—

- (a) Rule 15(1): "an unreasonably large quantity";
- (b) Rule 90(6): "at reasonable intervals";
- (c) Rule 96: "at frequent intervals";
- (d) Rule 115(1): "regularly"; and
- (e) Rule 172(4) "at regular intervals".

42. In this connection, the attention of the Ministry of Industry (Department of Industrial Development) was invited to paras 130 to 133 of the Eleventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha), wherein, they had felt that the expressions "reasonable distance", "adequate space" and "adequate height", used in the Roorkee Cantonment (Control and Supervision of Mills) Bye-laws, 1970, were liable to be interpreted differently by different officers. On being pointed out, the Ministry of Defence had amended the Bye-laws by laying down specific distances, etc.,

to be maintained in constructing the building or premises of mills. The Ministry were asked to state whether they had any objection to specify the exact quantity or period of intervals, etc., in the above rules to eliminate the element of vagueness therefrom.

43. In reply, the Ministry of Industry (Department of Industrial Development) have quoted the parallel provisions which existed in the original Rules of 1937, which have now been repealed by the Petroleum Rules, 1976, and stated as under:—

“(a) *Rule 15(1)*:

This rule is in line with rule 6 of the Petroleum Rules 1937.

The quantity of Petroleum kept as ship's stores in various ships may vary from ship to ship depending upon its size and requirement and the Collector of Customs who has sufficient experience in this matter has to decide and hence it would not be possible to specify the quantity which may be small or large for the reasons explained above.

(b) *Rule 90(6)*:

This is in line with rule 88, of the Petroleum Rules, 1937.

'Reasonable intervals' cannot be more closely defined as much depends on local conditions. Any point where particular dangers are likely to arise from a rupture, when the contents of a long length of line may be discharged by a break in the pipe seems to demand the fitting of a valve.

(c) *Rule 96*:

A time interval can perhaps be fixed for checking of gauges.

This needs further examination after studying the actual practices in vogue.

(d) *Rule 115(1)*:

- The regularity at which the equipment should be treated with protective paint is determinable only after knowing the prevalent conditions. For example, if a piece of iron is exposed to salty atmosphere it needs more frequent painting as compared with that located in a dry up country climate like in Rajasthan. As such, the regularity cannot be specified.

(e) *Rule 172(4)*:

The interval at which the calibration and checking of instrument is done changes from one make of instrument to

another and each manufacturer recommends a particular interval. It will, therefore, not be possible to specify the intervals."

44. At their sitting held on the 23th January, 1978, the Committee heard oral evidence of the representatives of the Ministry of Industry (Department of Industrial Development) in this matter.

45. During evidence, the explanation of the representatives of the Ministry for using the expression "unreasonably large quantity" in Rule 15(1) was that petroleum Class B and Class C were carried by ships for their own use. Ships were of different sizes and the quantity required depended upon their size. When a ship comes to the Indian Ports, it is subject to Indian Rules. A Collector of Customs is to determine that a ship does not carry an unreasonably large quantity of the aforesaid categories of oil. In view of the large variation in the sizes of ships and the tanks in which they carry bunker oil, it is necessary to provide this kind of variation in administering these rules. Asked whether there was any difficulty in prescribing quantities of petroleum which may be considered unreasonable for various sizes of ships or ranges of sizes of ships. The representative of the Ministry stated that not only the sizes of the ships vary from 15,000 to 80,000 tonnes but also the arrangements of filling with bunker oil vary. While some loaded at Indian ports, others loaded at North African ports.

46. The Committee pointed out that while one officer may feel that a particular quantity was 'unreasonably large', another officer may feel that it was not. The Committee enquired whether any check was exercised to ensure that the decision by a particular officer was a rational one. The Chief Controller of Explosives conceded that it had to be left entirely to the subjective determination of the officers concerned who were normally lower officers below the rank of customs officers. In reply to a question, the witness promised to examine the feasibility of laying down guidelines in the matter:

47. The Committee then referred to the use of the expression 'reasonable interval' in rule 90(6). The Chief Controller of Explosives stated that this expression was there in the old rules also. The pipelines rules had been made very elaborate and an approval system had been brought into force under which a Company which laid the pipelines was to submit a project report and show all the particulars of the pipeline—the design of the pipeline, the thickness, the diameter and the length of the pipeline, etc. They had also to provide route map of the pipeline and the officers of Engineers India Ltd. inspected the project.

48. The Committee desired the Ministry to send a note regarding the workability of the rules, in the light of their past experience, so that there is no scope of arbitrariness in their working. The representative of the Ministry promised to furnish the requisite note.

49. In their note sent on the 22nd February, 1978, the Ministry have stated as under:

"Rule 15(1):

The Controller of Explosives, West Circle had discussed the question of ship's stores manifest by the Master of the ship and intimated that there has not been any dispute between a ship's officers and the Customs officials as regards quantum of the ship's stores manifest. The Class 'B' Petroleum (Diesel Oil) or Class 'C' Petroleum (Furnace Oil) both come under the category of bunker oil. When once the Master of ship declares Diesel Oil and Furnace Oil Class B and Class C Petroleum respectively used for the preparation of the ship will not be permitted to be landed or transferred to another ship, while in the Port. Even the quantity of paint that is carried has to be declared in the manifest and will not be permitted to be landed or delivered to any other ship by the Customs authorities according to the Customs Rules and Regulations. In view of the above the proviso in rule 15(1) and sub-rule (2) do not appear necessary. Thus Class B or Class C Petroleum carried on the ship for its own use will not be treated as import under the Petroleum Rules, 1976 Rule 15 may be modified to read as under:—

- '15. Petroleum exempted—(1) Nothing in this Chapter applies to Petroleum Class B or Petroleum Class C comprised in a ship's stores and manifested as such.'
(2)—Rule 15(3) to be renumbered as 15(2).

Rule 90(6):

The recent U.S. Department of Transportation Pipeline Safety Standards for transportation of liquid petroleum have since been examined. The Safety Standards for liquid petroleum pipeline contain a provision regarding location of valves. This gives some guidelines for locating valves. Rule 90(6) is proposed to be amended giving similar guidelines for the location of gate valves.

'90(6)—Gate valves shall be installed at each of the following locations:

- (a) On the suction end and the discharge end of the pump station in a manner that permits isolation of the pump station equipment in the event of an emergency.

- (b) On each line entering or leaving the installation in a manner that permits isolation of the installation from other facilities.
- (c) On each main line at locations along the pipeline system that will minimize damage from accidental product discharge, as appropriate for the terrain in open country or for the location near cities or other populated areas.
- (d) On each lateral takeoff from a trunk line in a manner that permits shutting off the lateral without interrupting the flow in the trunk line.
- (e) On each side of a water crossing that is more than 100 feet wide from high-water mark to high-water mark.
- (f) On each side of a reservoir holding water for human consumption."

Rule 96:

This question has also been examined and it is considered that annual check of the pressure gauges should suffice. This is in line with the U.S. Standard referred to above. The rule will read as under:—

96—*Checking of gauges*—Tank gauges at intermediate or booster pump stations shall be checked between stations at least once in a year.'

Rule 115(1):

The intention of this rule is to ensure that electrical equipment is always covered with a layer of paint to protect the surface from corrosion. The frequency of painting depends on the atmospheric conditions to which equipment is exposed. With this purpose in mind no change in the rule is recommended.

Rule 172(4):

This may be amended to read as under to remove the vagueness in the word 'regular':—

'172(4)—All gas tests for the purpose of issuing a permit shall be carried out by suitably trained persons by an instrument which is calibrated and checked at such intervals as are recommended in this behalf by the

manufacturers of such instrument in the Manual of Instructions pertaining thereto.”

50. In the opinion of the Committee, it is of utmost significance that the provisions of legislation (including subordinate legislation) are spelt out with precision and, as far as possible, use of vague expressions, which may be interpreted differently by different persons, is avoided.

51. The Committee note with satisfaction that, on the matter being taken up by the Committee, the Ministry of Industry (Department of Industrial Development) have proposed to amend Rules 15(1), 90(6), 96 and 172(4) of the Petroleum Rules, 1976 so as to avoid the use of vague expressions like ‘unreasonably large quantity’ and ‘reasonable’, ‘frequent’ or ‘regular intervals’ therein. The Committee desire the Ministry to issue the proposed amendments at an early date.

52. In regard to Rule 115(1), the Committee feel satisfied with the reply of the Ministry that it is not possible to specify the regularity at which the equipment should be treated with paint as the regularity is determinable only after knowing the prevalent conditions.

N

- (i) The Military Lands & Cantonments Service (Class III & Class IV) Recruitment (Amendment) Rules, 1974 (S.R.O. 235 of 1974).
- (ii) The General Provident Fund (Defence Services) Forty-second Amendment Rules, 1974 (S.R.O. 381 of 1974).
- (iii) The Central Health Service (Amendment) Rules, 1976 (G.S.R. 381 of 1976).
- (iv) The Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974 (G.S.R. 1028 of 1974).
- (v) The Central Bureau of Investigation (Deputy Legal Adviser) Recruitment Rules, 1975 (G.S.R. 2722 of 1975).
- (vi) The Small Scale Industries (Class I and II Gazetted Posts) Recruitment (Amendment) Rules, 1975 (G.S.R. 2404 of 1975)—Delay in finalising the Rules.

53. There was a long delay in finalisation of the following Rules as a result of which retrospective effect had to be given to them.

The date of publication of the Rules and the date from which they were deemed to have come into effect are as under:

SI. No.	Name of the Rule and Ministry/Deptt. concerned	Date of publication in the Gazette	Date from which brought into force
(1)	(2)	(3)	(4)
1	The Military Lands & Cantonment Service (Class III & Class IV) Rectt. (Amendment) Rules, 1974 (S.R.O. 235 of 1974) (Ministry of Defence)	27-7-74	17-2-70
2	The General Provident Fund (Defence Services) Forty-second Amdt. Rules, 1974 (S.R.O. 381 of 1974). (Ministry of Defence)	16-11-74	14-6-72
3	The Central Health Service (Amdt.) Rules, 1976 (G.S.R. 381 of 1976) (Ministry of Health & Family-Welfare Dept. of Health)	13-3-76	24-1-74
4	The Central Hindi Directorate class III & IV posts Rectt. (Amdt.) Rules, 1974 (G.S.R. 1028 of 1974) (Ministry of Education and Social Welfare Dept of Education)	21-9-74	1-9-72
5	The Central Bureau of Investigation (Dept. of Legal Adviser) Rectt. Rules, 1975 (G.S.R. 2722 of 1975) (Deptt. of Personnel & Administrative Reforms)	29-11-75	20-1-64
6	The Small Scale Industries (Class I & II Gazetted Posts) Rectt. (Admt.) Rules, 1975 (G.S.R. 2404 of 1975) (Ministry of Industry-Deptt. of Industrial Development)	20-9-75	6-7-62

54. The matter was taken up with the Ministries/Departments concerned who were requested to state the reasons for taking such a long time ranging from 2 to 13 years in finalising amendments to the Rules. The replies received from the Ministries/Departments concerned are given in Appendix V.

55. It was seen from the replies received from the Ministries/Departments that one of the reasons for delay in finalisation of rules was the unduly long time taken in inter-Departmental consultations. The Committee which considered the matter at their sittings held on the 29th Nov., 1977 and the 9th Feb., 1978 desired the

Department of Personnel and Administrative Reforms to evolve some procedures whereby to reduce the time involved in such consultations to the barest minimum.

56. The Department of Personnel and Administrative Reforms with whom the matter was taken up have replied as under:

"The undersigned is directed to——forward herewith a copy of this Department's Office Memorandum* No. 20|3|67-Est(D), dated the 11th August, 1967, wherein the procedure for framing recruitment rules etc. has been laid down. It will be seen from para 2 thereof that all attempts are being made to finalise the recruitment rules as soon as possible. So far as this Department is concerned, the recruitment rules are required to be returned after scrutiny to the Administrative Ministry within a month and so far as the Union Public Service Commission are concerned they are required to furnish their comments|approval|concurrence within a period of 4 to 5 weeks. It has also been suggested that where necessary the matter may be discussed with the Union Public Service Commission or this Department at the appropriate level. It will be seen from the above that all attempts are being made to finalise the recruitment rules within the minimum shortest possible time.

It may further be added that a detailed note consolidating all the instructions and streamlining the procedure in regard to framing of recruitment rules has been prepared and referred to the Union Public Service Commission for their concurrence. It is hoped that the delay in framing and finalising the recruitment rules would be considerably reduced with the issue of the consolidated instructions..."

57. The Committee deprecate inordinate delays ranging from 2 to 13 years in the finalisation of the rules in question, with the result that all of them had to be given retrospective effect.

58. The Committee note that one of the main reasons for such delays is the unduly long time taken in inter-Departmental consultations. This has been conceded by the Ministry of Education and Social Welfare (Department of Education) in the case of the Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974. In this connection the Committee will like to invite the attention of the Ministries/Departments to the circular O.M.*

No. 20-3-67-Estt(D) dated the 11th August, 1967 issued by the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) regarding measures to be taken for reducing delays in finalising Recruitment Rules. According to this circular, the Ministry of Home Affairs will ordinarily return the draft Recruitment rules with their comments within a month from the date of reference to that Ministry or, if special circumstances of a case require more time for scrutiny/discussions, the Administrative Ministry/Department will be requested to discuss the case. Otherwise, after the period of one month, that Ministry/Department can presume concurrence of Home Ministry and proceed further. As regards consultation with the Union Public Service Commission, it has been laid down that ordinarily they will convey their advice within four or five weeks. It has been further laid down that if the Commission's advice on the draft recruitment rules is not received within this period the Administrative Ministry/Department should settle the matter by personal discussion with the officer concerned in the Commission.

59. The Committee have a feeling that the Ministries/Departments are not strictly following the procedure laid down by the Department of Personnel and Administrative Reforms in Appendix VI. They desire all the Ministries/Departments to streamline their existing procedure for finalisation of Recruitment Rules in accordance with the instructions contained in the above circular. In particular, stress may be laid on settlement of matters by mutual discussion at meetings of officers of different Ministries concerned with the finalisation of Rules.

60. The Committee note that the Department of Personnel and Administrative Reforms have prepared a detailed note consolidating all the instructions and streamlining the procedure in regard to framing of recruitment rules, which has been sent to the U.P.S.C. for concurrence. The Committee desire the Department to issue the note at an early date and impress upon all the Ministries/Departments to strictly follow the instructions contained therein so that delays in finalisation of rules are reduced to the barest minimum, if not eliminated altogether.

V

Furnishing of information by the Ministries/Departments to the Committee on Subordinate Legislation

61. Various Communications are received from the Ministries/Departments of Government of India giving information required by

the Committee on Subordinate Legislation or intimating action taken by them on the various recommendations of the Committee. These communications are usually received under the signatures of Under Secretary/Deputy Secretary. In a number of cases, the communications carry the signatures of only the Section Officer of Receipt and Issue Section of the Ministry/Department who is authorised to sign. Recently a case has come to notice where the communication was sent under the signatures of even an Assistant. There is also no indication in the letters received as to the level upto which the replies had been approved.

62. In the case of Estimates Committee, it has been laid down that the material/information furnished by the Ministries should be signed by the Secretary/Additional Secretary/Joint Secretary of the Ministry or if for any reasons it is not possible for them to do so, the letter should indicate the level at which the information/material being furnished had been approved. The same practice obtains in case of Public Accounts Committee and the Committee on Public Undertakings.

63. The matter had also been raised in the last Conference of Chairmen, Committee on Subordinate Legislation held in March, 1975 and the consensus was that in cases where the recommendations of the Committee were not accepted by the Ministries/Departments, it should be stated in their reply that the matter had been considered at the level of the Minister.

64. The Committee note with regret that communications giving information required by the Committee have in certain cases been sent by the Ministries/Departments under the signatures of a Section Officer and in one case the communication sent was under the signature of an Assistant. The Committee feel that the communications addressed by the Committee should be dealt with at a sufficiently high level in the Ministries and replies thereto signed by Senior Officers. With this end in view, the Committee desire the Ministries/Departments to follow the following procedure in regard to supply of information or intimating action taken on the recommendations of the Committee on Subordinate Legislation:

- (i) Communications furnishing information on points raised by the Committee on Subordinate Legislation should ordinarily be signed by an officer not below the rank of Deputy Secretary.
- (ii) Communications intimating action taken on the recommendations of the Committee on Subordinate Legislation

should be signed by an officer not below the rank of Joint Secretary.

- (iii) In cases where the recommendations of the Committee are not accepted by Government, the reply of the Ministry/Department should have the approval of the Minister concerned and it should be so stated in the said reply.

65. The Committee will like the Department of Parliamentary Affairs to issue necessary instructions to all the Ministries/Departments to introduce the above procedure without delay. The Ministries/Departments concerned may in their turn bring these instructions to the notice of all concerned for compliance.

VI

- (i) The National Savings Certificates (V Issue) Rules, 1973 (G.S.R. 421-E of 1973);
- (ii) The Post Office Savings Certificates (Second Amendment) Rules, 1973 (G.S.R. 422-E of 1973);
- (iii) The Post Office Savings Certificates (Second Amendment) Rules, 1975 (G.S.R. 2340 of 1975).

(A)

66. Rule 10 of the National Savings Certificates (V Issue) Rules, 1973, framed under section 12 of the Government Savings Certificates Act, 1959, provides as under:—

- “Irregular Holdings—*(1) Any certificate purchased or acquired in contravention of these rules shall be encashed by the holder as soon as the fact of the holding being in contravention of these rules, is discovered and no interest shall be paid on any holding in contravention of these rules.
- (2) If any interest has been paid on any holding which is in contravention of these rules, it shall be forthwith refunded to the Government failing which the Government shall be entitled to recover the amount involved from any money payable by the Government to the investor or as an arrear of land revenue.”

67. It has not been indicated anywhere in the rules as to what could be the possible contravention of the aforesaid rules which may result in the holdings becoming irregular under rule 10 and whether the holder will have to suffer even if the rules have been contravened by the Department.

68. The Ministry of Finance (Department of Economic Affairs) with whom the above point was taken up stated in their reply that the National Savings Certificates (V Issue) like other taxable securities are intended for individuals *vide* Rule 4. Contravention of this rule will result in the holdings becoming irregular, that is to say if a purchase is made by an institution, a company or other body. The Ministry have further stated that cases of contravention are being carefully examined and due care is taken that the holder does not suffer on account of any departmental contravention of the rules.

69. After processing the above reply of the Ministry, a further reference was made asking them to state—

- (i) The circumstances under which the certificates can be purchased by an institution, a company or other body, particularly when rule 4 of the above rules lays down only 3 types of certificates and issue thereof to—
 - (a) an adult for himself or on behalf of a minor or to a minor;
 - (b) two adults payable to both holders jointly or to the survivor; and
 - (c) two adults payable to either of the holders or the survivor;
- (ii) whether the Ministry had any objection to making a provision in the rules that the holder of certificates will not suffer on account of any departmental contravention of the rules;
- (iii) whether departmental contraventions cannot be prevented at the time of issue of certificates to individuals, so as to avoid its issue to a company, an institution or other body.

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

- (i) The National Savings Certificates (V Issue) are issued inadvertently by the Post Office to Institutions etc. Such cases occur rarely, due to an element of human error.
- (ii) Even where these certificates are issued to Institutions etc. because of lapse on the part of issuing post office, it cannot be said that the purchaser institution was not at all responsible in applying for the issue of the certificates. The rule clearly provides that such certificates are to be issued only to individuals (and not to institutions and bodies) and therefore there appears no point in making a provision in the rules that the investors in such certificates

will not suffer on account of the contravention of the rules. Such individual cases are considered on merits and generally interest at P.O. Savings Bank rates is allowed as a special case.

- (iii) The D.G., P & T is being asked to issue a suitable circular bringing the particular provision of the rule specifically to the notice of post offices so that such contravention of rule 4 of the National Savings Certificates (V Issue) Rules, 1973, may be totally avoided."

71. The Committee note that the Ministry of Finance have conceded in their reply that there is a possibility of issue of certificates under the aforesaid Rules to Institutions etc. by Post Offices due to an element of human error. The Committee further note that even though there is no statutory provision to this effect, cases of institutions etc. holding certificates are being considered on merit and generally interest at Post Office Savings Bank rates is also allowed to them. The Committee feel that in view of this practice being already there, the Ministry should have no difficulty in bringing it on a statutory footing.

(B)

72. Rule 26 of the National Savings Certificates (V Issue) Rules, 1973 provides as under:—

"Amount payable on discharge of certificate. (1) The amount (including interest) payable on certificates of different denominations after each completed year of retention shall be as in the following table, namely:—

Surrender value of National Savings Certificates (V Issue)

Face Value		Amount (including interest) payable after complete years				
		3	4	5	6	7
Rs.	10	12.20	12.20	14.20	14.20	16.60
Rs.	50	61.10	61.10	71.00	71.00	83.00
Rs.	100	122.00	122.00	142.00	142.00	166.00

73. It was seen from the above Table that the surrender value of certificates of all the three denominations, viz., Rs. 10, Rs. 50 and

Rs. 100 was the same for 3 years as it was for 4 years. It was again the same for 5 and 6 years. It appeared that no interest was payable for the fourth year and again for the sixth year.

74. Similar provisions were incorporated in the Post Office Savings Certificates Rules, 1960, *vide* G.S.R. 422-E of 1973 and G.S.R. 2340 of 1975.

75. The Ministry of Finance (Department of Economic Affairs) with whom the above matter was taken up for clarification stated in their reply that the same surrender values had been prescribed on completion of 3 and 4 years and 5 and 6 years to discourage premature encashment. They further stated that the National Savings Certificates (V Issue) Rules, 1973 were proposed to be revised with a view to eliminating the need to show the same surrender value twice in the table.

76. In a further reply, the Ministry have stated as under:—

“.....the draft notifications replacing the existing tables in the rules with a view to prescribing separate surrender values of the various National Savings Certificates after expiry of three and four and after five and six completed years, is being got cleared from the Ministry of Law and are expected to be issued shortly.”

77. The Table under rule 26 has since been substituted *vide* G.S.R. 1742 of 1976, dated 18-12-1976, as under:—

TABLE

Face Value	After 3 completed years but before completion of 4 years.	After 4 completed years but before completion of 5 years.	After 5 completed years but before completion of 6 years.	After 6 completed years but before completion of 7 years.	After 7 completed years.
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
10	13.00	14.40	15.90	17.70	20.00
50	65.00	72.00	79.50	88.50	100.00
100	130.00	144.00	159.00	177.00	200.00
500	650.00	720.00	795.00	885.00	1000.00
1000	1300.00	1440.00	1590.00	1770.00	2000.00

78. Similar amendments have been made in the Post Office Savings Certificates Rules, 1960, *vide* G.S.R. 1743 of 1976, dated 18-12-1976.

79. The Committee note that as a result of fixation of the same surrender values of the Certificates in question at the expiry of three and four completed years and also at the expiry of five and six completed years, no interest was payable to certificate-holders for the fourth and sixth years if such holders had to encash their certificates at the end of these years. This, in the opinion of the Committee, was inequitous.

80. The Committee therefore note with satisfaction that, on a suggestion by the Committee, the Ministry have amended the rules in question to prescribe separate surrender values of the various National Savings Certificates after the expiry of three and four and after five and six completed years.

VII

The Delhi Sikh Gurdwaras Rules, 1973 (Notification No. 18(15)/73-Judl. dated 13-9-1973).

81. Preamble to the Delhi Sikh Gurdwaras Rules, 1973 which were published in the Delhi Gazette dated the 27th September, 1973 and laid on the Table of Lok Sabha on 21-11-1973 reads as under:—

“In exercise of the powers conferred by section 39(1) of the Delhi Sikh Gurdwaras Act, 1971 (82 of 1971) read with the Government of India, Ministry of Home Affairs Notification S.O. No. U-11030/1/73-(i) UTL dated the 3rd May, 1973 read with S.O. No. U-11030/1/73-(ii) dated the 3rd May, 1973, the Administrator of the Union Territory of Delhi is pleased to make the following rules, namely.”

82. It was seen that Section 39(1) of the principal Act empowers the Central Government to make rules to carry out the purposes of the Act but the above rules had been framed by the Administrator which was tantamount to sub-delegation of legislative power to a subordinate authority without an express authorisation to that effect in the parent statute.

83. The Ministry of Home Affairs with whom the above point was taken up forwarded the following observations of the Ministry of Law in the matter:—

“Under clause (8) of section 3 of the General Clauses Act ‘Central Government’ in relation to anything done or to be done after the commencement of the Constitution, has been defined to mean the President and as including in relation to the Administration of a Union Territory the Administrator thereof acting within the scope of the authority given to him under article 329(1) of the Constitution.

Under article 239(1), except as otherwise provided by Parliamentary legislation, every Union Territory has to be administered by the President action to such extent as he thinks fit, through an Administrator to be appointed by him with such designation, as he may specify. Accordingly, if the Central Government has any statutory power with respect to a particular matter, the same can be exercised by the Central Government either directly or the same can be delegated to the Administrator of a Union Territory under article 239(1) which contains the constitutional authorisation for the purpose.

Thus, firstly, strictly speaking, there is no sub-delegation of legislative power in the Administrator making rules under section 39(1) of the Delhi Sikh Gurdwaras Act, 1971. Alternatively even if the provisions of the Delhi Sikh Gurdwaras Act, 1971 do not specifically empower the Central Government to sub-delegate the rule making power, the provisions of article 239(1) can be invoked for the purpose of delegation."

84. The Committee on Subordinate Legislation (1975-76) which considered the matter at their sitting held on the 17th July, 1975 desired that legal opinion of the Attorney General in the matter might be obtained, as a question of interpretation of the provisions of the Constitution was involved.

85. The Ministry of Home Affairs were accordingly requested on 29-8-75 to seek the legal opinion of the Attorney General on the following two points:—

- (i) Whether under the provisions of the General Clauses Act, 'Central Government' includes the Administrator of a Union Territory with regard to the legislative powers also, as contradistinguished from administrative powers;
- (ii) Whether under Article 239(1) of the Constitution the President could delegate to the Administrator power to legislate also which is exercisable by him only as a delegate of Parliament.

86. The Ministry of Law which prepared the statement of the case* for the opinion of the Attorney General of India requested him to advise on the following points:—

- (1) Where a Central Act confers rule making powers on the Central Government to carry out the purposes of the Act,

is it lawful for the President in pursuance of clause (1) of Article 239 of the Constitution to direct that the Administrator of a Union Territory having relation to the subject matter of the Act shall also exercise such rule making powers with respect to that Union Territory.

(2) Generally.

87. The opinion of Attorney-General on the above points is as follows:—

“The question for consideration, namely, the meaning and scope of Clause (1) of Article 239 of the Constitution, has already been answered by the Supreme Court in *Edward Mills Company Ltd. v. State of Ajmer* (AIR 1955 SC 25) which at first glance appears to be one referable to section 94(3) of the Government of India Act but when one turns to the judgement itself, the question was ultimately examined in the context of Article 239 of the Constitution. The decision in *Jayantilal Amratlal v. F. M. Rana* (AIR 1964 SC 648) really turns on the interpretation of Article 258(1) of the Constitution, nevertheless the Supreme Court has once again reiterated their earlier decision in AIR SC 25. While a reference to Article 244 may be useful to show the scope of the word “administration”, the work “administration” has to be construed and interpreted in the context of each Article on its own merits. The decision in *State of Meghalaya v. Ka Brayhim Kurkalang* (1972) ISCC 148 proceeds on an examination of Article 244 in the context of the scheme of the provisions of the Sixth Schedule to the Constitution. The decision in *Amer Khan v. State* (AIR 1950 All. 423) is useful; so is the decision in *H. L. Radhey v. Delhi Administration* (AIR 1969 Del. 246) though it is not directly relevant. The decision in *Bhanwarlal v. State of Rajasthan* (AIR 1959 Raj. 257) is in point. The decision in *Ghonsia Begum v. Union Territory of Pondicherry* (AIR 1975 Mad. 345) really proceeds on a different basis and must be discounted to the extent it runs counter to the Supreme Court decision noted earlier.

In view of this position on the authorities as well as on a true and proper interpretation of Article 239 itself, I take the view that:—

- (1) The answer to Question (1) must be in the affirmative;
- (2) I have nothing to add.”

88. The Committee note the opinion of the Attorney General that where a Central Act confers rule-making power on the Central Government to carry out the purposes of the Act, it is lawful for the President, in pursuance of clause (1) of Article 239 of the Constitution, to direct that the Administrator of a Union Territory having relation to the subject-matter of the Act shall also exercise such rule-making powers with respect to that Union Territory. In view of this opinion, the Committee feel satisfied regarding the authority of the Administrator of the Union Territory of Delhi in framing the Delhi Sikh Gurdwaras Rules, 1973 under the Delhi Sikh Gurdwaras Act, 1971, though section 39(1) of the Act empowers the Central Government to make rules to carry out the purposes of the Act.

VIII

The Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 (G.S.R. 425-E of 1975).

89. Clause 7(1) of the Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975, *inter alia*, provided as under:—

"7. POWERS OF ENTRY, SEARCH, SEIZURE, ETC.—(1) Any Police Officer not below the rank of Head Constable or any Officer of the Civil Supplies Department not below the rank of Supply Inspector or any Revenue Officer not below the rank of Aval-Karkun and *any other person authorised in this behalf by the State Government may*, with a view to securing compliance with the order or to satisfying that this order has been complied with—

- (a) stop and search or *authorise any person to stop and search any person or any vessel, boat, motor or other vehicles or any receptacle used or intended to be used for the export of rice;*
- (b) enter and search or *authorise any person to enter and search any place;*
- (c) *seize or authorise the seizure of any rice* in respect of which he has reason to believe that any provision of this Order has been, is being or is about to be contravened, alongwith the packages, coverings or receptacles, in which such rice is found or the animals, vehicles, vessels, boats or conveyances used in carrying such rice for securing the production of the packages, coverings, receptacles, animals, vehicles, vessels; boats or convey-

ances so seized in a court and for their safe custody pending such production.

* * * * *

90. At their sitting held on the 14th November, 1975, the Committee on Subordinate Legislation (Fifth Lok Sabha) considered the above Order and desired that the comments of the Ministry of Agriculture and Irrigation (Department of Food) may be called on the following points:—

In terms of the above Order,—

- (i) The Head Constable or Supply Inspector or Aval Karkun has been empowered to *further authorise any person* to enter, stop search and seize to see that the provisions of this Order are not contravened. This has been objected to by the Committee several times and it should be dispensed with.
- (ii) Similarly, the State Government has been given the power to authorise *any person who may further authorise any other person* to search and seize under this Order. The Committee have recommended time and again that minimum rank of the Officer to be authorised by the appropriate Governments should be given in the Order itself and provision for further authorisation should be dispensed with.

91. The Ministry of Agriculture and Irrigation (Department of Food) who were asked to furnish comments on the above points, have in their reply stated that keeping in view the points made by the Committee on Subordinate Legislation, the Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 has been amended suitably *vide* G.S.R. 1675 of 1976, dated the 27th November, 1976.

92. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture have amended the Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 specifying the minimum rank of the persons authorised to exercise the powers of entry, search and seizure etc. in the Order itself and eliminating the provision empowering the authorised persons to further authorise other persons to exercise such powers.

IX

The Defence and Internal Security of India (Amendment) Rules, 1976 (G.S.R. 396-E of 1976).

93. Rule 31-A (3) of the Defence and Internal Security of India (Amendment) Rules, 1976 provided as under:—

“If any person is in any area or place in contravention of an order made under the provisions of this rule, or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to the provisions of sub-rule (4), he may be removed from such area or place by any police officer or by any person acting on behalf of Government.”

94. Keeping in view the very wide powers vested by sub-rule (3) of rule 31-A in any police officer or any person acting on behalf of Government who could remove any person from the specified area, it was felt that the minimum rank of a police officer or any other person acting on behalf of the Government who could exercise the powers of removal under sub-rule (3) of rule 31A may be specified in the rules.

95. The Ministry of Home Affairs with whom the matter was taken up in their reply dt. 28-4-77 have stated as under:

“As the Emergencies proclaimed on 3rd December, 1971 and 25th June, 1975 have both been revoked, the applicability of the provisions of the DISIR is now limited for a period of only six months from the dates of the revocation of the Emergencies, and even that subject to their not contravening the Fundamental Rights. Rule 31-A which was only added to the main rules in June, 1976 has hardly been used and the State Governments power to resort to this rule has already been made subject to the control by Central Government. It is unlikely that this rule will be used during the remaining few months of the availability of the provisions of the DISIR. In the circumstances the balance of convenience seems to lie in not issuing an amendment as suggested by the Lok Sabha Secretariat.”

96. The Committee note that both the Emergencies proclaimed on the 3rd December, 1971 and the 25th June, 1975 have already been revoked, and therefore the question of issuing an amendment to sub-rule (3) of rule 31-A of the Defence and Internal Security of India Rules on the lines suggested by the Committee at this stage does not arise. The Committee, however, desire that in case such rules

are issued in future, these should invariably indicate the minimum rank of the officer who is authorised to exercise the power of removing a person from any place.

X

The Aircraft (Amendment) Rules, 1976 (G.S.R. 69 of 1976).

97. The following new Rule 78C was inserted in the Aircraft Rules, 1934 by the Aircraft (Amendment) Rules, 1976 (G.S.R. 69 of 1976):

“78C. Parking of vehicles at an aerodrome—

- (1) No person shall park any vehicle at any Government aerodrome, other than an aerodrome to which the International Airports Authority Act, 1971 (43 of 1971) applies or is made applicable, except in a place provided for the parking thereof and except on a payment of such fees as may be specified by the Director General from time to time for such parking, to the officer-in-charge of the aerodrome or to any other person as may be specified in this behalf by the Director General by general or special order.
- (2) Notwithstanding any-thing contained in sub-rule (1),—
 - (a) the Director General may, by general or special order, for good and sufficient reason, exempt any vehicle or class of vehicles from the payment of fees referred to in sub-rule (1);
 - (b) the Director General or the Officer-in-charge of aerodrome or any other person specified in this behalf by the Director General, by general or special order may if he is satisfied that it is necessary or expedient so to do for the maintenance of proper order or discipline, refuse admission of any vehicle into such aerodrome or require the same to be taken out of it.
- (3) The fees collected under sub-rule (1) shall be paid to the Central Government in such manner as may be specified in this behalf by the Director General by general or special order.”

98. The Aircraft (Amendment) Rules, 1976, were published in draft form on 26-10-1974 for inviting objections and suggestions from all persons likely to be affected thereby. These rules were

published in the final form in the Gazette of India, Part II, Section 3(i) dated 10-1-76.

99. The Committee on Subordinate Legislation (1976-77) examined the above rules at their sitting held on the 17th May, 1976 and desired that Ministry of Tourism and Civil Aviation may be asked to furnish comments on the following points:

(i) *Preamble to the Rules:*

The reasons for taking almost a year to publish the final rules.

(ii) *Rules 78C(1) as inserted:*

The rule empowers the Director General to specify the parking fee. Instead of authorising the Director General to specify the Parking fee, it should be laid down in the rules in order to make them self-contained.

(iii) *Rule 78C(2):*

The rule empowers the Director General to exempt any vehicle from the Parking fee. The Director General should be required to record his reasons in writing before exempting any vehicle from the Parking fee.

(iv) *Rule 78C(3):*

The rule empowers the Director General to specify the manner in which the Parking fees collected shall be paid to the Central Government. The manner of payment should be laid down in the rules to make them self-contained.

100. As regards the delay in the publication of the final rules, the Ministry of Tourism and Civil Aviation have in their reply dt. 29-11-76 stated as follows:

"...the draft rules dated 4-10-74 were published in the Official Gazette dated 26-10-74, wherein public opinion was invited within 3 months from the date of publication of the notification in the gazette. Thus, the period of 3 months was to count up to 25-1-75. Thereafter, steps to finalise the rules were taken immediately, in consultation with the Director General of Civil Aviation and Ministry of Law, Justice and Company Affairs, and it was possible to send the notification finalising the rules to the Government of India Press on 1-1-76 only. Most of the time was taken in exchanging of views between the Ministry of Law, Justice and Company Affairs, and Director General

of Civil Aviation, e.g., the former raised points and the latter replied to them, and for obtaining Hindi translation of the notification from the O.L. (L) C. The delay in this case is regretted. This position does not happen in all the cases but it was an exception in the case under consideration. Necessary instructions are, however, being issued to ensure that these cases are expeditiously dealt with at all states."

101. As regards points at (ii)-(iv) of para 99 above, the Ministry of Tourism and Civil Aviation have staged as follows:

"The recommendations made by the Committee on Subordinate Legislation of the Lok Sabha have been examined in consultation with the Director General of Civil Aviation, and the Ministry of Law, Justice and Company Affairs. To meet the various observations made by the Committee on Subordinate Legislation of the Lok Sabha, the following amendments to rule 78-C of the Aircraft Rules, 1937 are proposed to be made:—

- (i) to amend sub-rule (1) to provide that a fee not exceeding Rs. 3.00 per vehicle per hour shall be payable according to the importance or classification, if any, of the aerodrome;
- (ii) to amend sub-rule (2) to provide that the following vehicles shall be exempted from the payment of the parking fee by issue of a general or special order in writing from the DGCA:—
 - (a) Government vehicles; and
 - (b) vehicles belonging to any person who is engaged on a regular duty at an aerodrome; and
- (iii) to amend sub-rule (3) to provide that the fee shall be paid in cash to the Aerodrome Officer or to any other person authorised by him in this behalf, for which a receipt shall be issued forthwith.

This Ministry would be grateful to know if the above proposed amendments would meet the requirements of the Committee on Subordinate Legislation of the Lok Sabha. Necessary action to amend the rules in this regard will be taken on receipt of confirmation from the Lok Sabha Secretariat."

102. The Committee note with satisfaction that, on being pointed out, the Ministry of Tourism and Civil Aviation have suggested the following amendments to Rule 78-C of the Aircraft Rules, 1937:

- (i) to amend sub-rule (1) to provide that a fee not exceeding Rs. 3.00 per vehicle per hour shall be payable according to the importance or classification, if any, of the aerodrome;

(ii) to amend sub-rule (2) to provide that the following vehicles shall be exempted from the payment of the parking fee by issue of a general or special order in writing from the Director General Civil Aviation:—

(a) Government vehicles; and

(b) vehicles belonging to any person who is engaged on a regular duty at an aerodrome; and

(iii) to amend sub-rule (3) to provide that the fee shall be paid in cash to the Aerodrome Officer or to any other person authorised by him in this behalf, for which a receipt shall be issued forthwith.

103. The Committee agree to the above amendments and desire the Ministry to give effect to them at an early date.

104. The Committee note that, according to Ministry's reply, the delay of almost a year in the final publication of the Aircraft (Amendment) Rules, 1976 was an exception. The Ministry have regretted the same. They are also issuing necessary instructions that such cases are expeditiously dealt with at all stages in future. The Committee trust that due care will be taken by the Ministry to ensure that such delays do not recur.

XI

The Baggage (Conditions of Exemption) Rules, 1975 (G.S.R. 453-E of 1975)

105. Rule 2 of the Baggage (Conditions of Exemption) Rules, 1975 (G.S.R. 453-E of 1975) reads as under:—

"2. Where any goods in the baggage of a passenger or a member of the crew are exempted under section 79 of the Customs Act (52 of 1962) from payment of import duty leviable thereon, the exemption shall be subject to the condition that such goods shall not be sold, displayed, advertised or offered for sale or displayed in a shop—

(a) and, in the case of fire-arm also that such fire-arm shall not be gifted, or given to a retainer or otherwise parted with, until such fire-arm has been used for a period not less than ten years from the date of clearance by such person or passenger or member of the crew, or

(b) and, in the case of a T.V. set, also that such a T.V. set shall not be gifted or otherwise parted with, until such T.V. set has been used for a period not less than five years from the date of clearance by such person or passenger or member of the crew, or

- (c) and, in the case of any other goods, until the market price of such goods has depreciated to less than fifty per cent of their market price when new.

106. At their sitting held on the 30th January, 1976, the Committee on Subordinate Legislation (Fifth Lok Sabha) examined the above Rules and desired that the comments of the Ministry of Finance may be called on the following points:—

- (i) Whether any check is exercised by the Customs authorities to see that the condition laid down in sub-rule (C) of rule 2 is complied with? If not, how do the Customs authorities ensure that this sub-rule is not abused to evade Customs duty?
- (ii) Are there any guidelines in this regard?

107. The Ministry of Finance, with whom the matter was taken up, have replied as under:—

“.....generally no checks are exercised to see that goods cleared under the Baggage Rules and Transfer of Residence Rules are not disposed of till the market value of such goods is depreciated to less than 50 per cent. It will be appreciated that it is not practicable to exercise such checks as it will involve keeping watch on every case of baggage. During the course of raids conducted by the Customs Houses on shops and stalls suspected to be selling baggage items, if goods seized are found to be new and no explanation to establish the licit origin of the goods is given, these can be confiscated for violation of conditions prescribed in Notification No. 84 dated 22nd August, 1975. However, action against the passengers concerned can be taken only if the investigations disclose evidence of sale by persons who can be traced. Sometimes action is also possible for contravention of the said notification if facts are established.

2. Instructions incorporating some guidelines for ensuring that the conditions laid down in the above-mentioned notification are complied with, have been issued by this Department on 17th July, 1976.....”

108. The instructions issued on the 17th July, 1976 by the Central Board of Excise and Customs to all the Collectors of Customs and Central Excise, *inter alia*, read as follows:—

“.....notification (G.S.R. 453-E dated the 22nd August, 1975) is intended to enable the Department to deal with goods

which, in the first instance, are cleared as *bona fide* baggage but are later disposed of in contravention of the provisions of the Notification. The Board, therefore, desires that the provisions of this Notification should be invoked liberally.

- (2) In this connection it is also derived that proper checks should be exercised and an action plan drawn up for seizure of goods which having been cleared free of duty under the Baggage Rules are sold or are attempted to be sold. For this purpose, the following measures are commended:—
- (1) Surprise raids may be conducted at unspecified intervals on shops and stalls suspected to be selling goods which have been acquired by them from the passengers.
 - (2) Intelligence may be gathered, in respect of persons who, after clearing the goods as part of *bona fide* baggage, seek to dispose them of in contravention of the condition of baggage exemption.
 - (3) Such goods as are proved to have been disposed of contrary to these conditions should ordinarily be considered for confiscation and in appropriate cases personal penalty may also be imposed.
 - (4) In this regard checks at residential premises should be carried out only after proper verification of information and under specific authorisation from the concerned Assistant Collector of Customs."

109. The Committee regret to note that at present no checks are exercised by the Customs authorities to see that goods cleared under the Baggage Rules are not disposed of till the market value of such goods has depreciated to less than 50 per cent as stipulated in the conditions subject to which exemption is granted from payment of import duty leviable thereon. The Committee, however, note that, on being pointed out by the Committee, the Central Board of Excise and Customs have issued some guidelines to all the Collectors of Customs and Central Excise to ensure that the conditions laid down in Rule 2 of the Baggage (Conditions of Exemption) Rules, 1975 are complied with.

XII

Extension of time for framing of rules under the Oil Industry (Development) Act, 1974

110. While commenting upon the question of delay in exercise/non-exercise of rule-making power by Government delegated under

various Acts of Parliament, the Committee on Subordinate Legislation, had, *inter alia*, observed in para 108 of their Eighteenth Report (Fifth Lok Sabha) as follows:—

“The Committee re-stress their earlier recommendation that ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed 6 months. In case, however, a Ministry/Department finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time-limit in an exceptional case, they should at the expiration of 6 months from the commencement of the relevant Acts, explain the reasons to the Committee and seek a specific extension of time from them.”

111. In compliance with the above recommendation, the Ministry of Petroleum requested on 6th May, 1976 for extension of time for framing of rules under section 31 of the Oil Industry (Development) Act, 1974, and urged as under:

“.....the rules under Section 31 of the Oil Industry (Development) Act, 1974, *viz.*, Oil Industry Development Rules, 1975, were published in the Gazette of India on March 25, 1975.

The above rules, however, do not include provisions relating to the staff which may be employed by the Board and the pay and allowances and leave and other conditions of service of officers (other than those appointed by the Central Government) and other employees of the Board. This has been because the Board is presently in its initial stages and depends mostly for its staff requirements on officers and staff obtained on deputation from the Government. Also, the future pattern of staffing of the Board has not yet crystallised. The present strength of the Secretariat of the Board consists of the following:—

	No. of posts
F.A. & C.A.O.	.. 1
Section Officer	.. 1
Accountant	.. 1
Assistant	.. 1
Stenographer (Gr. II)	.. 1
L.D.C.	.. 1
Peons	.. 2
Driver	.. 1

Out of the above 9 posts, only two posts, i.e. one of Lower Division Clerk and one of Peon have been filled directly by the Board. Steps are in hand for appointment of a driver and another peon. The remaining posts are staffed by officers drawn on deputation from Government.

In the absence of its own rules regarding staff matters, the Board is presently following the rules of the Central Government in the matter.

It may yet take some time for the Board to have its own cadre of officers and staff and it is requested that the Committee on Subordinate Legislation (Lok Sabha) may kindly be approached to grant time upto 31st December, 1976 for finalisation of the rules relating to the terms and conditions of service of the staff of the Board.

This issues with the approval of Minister of Petroleum."

112. Since their communication dated 6th May, 1976 a number of further requests for extension of time have been received from the Ministry. In their communication, dated 22nd June, 1977, they requested for extension up to 30th November, 1977, for finalisation and notification of the service rules of the Oil Industry Development Board as the matter was still under examination and it was likely to take some more time.

113. In a further communication dated the 27th September, 1977, the Ministry of Petroleum sought extension of time-limit upto the 31st December, 1977 for finalisation and notification of the service rules of the Oil Industry Development Board.

114. In their latest communication dated the 16th January, 1978, the Ministry of Petroleum have sought a general waiver of the time-limit for framing the service rules of Oil Industry Development Board. In this connection, the Ministry have urged as follows:—

".....The Oil Industry Development Act, 1974 was promulgated on 26th September, 1974 and the main rules were published in the Gazette of India on 25th March, 1975 i.e. within the period of six months. The Service Regulations of the Board employees have, however, not been finalised so far. The number of employees presently on the strength of the Board is hardly 6 of whom 3 are Class III employees and another 2 are Class IV employees. Pending the finalisation of the rules the Board is following generally the Government rules and regulations in the

matter. As already stated the number of employees being too small it may be preferable not to hurry the finalisation of the various rules till the staff strength is stabilised. Till then the Board is following Government rules pending finalisation of their own rules in the matter. This position may kindly be explained to the Committee on Subordinate Legislation for their consideration and grant of a general waiver of the time limit."

115. The Committee note that the Ministry of Petroleum have from time to time been seeking extension of time for framing service rules of the Oil Industry Development Board. In their latest communication, the Ministry have sought a general waiver of time-limit for framing these rules. The Committee are not convinced by the argument advanced by the Ministry that as the number of employees of the Board at present is too small, it is preferable to wait till the staff strength has stabilised. The Committee, therefore, do not accede to the request of the Ministry for grant of a general waiver of the time-limit for the framing of the above-mentioned rules and desire that the service rules in question should be formulated latest by the 30th June, 1978.

XIII

Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 (S.O. 400-E of 1974).

116. Para 2 of the Schedule to the Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 relating to the procedure for verification of membership of Unions operating in subsidiary banks *inter alia* read as under:

".....The Verification Officer will ask the Unions by Registered Post Acknowledgement Due to produce before him *within ten days* at the stipulated place and time, a list of their members....."

117. It was not clear from the above provision whether the period of ten days would count from the date of receipt of the notice by the Union or the date of its issue. In case the date of issue was taken as the relevant date, time available for producing the record would be much less than 10 days.

118. Para 3 of the schedule was also so worded as not to make it clear whether the period of ten days would count from the date of receipt of the notice by the Union or the date of its issue.

119. The Ministry of Finance (Department of Banking) with whom the matter was taken up have replied as under:

“.....The suggestion made in the Lok Sabha Secretariat's O.M. No. 38|65|CII|75, dated the 30th September, 1975, was accepted by the Government and the Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 were amended *vide* our Notification No. F.2|1|75-BO.I, dated the 18th February, 1976.”

120. The amendment makes it clear that ten days' time will be counted from the date of receipt of the relevant Notice.

121. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have amended para 2 of the Schedule to the Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 so as to clarify that ten days time to be given thereunder to the Unions for producing a list of their members would be counted from the date of receipt of notice by the Unions.

XIV

The Liquefied Petroleum Gas (Restrictions on Use) Order, 1974 (G.S.R. 252-E of 1974).

122. Clause 4 of the Liquefied Petroleum Gas (Restrictions on Use) Order, 1974 relating to power to search and seizure authorised a Police Officer not below the rank of a Head Constable to conduct searches and seizures. It was felt that the power of search and seizure should be conferred on a Police Officer not below the rank of Sub-Inspector and suitable safeguards like presence of witnesses at the time of search and preparation of inventory of articles seized should be incorporated in the Order.

123. The Ministry of Petroleum with whom the above matter was taken up amended the Order accordingly *vide* G.S.R. No. 2735 dated the 27th October, 1975.

124. The Committee note with satisfaction that, on being pointed out, the Ministry of Petroleum have amended the Liquefied Petroleum Gas (Restrictions on Use) Order, 1974 so as to authorise a Police Officer not below the rank of Sub-Inspector to exercise the power of search and seizure under the Order. They further note that, as desired by the Committee, the Ministry have provided in the Order suitable safeguards like presence of witnesses at the time of search and seizure, preparation of inventory of seized goods and giving a copy thereof to the person concerned.

Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948—Provision for laying before Parliament

125. Sub-section (1) of Section 4 of the Dock Workers (Regulation of Employment) Act, 1948 empowers the Government to frame schemes for a port or a group of ports but there is no provision in the Act for laying them before Parliament.

126. The Ministry of Shipping and Transport (Transport Wing) were requested to state whether they had any objection to making a provision in the Act for laying the Schemes framed thereunder before Parliament.

127. In their reply, the Ministry of Shipping and Transport have stated as under:—

“This Ministry has no objection to making a provision in the Dock Workers (Regulation of Employment) Act, 1948 for laying of Schemes framed thereunder before Parliament.....”

128. The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Dock Workers (Regulation of Employment) Act, 1948 so as to make a provision therein for laying of Schemes framed thereunder before Parliament. The Committee desire the Ministry to bring necessary legislation for the purpose at an early date.

XVI

**The Survey of India Assistant Stores Officer Recruitment Rules, 1974
(G.S.R. 921 of 1974)**

129. Rule 8 of the Survey of India Assistant Stores Officer Recruitment Rules, 1974 provided that any rules corresponding to above rules and in force immediately before the commencement of those rules were repealed.

130. The rule, as worded, appeared to be vague as it did not specify the name of the rules which were sought to be repealed.

131. The Department of Science and Technology were asked to state whether they had any objection to amending the rules by mentioning in it the name of the rules which were sought to be repealed. The Department have issued the necessary amendment *vide* G.S.R. 297 dated 28th February, 1976, and given the precise name of the rules which had been repealed.

132. The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended the Survey of India Assistant Stores Officer Recruitment Rules, 1974 so as to specify therein the precise name of the rules which had been repealed vide rule 8 *ibid.*

XVII

The Linoleum (Price Control) Order, 1974 (S.O. 386-E of 1974).

133. Clause 4(1) of the Linoleum (Price Control) Order, 1974 provided that every manufacturer shall keep such books, accounts and records relating to the manufacture and the sale of linoleum as the Controller may specify. Clause 4(2) of the Order provided that every book, account or record shall when so required, be produced for inspection before the Controller or other authority specified by the Central Government.

134. It was felt that the nature of the records which a manufacturer was required to keep should be mentioned in the rules in order to make them self-contained and for the information of all concerned.

135. The term "other authority" used in clause 4(2) appeared to be vague. It was felt that the minimum rank of the other authority which could be authorised to inspect books, accounts or records should be specified in the rules.

136. The Ministry of Industry (Department of Industrial Development) with whom the matter was taken up have in their reply stated as follows:—

".....the Linoleum (Price Control) Order 1974 has since been rescinded—*vide* this Ministry's Order No. S.O. 3098 dated the 12th August, 1976.... As the Linoleum (Price Control) Order, 1974 has been rescinded, it is presumed that the suggestions made by the Lok Sabha Secretariat *viz.* mentioning in the Order the nature of record which a manufacturer is required to keep in terms of Clause 4(1) of the Control Order and specifying the name of the "other authority" (not below a particular rank) mentioned in Clause 4(2) of the Order need not be pursued. 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."

137. The Committee note that the Linoleum (Price Control) Order, 1974 has since been rescinded and, therefore, the question of

amending it on the lines suggested by the Committee does not arise at this stage. The Committee, however, note the assurance given by the Ministry of Industry (Department of Industrial Development) that the suggestions made by the Committee viz., (i) mentioning in the Order of the particulars of records required to be kept in terms of clause 4(1) of the Order, and (ii) specifying the name of the 'Other authority' (not below a particular rank) mentioned in clause 4(2) of the Order would be kept in view, if any necessity arises to issue a similar Control Order in future.

SOMNATH CHATTERJEE,

NEW DELHI;
March 30, 1978

Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(Vide para 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1 (i)	19	Despite several reminders, the final reply of the Ministry of Law, Justice & Company Affairs (Legislative Department) in regard to laying of regulations before Parliament (<i>vide</i> paras 17-18 of the Report) has not so far been received. The Committee regret to note that although more than adequate time has been taken by the Ministry of Law, Justice and Company Affairs (Legislative Department), they have not yet sent their reply.
1 (ii)	23	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 emphasised on Government to make a suitable provision for laying and modification in all future Bills which may seek to delegate power to make rules, regulations etc. or which may seek to amend earlier Acts giving power to make rules, regulations etc. This recommendation was accepted by Government <i>vide</i> paras 78-79 of their Sixth Report (First Lok Sabha). The Committee note that, while in the case of rules, Government have by and large been complying with the above recommendation of the Committee, they have failed to comply with the said recommendation in so far as regulations are concerned. Of the 19 Acts enumerated in Appendix II, 15 were passed by Parliament after the Committee made the above

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recommendation. Only in two of these, where the regulation-making power has been conferred on the Central Government, a provision has been made for the laying of regulations before Parliament. In none of the remaining 13 Acts, where regulation-making power has been conferred on subordinate bodies, such as Corporations, Boards, Councils, etc. a provision has been made for laying of regulations framed thereunder before Parliament. The Committee are surprised that after having accepted the above recommendation of the Committee, Government should have paid so scant a regard to it so far as regulations are concerned.

1 (iii) 24-25

The main reasons now given by the Ministries|Departments for not incorporating a provision for laying of Regulations in Acts|Bills are:

- (i) the regulations are generally framed by autonomous bodies with regard to their internal working, and are, therefore, not of general public interest; and
- (ii) a provision for their laying before Parliament would not be consistent with the autonomous character of such bodies.

The Committee note that similar arguments were given by the Ministry of Finance for not incorporating a provision for laying of Regulations framed under the State Bank Laws Amendment Bill, 1973. The Committee which had gone into the matter in depth had been no force in these arguments. As observed by the Committee in paras 86-87 of their Second Report (Sixth Lok Sabha), the body which delegated the power has a right to see that the power delegated by it does not transgress the limits laid down by it. Whether the delegate is the Central Government or a body subordinate to it is not very material. Nor did the Committee

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see any force in the argument that the laying of regulations relating to an autonomous body before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As observed by the Committee, even now the Committee on Subordinate Legislation can, and does, scrutinise the regulations framed by subordinate bodies under delegated powers. Laying of such regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. So as no to leave any room for doubt, the Committee will like to make it clear that their whole purpose in asking Government to lay the regulations framed under delegated powers before Parliament is to enable Parliament to see that the regulations framed under such powers are within the limits laid down by it and do not contain any unreasonable or inequitable provision not intended by Parliament.

1 (iv) 26

The Committee reiterate their earlier recommendations and desire that like rules, regulations should also be laid before Parliament and there should be a provision to this effect in the relevant statutes. Like-wise, there should invariably be a provision in the relevant statutes for publication of regulations to be framed thereunder. With this end in view, the Committee desire the Ministries|Departments of Government of India to examine all Acts delegating power to make regulations, with which they are administratively concerned, and to incorporate suitable provisions for publication and laying of regulations in those Acts which do not contain such provisions. The Committee desire the Ministry of Law|Department of Parliamentary Affairs to issue necessary instructions to all Ministries|Departments of the Government of India to this effect.

(1)	(2)	(3)
2 (i) 38	<p>The Committee regret to note that the Petroleum Rules which were published in draft form on 16-9-72 for inviting suggestions|objections from the persons affected thereby were finally published after a time-lag of about 4 years. As conceded by the representative of the Ministry of Industry during the course of his evidence before the Committee, broadly speaking, six to nine months' period should normally be adequate for the publication of any draft rules. As such, the delay of nearly four years in the final publication of rules in this case was inexplicable. The Committee cannot help expressing concern at the lackadaisical manner in which the matter had been dealt with.</p>	
2 (ii) 39	<p>One of the reasons for delay in the finalisation of the rules is the large number of stages through which they had to pass before their publication. The Committee feel that in such cases rules may be finalised at meetings of officers of the Ministries/Departments concerned, instead of making frequent time-consuming to and fro references and waiting for their replies to be received in due course.</p>	
2 (iii) 40	<p>The Committee note that in order to expedite the publication of rules, the Ministry of Industry have decided that when draft rules are prepared and published for inviting objections, they would also be sent simultaneously to all the agencies instead of sending them to one agency at a time so that the comments of all concerned are available at the same time. Like-wise, in order that the final publication of the rules is not delayed on account of delay in receipt of Hindi translation from the Official Language Commission, the Committee desire that, in case of voluminous rules, instead of sending the entire rules at a time, the Ministries/Departments may send them in batches. The Committee hope that all these</p>	

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		steps will go a long way in reducing delays in the finalisation of rules. The Committee trust that the Ministry of Industry will henceforth take care to see that such cases of inordinate delays do not recur.
3 (i)	50	In the opinion of the Committee, it is of utmost significance that the provisions of legislation (including subordinate legislation) are spelt out with precision and, as far as possible, use of vague expressions, which may be interpreted differently by different persons, is avoided.
3 (ii)	51	The Committee note with satisfaction that, on the matter being taken up by the Committee, the Ministry of Industry (Department of Industrial Development) have proposed to amend Rules 15(1), 90(6), 96 and 172(4) of the Petroleum Rules, 1976 so as to avoid the use of vague expressions like 'unreasonably large quantity', 'reasonable', 'frequent' or 'regular intervals' therein. The Committee desire the Ministry to issue the proposed amendments at an early date.
3 (iii)	52	In regard to Rule 115(1) of the Petroleum Rules, 1976, the Committee feel satisfied with the reply of the Ministry of Industry (Department of Industrial Development) that it is not possible to specify the regularity at which the equipment should be treated with paint as the regularity is determinable only after knowing the prevalent conditions.
4 (i)	57	The Committee deprecate inordinate delays ranging from 2 to 13 years in the finalisation of the rules mentioned in para 53 of the Report, with the result that all of them had to be given retrospective effect.
4 (ii)	58	The Committee note that one of the main reasons for such delays is the unduly long time

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taken in inter-Departmental consultations. This has been conceded by the Ministry of Education and Social Welfare (Department of Education) in the case of the Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974. In this connection, the Committee will like to invite the attention of the Ministries/Departments to the circular O.M. No. 20/3/67-Estt(D) dated the 11th August, 1967 issued by the Ministry of Home Affairs regarding measures to be taken for reducing delays in finalising Recruitment Rules. According to this circular, the Ministry of Home Affairs will ordinarily return the draft Recruitment rules with their comments within a month from the date of reference to that Ministry or, if special circumstances of a case require more time for scrutiny/discussions, the Administrative Ministry/Department will be requested to discuss the case. Otherwise, after the period of one month, that Ministry/Department can presume concurrence of Home Ministry and proceed further. As regards consultation with the Union Public Service Commission, it has been laid down that ordinarily they will convey their advice within four or five weeks. It has been further laid down that if the Commission's advice on the draft recruitment rules is not received within this period the Administrative Ministry/Department should settle the matter by personal discussion with the officer concerned in the Commission.

4 (iii) 59

The Committee have a feeling that the Ministries/Departments are not strictly following the procedure laid down by the Ministry of Home Affairs in their circular O.M. 20/3/67-Estt(D) dated the 11th August, 1967 (Appendix VI). They desire all the Ministries/Departments to streamline their existing procedure for finalisation of Recruitment Rules in accordance with the instructions contained in the above cir-

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cular. In particular, stress may be laid on settlement of matters by mutual discussion at meetings of officers of different Ministries concerned with the finalisation of Rules.

4 (iv) 60

The Committee note that the Department of Personnel and Administrative Reforms have prepared a detailed note consolidating all the instructions and streamlining the procedure in regard to framing of recruitment rules, which has been sent to the U.P.S.C. for concurrence. The Committee desire the Department to issue the note at an early date and impress upon all the Ministries/Departments to strictly follow the instructions contained therein so that delays in finalisation of rules are reduced to the barest minimum, if not eliminated altogether.

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The Committee note with regret that communications giving information required by the Committee have in certain cases been sent by the Ministries/Departments under the signatures of a Section Officer and in one case the communication sent was under the signature of an Assistant. The Committee feel that the communications addressed by the Committee should be dealt with at a sufficiently high level in the Ministries and replies thereto signed by Senior Officers. With this end in view, the Committee desire the Ministries/Departments to follow the following procedure, in regard to supply of information or intimating action taken on the recommendations of the Committee on Subordinate Legislation:

- (i) Communications furnishing information on points raised by the Committee on Subordinate Legislation should ordinarily be signed by an officer not below the rank of Deputy Secretary.
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(ii) Communications intimating action taken on the recommendations of the Committee on Subordinate Legislation should be signed by an officer not below the rank of Joint Secretary.

(iii) In cases where the recommendations of the Committee are not accepted by Government, the reply of the Ministry/Department should have the approval of the Minister concerned and it should be so stated in the said reply.

The Committee will like the Department of Parliamentary Affairs to issue necessary instructions to all the Ministries/Departments to introduce the above procedure without delay. The Ministries/Departments concerned may in their turn bring these instructions to the notice of all concerned for compliance.

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The Committee note that the Ministry of Finance have conceded in their reply that there is a possibility of issue of certificates under the National Savings Certificates (V Issue) Rules, 1973 to Institutions etc. by Post Offices due to an element of human error. The Committee further note that even though there is no statutory provision to this effect, cases of institutions etc. holding certificates are being considered on merit and generally interest at Post Office Savings Bank rates is also allowed to them. The Committee feel that in view of this practice being already there, the Ministry should have no difficulty in bringing it on a statutory footing.

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The Committee note that as a result of fixation of the same surrender values of the Certificates issued under the National Savings Certificates (V Issue) Rules, 1973 and the Post Office Savings Certificates Rules, 1960 at the expiry of three and four completed years and also at the

(1)	(2)	(3)
		<p>expiry of five and six completed years, no interest was payable to certificate-holders for the fourth and sixth years if such holders had to encash their certificates at the end of these years. This, in the opinion of the Committee, was inequitable.</p>
7 (ii)	80	<p>The Committee note with satisfaction that, on a suggestion by the Committee, the Ministry have amended the National Savings Certificates (V Issue) Rules, 1973 and the Post Office Savings Certificates Rules, 1960 to prescribe separate surrender values of the various National Savings Certificates after the expiry of three and four and after five and six completed years.</p>
8	88	<p>The Committee note the opinion of the Attorney General that where a Central Act confers rule-making power on the Central Government to carry out the purposes of the Act, it is lawful for the President, in pursuance of clause (1) of Article 239 of the Constitution, to direct that the Administrator of a Union Territory having relation to the subject-matter of the Act shall also exercise such rule-making powers with respect to that Union Territory. In view of this opinion, the Committee feel satisfied regarding the authority of the Administrator of the Union Territory of Delhi in framing the Delhi Sikh Gurdwaras Rules, 1973 under the Delhi Sikh Gurdwaras Act, 1971, though section 39(1) of the Act empowers the Central Government to make rules to carry out the purposes of the Act.</p>
9	92	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture have amended the Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 specifying the minimum rank of the persons authorised to exercise the</p>

(1)	(2)	(3)
		powers of entry, search and seizure etc. in the Order itself and eliminating the provision empowering the authorised persons to further authorise other persons to exercise such powers.
10	96	The Committee note that both the Emergencies proclaimed on the 3rd December, 1971 and the 25th June, 1975 have already been revoked, and therefore the question of issuing an amendment to sub-rule (3) of rule 31-A of the Defence and Internal Security of India Rules on the lines suggested by the Committee at this stage does not arise. The Committee, however, desire that in case such rules are issued in future, these should invariably indicate the minimum rank of the officer who is authorised to exercise the power of removing a person from any place.
11 (i)	102-103	The Committee note with satisfaction that on being pointed out, the Ministry of Tourism and Civil Aviation have suggested the following amendments to Rule 78-C of the Aircraft Rules, 1937:
		(i) to amend sub-rule (1) to provide that a fee not exceeding Rs. 3.00 per vehicle per hour shall be payable according to the importance or classification, if any, of the aerodrome;
		(ii) to amend sub-rule (2) to provide that the following vehicles shall be exempted from the payment of the parking fee by issue of a general or special order in writing from the Director General, Civil Aviation:—
		(a) Government vehicles; and
		(b) vehicles belonging to any person who is engaged on a regular duty at an aerodrome; and

(1)	(2)	(3)
		(iii) to amend sub-rule (3) to provide that the fee shall be paid in cash to the Aerodrome Officer or to any other person authorised by him in this behalf, for which a receipt shall be issued forthwith.
		The Committee agree to the above amendments and desire the Ministry to give effect to them at an early date.
11 (ii)	104	The Committee note that, according to the reply of the Ministry of Tourism and Civil Aviation, the delay of almost a year in the final publication of the Aircraft (Amendment) Rules, 1976 was an exception. The Ministry have regretted the same. They are also issuing necessary instructions that such cases are expeditiously dealt with at all stages in future. The Committee trust that due care will be taken by the Ministry to ensure that such delays do not recur.
12	109	The Committee regret to note that at present no checks are exercised by the Customs authorities to see that goods cleared under the Baggage Rules are not disposed of till the market value of such goods has depreciated to less than 50 per cent as stipulated in the conditions subject to which exemption is granted from payment of import duty leviable thereon. The Committee, however, note that, on being pointed out by the Committee, the Central Board of Excise and Customs have issued some guidelines to all the Collectors of Customs and Central Excise to ensure that the conditions laid down in Rule 2 of the Baggage (conditions of Exemption) Rules, 1975 are complied with.
13	115	The Committee note that the Ministry of Petroleum have from time to time been seeking extension of time for framing service rules of the Oil Industry Development Board. In their

(1)	(2)	(3)
		<p>latest communication, the Ministry have sought a general waiver of time-limit for framing these rules. The Committee are not convinced by the argument advanced by the Ministry that as the number of employees of the Board at present is too small, it is preferable to wait till the staff strength has stabilised. The Committee, therefore, do not accede to the request of the Ministry for grant of a general waiver of the time-limit for the framing of the above-mentioned rules and desire that the service rules in question should be formulated latest by the 30th June, 1978.</p>
14	121	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have amended para 2 of the Schedule to the Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 so as to clarify that ten days time to be given thereunder to the Unions for producing a list of their members would be counted from the date of receipt of notice by the Unions.</p>
15	124	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Petroleum have amended the Liquefied Petroleum Gas (Restrictions on Use) Order, 1974 so as to authorise a Police Officer not below the rank of Sub-Inspector to exercise the power of search and seizure under the Order. They further note that as desired by the Committee, the Ministry have provided in the Order suitable safeguards like presence of witnesses at the time of search and seizure, preparation of inventory of seized goods and giving a copy thereof to the person concerned.</p>
16	128	<p>The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Dock Workers (Regulation of Employment) Act, 1948 so as to</p>

(1)	(2)	(3)
		make a provision therein for laying of Schemes framed thereunder before Parliament. The Committee desire the Ministry to bring necessary legislation for the purpose at an early date.
17	132	The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended the Survey of India Assistant Stores Officer Recruitment Rules, 1974 so as to specify therein the precise name of the rules which had been repealed <i>vide</i> rule 8 <i>ibid</i> .
18	137	The Committee note that the Linoleum (Price Control) Order, 1974 has since been rescinded and, therefore, the question of amending it on the lines suggested by the Committee does not arise at this stage. The Committee, however, note the assurance given by the Ministry of Industry (Department of Industrial Development) that the suggestions made by the Committee <i>viz.</i> , (i) mentioning in the Order of the particulars of records required to be kept in terms of clause 4(1) of the Order, and (ii) specifying the name of the 'other authority' (not below a particular rank) mentioned in clause 4(2) of the Order would be kept in view, if any necessity arises to issue a similar Control Order in future.

APPENDIX II

(See para 5 of the Report)

Statement regarding publication, laying, modifications, etc., of Rules and Regulations framed under certain Acts.

Name of the Act	RULES				REGULATIONS				
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Authority competent to frame	Whether published in the Gazette Table	Whether laid on the Table	Whether subject to modification	Authority competent to frame	Whether published in the Gazette	Whether laid on the Table	Whether subject to modification	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1. Oil and Natural Gas Commission Act, 1959.	Central Government	Yes	Yes	Yes	Yes	Commission	Yes	No	..
2. Indian Medical Council Act, 1956.	Do.	Yes	Yes	Yes	Yes	Council	No	No	..
3. Press Council Act, 1965 . . .	Do.	Yes	Yes	Yes	Yes	Council	No.	No	..
4. River Board Act, 1956 . . .	Do.	Yes	Yes	No	No	Board	Yes	No	..
5. University Grants Commission Act, 1956.	Do.	Yes	Yes	No	No	Commission	No	No	..
6. Road Transport Corporation Act, 1950.	State Government	Yes	No	..	..	Corporation	No	No	..
7. Mines Act, 1952 . . .	Central Government	Yes	No	..	..	Central Government	Yes	Yes	..
8. Warehousing Corporation Act, 1962.	State/Central Government	Yes	No	..	..	Corporation	Yes	No	..

APPENDIX III

(See para 6 of the Report)

Statement giving a gist of the replies received from Ministries/departments regarding laying publication of regulations framed under various Acts.

S. No.	Ministry/Department concerned	Short title of the Act under which Regulations made	Comments solicited for incorporating provision in the Act for (i) laying (ii) publication in the Official Gazette	Reply in brief
(1)	(2)	(3)	(4)	(5)
1	Agriculture and Irrigation (Deptt. of Irrigation).	The River Boards Act, 1956.	Laying	No River Boards have been set up so far. The question of laying Regulations could be considered as and when such Boards are set up.
2	Education and Social Welfare (Deptt. of Education).	The University Grants Commission Act, 1956.	(i) Laying and (ii) Publication	(i) The University Grants Commission should have full freedom to make regulations governing its day-to-day administration and no restriction should be placed by making the regulations subject to Parliament's scrutiny which is implied if not explicit in the suggestion for laying the same before Parliament. (ii) The Ministry do not propose to make a provision in the U.G.C. Act for publication of regulations.

3	Petroium & Chemicals . . . The Oil & Natural Gas Commission Act, 1959.	Laying	The matter was referred to the Ministry of Law (Legislative Department). The relevant file has not yet come back from that Department.
4	Information & Broadcasting . . . The Press Council Act, 1965.	(i) Laying and (ii) Publication	(i) Agreed to amend the Act suitably to provide for laying of regulations before Parliament. (ii) Regulations are published in the Gazette even though there is no provision in the Act. Suitable provision for publication will be considered by M.Pa. Committee for possible compliance.
5	Health & Family Welfare (Deptt. of Health). . . Indian Medical Council Act, 1956.	(i) Laying and (ii) Publication	(i) & (ii) Regulations are of routine and technical nature and the Ministry does not see any advantage in their publication and laying them before Parliament.
6	Health & Family Welfare (Deptt. of Health) . . . The Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966.	(i) Laying & (ii) Publication	The Ministry agree to lay and publish the regulations.
7	Finance (Deptt. of Banking) . . . The Deposits Insurance Corporation Act, 1961.	(i) Laying and (ii) Publication	(i) Matters covered by the Regulations are not of general public interest and mainly relate to day-to-day administration of the Corporation. Parliament may not be troubled with such matters which are left to be dealt with by the Boards of the Corporation. There would be considerable practical difficulties in providing for the laying of the regulations before Parliament. (ii) Publication in the official Gazette is normally provided for when they are of interest to the general public and wide publicity to them is consequently necessary. As these regulations deal only with matters of detail and are not of general public interest, a provision for their publication may not be made.

The Ministry have no objection to making a provision in the Act for the laying of regulations before Parliament.

The underlying idea in setting up of autonomous bodies is that in certain matters of detail they are free to formulate their own procedures, depending upon the needs of individual organisations. It does not seem necessary that such matters of detail covered by the regulations should be given the status of subordinate legislation and laid before Parliament.

The matters in respect of which the Corporation has been empowered to make regulations do not have any legislative character. As such, no provision has been made for the laying of such regulations before Parliament.

Regulations framed under the Act provide for matters of administrative details like Provident Fund, Staff Regulations, etc. Such regulations are more operational and administrative in nature and internal to the requirements of the Corporation than the rules under the Act. A number of amendments are necessary now and then. It should not be necessary to have such matters of administrative details placed before Parliament.

(i) Regulations framed under the Act need not be laid before Parliament as these relate to internal and domestic matters and are not of general public interest. Parliament

The Customs Act, 1962.

(i) The Salar Jung Museum Act, 1961

The National Co-operative Development Corporation Act, 1962

The Warehousing Corporations Act, 1962

8 Finance (Deptt. of Revenue and Insurance)

9 Education and Social Welfare (Deptt. of Culture)

10 Commerce, Civil Supplies & Coop.

11 Agriculture & Irrigation (Deptt. of Food)

12 Finance (Deptt. of Economic Affairs) The Unit Trust of India Act, 1963

Laying

(i) Laying

(ii) Publication

Laying

Laying

(i) Laying & (ii) Publication

need not be troubled with such routine procedural matters.

(ii) These regulations need not be published as they mainly relate to day-to-day administration of the Trust.

The items on which the Corporation can frame regulations deal, except item (xxi) of section 97(2) of the Act, mainly with operational matters relating to registration of employees collection of contributions, payment of cash benefits, etc. These are specialised functions normally entrusted to social insurance bodies which function with certain amount of independence of ordinary Government routines, procedures and controls. Since the Act was enacted in 1948, the trend for more and more delegation of powers. Even the Estimates Committee (Fourth Lok Sabha) has in its 23rd Report recommended further delegation of powers to the Employees' State Insurance Corporation. It may not, therefore, be advisable to provide for laying of regulations before Parliament.

The regulations framed under the Act provide in general for terms and conditions of the appointment and service of employees of the Commission and time, place and procedure to be followed and conditions of business in the meetings of the Commission. These are matters of day-to-day administration of Commission. Laying of regulations before Parliament would not be expedient and in interest of the day-to-day functioning of the Commission.

The Ministry have no objection to making a provision in the Act for publication of regulations in the Gazette.

Laying

The Employee's State Insurance Act, 1948;

13 Labour

Laying

The Khadi and Village Industries Commission Act, 1956;

14 Industry (Deptt. of Industrial Development)

Publication

The Road Transport Corporations Act, 1950

15 Shipping and Transport (Transport Wing)

APPENDIX IV

(See para 15 of the Report)

Statement giving a gist of replies received from Ministries/Departments regarding incorporation of provisions for laying and modification of Regulations in certain Bills

Sl. No.	Ministry/Department concerned	Short title of the Bill providing for regulation-making power	Comments solicited for incorporating provision in the Bill for (i) Laying (ii) Publication	Reply in brief
1	2	3	4	5
1	Works and Housing	The Delhi Urban Art Commission Bill, 1973	Laying	Reply received from the Ministry of Law Relevant extracts reproduced in para 14 of the Memorandum.
2	Education and Social Welfare (Deptt. of Culture)	The Rampur Raza Library Bill, 1974	(i) Laying	Regulations to be framed provide for matters which relate to the internal working of the Board and of Library. These matters do not partake of the nature of delegated legislation and as such, it is not necessary to provide for their laying before Parliament.
			(ii) Publication	Since the matters in relation to which regulations may be made are not matters of general im- portance, no provision for their publication in Gazette has been made.
3	Finance (Department of Banking)	The Public Financial Institutions Laws (Amendment) Bill, 1973.	Laying	Regulations to be framed mainly relate to matters of day-to-day administration of the Corpora- tions, and are not of general public interest. There would be considerable practical diffi- culties in providing for their laying before Parliament. It is also felt that Parliament need not be troubled with such matters.

APPENDIX V

(See para 54 of the Report)

Replies received from the Ministries/Departments regarding delay in finalisation of Rules

(i) *The Military Lands and Cantonment Service (class III and class IV) Recruitment (Amendment) Rules, 1974 (SRO 235 of 1974)*

Reply from the Ministry of Defence

"The post of Technical Assistant to which Head Clerks Gde II were promoted was peculiar to the ML&C Service, the post not being in existence anywhere else in the Ministry of Defence.

In the year 1968, a Committee known as the 'Devanath Committee' was set up in this Ministry to consider, among other things, the question of redesignation of the posts of clerical supervisors namely, Superintendent (clerical), Head Clerk Gde I and Head Clerk Gde II, in the Ministry of Defence. The recommendations of the Committee became available in the year 1970. On the basis of these recommendations, the erstwhile posts of Supdt. (clerical), Head Clerk Gde I and Head Clerk Gde II in the Ministry of Defence were redesignated as Office Supdt. Technical Assistant was not equated with the redesignated post of Office Supdt. whereas the post of Head Clerk Gde II, which was the feeder category for promotion to the post of Technical Assistant, was so equated, thereby resulting in an anomalous situation, so far as the ML&C Service was concerned, which has to be sorted out. This apart, the post of T.A. being peculiar to the ML&C Service, the structure of the clerical cadre in this service, had to be reorganised separately from the other clerical cadres with a common structure in the Ministry of Defence. All this involved changes which necessitated elaborate and time consuming deliberations.

The amendment Rules, 1974 published under S.R.O. 235 dated 17-7-74 were examined at various levels in this Ministry as well as in the Department of Personnel & A.R. and the Ministries of Finance and Law when they were at the drafting stage. As a result the proposal which was initiated by the Department on 16-1-71, got clearance for publication in the official Gazette only on 17-7-74.

In view of the position explained above, it will be appreciated that the delay pointed out in the Office Memorandum quoted above, was inescapable."

(ii) The Central Provident Fund (Defence Services) Forty-Second Amendment Rule, 1974 (SRO 381 of 1974).

Explanatory Memorandum regarding retrospective effect published in the Gazette.

In accordance with note 2 under Rule 12 of GPF (DS) Rules 1960, read with S.R.O. No. 319 of 30-9-65, the C.G.D.A. was the competent authority to sanction advances applied for under Rule 12(2) of the Fund Rules *ibid.* During 6/70 it was proposed to delegate the powers to sanction such advances to Controllers by suitably modifying the S.R.O. No. 319 of 1965. The amendment, as finally notified in S.R.O. No. 177 dated 14-6-72 substituted the words "C.G.D.A." by the words "Controller of Defence Accounts".

2. With the notification of S.R.O. No. 177 of 1972 containing amendment to S.R.O. 319 of 1965 as mentioned above no authority stands specified in the Rules who may sanction advances under Rule 12(2) of the Fund Rules to personnel serving in the office of the C.G.D.A. as also in respect of withdrawals personally applied for by the Controllers of Defence Accounts. It has, therefore, been proposed to specify in the Fund Rules the authority who may sanction such advances. With a view to mitigating the hardship to the personnel of C.G.D.A.'s office and Controllers who apply for advance from G.P. Fund under Rule 12(2), sanction is being accorded under the procedure as it existed prior to the issue of S.R.O. 177 of 14-6-72, pending notification of the proposed amendment. It has, accordingly, become necessary that the proposed amendment be given effect to from 14-6-72 (*i.e.* the date from which no authority stands specified in respect of staff of C.G.D.A.'s office).

Reply from the Ministry of Defence

"The hardship... was noticed in July, 1972 (*i.e.* after issue of the above SRO), while dealing with the applications for GP Fund withdrawal from the affected individuals. The applications so received during July 1972 onwards were, however, processed by the CGDA to avoid hardship to the affected individuals. An amendment incorporating the powers of the CGDA as existed prior to the issue of SRO dated 14th June, 1972 was, therefore, initiated in July 1973. The matter remained under consideration with the Ministry of Finance (Defence) and the Ministry of Law and the amendment was published in the Gazette of India in November 1974. The amendment specifying the powers to the CGDA in GP Fund Rules was given effect from 14th June, 1972 to cover the period during which no authority stood specified in respect of staff of CGDA's Office. No one has, therefore, been adversely affected by giving retrospective effect to the amendment."

(iii) The Central Health Service (Amendment) Rules, 1976 (G.S.R. 381 of 1970)

Reply from the Ministry of Health and Family Welfare (Department of Health).

“...the Government of Himachal Pradesh attained the statehood on the 29th January, 1974, requesting them to obtain the option of the Himachal Pradesh Health Service on the 19th January, 1974. A circular letter to all the participating organisations etc. was sent on the 29th January, 1974, requesting them to obtain the option of those C.H.S. Officers who were working under them to find out if they were willing to opt for the service under the Government of Himachal Pradesh furnished the information about the officers who direct by the 15th March, 1974. In May, 1974, the Government of Himachal Pradesh furnished the information about the officers who opted for the Himachal Pradesh service and also about those officers who were to be taken back from that State service to other participating organisations of the C.H.S. In their letter dated the 3rd June, 1974, the Government of Himachal Pradesh had asked for the particulars about the C.H.S. Officers who had opted for absorption in the Himachal Pradesh Service. The requisite information was furnished to the State Government on the 26th September, 1974. Under Rule 6(3) of the C.H.S. Rules, 1966, the Central Government may in consultation with the Union Public Service Commission include in the service or exclude from the service, any post other than those included in the schedule. Accordingly, a reference was sent to the U.P.S.C. for exclusion of the posts under the Government of Himachal Pradesh on the 27th September, 1974. The U.P.S.C. in their letter dated the 19th November, 1974, asked the information on the following two points:

- (i) The number of CHS Officers who have not opted for the Himachal Pradesh Health Service and the number out of them who have already been posted against other posts and the time lag during which the Ministry expect to post the remaining officers against other posts;
- (ii) Whether the Ministry of Finance have been consulted and if so, whether they have concurred in the exclusion of the Medical and Public Health posts under the Himachal Pradesh Government from the C.H.S.

The points raised by the Commission were duly examined in this Ministry and a proposal for exclusion of the posts under the Government of Himachal Pradesh was finally referred to the Ministry of Finance for their concurrence as desired by the U.P.S.C. on the

16th January, 1975. The Ministry of Finance finally agreed to the exclusion of the posts in question on 25-3-75. On the 31st March, 1975, this Ministry again approached the U.P.S.C. for the exclusion of the posts from the C.H.S. The information called by the Commission earlier was also furnished to them alongwith the proposal for exclusion of the posts referred to above. The Commission conveyed their approval to exclude the posts in question from the C.H.S. vide their letter dated the 19th April, 1975. This letter of the U.P.S.C. was received in this Ministry on 23-4-1975. The sanction of the President under rule 6 of the C.H.S. Rules, 1963, as amended by the C.H.S. Rules, 1966 to the exclusion of the posts under the Government of Himachal Pradesh was communicated to that Government on 30-4-1975. Subsequently, the approval of the Government of India was also conveyed to the Government of Himachal Pradesh to the transfer of 135 officers from the C.H.S. to the Himachal Pradesh Health Service with effect from 26-1-1974, vide this Ministry's letter No. A. 11016/12/71-CHSIII, dated the 8th May, 1975. Such retrospective effect was also considered necessary to enable the State Government to exercise full control over the officers transferred to the Himachal Pradesh Service from 24-1-1974. In this connection, it may be stated that under sec. 40(7) of the State of Himachal Pradesh Act, 1970 (53 of 1970) every member of the C.H.S. who immediately before the appointed date was holding any post in the existing Union Territory of Himachal Pradesh being a post included in the authorised strength of that service was required to serve without any deputation allowance for a period of 3 years, which expired on 24-1-1974. If the notification had not been given retrospective effect from 24-1-1974. The C.H.S. Officers would have become entitled to payment of deputation allowance from 24-1-1974 upto the date of their transfer to the Himachal Pradesh Health Service. Since the officers were already serving under the State Government of Himachal Pradesh, giving of retrospective effect to the exclusion of posts did not cause any hardship to any officer."

(iv) The Central Hindi Directorate class III & IV posts Recruitment (Amendment) Rules, 1974 (I.S.R. 1028 of 1974).

*Reply received from the Ministry of Education and Social Welfare
(Department of Education)*

"...the finalisation of the amendments was delayed because of inter-departmental consultations. It is felt that such delays can be greatly reduced by holding meetings of the concerned officers of the different departments concerned. This has been noted for the future. The delay that occurred in the present case is regretted.

**(v) The Central Bureau of Investigation (Deputy Legal Adviser)
Recruitment Rules, 1975 (G.S.R. 2722 of 1975)**

*Explanatory Memorandum in regard to retrospective effect published
in the Gazette.*

“The recruitment rules for the post of Deputy Legal Adviser in the Central Bureau of Investigation were earlier notified under the Ministry of Home Affairs Notification No. 14/35/62-AVD, dated the 20th January, 1964. According to column 11 of the Schedule to the rules, promotion to the grade of Deputy Legal Adviser in the Central Bureau of Investigation shall be made from amongst the Public Prosecutors in the Central Bureau of Investigation with at least 7 years service in the grade of Public Prosecutor. However, at the time of notifying the rules, the fact that the post of Public Prosecutor, referred to above, had been redesignated as Senior Public Prosecutor in December, 1963, was overlooked as a result of which the rules for the post are being notified again, with the necessary amendment duly made, giving effect from 20th January, 1964. It is confirmed that retrospective effect of the rules now notified will not adversely affect the interests of any one.”

Reply received from the Department of Personnel and Administrative Reforms

“The error in the recruitment rules was first noticed by the Central Bureau of Investigation in January, 1973, and a proposal to effect necessary amendments was initiated by them in April, 1973. Since then, the matter had been under consideration in consultation with the Establishment Division of this Department and the Union Public Service Commission, and the revised rules were finally notified on 12th November, 1975.”

**(vi) The Small Scale Industries (Class I and II Gazetted Posts)
Recruitment (Amendment) Rules, 1975 (G.S.R. 2404 of 1975)**

*Reply received from the Ministry of Industry (Department of
Industrial Development)*

- ‘(i) S/Shri P. R. Malhan and S. C. Pande were appointed as Deputy Director (Chemicals) as direct recruits w.e.f. 30-6-1966 and 11-10-1966 respectively against promotion quota vacancies. Similarly Shri T. N. Basu was appointed as Assistant Director (Grade I) (Metallurgy) w.e.f. 9-10-1964.
- (ii) On 3-6-72 the DC(SS1) requested this Department to approve the fixation of seniority of S/Shri P. R. Malhan and S. C. Pande as Dy. Dir (Chem) against the promotion

quota vacancies even though they were recruited through the UPSC against the posts. As there was no explicit provision in the Recruitment Rules to fill up the promotion quota vacancies by direct recruitment if promotion failed, the Department of Personnel and Administrative Reforms did not agree to fix the seniority of S/Shri Malhan and Pande against promotion quota posts. Hence it was suggested to amend the Recruitment Rules with retrospective effect so as to fix the seniority of these officers against the promotion quota vacancies.

- (iii) Accordingly the DC(SSSI) suggested on 3-7-1973 to amend the Recruitment Rules for the posts of Deputy Director (Chem) with retrospective effect so as to fix the seniority of S/Shri Malhan and Pande in the grade of Deputy Director (Chem). The matter was taken up with the Department of Personnel and Administrative Reforms on 13-7-1973.
- (iv) As stated under (iii) above, the Department of Personnel and Administrative Reforms who were approached in the matter, agreed on 19-10-1973 to our suggestion to amend the Recruitment Rules with retrospective effect and advised us to consult the Ministry of Law. Accordingly the Ministry of Law was consulted in the matter who agreed on 27-11-1972 to amend the rules retrospectively. Thereafter the DC(SSSI) was requested on 14-12-1973 to send a formal proposal to amend the recruitment rules retrospectively in order to obtain the approval of the UPSC to the proposed amendment. The proposal was received on 30-1-1974 which was sent to the UPSC on 7-3-1974. The Commission wanted certain information before approving the amendment of the Recruitment Rules which was furnished to them on 22-7-1974 after collecting the same from the DC(SSSI). The UPSC conveyed their approval in the matter on 9-9-1974. Thereafter the draft notification was sent to the Deptt. of Personnel and Administrative Reforms on 3-10-1974.. The Deptt. of P.&A.R. before approving the draft notification desired to know the individual cases where the seniority was to be affected, if the recruitment rules were not amended retrospectively. In order to expedite the issue of the notification, the matter was discussed with the Department of Personnel and Administrative Reforms on 10-3-1975 who approved the draft notification on 22-4-1975. The Draft notification was sent to the Ministry of Law on 30-4-1975 for vetting. That

Ministry revised the draft which was not in accordance with the spirit of our proposal. The Ministry therefore requested to reconsider the revised draft. Ultimately the Ministry of Law vetted the draft on 7-6-1975. The Official Languages Commission was requested to make available the Hindi version of the draft who did the needful on 7-7-1975. The Hindi version of the explanatory Memorandum was not done by the Official Languages Commission which was got done by our Hindi Section who did it on 29-7-1975. The notification to amend the Recruitment Rules was ultimately issued on 6-9-1975. Thus there was hardly any delay on the part of this Department to amend the Recruitment Rules with retrospective effect.

APPENDIX VI

(See para 56-57 of the Report)

*Copy of circular letter from the Ministry of Home Affairs
regarding measures to reduce delay in framing of
Recruitment Rules*

No. 20/3/67-Estt (D)

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

New Delhi-1, the 11th August, 1967.

20th Sravana, 1880.

OFFICE MEMORANDUM

SUBJECT: —Framing of Recruitment Rules of Services|Posts—measures
to reduce delay in—

The question of reducing the time taken in the finalisation of Recruitment Rules for Services|Posts has been under consideration of this Ministry for some time. A recent study of the cases relating to framing of Recruitment Rules for Services|Posts, or for amendments to existing Rules, has shown that there is considerable scope for improvement at various stages—from the time that preliminary work is required to be initiated for drafting the rules to the final stage of their being notified. The methods of recruitment to be prescribed for a post are closely related to the nature of the duties that should be assigned to it. The laying down of the duties of posts and of drafting the recruitment rules for them are thus item of work which—if they are to be handled effectively level. It has been noticed that the framing of Recruitment Rules for a post|service has often been left to be dealt with at comparatively junior levels. Delay also occurs at each stage of consultation either with the Home Ministry or the Union Public Service Commission, as the data necessary for consideration of draft rules are often not available. Some of the Ministries|Departments experience difficulty in preparing the draft rules, as they are not fully conversant with the requirement of the proforma prescribed for framing Recruitment Rules for Services|Posts other than those in the established Services (copy enclosed—Annexure-I).*

*Not Printed.

2. It has been decided in consultation with the U.P.S.C. that the following revised procedure should be adopted for framing Recruitment Rules for Services|Posts:—

(a):—As soon as a decision is taken to create a new Service|post including a Class I|Class II Service|post, action should be taken immediately by the administrative Ministry|Department concerned to frame a draft of the Recruitment Rules therefor. An officer not lower in rank than an Under Secretary should personally frame a draft of the Recruitment Rules for the Service|post.

(b) The existing arrangement under which draft Rules for Class I and Class II Services|posts, as framed by the administrative Ministry|Department are referred to U.P.S.C. for advice before scrutiny by the Ministry of Home Affairs, will cease to be operative. Recruitment Rules for all Class I or II Services|posts, as drafted by the administrative Ministry|Department, will hereafter be referred to Ministry of Home Affairs first for clearance, as is the case with the draft Rules for Class III or IV Services|posts. The administrative Ministry|Department should send, within a period of one month from the date of creation of the service|post a self-contained proposal together with (i) the draft Recruitment Rules (for posts other than those in the established services) in the proforma already prescribed *vide Annexure I** and (ii) the particulars in proforma in *Annexure II.** The data in Annexure II are intended to supply necessary information for the scrutiny of the proposal and to help in the early finalisation of Rules. Ordinarily, the draft Recruitment Rules will be returned by the Home Ministry, with their comments, within a month from the date of reference to that Ministry or, if special circumstances of a case require more time for scrufiny|discussions, the administrative Ministry|Department will be requested to discuss the case. Otherwise after the period of one month that Ministry] Department can presume concurrence of Home Ministry and proceed further.

(c) Even before a formal reference is made, if the administrative Ministry|Department finds any difficulty in framing a draft of the Recruitment Rules for the Service|post newly created, the Deputy Secretary of the Under Secretary concerned in the Ministry of Home Affairs would be available for assistance. The matter can be discussed with him, if the Ministry|Department so desires.

(d) After consulting the Ministry of Home Affairs, the administrative Ministry|Department will refer the draft Rules immediately

to the U.P.S.C. along with the information as in the enclosed proforma (Annexure II).* Before such a reference is made, it is necessary to discuss the proposals with the Commission's Secretariat as laid down in the undermentioned instructions.

- (i) Ministry of Home Affairs O.M. No. 18/20]54-Estt (B), dated 8-9-1954.
- (ii) D.O. No. 31(7)-E.O.]55, dated 12-3-1955 from Shri S. B. Bapat to all Secretaries to the Govt. of India.
- (iii) Ministry of Home Affairs' O.M. No. F. 18|2|63-Estt(B) dated 18-1-1963.

Where the procedure for consultation with the Commission has been correctly followed and the information necessary for the consideration of such proposals has been fully given, it would ordinarily be possible for the Commission to convey their advice *within four or five weeks*. If the Commission's advice on the draft Recruitment Rules is not received within this period the administrative Ministry| Department should settle the matter by personal discussion with the Officer concerned in the Commission. In case the provisions of the final draft are at variance with the draft Rules, as concerned in by the Ministry of Home Affairs the changes should be brought to the notice of the Home Ministry.

(e) The revised procedure indicated in (a) to (d) above will apply also to amendments proposed to be made to existing Recruitment Rules. Such proposals should be sent along with the information in the proforma given in Annexure III* to this Office Memorandum.

Sd|- R. M. SHROFF (MRS.)

Deputy Secretary to the Government of India.

To,

All Ministries of the Government of India, etc. etc.

APPENDIX VII

(Please see para 86 of the Report)

Statement of case for the opinion of the Attorney General of India

The true meaning and scope of clause (1) of article 239 of the Constitution forms the subject matter of this reference.

2. In many Central Acts, power to make rules is conferred upon the Central Government and when such Act is in force in a Union territory, it has been the practice of the President, in pursuance of clause (1) of Article 239 of the Constitution, to direct by a notification that, subject to his control and until further orders, the powers and functions of the Central Government shall also be exercised by the Administrator of that Union territory. *Annexure I to the Statement of Case enumerates 21 such notifications under various Acts.

3. In conformity with the above practice, a Presidential notification dated 3rd May, 1973 (appearing in serial No. 19 of *Annexure I and also reproduced *in extenso* in *Annexure II) was issued and, clothed with the rule-making powers thereunder, the Administrator of the Union territory of Delhi has made the Delhi Sikh Gurdwara Rules, 1973 (*Annexures III and IV).

4. The Committee on Subordinate Legislation have taken exception to the concurrent conferment of the rule-making power upon the Administrator. The Committee assails such conferment on two grounds. Firstly, they feel that it was only in relation to the administration of a Union territory that the Administrator had been included in the definition of 'Central Government' under clause (8) of section 3 of the General Clauses Act, 1897; and secondly, because delegation of power under article 239(1) of the Constitution is in relation only to "administration" of the Union territory. Hence this reference.

5. The legality of the notifications in question (as well as that of the bunch of notifications listed in *Annexure I) has been examined in the succeeding paragraphs.

*Not Printed.

6. On 15th March, 1948, the Central legislature of India passed the Minimum Wages Act, 1948 which, in its Schedule specified, under two parts, the employments in respect of which the minimum wages of the employees can be fixed. Section 27 of the Act authorised the 'appropriate Government' after giving three months' notice of its intention to do so, to add to either part of the Schedule, any other employment in respect of which it is of the opinion that the minimum rates of wages should be fixed under the Act. On the 16th March, 1949, the Central Government issued a notification in exercise of its powers under section 94(3) of the Government of India Act, 1935 directing that the functions of the 'appropriate Government' under the Minimum Wages Act would, in respect of every Chief Commissioner's province, be exercised by the Chief Commissioner. On the 17th March, 1950, the Chief Commissioner of Ajmer, purporting to act as the 'appropriate Government' of the State, published a notification in terms of section 27 of the Act giving three month's notice of his intention to include employment in the textile mills as an additional item in part I of the Schedule and issued a final notification on the 10th October, 1950.

7. Upon a challenge made to the vires of the notification, the Supreme Court in *Edward Mills Company Ltd. v. State of Ajmer* (AIR 1955 SC 25) hold that no order made by the Governor General under section 94(3) investing the Chief Commissioner with authority to administer a province is really in the nature of a legislative provision which defines the rights and powers of the Chief Commissioner in respect of that province and that the notifications are legal and valid. The court also observed that an order made under this section is to be reckoned as an order made under article 239 of the Constitution.

8. In *Jayantilal Amratlal v. P. M. Rana* (AIR 1964 SC 648) which was a member under article 258(i) of the Constitution, the minority view made a reference to section 94(3) of Government of India Act, 1935 corresponding to article 239 of the Constitution and reiterated that *Edward Mills'* case dealt with the governance of the Chief Commissioner's province and governance would include all kinds of functions—whether executive, legislative or judicial.

9. The provisions of article 244 may next be compared with those of Article 239. The word 'administration' with its variations which occurs in article 239 also finds a place in article 244. No doubt, the Sixth Schedule in its para 19(i) (b) gives a specific legislative power to the Governor, but such power could not have found place in the schedule—extension as it is of the parent article unless it is includ-

ed in the expression 'administration of the tribal areas' occurring in clause (2) of article 244. While examining the vires of a notification dated 8-9-1961 issued pursuant to the powers conferred under Article 244 whereby Governor of Assam extended the Eastern Bengal and Assam Excise Act, 1910 to the United Khasi-Jainti Mills District, the Supreme Court, in *State of Meghalaya v. Ka Drhyim Kurkuleng* (1972)|SC 148, observed that the power conferred on the Governor is a legislative power and is not only in the form of making substantive Laws but also could apply to the existing statutes. It may be conceded that the phraseology of paragraph 19 (1) (b) of the schedule does not obtain in article 239 and the relevance of this case is only to stress that administration in certain circumstances can include legislative power.

10. Next a reference may be made to section 124(1) of the Government of India Act, 1935 (corresponding to article 258 of the Constitution). In *Amer Khan v. State* (AIR 1950 All. 423) a question was raised whether this section refers to the executive functions of the Central Government alone or does it cover functions other than executive functions, that is, the power of subordinate legislation? It was held, that section 124(1) is not confined to the executive functions of the Central Government on the ground that the word 'functions' is not qualified by the word 'executive'. The words 'to which the executive authority of the federation extends' relate not to the word 'function' but the 'matter'.

11. While dealing with the power of the President to make rules, the Delhi High Court in *H. L. Radhey v. Delhi Administration*, (AIR 1969, Del. 246) held that article 239 also enables the President to make rules for the Central Services in any Union Territory since the making of such rules is included in the Administration of such territories which can be carried on by the President through the Administrator. Similarly the Rajasthan High Court in *Bhanwarlal v. State of Rajasthan* (AIR 1959, Raj. 257) upheld the rule-making power of the Chief Commissioner under Ajmer Shops and Commercial Establishment Act, 1956.

12. It may be useful at this stage to distinguish a judgement of Madras High Court in *Ghonsia Begum v. Union Territory of Pondicherry* (AIR 1975, Mad. 345) wherein it was held that the President, acting under article 239 of the Constitution, cannot delegate the powers and functions of the Central Government under the Land Acquisition Act for the acquisition of a land for the purpose of an auto-telephone exchange for the Post and Telegraphs Department, Pondicherry to the District Governor of Pondicherry, an Administrator appointed under that article. The Madras High Court

underscored the fact that 'Post and Telegraphs' constitute item 31 of Union List and are Union subjects which could be administered only by the Central Government. In the facts of the present case, Entry 10 "Trust and Trustees" and Entry 28 Charities and Charitable institutions, Charitable and religious endowments and religious institutions fall in the Concurrent list and hence the ratio of the Madras ruling will not be applicable here.

13. Etymologically, the word administrator is derived from Minister which means render aid or service, Administration is management of public affairs government and even in international law when the United Nations charter (article 75—86) provides that trust territories are to be administered pursuant to trusteeship agreement under the auspices and supervision of the United States, the expression has been held to include law-making. It is not suggested that Administration will always include the power of law-making because in the Constitution there is specific article relating to regulations to be made by the President, but the usage and interpretation of article 239 by the courts unequivocally point out to the fact that the power of rule-making is deposited therein to the extent that the Central Government has power to make laws on the subject.

14. Learned counsel is requested to advise:

- (i) Where a Central Act confers rule-making powers on the Central Government to carry out the purposes of the Act, is it lawful for the President, in pursuance of clause (1) of article 239 of the Constitution, to direct that the Administrator of a Union Territory having relation to the subject matter of the Act shall also exercise such rule-making powers with respect to that Union Territory?
- (ii) Generally.

NEW DELHI;
8th December, 1977.

Sd/- V. V. VAZE,
Joint Secretary and Legal Adviser.

MINUTES

APPENDIX VIII

VII

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

The Committee met on Tuesday, the 29th November, 1977 from 16.00 to 16.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Durga Chand
4. Shri Ram Sewak Hazari
5. Shri K. T. Kosalram
6. Shri Trepan Singh Negi
7. Kumari Maniben Vallabhbbhai Patel

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 43 to 52 on the following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
1.	43	* * *
2.	44	(i) The Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974 (G.S.R. 1028 of 1974). (ii) The Petroleum (Amendment) Rules, 1974 (G.S.R. 1376 of 1974). (iii) The Central Bureau of Investigation (Deputy Legal Adviser) Recruitment Rules, 1975 (G.S.R. 2722 of 1975).
3 to 10	45 to 52	* * *

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

- (ii) (a) The Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974 (G.S.R. 1028 of 1974).
- (b) The Petroleum (Amendment) Rules, 1974 (G.S.R. 1376 of 1974).
- (c) The Central Bureau of Investigation (Deputy Legal Adviser) Recruitment Rules, 1975 (G.S.R. 2722 of 1975) (Memorandum No. 44).

5. The Committee considered the above Memorandum and deprecated inordinate delays in the issue of the rules in question. They observed that not infrequently such delays were occasioned by unduly long time taken in inter-Departmental consultations. For instance, as conceded by the Ministry of Education and Social Welfare in the case of the Central Hindi Directorate Class III and IV Posts Recruitment (Amendment) Rules, 1974, holding of frequent meetings of the officers of the different Ministries concerned with the finalisation of the rules could result in substantial reductions in delays. The Committee desired the Ministries concerned to streamline the existing procedure for Inter-Departmental consultations to reduce delays and to intimate to the Committee the procedure derived and guidelines formulated in this regard.

6—19

* * * * *

The Committee then adjourned.

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

XI

MINUTES OF THE ELEVENTH 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

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhry 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

II. Representatives of the Ministry of Industry (Department of Industrial Development)

1. Shri G. V. Ramakrishna, Additional Secretary.
2. Shri I. Mahadevan, Joint Secretary.
3. Shri Yogesh Chandra, Director.
4. Shri I. N. Murthy, Chief Controller of Explosives, Nagpur.

III. * * * * *

SECRETARIAT

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

2 to 15 * * * *

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

Delay in publishing the Petroleum Rules

16. The Committee then examined the representatives of the Ministry of Industry (Department of Industrial Development) regarding delay in publishing the Petroleum Rules.

17. In his evidence, the representative of the Ministry conceded that the delay of nearly four years in the final publication of the rules was very difficult to explain. Giving a stage-wise break-up of the delay, he stated that the initial delay of about eight months took place after the publication of the draft rules on 16-9-1972. Objections and suggestions were invited from the public upto 31-12-1972. The examination of the objections and suggestions and revision of the draft rules took about eight months. Subsequently, consultation with the Ministries of Law, and Petroleum and Chemicals also took some time. There was another 6 months delay from December, 1975 to June, 1976 in getting the rules translated in Hindi. The representative of the Ministry conceded that such delays should not occur and it would be avoided in future.

18. When asked what could be the reasonable period within which draft rules could be finally published, the representative of the Ministry stated that though the exact period taken in each case would depend upon the nature of the draft rules, the nature of objections received and the complexity of the matter, broadly speaking, 6 to 9 months' period should be adequate for the publication of any draft rules.

19. Regarding steps taken by the Ministry to expedite the publication of rules, he stated that they have come to the conclusion that when draft rules are prepared and published for inviting objections, they could be sent simultaneously to all the agencies without doing it in a serial order so that the comments of all concerned were available at the same time. For Hindi translation also the Official Language Commission had asked them to send chapter by chapter. It can be sent for translation at draft stage also.

20. Regarding reduction of the time taken in inter-departmental consultation, the witness stated that it can be achieved through having meetings of the concerned Ministries. The views of the respective Ministries/Departments can be taken into account at the meeting itself and further processing done on that basis.

21. In reply to a question whether the Ministry had examined the feasibility of publishing the rules in English in the first instance followed by its Hindi translation so as to avoid delay in the final publication of the rules, the representative of the Ministry stated that the normal procedure was to send the manuscripts of both English and Hindi versions to the press together.

22. In reply to another question, the witness promised to impress upon the officers of the Ministry the need of expedition in the final publication of rules.

Use of vague Expressions in Rules 15(1), 90(6), 96, 115(I) and 172(4) of the Petroleum Rules, 1976. ..

23. The Committee then took up the question of use of vague expressions such as "unreasonably large quantity", and "frequent intervals", "regularly in the Petroleum Rules. For using the expression "unreasonably large quantity" in Rule 15(1), the representative of the Ministry stated that petroleum Class B and Class C were carried by ships for their own use. Ships were of different sizes and the quantity required depend upon their size. When a ship comes to the Indian Ports, it is subject to Indian Rules. A Collector of customs is to determine that a ship does not carry an unreasonably large quantity of the aforesaid categories of oil. In view of the large variation in the sizes of ships and the tanks in which they carry bunker oil, it is necessary to provide this kind of variation in administering these rules. Asked whether there was any difficulty in prescribing quantities of petroleum which may be considered unreasonable for various sizes of ships or ranges of sizes of ships. The representative of the Ministry stated that not only the sizes of the ships vary from 15,000 to 80,000 tonnes but also the arrangements of filling with bunker oil varies. While some loaded at Indian ports others loaded at North African ports.

24. The Committee pointed out that while one officer may feel that a particular quantity was 'unreasonably large' another officer may feel that it was not. The Committee enquired whether any sketch was exercised to ensure that the decision by a particular officer was a rational one. The Chief Controller of Explosives conceded that it had to be left entirely to the subjective determination of the officers concerned who were normally lower officers below the rank of customs officers. In reply to a question, the witness promised to examine the feasibility of laying down guidelines in the matter.

25. The Committee then referred to the use of the expression 'reasonable interval' in rule 90(6). The Chief Controller of Explosives stated that this expression was there in the old rules also. The pipelines rules had been made very elaborate and an approval system had been brought into force under which a Company who laid the pipelines was to submit a project report and show all the particulars of the pipeline—the design of the pipeline, the thickness, the diameter and the length of the pipeline, etc. They had also to provide route map of the pipeline and the officers of Engineers India Ltd. inspected the project.

26. The Committee desired the Ministry to send a note regarding the workability of the rules, in the light of their past experience, so that there is no scope of arbitrariness in their working. The representative of the Ministry promised to furnish the requisite note.

(The witnesses then withdrew)

27 to 33

* * * * *

The Committee then adjourned.

XII

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

The Committee met on Thursday, the 9th February, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Somjibhai Damor
3. Shri Santoshrao Gode
4. Chaudhary Hari Ram Makkasar Godara
5. Shri Tarun Gogoi
6. Shri Ram Sewak Hazari
- 7 Shri K. T. Kosalram
8. Shri N. Sreekantan Nair
9. Shri Trepan Singh Negi
10. Kumari Maniben Vallabhbai Patel
11. Shri Saeed Murtaza
12. Shri Sachindralal Singha

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 79 to 88 on the following subjects:—

S. No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	79	Laying of Regulations framed under Central Acts before Parliament.

(1)	(2)	(3)
(ii)	80	(a) The National Savings Certificates (V Issue) Rules, 1973 (G.S.R. 421-E of 1973); (b) The Post Office Savings Certificates (Second Amendment) Rules, 1973 (G.S.R. 422-E of 1973); and (c) The Post Office Savings Certificates (Second Amendment) Rules, 1975 (G.S.R. 2340 of 1975).
(iii)	81	The Baggage (Conditions of Exemption) Rules, 1975 (G.S.R. 453-E of 1975).
(iv)	82	The Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 (G.S.R. 425-E of 1975).
(v)	83	Delay in finalising Amendments to rules: (a) The Military Lands & Cantonments Service (Class III & Class IV) Recruitment (Amendment) Rules, 1974 (S.R.O. 235 of 1974). (b) The General Provident Fund (Defence Services) Forty-second Amendment Rules, 1974 (S.R.O. 381 of 1974). (c) The Central Health Service (Amendment) Rules, 1976 (G.S.R. 381 of 1976).
(vi)	84	The Linoleum (Price Control) Order, 1974 (S.O. 386-E of 1974).
(vii)	85	The Aircraft (Amendment) Rules, 1976 (G.S.R. 69 of 1976).
(viii)	86	The Defence and Internal Security of India (Amendment) Rules, 1976 (G.S.R. 396-E of 1976).
(ix)	87	Extension of time for framing of rules under the Oil Industry (Development) Act, 1974.
(x)	88	The Survey of India Assistant Stores Officer Recruitment Rules, 1974 (G.S.R. 921 of 1974).

(i) *Laying of Regulations framed under Central Acts before Parliament. (Memorandum No. 79).*

3. The Committee considered the matter in all its aspects, and noted that the reasons given by the Ministries/Departments for not incorporating a provision for laying/publication of regulations in Acts/Bills were generally on the lines of those given in the two communications of the Ministry of Law, Justice and Company Affairs (Legislative Department) dated the 9th March, 1974 and 21st January, 1975. Similar arguments were given by the Ministry of Finance (erstwhile Department of Banking) for not incorporating a provision for laying of regulations framed under the State Bank Laws Amendment Bill, 1973. These arguments were not accepted by the Committee on Subordinate Legislation who had in paras 86-87 of their Second Report (Sixth Lok Sabha) observed that the body which delegated the power had a right to see that the power delegated by it was properly exercised, and the delegate did not transgress the limits laid down by it. Whether the delegate was the Central Government or a body subordinate to it was not very material.

4. Nor did the Committee see any force in the argument that the laying of regulations relating to an autonomous body before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. The Committee, therefore, desired that, like rules, regulations should also be laid before Parliament and there should be a provision to this effect in the relevant statutes. Likewise, there should invariably be a provision in the relevant statutes for publication of regulations to be framed thereunder. The Committee desired the Ministry of Law/Department of Parliament Affairs to issue necessary instructions to all Ministries/Departments of the Government of India to this effect.

- (ii) (a) *The National Savings Certificates (V Issue) Rules, 1973 (G.S.R. 421-E of 1973);*
 (b) *The Post Office Savings Certificates (Second Amendment) Rules, 1973 (G.S.R. 422-E of 1973); and*
 (c) *The Post Office Savings Certificates (Second Amendment) Rules, 1975 (G.S.R. 2340 of 1975). (Memorandum No. 80)*

5. The Committee considered the above Memorandum and noted that the Ministry of Finance (Department of Economic Affairs) had conceded in their reply that there was a possibility of issue of certificates under the above Rules to Institutions etc., by the Post Offices due to an element of human error. The Ministry were, however, not in favour of making a provision in the rules that the

investors in such cases would not suffer on account of the contravention of the rules. The Committee further noted that even though there was no statutory provision to this effect, such individual cases were being considered on merit and generally interest at Post Office Savings Bank rates was also allowed to institutions, etc. as a special case. The Committee felt that it would be appropriate if this practice was brought on a statutory footing.

6. The Committee noted that, on being pointed out, the Ministry of Finance (Department of Economic Affairs) had since amended the relevant rules to prescribe separate surrender values of the various National Savings Certificates after the expiry of three and four and after five and six completed years.

(iii) *The Baggage (Conditions of Exemption) Rules, 1975 G.S.R. 453-E of 1975). (Memorandum No. 81)*

7. The Committee considered the above Memorandum and noted that at present no checks were exercised by the Customs Authorities to see that goods cleared under the Baggage Rules were not disposed of till the market value of such goods had depreciated to less than 50 per cent. However, on being pointed out by the Committee, the Central Board of Excise and Customs had issued some guidelines to all the Collectors of Customs and Central Excise to ensure that the condition laid down in Rule 2 including sub-rule (c) of the Baggage (Conditions of Exemption) Rules, 1975 were complied with.

(iv) *The Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 (G.S.R. 425-E of 1975) (Memorandum No. 82).*

8. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry had amended the Gujarat and Dadra and Nagar Haveli Rice (Export) and Paddy (Movement Control) Order, 1975 specifying the minimum rank of the persons authorised to exercise the powers of entry, search, seizure, etc., in the Order itself and eliminating the provision empowering the authorised persons to further authorise other persons to exercise such powers.

(v) *Delay in finalising Amendments to rules:—*

(a) *The Military Lands and Cantonments Service (Class III and Class IV) Recruitment (Amendment) Rules, 1974 (S.R.O. 235 of 1974);*

(b) *The General Provident Fund (Defence Service) Forty-second Amendment Rules, 1974 (S.R.O. 381 of 1974); and*

(c) *The Central Health Service (Amendment) Rules, 1976* (G.S.R. 381 of 1976). (Memorandum No. 83)

9. The Committee considered the above Memorandum and noted that there had been delays in finalising the above rules ranging from over two years to nearly three and a half years, with the result that retrospective effect had to be given in all the three cases. From the explanations of the Ministries in the three cases, the Committee felt that too much time was taken in inter-Departmental consultations. The Committee desired the Department of Personnel and Administrative Reforms to evolve some procedure whereby to reduce the time involved in such consultations to the barest minimum, and to send their suggestions in this regard within four weeks. The Committee, on receipt of reply from the Department of Personnel and Administrative Reforms, will consider and examine this aspect of delay and make suitable recommendation thereon.

(vi) *The Linoleum (Price Control) Order, 1974* (S.O. 386-E of 1974) (Memorandum No. 84).

10. The Committee considered the above Memorandum and noted that the Linoleum (Price Control) Order, 1974 had been rescinded. Since the Order was no longer in force, the question of making any amendments thereto did not arise. The Committee, however, noted the assurance given by the Ministry of Industry (Department of Industrial Development) that the suggestions made by the Committee, viz., (i) mentioning in the Order of the nature of records which a manufacturer is required to keep in terms of clause 4(1) of the Order, and (ii) specifying the name of the 'other authority' (not below a particular rank) mentioned in clause 4(2) of the Order, would be kept in view, if any necessity arose to issue a similar Control Order in future.

(vii) *The Aircraft (Amendment) Rules, 1976* (G.S.R. 69 of 1976) (Memorandum No. 85).

11. The Committee considered the above Memorandum and agreed with the following amendments proposed to be made by the Ministry of Tourism and Civil Aviation to Rule 78-C of the Aircraft Rules, 1937:—

- (f) to amend sub-rule (1) to provide that a fee not exceeding Rs. 3.00 per vehicle per hour shall be payable according to the importance or classification, if any, of the aerodrome;

(ii) to amend sub-rule (2) to provide that the following vehicles shall be exempted from the payment of the parking fee by issue of a general or special order in writing from the DGCA:—

(a) Government vehicles; and

(b) vehicles belonging to any person who is engaged on a regular duty at an aerodrome; and

(iii) to amend sub-rule (3) to provide that the fee shall be paid in cash to the Aerodrome Officer or to any other person authorised by him in this behalf, for which a receipt shall be issued forthwith.

The Committee desired the Ministry to give effect to the above amendments at an early date.

12. As regards the delay of almost a year in publishing the final rules, the Committee noted that, according to the reply of the Ministry, it was an exception in this case. However, necessary instructions were being issued by the Ministry to ensure that such cases were expeditiously dealt with at all stages in future.

(viii) *The Defence and Internal Security of India (Amendment) Rules, 1976 (G.S.R. 396-E of 1976) (Memorandum No. 86).*

13. The Committee considered the above Memorandum and felt that as both the Emergencies proclaimed on the 3rd December, 1971 and the 25th June, 1975 had already been revoked, there was no question of issuing an amendment to sub-rule (3) of rule 31-A of the Defence and Internal Security of India Rules at this stage. The Committee, however, desired that in case such rules were issued in future, these should invariably indicate the minimum rank of the officer authorised to exercise the power of removal.

(ix) *Extension of time for framing of rules under the Oil Industry (Development) Act, 1974. (Memorandum No. 87).*

14. The Committee considered the above Memorandum and noted that the Ministry of Petroleum had from time to time been seeking extension of time for framing service rules of the Oil Industry Development Board, and that in their latest communication dated the 16th January, 1978, the Ministry had sought a general waiver of the time-limit for framing these rules. The Committee were not convinced by the argument advanced by the Ministry

that as the number of employees of the Board at present was two small, it was preferable to wait till the staff strength had stabilised. The Committee, therefore, did not agree with the request of the Ministry for grant of a general waiver of the time-limit for the framing of the above mentioned rules and desired that the service rules in question should be formulated latest by the 30th June, 1978.

(x) *The Survey of India Assistant Stores Officer Recruitment Rules, 1974 (G.S.R. 821 of 1974) (Memorandum No. 88).*

15. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Department of Science and Technology had amended the Survey of India Assistant Stores Officer Recruitment Rules, 1974 specifying the precise name of the rules which had been repealed.

The Committee then adjourned to meet again on the 1st March, 1978.

XIII

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

(1977-78)

The Committee met on Wednesday, the 1st March, 1978 from 15.30 to 16.15 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

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

SECRETARIAT

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

2-3. * * * *

4. The Committee considered Memoranda Nos. 89 to 95 on the following subjects:—

S. No.	Memorandum No.	Subject
(1)	(2)	(3)
1	89	The Delhi Sikh Gurdearas Rules, 1973 (Notification No. 18(15)/73-Judl. dt. 13-9-1973).

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

1	2	3
2.	90	Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948—Provision for laying before Parliament.
3.	91	The Liquefied Petroleum Gas (Restriction on Use) Order, 1974 (G.S.R. 252-E of 1974).
4.	92	Subsidiary Banks (Appointment of Employee Directors) Rules, 1974 (S.O. 400-E of 1974).
5.	93	Furnishing of information by the Ministries/Departments to the Committee on Subordinate Legislation.
6.	94	* * * * *
7.	95	* * * * *

(i) *The Delhi Sikh Gurdwaras Rules, 1973 (Notification No. 18(15)/73-Judl. dt. 13-9-1973) (Memorandum No. 89).*

5. The Committee considered the above Memorandum and noted the opinion of the Attorney General that where a Central Act conferred rule-making power on the Central Government to carry out the purposes of the Act, it was lawful for the President, in pursuance of clause (1) of Article 239 of the Constitution to direct that the Administrator of a Union Territory having relation to the subject matter of the Act shall also exercise such rule-making powers with respect to that Union Territory. In view of this opinion, the Committee felt satisfied regarding the authority of the Administrator of Union Territory of Delhi in framing the Delhi Sikh Gurdwaras Rules, 1973 under the Delhi Sikh Gurdwaras Act, 1971, though section 39(1) of the Act empowered the Central Government to make rules to carry out the purposes of the Act.

(ii) *Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948—Provision for laying before Parliament (Memorandum No. 90).*

6. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to make a provi-

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

sion in the Dock Workers (Regulation of Employment) Act, 1948 for laying of Schemes framed thereunder before Parliament. The Committee desired the Ministry to bring legislation for the purpose at an early date.

(iii) *The Liquefied Petroleum Gas (Restrictions on Use) Order, 1974* (G.S.R. 252-E of 1974)—(Memorandum No. 91).

7. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Petroleum had amended the Liquefied Petroleum Gas (Restrictions on Use) Order, 1974 so as to provide for the following:

- (i) Power of Search and Seizure would be exercised by a Police Officer not below the rank of Sub-Inspector;
- (ii) Presence of witnesses at the time of search and seizure and preparation of inventory of articles seized and supplying a copy thereof to the person concerned.
- (iv) *Subsidiary Banks (Appointment of Employee-Directors) Rules, 1974* (S.O. 400-E of 1974) (Memorandum No. 92).

8. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Finance (Department of Banking) had amended the above Rules *vide* Notification No. F. 2|1|75-BO-I dated the 18th February, 1978, so as to clarify that 10 days' time given under the Rules to the Unions for production of record would be counted from the date of receipt of the notice.

(v) *Furnishing of information by Ministries|Departments to the Committee on Subordinate Legislation.* (Memorandum No. 93).

9. The Committee considered the above Memorandum and noted with regret that in a number of cases communications received by the Committee from Ministries/Departments of Government of India carried the signatures of a Section Officer and in one case the communication sent was under the signature of even an assistant.

The Committee approved the draft Office Memorandum as given in the Annexure and desired that it should be issued to all Ministries|Departments of Government of India, requesting them to follow the following procedure in regard to supply of information or intimating action taken on the recommendations of the Committee on Subordinate Legislation:

- (1) Communications furnishing information on points raised by the Committee on Subordinate Legislation should or-

dinarily be signed by an officer not below the rank of Deputy Secretary.

- (2) Communications intimating action taken on the recommendations of the Committee on Subordinate Legislation should be signed by an officer not below the rank of Joint Secretary.
- (3) In cases where the recommendations of the Committee are not accepted by Government, it should be stated in the reply of the Ministry|Department that the matter had been considered at the level of the Minister.

10-11

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The Committee then adjourned.

ANNEXURE

(Vide para 9 of the Minutes)

LOK SABHA SECRETARIAT

(COMMITTEE BRANCH-II)

No. 43/CII/78

Parliament House Annexe,
New Delhi-110001.

OFFICE MEMORANDUM

SUBJECT: Furnishing of information by the Ministries/Departments to the Committee on Subordinate Legislation—level at which letters should be signed.

The undersigned is directed to state that at their sitting held on the 1st March, 1978, the Committee on Subordinate Legislation observed that the information sought by the Committee should be communicated by the Ministry/Department concerned under the signatures of an officer not below the rank of Deputy Secretary while communications in regard to action taken by the Ministry on the recommendations of the Committee should ordinarily be signed by an officer not below the rank of Joint Secretary. In cases where the Government have not accepted a recommendation of the Committee, the decision should have the approval of the Minister concerned and it should also be stated in the communication that the matter had been considered at the level of the Minister.

2. The receipt of this Memorandum may kindly be acknowledged.

(Y. SAHAI)

Chief Legislative Committee Officer.

To

The Ministries/Departments of
Government of India.

XV

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

(1977-78)

The Committee met on Thursday, the 30th March, 1978 from 15.30 to 17.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri Santoshrao Gode
4. Chaudhary Hari Ram Makkasar Godara.
5. Shri Trepan Singh Negi.
6. Kumari Maniben Vallabhbhai Patel.

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SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Shri Durga Chand to present the Seventh Report to the House on their behalf on the 4th April, 1978.

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The Committee then adjourned.

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