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COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

TWENTIETH REPORT

(Action Taken by Government on Outstanding Recommendations of the Committee)

(Presented on 26 August, 1983)

LOK SABHA SECRETARIAT
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Corrigenda to the Twentieth Report of the Committee on Subordinate Legislation(Seventh Lok Sabha) presented to the Lok Sabha on 26 August, 1983.

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			Officer.	Senior Legislative Committee Officer.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1983-84)

1. Shri R. S. Sparrow—*Chairman*
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3. Shri Xavier Arakal
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1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
3. Shri T. E. Jagannathan—Senior Legislative Committee *Officer.*

I

INTRODUCTION

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

2. Like their Eighteenth and Nineteenth Reports (Seventh Lok Sabha), this is yet another report in the series of special implementation reports devoted exclusively to reporting to the Lok Sabha the action taken by Government on the outstanding recommendations of the Committee. The replies have been grouped into the following three categories in this Report:—

(i) Cases of recommendations wherein only interim replies have been received from the Ministries;

(ii) Cases of recommendations wherein Government have expressed their inabilty to implement; and

(iii) Cases of recommendations replies to which have been found unsatisfactory by the Committee.

3. This is not to belittle the fact that a large number of recommendations have been satisfactorily implemented. The Committee have already reported on them in their Tenth and Nineteenth Reports (Fifth Lok Sabha), Eighth Report (Sixth Lok Sabha) and Second, Fourth, Ninth, Tenth, Twelfth, Fifteenth to Nineteenth Reports (Seventh Lok Sabha) and some have been included in this Report also. But the Committee do like to observe that even such cases, there had been avoidable delay in implementation in most of the cases. A separate Chapter has, therefore, been added in this report.

4. In two cases, Government had sought prior concurrence of the Committee to amendments before their notification in the Official Gazette in pursuance of the implementation of recommendations. These have been examined in a separate Chapter in this Report.

5. The matters covered by this Report were considered by the Committee at their sittings held on 29 September, 1977, 30 March, 21 and 23 May, 1983.

6. At their sitting held on 21 May, 1983, the Committee took evidence of the representatives of the Ministry of Industry (Department of Industrial Development) regarding the Cement Control (Fourth Amendment) Order, 1977. On 23 May, 1983, the Committee took evidence of the representatives of the Ministry of Communications (Posts and Telegraphs Board) regarding the Indian Post Office (Third Amendment) Rules, 1974. The Committee desire to place on record their thanks to the officers of the Ministries for appearing before the Committee and furnishing the information desired by them.

7. The Committee considered and adopted this Report at their sitting held on 27 June, 1983.

The Minutes of the sittings which form part of the Report are appended to it.

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

II

CASES OF RECOMMENDATIONS WHEREIN ONLY INTERIM REPLIES HAVE BEEN RECEIVED FROM THE MINISTRIES

9. The implementation of the recommendations made by the Committee on Subordinate Legislation in their various Reports is pursued with the Ministries concerned till these are actually implemented by them. In a number of cases though the Ministries concerned accept, in principle, the recommendations made by the Committee; yet, in actual practice, such recommendations remain unimplemented on one pretext or the other. The Committee feel that it would be better for them to report such cases to Lok Sabha with facts intimating the latest position rather than keep them under correspondence indefinitely.

10. In this connection, unimplemented recommendations, which are old enough and in respect of which only interim replies have been received from the concerned Ministries, are given below.

(i) *The Public Premises (Eviction of Unauthorised Occupants) Rules*, 1971 (*GSR 1883 of* 1971)

11. Rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (G.S.R. 1883 of 1971) provided that in assess-

ing damages for unauthorised use and occupation of any public premises, the Estate Officer shall take into consideration the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person.

12. The Ministry of Works and Housing, who were asked to state whether any guidelines for determining the market rent have been laid down in the rules, stated as under:—

".....since Rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 involves the concept of market rent, which will depend upon the market at any given point of time, no guidelines have been or could possibly be laid down for determining the 'damages' for unauthorised use and occupation of public premises as these are bound to vary not only from place to place, but also from building to building in the same place.

However, so far as the general pool accommodation under the control of this Ministry is concerned, demand for damages is made on the basis of the undermentioned formulae which reflect the revision of the market rate of rent from time to time:—

(i) *For residential premises*:—Double the standard rent under FR 45-B, or double the pooled standard rent under FR 45-A, whichever is higher plus single departmental charges plus double the additional rent for additions and alternations if any, plus single other charges (e.g., service charges, garden charges; charges for scale furniture, extra furniture and electrical appliances) under FR 45-B including departmental charges.

(ii) *For office accommodation*:—For all permanent buildings in Delhi and New Delhi, market rate of licence fee for office accommodation is Rs. 100 per 100 sft. of carpet area per month and for office accommodation available in huts-ments, the rate is Rs. 50/- per 100 sft. of carpet area per month.

This is also in accordance with SR 317-B-22. which provides that the unauthorised occupant shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges equal to the market rent as may be determined by Government from time to time.

In any case where the damages so assessed are challenged by the unauthorised occupant before the Estate Officer appointed under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or before the Civil Court, the Department has to put forward material/evidence having regard to the principles of assessment of damages prescribed under Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 in support of its claim and the Estate Officer (or the Civil Court, as the case may) has to give a decision in the matter after taking into account all the circumstances of the case. It is accordingly considered that the existing practice may be allowed to continue, specially as no difficulty appears to have been experienced in the operation of the rule as it stands at present."

13. After considering the above reply of the Ministry, the Committee on Subordinate Legislation recommended in paragraph 86 of their Fifteenth Report (Fifth Lok Sabha), presented to the House on 15 April, 1975, as under:—

"The Committee do not agree with the views of the Ministry of Works and Housing that the existing practice may be allowed to continue since they have not experienced any difficulty in the operation of rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, as it stands at present. The Committee feel that it is necessary to lay down some guidelines to obviate the scope of discriminatory treatment. The Committee, therefore, recommend that the Ministry of Works and Housing should provide suitable guidelines in the aforesaid rules for determining the market rent rather than leaving it to the discretion of the Estate Officer."

14. In their action taken note, the Ministry of Works and Housing stated as follows:—

".....the recommendation made by the Committee on subordinate Legislation in para 86 of their 15th Report has been considered carefully. The guidelines for working out the rent under Rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 are

already there in the formulae mentioned in our O.M. No. 21011(2)73-Poly.IV dated 28-1-74* which have been found to be adequate. There is, therefore, no scope for exercising discretion by the Estate Officer or fear of discrimination. It will thus be observed that the recommendation of the Committee is already being substantially complied with.

The case has been seen by the Minister for Works, Housing and Parliamentary Affairs."

15. The Committee on Subordinate Legislation considered the whole matter at their sitting held on 29 September, 1977 and desired the Ministry of Works and Housing to furnish information on the following points:—

(i) Number of cases, year-wise, in which appeals were filed under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the orders of Estate Officer fixing damages for unauthorised occupation of public premises.

(ii) Number of cases in which the amount of damages was reduced in appeal.

(iii) Number of cases in which the orders of the Estate Officer were upheld in appeal.

16. The Ministry of Works and Housing were accordingly requested on 15 November, 1977 to furnish the requisite information for the use of the Committee on Subordinate Legislation.

17. As the Ministry of Works and Housing were experiencing certain difficulties in the matter of collecting the details of statistics asked for by the Committee, they pleaded that the same might not be insisted upon. The Ministry was, however, told that the information asked for by the Committee was still required and might be furnished urgently for being placed before the Committee. The Ministry accordingly addressed a Circular letter No. 21011(2)/73-Pol.IV dated 5 January, 1983 to all the Estates Managers/Assistant Estates Managers asking them to collect the details for being furnished to the Committee. The Ministry were reminded on 19 April and 16 May, 1983 to expedite the information. A reply from the Ministry in this regard is, however, awaited.

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*See Paragraph 12 above.

18. The Committee presented their Fifteenth Report (Fifth Lok Sabha) to the House on 15 April, 1975. The Committee considered the action taken reply of the Ministry of Works and Housing on 29 September, 1977. Not being satisfied with the reply, the Committee asked for certain more details in this regard. However, the same still remains to be furnished inspite of several reminders. The Committee cannot but express their unhappiness over the inordinate delay in implementing their recommendation and urge upon the Ministry to expedite the information without further delay to enable them to finalise the action taken on their recommendation which concerns such important matter as eviction of unauthorised occupants from public premises:

(ii) (a) The Indian Railway Traffic Service Recruitment Rules, 1968 (G.S.R. 2204 of 1968); and

(b) The Indian Railway Service of Engineers etc. Rules, 1971 (G.S.R. 550-555 of 1971).

19. Paragraph (d) of the Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968 provided as under:—

"Probationers should already have passed or should pass during the period of probation an examination in Hindi in the Devnagri script of an approved standard. This examination may be the 'Praveen' Hindi Examination which is conducted by the Directorate of Education, Delhi Administration, Examination Branch, or one of the equivalent examinations recognised by the Government.

No probationer may be confirmed or his pay in the time scale raised to Rs. 450/- per month unless he fulfils the above requirement, and failure to do so will involve liability to termination of service."

20. It was noticed that similar provision regarding passing of examination in Hindi had been made in the Recruitment Rules relating to the Indian Railway Service of Engineers, Electrical Engineers/Medical Engineers/Signal Engineers|Indian Railway Stores Services, etc.

21. The aforesaid provision did not appear to be in consonance with the spirit of sub-section (4) of section 3 of the Official Languages Act, 1963 which *inter alia* laid down that the rules to be framed by the Government under the Act shall ensure that the persons serving in connection with the affairs of the Union were not placed

at a disadvantage on the ground that they did not have proficiency in both languages (Hindi and English).

22. The Ministry of Railways, with whom the matter was taken up, stated in their reply as under:—

".....The matter has been considered in detail in consultation with the Ministry of Law. The Ministry of Law have given their advice which is reproduced below:

'Section 8 of the Act contains the power to make rules by the Central Government for purpose of the Act. Section 3(4) says that such rules made by the Central Government under Section 8 shall ensure that persons serving in connection with the affairs of the Union and having proficiency either in Hindi or in English languages may function effectively and that they are not placed at a disadvantage on the ground that they do not have proficiency in both the languages. Therefore, according to the Committee on Subordinate Legislation, the provision contained in para (d) of the Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968, wounds the spirit underlying the provisions of the Official languages Act because failure to pass, according to the paragraph, could involve termination of the Services of the employee.

In their comments the Department of Personnel and Administrative Reforms have stated that Hindi is one of the qualifying subjects prescribed in the IAS Probationers Final Examination, unless a Probationer passes the test in Hindi he is not confirmed in the IAS; again under the ICS (Probationary Service) Rules, 1940, a Probationer was required to offer for examination a vernacular language whom against his Province and the IAS (Probationers Final Examination) Regulations, 1955, are almost based on the lines of the ICS Rules, 1940.

In this connection, attention is invited to Rule 7 of the Indian Administrative Service (Probation) Rules, 1954, which says that every Probationer shall, during the course of training, appear at a final examination to be conducted by the Director in accordance with such regulations as the Central Govvernment may make in consultation with the State Government and the UPSC. The Indian Ad-

ministrative Service (Probationers Final Examination) Regulations, 1955 have been accordingly framed and Part II of the Regulations has prescribed Hindi as one of the qualifying tests except for candidates who are examined in Hindi as a regional language.

No doubt, in the rules prescribed by Railways mentioned above, a drastic consequence will visit an employee who fails to pass the Hindi test, that is his services will be terminated. It is felt that considering the spirit of the Official languages Act, such a drastic consequence appears to be out of context. In any event stipulation that a candidate should pass the Hindi test as is done in the case of Railway Service Rules for getting confirmed in the service, appears to be necessary to promote the objectives of the Official Languages Act itself.

It may also be mentioned that the Railway Services Rules mentioned above have been framed under the proviso of article 309 of the Constitution and not under Section of the Official Languages Act so as to ensure strict adherence to the provisions of that Act.

In the circumstances, the Railway Service Rules in question may be amended and the penalty of termination of services in case of candidate fails to pass a Hindi test, may be deleted.'.

The Ministry of Railways have carefully considered the advice given by the Ministry of Law and are of the view that the provision as it appears in paragraph (d) of the Appendix to the Rules may be deleted. However, in keeping with the broad spirit of the languages Act to encourage use of Hindi, it is proposed to issue administrative instructions that Hindi should be one of the subjects for the departmental examination of the probationers. This will be on the lines of IAS (Probationers Final Examination) Regulations, 1955."

23. After taking into consideration the above reply, the Committee on Subordinate Legislation, in paragraph 45 of their Twelfth Report (Fifth Lok Sabha), presented to the House on 10 May, 1974, observed as under:—

"The Committee are glad to note that the Ministry of Railways have decided to delete paragraph (d) of the

Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968, which provides penalty of termination of service in case a candidate fails to pass Hindi test. The Committee desire the Ministry to take necessary action to amend these Rules as well as Recruitment Rules relating to Indian Railway Service of Engineers etc. at an early date."

24. In their action taken note dated 10 May, 1977, the Ministry of Railways stated as under:—

"The question of deleting paragraph (d) of the Appendix to the Rules for the Indian Railway Traffic Service and the corresponding provision in the recruitment rules for the other established railway services and to incorporate a suitable provision on the lines of the rules for the IAS and IPS was examined in detail in consultation with the UPSC, the Ministry of Law and the Ministry of Home Affairs (Official Language Section). The Ministry of Home Affairs advised that it was decided in the meeting of the Central Hindi Committee held on 25-11-1975 that this question should be put up for consideration before the Parliamentary Rajbhasha Committee as a general question and that a status quo should be maintained till a decision is taken by that Committee."

25. In their subsequent communication dated 28 April, 1981, the Ministry of Railways (Railway Board) stated the latest position obtaining the matter as under:—

"The final decision in the matter has to be taken by the Department of Official Language in the Ministry of Home Affairs. They are being reminded periodically. They have advised that this issue is under the consideration of Parliamentary Committee on Official Language. After some recommendation is made, this will be intimated to the Ministry of Railways for amending the recruitment Rules of the Railway Services on those lines."

26. The Committee presented their Twelfth Report (Fifth Lok Sabha) to the House as early as 10 May, 1974. A period of more than nine years has since elapsed, but the implementation of the Committee's recommendation made in paragraph 45 of the said Report is still pending. The Committee cannot but express their grave concern over the inordinate delay in the matter of complying with their re-

commendations. The Committee feel that such prolonged indecisiveness on the part of the executive, besides diminishing the utility of the Committee's recommendations, results in continuance of the defects in the statutory rules most often resulting in unmitigated harm to the persons concerned. The Committee need hardly emphasize that the matter should not be postponed indefinitely and the lacunae and short comings from the rules should be eliminated without any further delay for which the Ministry have already agreed long back. The Committee would like responsibility to be fixed for such inordinate delay in implementing the recommendations.

(iii) *The Compensation Tribunal Order, 1974 (GSR 149-E of 1974)*

27. The Compensation Tribunal Order, 1974 was framed under the Defence of India Rules, 1971. The Defence of India Rules are required to be laid on the Table of Lok Sabha *vide* Section 35 of the Defence of India Act. It was felt that when the Defence of India Rules are required to be laid on the Table, the Compensation Tribunal Order which had been framed under the Defence of India Rules, should also be laid on the Table.

28. In paragraph 28 of their Seventh Report (Fifth Lok Sabha), presented to the House on 7 January, 1976, the Committee on Subordinate Legislation observed as under in this regard:—

> "The Committee are not convinced by the reply of the Ministry of Home Affairs that the Compensation Tribunal Order, 1974, is not required to be laid before Parliament as section 35 of the Defence of India Act, 1971, requires only the rules made under the Act to be laid before Parliament; and that orders either executive or statutory made under the Defence of India Rules are not required to be laid before Parliament. The Committee are of the view that when the principal rules are required to be laid before Parliament, all statutory orders made under the rules should also be laid on the Table. The Committee note in this connection that in the case of regulations framed under the Rules made under the All India Services Act, 1951, replying on the Judgement of Supreme Court in Narendra Kumar *vs.* Union of India (1960, SCR Vol. II, 375), the Ministry of Law and advised the of Home Affairs that regulations made by the Central Government should be taken to form an integral part of

the rules under the All India Services Act, and as such they were required to be laid before Parliament. The Committee, therefore, recommend that all statutory orders made under the Defence of India Rules should also be laid before Parliament."

29. In their action taken note dated 8 February, 1977 on the above recommendation, the Ministry of Home Affairs stated as under:—

".....the matter has been examined in detail in consultation with the Ministry of Law. Some difficulty is felt in implementing this recommendation totally. The stautory orders issued from time to time under various rules of the Defence and Internal Security of India Rules, 1971 consist of two types, *viz.*,

(1) Orders which constitute executive action under the powers provided for in the Rules; and

(2) Orders which are in the nature of providing further powers, or modifying the existing powers as was the case in the issue of the Compensation Tribunal Order, 1974.

This Ministry is of the view, with which the Ministry of Law agree, that in pursuance of the recommendation of the Committee on Subordinate Legislation, only orders of the second type need be laid before the Houses of Parliament. If this interpretation is accepted by the Committee on Subordinate Legislation, this Ministry may take either of the following two alternative courses of action in implementing the recommendations:—

(1) Collecting all the orders so far issued since 1971 by the various Ministries of the Central Government as also the State Governments so as to examine them and determine which of the orders fall in the second category so that all of them could be laid before Lok Sabha.

OR

(2) Taking steps to ensure that all orders issued henceforth which fall in the second category mentioned above are laid before Parliament, with reference to Section 35 of the Defence and Internal Security of India Act, 1971.

Lok Sabha Secretariat may kindly seek the advice of the Committee o Subordinate Legislation and inform this Ministry if the interpretation indicated in the preceding para is correct and if so, whether the second alternative suggested may be followed."

30. After taking into consideration the above reply of the Ministry, the Committee on Subordinate Legislation, in paragraph 38 of their Eighth Report (Sixth Lok Sabha), presented to the House on 26 April, 1978, observed as under:—

"The Committee have given a careful thought to the matter. They desire that all statutory orders issued by the Government under the Defence of India Rulss since 1st January, 1975 and which are still in force, should be laid before Parliament at the earliest."

31. In an interim reply dated 24 October, 1978, the Ministry of Home Affairs stated as under:—

".....the undersigned is directed to send herewith a list of orders issued under DISIR, 1971 during the period 1-1-1975 to 20-3-1977, according to information collected so far. A further communication will follow as soon as replies from a few defaulting Ministries/Departments are received."

32. The Ministry listed in all 73 Orders issued by various Ministries/Departments. In their subsequent communication dated 5 April, 1980, the Ministry forwarded the particulars of one more Order issued during the period from 1 January, 1975 to 20 March, 1977.

33. On 14 April, 1982 the Ministry of Home Affairs were again approached to state the action taken by Government to lay the statutory orders issued under the DISIR, 1971 before Parliament in pursuance of the Committee's recommendation to that effect. In response, the Ministry stated hat a copy of the recommendation of the Committee on Subordinate Legislation made in paragraph 48 of their Eighth Report (Sixth Lok Sabha) might be furnished to them urgently to enable them to take action in the matter. The Ministry were accordingly supplied with the requisite extracts of the Committee's recommendation.

34. In their communication dated 22 June, 1982, the Ministry of Home Affairs stated as under:—

> ". . . Section 3 of the Defence of India Act, 1971 provided that it would remain in force during the period of a operation of the proclamation of emergency and a period of six months thereafter. The proclamation of emergency was revoked in March, 1977. It is presumed that DISIR and the orders issued thereunder would also have lapsed simultaneously with the lapsing of the Defence of India Act 1971 in September, 1977. In other words all the Statutory Orders issued under DISIR since 1-1-1975 would have ceased to be in force simultaneously with the lapsing of Defence of India Act, 1971 and the DISIR in September, 1977. If this presumption is correct, then none of the orders issued since 1-1-1975 is required to be laid on the Table of Lok Sabha. Lok Sabha Secretariat is, therefore, requested to clarify the position as early as possible."

35. The matter was then referred to the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for eliciting their opinion. In the light of the advice given by the Department of Legal Affairs, the Ministry of Home Affairs were informed in the matter as follows:—

> ". . . In terms of Sub-section (3) of Section 1 of the Defence and Internal Security of India Act, 1971 [as amended by the Defence of India (Amendment) Act, 1975], the operation of the sub-section on the expiry of the Act shall not affect the actions, investigations, etc. specified thereunder. It is, therefore, felt that with the revocation of he Proclamation of Emergency in March, 1977 or with the lapse of DISIR in September, 1977, the statutory orders issued under DISIR do not totally cease to be in existence until this particular sub-section of the Act is repealed. This view has been confirmed by the Department of Legal Affairs of the Ministry of Law. . . .
>
> It is also felt that there may still be some cases, wherein the Act or the rules or the orders made thereunder may still be alive for certain purposes. The Ministry of Home Affairs are, therefore, requested to comply with the recommendation of the Committee on Subordinate Legislation made in paragraph 38 of their Eighth Report (Sixth Lok Sabha), which was presented on 26 April, 1978,

without any further delay and communicate the action taken to this Secretariat so that the Committee on Subordinate Legislation is able to report the matter to the House."

36. The Committee observe that as early as January, 1976, they had recommended that all statutory orders framed under the Defence of India Rules should be laid before Parliament. The Committee reiterated the recommendation in their Eighth Report (Sixth Lok Sabha), presented to the House on 26 April, 1978. Even after a protracted correspondence for over seven years, the Ministry of Home Affairs have not been able to lay the statutory orders on the Table of Parliament despite categorical findings of the Committee in this regard. The Committee cannot but express grave concern over the inordinate protracted delay in complying with their recommendations. The Committee re-stress that such delays over a long period in laying are contrary to the spirit of the relevant provisions in the Acts which require that the Orders should be laid before Parliament as soon as possible after they are made. The Ministries/Departments exercising rule-making powers should bear in mind that generally the rules become operative as soon as they are published, but Parliament's statutory right of modification/annulment, in terms of the parent statutes, becomes exercisable only after they are laid before it. Unjustified delays such as the one in the present case inevitably result in depriving the Parliament of their statutory right of modification/annulment for unduly long periods.

37. The Committee, therefore, again reiterate their recommendations and desire that the Ministry should lay the requisite orders on the Table of the each House of the Parliament without any further loss of time.

(iv) Publication and Laying of Rules and Regulations framed under the Indian Railways Act, 1890.

38. Apart from rules and regulations framed under Sections 27, 29 and 42 of the Indian Railways Act, rule making power has also been vested in Government under Sections 22, 47, 71E, 82J and 84 ibid. Only one of these sections, viz., Section 82J provides for both publication of the rules framed thereunder and their laying before Parliament. Section 47 provides for publication of the Rules in the Gazette but not for their laying before Parliament. The other Sections provide neither for publication nor for their laying.

39. The Committee on Sub-ordinate Legislation (Fifth Lok Sabha) after considering the matter in all aspects, observed in paragraph

32 of their First Report that both in the interest of wider publicity and Parliamenary control over subordinate Legislation, it was 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, recommended that Government should suitably amend the Act to this end.

40. In their reply dated 9 October, 1973, the Ministry of Railways (Railway Board) inter-alia stated that they had embarked upon a detailed and comprehensive review of the Indian Railways Act, with a view to bringing it in consonance with present day conditions and making it a more flexible istrument of regulation. The question of rules and regulations made by the Central Government in exercise of the powers conferred on it by the Act would naturally be gone into as a part of that review. Meanwhile, the Ministry of Railways would, without waiting for a statutory requirement to that effect being inscribed in the Act, undertake to 'lay' rules and regulations framed by them in exercise of their rule-making powers under Section 22, 47, 71E and 84. Section 82J already provided for the rules framed thereunder being laid before each House of Parliament.

41. In a further communication dated 3 November, 1973, the Ministry of Railways pointed out that only a very few copies of the 'General Rules for all open Lines of Railways in India administered by the Government, 1929', framed under Section 47 of the Indian Railways Act, were available for official use. The Ministry, therefore, proposed to furnish two completely upto-date copies of the said Rules to the Parliament Library for reference. The Ministry, however, assured that copies of any future amendments to these rules would be duly placed before the Parliament. The Ministry added that as and when a revised version of these rules was brought out, it would be laid before Parliament.

42. Having considered the aforesaid replies of the Ministry, the Committee on Subordinate Legislation, in paragraph 217 of their Twelfth Report (Fifth Lok Sabha), presented to the House on 10 May, 1974, observed as under:—

> "The Committee note with satisfaction the reply of the Ministry of Railways that a detailed and comprehensve review of the Indian Railways Act with a view to bringing it in consonance with the present conditions has been undertaken and the question of making suitable provision for the laying of Rules and Regulations framed under the Act

would also be gone into as a part of the review. The Committee are also glad to note that the Ministry would be laying Rules and Regulations framed by them in exercise of the rule-making powers under Sections 22, 47, 71-A and 84 of the Railways Act without waiting for statutory requirement to that effect. The Committee desire the Ministry to expedite action for amending the Act at an early date."

43. In their action taken note dated 10 May, 1977, the Ministry of Railways (Railway Board) stated as under:—

"The draft of the revised Indian Railways Act is under consideration and is being finalised in consultation with the Ministry of Law, Justice and Company Affairs."

44. In their subsequent communication dated 28 April, 1981, the Ministry of Railways (Railway Board) stated the latest position obtaining in the matter as under:—

"The Indian Railways draft Bill, 1981 for amending the Indian Railways Act, 1890 has been sent to the Ministry of Law together with other documents like Cabinet Summary, explanatory memorandum, memorandum of delegated legislation etc., on 23-3-1981 for their further scrutiny and processing. The Ministry of Law has been requested to obtain Cabinet's approval to the proposed legislation and take necessary steps for drafting of the Bill and for its introduction in the current Session of Parliament."

45. In their latest communication dated 19 May, 1983, the Ministry of Railways stated as under:—

"..... the review of the Indian Railways Act 1890 with the object of replacing it with a new legislation is at an advanced stage. The Ministry of Railways have sent the draft Bill and the draft Summary for the Cabinet for scrutiny and vetting by the Ministry of Law, Justice and Company Affairs. On receipt of the clearance from the Law Mnistry, further steps for introduction of the Bill in the Parliament, after obtaining the approval of the Cabinet, shall be taken. Close liaison is being maintained with the Ministry of Law, Justice and Company Affairs with a view to have the matter expedited."

46. The Committee note that the matter is pending with the Ministry of Railways since 10 August, 1971 when the Committee made

their First Report (Fifth Lok Sabha) recommending for the amendment of the Indian Railways Act, 1890 with a view to provide for laying and publication of all rules and regulations made thereunder. Since the Ministry co-related the amendment with their comprehensive review of the Act in all its aspects, the matter has been getting delayed year after year. It is indeed distressing that it has taken the Ministry almost twelve years to process the review of the Act and still it is not precisely known as to when it will actually be brought before Parliament in the near future. Such prolonged indecisiveness and dilatory processes are bound to result in avoidable continuance of the defects in the Legislation and more often than not, result in unintended harm to the cause and objects in view.

47. The Committee would stress with great emphasis upon the Ministry to bring forth immediately before Parliament an exclusive piece of legislation for incorporating the requisite laying and modification provisions in the Indian Railways Act 1890 within three months of the presentation of this Report, if the proposed comprehensive Bill is further delayed for any reasons whatsoever.

III

CASES OF RECOMMENDATIONS WHEREIN GOVERNMENT HAVE EXPRESSED THEIR INABILITY TO IMPLEMENT

48. The Committee have made a number of recommendations in their various Reports presented to the House during the Fifth, Sixth and Seventh Lok Sabha and have subsequently pursued with the Ministries|Departments concerned the implementation of these recommendations. In respect of the following recommendations, the Ministries concerned in their Action Taken Notes on these recommendations have expressed their inability to implement them.

(i) *The Mineral Concession (Second Amendment) Rules, 1971 (G.S.R. 1580 of 1971)*

49. Rule 16 of the Mineral Concession Rules, 1960, as it stood prior to amendment, read as under:—

> *"Report of information obtained by licensee*—The licensee shall submit *confidentially* to the State Government within one month of expiry of the licence or abandonment of the operations or termination of the licence, whichever is earlier, a full report of the work done by him and disclose all information acquired by him in the course of prospecting operations, regarding the geology and mineral resources of the area covered by the licence."

50. Rule 16, as substituted by the Mineral Concession (Second Amendment) Rules, 1971, read as follows:—

> "*Report of Information obtained by licensee*—The licensee shall submit *confidentially* to the State Government, a quarterly report of work done by him stating the number of persons engaged and disclosing the geological and geophysical and other valuable data collected by him during the period and also submit to the State Government within three months of expiry of the licence or abandonment of the operations or termination of licence, whichever is earlier, a full report of the work done by him and all other relevant informations acquired by him in the course of prospecting operations in the area covered by the licence."

51. The Ministry of Steel and Mines (Department of Mines), who were requested to state (i) the reasons for having the above information from the licensee confidentially, and (ii) whether there was any provision in the Rules enjoining upon the licensee to keep the information confidential, had stated as follows:—

> "Rule 16 of the Mineral Concession Rules, 1960 is a modified version of Rule 25 of the Mineral Concession Rules, 1949 which is reproduced below:—
>
> '25. *Report of the information obtained by licensees.*—The Licensee shall, before the deposit made under Rule 19 is returned to him, submit *confidentially* to the State Government a full report of the work done by him, and.....
>
> In other words, the word 'confidentially' was there in the rules since the date of promulgation of Mineral Concession Rules, 1949 for the first time in India in October, 1949.
>
> The grant of a prospecting licence is a privilege and as such the reports to be submitted by the Licensees under rule 16 and clause 17(A)—From 'F' of Schedule I are treated as confidential to eliminate misuse of the privilege. The information collected by the Licensee during the period of prospecting licence contains the nature of reserves and the potentialities of the area concerned and it is, therefore, incumbent on the part of the Licensee to keep it confidential."

52. After careful consideration of the above reply the Committee observed in paragraph 119 of their Eleventh Report (Fifth Lok Sabha) presented to the House on 9 May, 1974 as under:—

> "The Committee are not convinced by the arguments given by the Ministry of Steel and Mines (Department of Mines) for having the information confidentially from the licensee regarding geology and mineral resources of the area covered by him. The Committee note that there is no provision in the Rules to ensune that the licensee will keep the information confidential. They desire the Ministry to re-examine the need for retaining the above stipulation in Rule 16 of the Mineral Concession Rules, 1960."

53. In their action taken note dated 26 June, 1978 on the above recommendation of the Committee the Ministry of Steel and Mines (Department of Mines) stated as under:—

> ". . . . . The intention behind the provision made in Rule 16 of the Mineral Concession Rules, 1960 requiring a licensee to submit the report of the prospecting work done by him to the State Government 'confidentially' is primarily to protect the interest of the licensee. A licensee, during the course of prospecting operation, obtain valuable information regarding the ore. the mode of occurence, attitude, likely extent of mineralization, grade etc. and other lithological control for mineralization at considerable expenses of money, labour as well as time. By virtue of such input of work done in a particular area, he decides and selects certain portion of the area for mining lease. It may happen that the area prospected by him may give certain clue depending upon the lithological features, and other structural control of mineralisation that the possible extension of mineralized portion is expected outside the area held under prospecting licence; and he may like to abandon the present prospecting area and acquire the neighbouring area with likely potentialities. This information he gains at considerable expense and as such if the information so acquired by him is disclosed to his competitiors, it may adversely affect his interest. It is only for this reason the rule 16 provides that the report of prospecting submitted to the State Government should be kept confidential.

The provision of rule 16 serves twin measures, (i) it infuses the confidence in the licensee to disclose all the information obtained by him during the course of prospecting, and (ii) the State Government in turn acquired more knowledge about the potentialities of the area at the expense of enterpreneurs. As said before, the provision in rule 16 *prima facie* has been made to protect the interest of the licensee only and in case if he himself wants to disclose there should be no objection from the State Government. Therefore, the question of ensuring that the licensee will keep the information confidential does not arise in this case.

It is not only in India that a provision has been made to keep prospecting reports confidential for sometime; but it is universal practice. The relevont extracts reproduced from the 'proceedings of the Seminar on Mining Legislation and Administration', organised by the ECAFE and a Review entitled 'Government Measures pertaining to the Development of Mineral resources on the Continental Shelf' prepared by the United Nations Secretariat for the Committee on the peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction will clearly indicate the universal practice of keeping the information obtained from the licensees as confidential:

(1) '69. Other obligations of a mineral rights holder were periodical reports to the Department of Mines, dealing with technical and statistical data and including his balance sheet and annual production report. The miner had to declare any opening of workings, keep up-to-date records and possess a sufficiently large-scale map of the operations.

70. It would be preferable to keep a clear distinction between information of a confidential nature and that which could be published. Confidential reports had to remain restricted at least for an agreed period of time, *in order to retain the miner's trust and his confidence regarding future reports.*

[Page 8 of the Proceedings]

'19. In addition, legal provisions relating to mineral development on the continental shelf usually include

the obligation of licensed operators to communicate to the responsible national authorities basic data obtained from their operations; this information is usually confidential and not made public nor divulged without the written consent of those concerned and/or only after the expiration of an agreed number of years.'

[Page 8 of the Review]

In view of the position explained above, it will be seen that the main intention of the rule is to reassure the licensee and thereby encourage him to disclose information in full. A suitable amendment to the rule to bring out this intention even more clearly than at present is under consideration."

54. In their subsequent communication dated 1 April, 1980, the Ministry further stated as under:—

". . . . ' keeping in view the recommendation made in para 119 of Eeventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha), rule, 16 and corresponding clause 17A, in part II, of Form F in Schedule I of the Mineral Concession Rules, 1960 have since been substituted *vide* this Ministry's notification No. 1(9)/78-MVI/MM* dated 31-5-1979. . . . "

55. The matter came up before the Committee on Subordinate Legislation on 8 and 24 July, 1981. The Committee decided to hear evidence of the representatives of the Ministry of Steel and Mines (Department of Mines) in the matter.

56. The representatives of the Ministry appeared before the Committee on October, 1981 and tendered evidence with respect to implementation of the Committee's recommendation made in paragraph 119 of Eleventh Report (Fifth Lok Sabha) relating to the amendment made by G.S.R. 1580 of 1971 in Rule 16 of the Mineral Concession Rules, 1960.

57. Explaining the rationale behind the amendment made in Rule 16 of the Mineral Concession Rules, the representative stated that before a mining lease was granted, a person was given the prospecting lease for two years. After the completion of the period of prospecting lease, the licensee could apply for a final lease, if he

*Appendix II.

so liked. The prospecting licence cast upon the holder thereof an obligatiin to submit a quarterly report to the State Government mentioning the amount of work done and the data obtained by him. When the prospecting licence was completed, the licensee was required to submit a final report. The State Government as the owner of the minerals was entitled to know what was contained in that particular area. As the prospecting licensee puts in money, men and efforts during the prospecting mining, with a view to safeguarding his interest against undue competition, the licensee was given the option to indicate in his report whether the whole or a part thereof should be kept confidential to protect his own interests. The information could at the most be kept confidential for a period of two years only. If the State wished to throw the area open to a mining lease, the prospecting licensee had to be given preference in the grant of the mineral licence under the Act.

58. When asked as to how it was ensured that the information furnished by the licensee was correct, the representative stated that the State Department of Mines and Geology could depute persons to inspect the operations on the spot. The Indian Bureau of Mines and the State Department of Mines and Geology were well-equipped. The Indian Bureau of Mines had a system of inspection of mines. The Bureau had access to different working mines. However, a prospecting licence was alltogether different. A prospecting licensee did detailed exploration to establish the potential of the minerals in a limited area.

59. Regarding the procedure for issue of a prospecting licence, the representative stated that the Central Act was administered by State Governments also. The applications for licence were made to the respective State Governments who were the owners of the minerals. It was not obligatory on their part to send the confidential reports of the licensees to the Indian Bureau of Mines.

If the Central Government wished to have a report on a particular lease area, they could call it from the State Government.

60. When asked whether the mining was a Central or State subject, the representative stated that it was a State subject. However, in respect of the 6 minerals enumerated in the First Schedule to the mines and Minerals Regulations Act, the State Government could issue licence only after prior approval of the Central Government. The State Government receive applications for mining leases of these specific minerals and then sent their recommendations to

the Central Government for acceptance. In the case of major minerals, the royalty rates could not be fixed by the miners.

61. During the course of evidence, the representatives promised to furnish written information on the following points:—

(i) The number of licences issued by the State Governments with prior approval of the Central Government during the years 1979 to 1981;

(ii) Whether any confidential reports as furnished by the prospecting licensees had been received by the Central Government; and

(ii) The manner in which the reports furnished by the prospecting licensees were being kept confidential.

62. The Committee, thereafter, decided to postpone further consideration of the matter till the information promised by the representatives of the Ministry of Steel and Mines (Department of Mines) was received and gone through.

63. In their communication dated 10 February, 1983, the Ministry of Steel and Mines (Department of Mines) stated as under:—

"During the Proceedings, the Committee wanted to know the number of prospecting licences issued by the various State Governments during 1979, 1980 and 1981 and also the number of cases in which confidential reports were sent as required under rule 16 of the Mineral Concession Rules, 1960. The Committee also wanted to know whether on any occasion the Department of Mines had called for such confidential reports from the State Governments. Besides, the Committee also wanted to know the scrutiny that is done at the Central Government level in the proposals from the State Government for grant of prospecting licence.

The information regarding the number of prospecting licences granted by the State Governments during the 3 years 79, 80 and 81 and the reports submitted by the licensees under rule 16 of the MCR 1960 have been obtained from the State Governments. The comments of the State Governments regarding the necessity of keeping such a report confidential were also called for.

The majority of the State Government/Union Territories have furnished nil information with regard to grant of prospecting licences. These are Arunachal Pradesh, Haryana, Nagaland, Mizoram, Chandigarh, Dadra and Nagar Haveli, Kerala, Himachal Pradesh, Meghalaya, Uttar Pradesh, Lakshdweep, Sikkim, Andaman and Nicobar, Delhi, Pondicherry, Goa, Daman and Diu, Tamil Nadu, West Bengal and Punjab. In the remaining States save Bihar about 363 prospecting licences have been granted during the years 1979, 1980 and 1981 and in 31 cases only (pertaining to Gujarat—21, Orissa—7 and Andhra Pradesh—3) reports have been submitted under rule 16 of the said Rules. Bihar Government has furnished no details stating that the reports of the licensees are submitted incomplete and that they contain no worthwhile information.

The Government of Madhya Pradesh, Orissa, Haryana, Punjab, Bihar and Karnataka do not see any justification in keeping the reports or parts thereof as confidential, while those of Andhra Pradesh, Rajasthan, Jammu and Kashmir, Gujarat, Maharashtra, Assam and West Bengal have expressed the view that these should be kept confidential. The Government of Tripura and Nagaland have commented that they should have the power to use their discretion. These State Governments also differ about the period and the circumstances under which these reports should be kept confidential.

In the returns submitted to the State Government under rule 16, the licensees generally have not expressed any specific desire that these returns or part thereof should be kept confidential.

In so far as Central Government is concerned only such cases are referred to it by the State Government as pertain to minerals specified in the First Schedule to the Mines and Minerals (Regulation and Development) Act, 1957 and require its previous approval under Section 5(2) or which are not disposed of by the State Governments within the prescribed period and require setting aside of deemed rejection. In the case of references which pertain to

scheduled minerals, the following scrutiny is generally made:—

(i) that area applied for is not reserved and is available for grant;

(ii) in the case of simultaneous applications, the State Government has selected the right applicant for granting the prospecting licence as per the guidelines laid down in the Act;

(iii) the area applied for is free from any litigation;

(iv) the mineral applied for is such for which, as per Government policy, licences can be granted to private parties (if the applicant happen to be a private party);

(v) the State Government has satisfied itself that the applicant fulfils all the Qualifications laid down in the Act and rules for grant of PL; and

(vi) The area applied for is not required for exploitation in Public Sector.

The Central Government only consider such cases as are referred to it by the State Government and had not felt any need for calling for a report submitted by the licensee under Rule 16.

It may be seen that there is no agreement on the part of the State Governments on the question of keeping the reports confidential. However, this Deptt. would like to reiterate their earlier stand that in the interest of the licensee who has spent considerable time, money and energy in prospecting and area any information that he reports to the Government should be kept confidential at least for specified limited time. The information can be disclosed after the expiry of the said period or if the licensee has not applied for renewal of the prospecting licensee or for a mining lease for the area earlier prospected.

64. The Committee observe that a licensee, during the course of his prospecting operation, obtains valuable information regarding the ore, the mode of occurrence, attitude, likely extent, grade, other lithological and structural control of mineralization at considerable expense of money, labour as well as time. With the fear

of disclosure of such valuable data to his competitors, he may not like to part with the full facts in his reports to the State Government. With the result, the State Government will be deprived of this valuable information about the mining area already explored by the prospecting licensee. To do away with such a situation, it has since become a universal practice that the confidential reports are to remoin restricted at least for an agreed period of time, in order to retain the miner's trust and his confidence regarding future reports.

65. The Committee note from the reply of the Ministry of Steel and Mines (Department of Mines) that the provisions in Rule 16 of the Mineral Concession Rules are intended to infuse the confidence in the licensee to disclose all the information obtained by him during the prospecting mining to the State Government to enable them to assess the potentialities of the area. To make this intention abundantly clear, Rule 16 and the corresponding Clause 17A in Part II of Form F in Schedule I of the Mineral Concession Rules, 1960 have accordingly been amended vide G.S.R. 835 of 1979.

66. In view of the above, the Committee do not press for implementation of their recommendation and accept the position as stated by the Ministry.

(ii) The Central Industrial Security Force Rules, 1969 (S.O. 463 of 1969)

67. Rule 23 of the Central Industrial Security Force Rules, 1969, provided as under:—

> *Powers of Inspector General to frame Regulations.*—The Inspector General may from time to time for the proper administration of the force frame and issue regulations with the approval of the Central Government, and the supervisory officers and the members of the Force shall as a condition of their service, be governed by such regulations in the discharge of their duties.

68. The above provision was tantamount to sub-delegation of legislative power for which there was no express authority in the Central Industrial Security Force Act, 1968.

69. The matter was referred to the Ministry of Home Affairs and after considering their reply, the Committee on Subordinate Legis-

lation (Fifth Lok Sabha) had recommendation in para 64 of their Seventh Report (Fifth Lok Sabha), as under:—

"The Committee are not convinced by the reply of the Ministry of Home Affairs that Rule 23 of the Central Industrial Security Force Rules, 1969, which empowers the Inspector-General to frame and issue regulations for the proper administration of the force is based on Section 7(1) of the Central Industrial Security Force Act, 1968. Section 7(1) of the Central Industrial Security Force Act, 1968, states as under:—

'The superintendence of the Force shall vest in the Central Government, and subject thereto the administration of the Force shall vest in the Inspector General and shall be carried on by him in accordance with the provisions of this Act, and of any rules made thereunder:

'This section requires the Inspector-General to carry on the administration of the Force in accordance with the provisions of the Act and the Rules made thereunder and does not empower him to frame regulations for that purpose. The Committee are, therefore, of the opinion that sub-delegation of the legislative power to the Inspector-General under Rule 23 is not authorised by the parent Act. The Committee desire the Ministry to delete this Rule from the Central Industrial Security Force Rules."

70. In their action-taken note on the above recommendation of the Committee, the Ministry of Home Affairs had stated as under:—

". . . this Ministry is in agreement with the views of the Committee on Subordinate Legislation in regard to Rule 23 of the CISF Rules, 1969, as such, this Ministry has substituted this rule with another rule similar to rule 4 of the CRPF Rules, 1955 . . .

The substituted rule 23 reads as under:—

"Powers of the Central Government and certain officers of the Force.—In all cases not specifically provided for in these rules, the instructions issued from time to time by the Central Government or the Inspector-General or the Deputy Inspector-General shall regulate the working of the Force."

71. After considering the above reply of the Ministry, the Committee had reiterated their earlier recommendation mode in para-64 of their Seventh Report and observed in paras 108—110 of Fifteenth Report (Fifth Lok Sabha) as under:—

"The Committee are surprised to note that the Ministry of Home Affairs, instead of deleting rule 23 of the Central Industrial Security Force Rules, 1969, as recommended by the Committee in para 64 of their Seventh Report (Fifth Lok Sabha), have substituted it by another rule 4 on the lines of rule of the Central Reserves Police—Force Rules, 1955. Under the new Rule 23 the Central Government as well as the Inspector-General or the Deputy Inspector-General have been empowered to issue instructions for regulating the working of the Force. In the opinion of the Committee, the effect of the new rule, which again is not backed by an express authorisation in the parent Act, remains the same; only there has been a change in terminology. The new rule 23 is thus open to the same objection as the original rule 23.

The Committee, therefore, reiterate their earlier recommendation made in para 64 of their Seventh Report (Fifth Lok Sabha), in which they had desired the Minister of Home Affairs to delete rule 23 from the Central Industrial Security Force Rules, 1969. In case, it is considered necessary to empower the Central Government or Inspector-General or Deputy Inspector-General to issue instructions for regulating the working of the Force, the Committee desire that the Ministry of Home Affairs should come before Parliament with a suitable amendment to the Central Industrial Security Force Act, 1968, to obtain this power.

The Committee further desire that rule 4 of the Central Reserve Police Force Rules, 1955, on the lines of which rule 23 of the Central Industrial Security Force Rules, 1969, has now been amended, should also be deleted, or, in the alternative, similar action should be initiated to amend the Central Reserve Police Force Act, 1969, on the lines suggested above."

72. The Ministry of Home Affairs have not accepted the above recommendations of the Committee, and have stated in their reply as follows:—

"....the existing rule of the Central Industrial Security Force Rules, 1969, authorises the Central Government, the Inspector General and the Deputy Inspector General to issue instructions to regulate the working of the Force. This provision will have to be interpreted with reference to the provisions contained in the CISF Act, 1968, particularly those contained in section 22 (1) and section 7. Section 22 (1) confers on the Central Government, the general power regarding making of rules for carrying out the purposes of the Act. The settled legal position indicate that the particular provisions contained in different clauses under sub-section (2) of Section 22 of the Act will not limit the general rule-making power contained in sub-section (1). Attention is invited to Emperor Vs. Shiv Nath Banerjee reported in AIR 1945 P.C. 156. Apart from this, clause (b) of sub-section (2) of section 22 authorises making of rules regulating the powers and duties of supervisory officer. The expression 'Supervisory Officer' as defined in clause (1) of sub-section (1) of section 2 means officer appointed under section 4. Section 4(1) provides for appointment of Inspector General and Deputy Inspectors General. As provided under section 7, the Superintendence of the force shall vest in the Central Government and administration of the Force shall vest in the Inspector-General. Under section 7(2) the administrative of the Force within prescribed limits shall be carried out among others by the Deputy Inspector General. Therefore, the provisions contained in sub-section (1) and clause (b) of sub-section (2) of Section 22 read with those contained in section 7 of the Act are the genesis of the existing rule 23.

It is true that neither section 22 nor any other provision of the Act authorises sub-delegation of the legislative functions but the provisions maintained and position indicated above clearly show that the instructions which can be issued either by the Central Government or by the IG or AIG can only be administrative or executive in nature. No instructions which are legislative in nature can be issued within the scope of the rule. While exercising superintendence or doing administration of the Force as envisaged under section 7 of the Act, there may be necessity to issue

administrative or executive orders or instructions on matters not covered by the rules. The existing rule 23 only provides for these powers for the purpose of day to day functioning of the administration. The instructions or orders issued under rule 23 cannot, therefore, have equal status to the statutory rules and as such, the provision of rule 23 cannot be deemed to be as excessive delegation. It is therefore, necessary to continue it to be operative."

73. The Committee note from the reply of the Ministry of Home Affairs that the instructions to be issued by the Central Government or the Inspector General or the Deputy Inspector General under Rule can only be administrative or executive in character for the purpose of day to day functioning of the administration as envisaged under Section 7 of the CISF Act, 1964 and no instructions which are legislative in nature can be issued within the scope of Rule 23.

The Committee would not like to press their recommendation in view of the reasons advanced by the Ministry of Home Affairs.

(iii) (a) *The Punjab State Agricultural Marketing Board and Market Committee (Reconstitution and Reorganisation) Order* 1969 (*S. O.* 3021) *of* 1969); *and*

(b) The *Punjab Zila Parishads Panchayat Samities and Gram Sabhas (Reconstitution and Reorganisation) Order* 1969 (*S.O.* 2933 *of* 1969).

74. Clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969, provided as under:—

"*Provisions relating to employees of Market Committees*— Every employee of an existing Market Committee holding office immediately before the appointed day shall be allotted to such successor Market Committee in whose jurisdiction the Headquarters of the existing Market Committee falls.

Provided that the employees working in a principal yard or sub-yard shall be allotted to the successor Market Committee in whose jurisdiction such yard falls on the appointed day.

Provided that the condition of the service applicable immediately before he appointed day to the case of any such

employee of the existing Market Committee, shall not be varies to his disadvantage except with the previous approval of the successor Government concerned."

75. A similar provision existed in clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969.

76. The Inter-State Corporations Act 1957 under which the above-mentioned orders were issued did not specifically empower the Government to vary the conditions of service of an employee to his disadvantage.

77. The Committee after considering the reply of the Ministry of Home Affairs, recommended in para 24 of their Eighth Report (Fifth Lok Sabha) as under:—

"The Committee are not convinced with the reply of the Ministry of Home Affairs that the provision to clause 14 of the Punjab State Agricultural Marketing Board and Market Committee (Reconstitution and Reorganisation) Order, 1969 and clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabha (Reconstitution and Reorganisation) Order, 1969 under which the conditions of service of an employee can be varied to his disadvantage with the approval of the successor Government are within the provisions of Section 4(2)(f) of the Inter-State Corporation Act, 1957.

Section 4(2)(f) of the Inter-State Corporations Act 1957 merely reads as follows:—

'(4) An order made under sub-section (1) may provide for all any of the following matters,

* * * *

(f) the transfer or re-employment of any employee of the Inter-State Corporation to or by any such transferee and subject to the provisions of section 111 of the State Re-organisation Act, 1956 the terms and conditions of service applicable to such employees after such transfer or re-employment.'

Section 4(2)(f) of the Act as worded does not empower the successor Market Committee to vary the conditions of

service of employees allotted to it. The Committee are therefore of the view that the existing conditions of Service of an employee should not be varied to his disadvantage and desire the Ministry of Home Affairs to amend the Order suitably."

78. After taking into consideration the reply of the Ministry of Home Affairs to the above recommendation, the Committee observed as follows in para 115 of their Fifteenth Report (Fifth Lok Sabha):—

"The Committee note that the Ministry of Home Affairs have admitted in their reply that Section 4(2) (f) of the Inter-State Corporations Act, 1957, under which the aforesaid 'Orders' have been issued, does not specifically empower the successor Corporation to vary the conditions of service to the disadvantage of the employees allotted to it. The Committee, therefore, reiterate their earlier recommendation made in para 24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage. The Committee desire that the Ministry of Home Affairs should take early action to amend both the sets of 'Orders' accordingly."

79. The Ministry did not agree with the above recommendation of the Committee. In their action taken note the Ministry of Home Affairs stated as under:—

"The recommendations of the Committee on Subordinate Legislation (Fifth Lok Sabha) in paragraph 115 of their Fifteenth Report have again been examined carefully in consultation with the Ministry of Law. It appears that the true scope and effect of the two provisos in clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Re-organisation) Order, 1969, and clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969, has not been brought home to the Committee on Subordinate Legislation.

The Committee has proceeded on the assumption that it is these provisos which empoyer the successor Corporations to vary the conditions of service, to their disadvantage, of the employees allotted to them. In fact, the power to regulate or vary the conditions of service of such em-

ployees vests with the successor Corporations under sections 20 and 43 of the Punjab Agricultural Produce Markets Act, 1961, Sections 33, 34, 36 and 115 of the Punjab Panchayat Samitis and Zila Parishads Act, 1951 and sections 16, 17, 18 and 101 of the Punjab Gram Panchayat Act, 1952 and the rules framed thereunder. These laws still continue to be in force in the respective territories by virtue of the provisions of the section 88 of the Punjab Reorganisation Act, 1966.

The condition under the two Central Government Orders to the effect that the conditions of service applicable immediately before the appointed day to the employees shall not be varied to their disadvantage except with the previous approval of the successor Government can be compared to analogous provisions with respect to State Government employees affected by the Reorganisation, as contained in sub-section (6) of section 82 of the Punjab Reorganisation Act, 1966 and the earlier provisions in sub-section (7) of section 115 of the States Reorganisation Act, 1956, whereunder previous approval of the Central Government was required for variation of the conditions of service to their disadvantage of the allocated Government employees. In the instant case of the two Central Government Orders issued under section (2) (f) of the Inter-State Corporations Act, 1957, the approval of the successor Government is prescribed, as the employees concerned are those otherwise governed by the Punjab, Agricultural Produce Market Act, 1961 Gram Panchayat and Zila Parishads Act, 1961 etc., which confer powers of appointment promotion, disciplines, etc. of the employees on the Panchayat Samitis, Zila Parishads or the Agricultural Board and Market Committees as the case may be.

It would thus be seen that the intention of the proviso in the Orders issued under the Inter-State Corporations Act, 1957 is really to safeguard the interests of the employees allocated to the successor Corporation in the matter of conditions of their service against unilateral action by the Corporations concerned in the successor States. The State Government already exercise control through the provisions and rule-making powers, under the respective Acts in the matter of service conditions of the employees.

In the circumstances the second proviso to paragraph 14 of the Punjab State Agricultural Marketing Board and the Market Committees (Reconstitution and Reorganisation) Order, 1969 and the first proviso to paragraph 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969, should not be construed as clothing the State Government with any additional powers, and are in fact in the nature of the limitations upon the exercise of powers already available to the concerned bodies under the relevant State Enactments.

It is pertinent to mention that the recommendations of the Committee on Subordinate Legislation, if implemented would be unintended results inasmuch as there would be no check on the Corporations in dealing with the service conditions of allocated employees and in a situation where such conditions are to be brought on par with conditions appliable to employees who join the service of the Corporations after the date of issue of Orders, the Corporations would not be under an obligation to take the approval of the State Government."

80. The Committee note from the reply of the Ministry of Home Affairs that the second provisos to Clause 14 of the Pujab State Agricultural Marketing Board and market Committees (Reconstitution and Reorganisation) Order, 1969 and Clause 10 of the Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969 are intended to safeguard the interests of the employees allocated to the successor Corporations in the matter of conditions of their service, against unilateral action by the corporations concerned in the sucessor States. As such these do not clothe the State Government with any additional powers and are in the nature of limitations upon the powers already available to the concerned bodies under the relevant State enactments. In views of the reasons given above especially as there would be no check on the Corporations in dealing with service conditions of allocated employees, the Committee do not like to pursue the matter further.

(iv) *The Reserve Bank of India (Note Refund)* Rules, 1975

81. The original Rule 6 of the Reserve Bank of India (Note Refund) Rules, 1975, framed under the Reserve Bank of India Act, 1934 read as under:—

"*Lost or wholly destroyed note and half notes.*—No claim in respect of a note which is stated to have been lost or

wholly destroyed or a half note, shall be entertained, if the denomination of the note is either one hundred rupees or less."

82. The Committee on Subordinate Legislation (1975-76) desired to know the considerations on which rule 6 *ibid.*, had been made. The Committee on Subordinate Legislation (1976-77) examined the reply of the Ministry of Finance (Department of Banking) and also heard oral evidence of he representatives of the Ministry of Finance (Department of Economic Affairs) and the Reserve Bank of India on the provisions of Rule 6 of the aforesaid Rules.

83. The observations|conclusions of the Committee are contained in para 63 of their Third Report (Sixth Lok Sabha) which read as under:—

"The Committee note that the main consideration why the Reserve Bank of India does not entertain claims in respect of lost, wholly destroyed or half notes of the denominations of one hundred rupees and less is that, unlike notes of the denominations exceeding rupees one hundred, these are unregistered notes, and maintenance of a complete record is not practicable in their case. But having regard to the great value of hundred rupees and fifty rupee notes to the great mass of the people of this country, the Committee will like the Ministry of Finance to examine whether some way could not be found out whereby claims for lost or half notes of these denominations could be entertained by the Reserve Bank even without registration. For instance, in respect of half notes, the Reserve Bank could have a statement from the claimant, and in respect of lost notes, the Bank could have an affidavit from the claimant, and, after notifying it, make payment to him. The Committee will like to be apprised of the outcome of the Ministry's examination at an early date."

84. In their Action Taken Note dated 8 July, 1980 the Ministry of Finance (Department of Economic Affairs) stated as under:—

". . . the Reserve Bank of India, Central Office, Bombay have since informed that they have since informed that they have carefully examined the suggestions made by the Committee on Subordinate Legislation of Lok Sabha in

paragrap 63 of its Third Report regarding amendment of Reserve Bank of India (Note Refund) Rules, 1975 to make payment of the value of half notes and lost notes. A sub-rule (3) under Rule 9 of the Reserve Bank of India (Note Refund) Rules, 1975 has been inserted by the Reserve Bank of India (Note Refund) (Amendment) Rules, 1980 which provides for payment of half the face value of a mutilated banknote on which the number is printed at two places on the production of one piece the undivided area of which is not less than half the area of the note and subject to other requirements of the Rules the said RBI (Note Refund) (Amendment) Rules, 1980 have been published in Part III, Section 4 of the Gazette of India, dated 10-5-80.....

As regards payment of lost or wholly destroyed notes, the Reserve Bank of India, Central Office, Bombay have stated that as notes of the denomination of one hundred rupees or less are not registered, it is not possible to pay the value of such notes without production of the notes themselves as it is not possible for the Bank to verify whether that note had been destroyed by the Bank in the normal course apart from the possibility of the note being held by a third party. Soiled notes are withdrawn from circulation and are destroyed by the Bank (in the normal course); no particulars are maintained of the distincitive numbers of such soild notes which are destroyed. Therefore, if a verson were to make a claim on a note without producing the same, claiming that it has been lost it would not be possible for the Bank to verify whether the note had been destroyed by the Bank in the normal course. The Bank will, therefore, be running the risk of making payment on a note which might have been destroyed by it in the normal course, and this will cause loss to Bank and the Government. There is also a possibility of conflicting claims. It will not be advisable for the Bank to rely on the affidavit of the claimant only as that would be a self-serving statement. The Bank is, therefore of the opinion that claims should not be entertained in respect of lost notes, whether on the basis of affidavits of the claimant or otherwise. This Department agrees with the Reserve Bank's view and requests that in the background explained above the Committee may not like to pursue this recommendation."

85. The Committee note with satisfaction that as a consideration to their suggestion, the Reserve Bank of India have agreed to provide for payment of half the face value of a mutil to bank note of a denomination of the hundred rupees or less on which the number is printed at two places on the production of one piece the undivided area of which is not less than half the area of the note and subject to other requirements of the rules. Rule 6 of the Reserve Bank of India (Note Refund) Rules, 1975 has accordingly been amended on a new sub-rule (3) under Rule 9 of the said Rules has been inserted by the Reserve Bank of India Note Refund (Amendment) Rules, 1980 to the above effect.

86. The Reserve Bank of India have, however expressed their inability to meet the claues in respect of the lost notes (including those of the denominations of hundred rupees and fifty rupees), whether on the basis of affidavits of the claimant or otherwise after taking into consideration all aspects of the matter. In view of the difficulties expressed by the Bank, the Committee do not desire to pursue the matter further.

87. The Committee are however distressed to note that it took the Ministry of Finance (Department of Economic Affairs) more than two and a half years to forumlate their views on the suggestion of the Committee made in paragraph 63 of their Third Report (Sixth Lok Sabha) presented to the House on 14 December, 1977. The Committee expect the Ministry to be careful in further and finalise all proposals referred to them by the Committee as early as possible and not exceeding six months in any case.

(v) *The Cochin Port Pilotage and other Attendant Services (Fees) Rules*, 1974 (*G.S.R.* 1278 *of* 1974).

88. Note 3 under Part I of the Schedule to the Cochin Port Pilotage and other Attendant Service (Fees) Rules, 1974 (G.S.R. 1278 of 1974) provided that the Board of Trustees, Cochin Port Trust, may in special cases remit the whole or any portion of the fees leviable in accordance with items (c), (d) and (e) of the Schedule thereto.

89. The Ministry of Shipping and Transport (Transport Wing) were requested on 6 April 1976 to state (i) whether any guidelines had been laid down as to what might be the 'special cases' in which the whole or a part of the fee would be remitted, and (ii) whether they had any objection to amending the rules so as to provide for recording of reasons in writing for remission of fees in the above cases.

90. The Ministry was reminded on 4 June, 1976 and 5 May and 10 August, 1977 to expedite their reply.

91. In their reply dated 8 September, 1977, the Ministry stated as under:—

> ".....provision in Note 3 under Part I of the Schedule to above rules published *vide* G.S.R. 1278, and subsequently amended *vide* G.S.R. 382-E, dated the 1st July, 1975 that the Board of Trustees, Cochin Port Trust may in special cases remit the whole or any portion of the fees leviable in accordance with items (c), (d) and (e) appears to be in conformity with sub-section (3) of section 35 of the Indian Ports Act, 1908 which reads as follows:—
>
> '35(3) The Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).'
>
> However, a doubt has been raised now by the Ministry of Law (Legislative Department) whether the power to remit, which is vested in the Government as quoted above, could be delegated to the Board of Trustees and how a provision as suggested by the Lok Sabha Secretariat in their O.M. under reference, could be made."

92. In their subsequent reply dated 17 March, 1978, the Ministry stated as under:—

> ".....a further notification bearing No. G.S.R. 639(E) dated the 13th October, 1977 was issued and in that the power to remit the whole or any portion of the fees leviable in accordance with the rates prescribed under item 1(b) i.e. for pilotage either inward or outward between 6 p.m. and 6 a.m. has been vested in Government."

93. The above reply of the Ministry of Shipping and Transport (Transport Wing) was not specific to the points raised. The Ministry was again asked on 28 March, 1978 to furnish their reply to the above points. No further communication of the Ministry was received.

94. The Committee on Subordinate Legislation (1978-79) after considering the above reply observed in paragraphs 10—12 of their Fifteenth Report (Sixth Lok Sabha), presented to the House on 21 December, 1978 as under:—

> "10. The Committee note that the reply of the Ministry of Shipping and Transport (Transport Wing) was not speci-

fic to the points raise by the Committee. The authority to remit the fee which was clearly available in section 35(3) of the Indian Ports Act, 1905 was not objected to. Comments of the Ministry were invited specifically on the discrimination in the grant of remission of fees leviable in accordance with items (c), (d) and (e) of the schedule to the Cochin Port Pilotage and other Attendant Services (Fees) Rules but no reply has been received from the Ministry on these points:—

(i) whether any guidelines had been laid down by Government as to what may be constructed as 'special' cases'; and

(ii) whether Government had any objection to amend the rules so as to provide for recording of reasons in writing for remission of fee.

11. The Committee recommend that guidelines should be laid down in regard to the special cases in which fee may be remitted and the rules be amended to provide for recording of reasons in writing before grant of such remission.

12. The Committee note that a reply to their communication dated the 6th April, 1976 was received from the Ministry after a lapse of about two years in March, 1978. The Committee record their displeasure over the delay on the part of the Ministry in sending their reply to the points referred to them. The Committee need hardly emphasise that the reply furnished to the Committee should have been specific to the points raised in not evasive and vague. Vague and rembiling replies lead to unnecessary correspondence which apart from delaying the matter also affect the time schedule of the Committee. The Committee expect the Ministries|Departments of Government to be prompt in sending their replies to the issues raised by a Parliamentary Committee. The replies should be specific and germance to the matters referred to Ministries for their comments or clarification."

95. In their action-taken note dated 31 March, 1979, the Ministry of Shipping and Transport (Transport Wing) stated as under:—

"In reply to the Lok Sabha Sectt. O.M. No. 38|63|CII|76 dated March 28, 1978 a reply was sent vide Ministry's O.M. No. PGR-94/76 dated 4-4-1978.....As the cases for remission of pilotage fees are to be decided in the Ministry in consultation with the Ministry of Finance and such cases are

very rare, no separate guidelines have been laid down for this purpose. It deserves to be emphasized that the rules, as they stand now do not vest any power in the Port Trust Board for remission of fees. As such the question of amendment of the Rules along the suggested lines does not arise.

The delay in sending the reply to the point raised by the Committee in the Lok Sabha Secretariat's Office Memorandum of 6 April, 1976 was regretted, while sending our first reply on 8 September, 1977. The delay is again regretted. The need for sending promptly specific replies to the points raised, has been noted."

96. The Committee observe that the Coe in sort Pilotage and other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974, have since been successively superseded by G.S.R. 392-E of 1975 and G.S.R. 639-E of 1977. The Rules, as they stand now, do not vest any power in the Port Trust Board for remission of pilotage fees. According to the Ministry of Shipping and Transport (Transport Wing), the cases for remission of pilotage fees are rare and are decided upon in consultation with the Ministry of Finance. In view of the fact that the powers for remission of pilots fees are no more vested in the Port Trust Board, the Committee do not like to pursue the matter further.

97. Compliance with the Committee's observations made in paragraph 12 of their Fifteenth Report (Sixth Lok Sabha) has already been reported to the House vide Paragraph 65 of Fourth Report (Seventh Lok Sabha).

(vi) The Integrated Grades II and III of the Indian Foreign Service Branch 'B' (Limited Departmental Competitive Examination Regulations, 1966

98. Regulation 4(4) of the Integrated Grades II and III of the Indian Foreign service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 provides for the examination fee to be specified by the Commission.

99. It was felt that the amount of fee to be paid by a candidate should be mentioned in the regulations so as to make then self-contained and for the information of all concerned.

100. The Ministry of External Affairs to whom the matter was referred have amended regulation 4(4) as under:—

"(4) *Fees*: He shall pay such fees as may be specified from time to time by the Commission:

Provided that candidates belonging to the categories indicated in column (1) of the Table below shall pay such fees as are indicated in the corresponding entry in column (2) of the said Table.

(1)	(2)
(a) Candidates belonging to the Scheduled Castes and Scheduled Tribes.	Ane fourth of the fees specified by the Commission from time to time.
(b) Candidates belonging to the various classes or categories of persons notified from time to time by Government for exemption or concessions or both in fees.	Such proportion of the fees subject to such conditions as may be issued by th Central Government from time to time

101. After considering the above reply of the Ministry, the Committee in paragraph 26 of their Fifteenth Report (Sixth Lok Sabha) presented to the House on 21 December, 1978 observed as under:—

> "The Committee are not satisfied with the amendment made to regulation 4(4) of the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966. In para 35 of their Seventeenth Report (Fifth Lok Sabha), the Committee in the case of a similar amendment to regulation 4(2) of the Central Secretariat Service Assistants Grade (Limited Departmental Competitives Examination) Regulations, 1974, have observed that the amendment did not indicate the precise amount of fee to be paid by a candidate and desired the Department of Personnel and Administrative Reforms to amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay. The Committee reiterate their above recommendation in the present case also and desire that action to amend the regulations accordingly should be initiated at an early date."

102. In their action taken note dated 30 September, 1982 (i.e. after 4 years) the Ministry of External Affairs stated as under:—

> "The regulations for the Limited Departmental Competitive Examination under reference in our opinion are meant to serve the purpose of providing broader frame work of the examination. The examination is actually conducted by the UPSC who have the discretion to revise fee for the

examination from time to time. In case we amend our regulation to incorporate therein the exact amount of fee payable it shall be obligatory on our part to amend the regulation every time he UPSC revise the fee. We feel that such an exercise would serve no purpose, while the same shall call for under going avoidable bureaucratic procedure.

We presume that the Committee are insisting upon precise amount of fee to be specified as the same would give the candidate an exact idea for expenditure he/she would be required to incur towards fee for examination. If so, I would like to draw your attention to the fact that every time the UPSC conduct the exam, they issue a notification well in advance to that effect which mention, *inter-alia*, the amount of fee payable. The perspective candidate therefore invariably know the precise amount of fee payable by him/her. On the contrary, if we incorporate precise amount of fee in our regulation the same may lead to confusion. For, whenever there is revision of fee by the UPSC, the Ministry shall initiate action to amend regulation to bring in the revised amount of fee; the process of amendment being very long, there will be invariably a situation, when the amount of fee reflected in our regulation will differ from the one reflected in the UPSC's notification for candidates.

Moreover, the rules and regulations in our Ministry are on the pattern of those obtaining in the Central Secretariat, and it is our endeavour to keep our rules in complete harmony with them. We have consulted the D.P. & A.R. in this regard, who have confirmed that the corresponding rules in the Central Secretariat are the same as those in our case at the moment."

103. The Committee accept the plea advanced by the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grades II and III of the Indian Foreign Service. Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 as the precise amount of fee payable by a candidate for a particular examination was laid down in the notification issued by the Union Public Service Commission for that particular examination for the information of the prospective candidadtes. In view of this, the Committee do not like to press for an amendment to that effect in the Regulations. .. ..

104. The Committee however, regret to observe that the Ministry of External Affairs have spent almost 4 years in sending their comments on the recommendation made in paragraph 26 of their Fifteenth Report (Sixth Lok Sabha), presented to the House on 21 December, 1978. The Committee take a serious view of such inordinate delays in the disposal of urgent matters referred to by the Parliamentary Committee an expect the Ministry to be prompt in future.

(vii) The Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade (VI) Regulations, 1975 (G.S.R. 616 of 1976)

105. Regulation 5 of the Indian Foreign Service of Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) provide that a candidate shall pay the fee specified for the said examination.

106. It was felt that the precise amount of fee which a candidate has to pay should be indicated in the regulations in order to make them self-contained and for the information of all concerned.

107. The Ministry of External Affairs to whom the matter was referred have in their reply dated 19 April, 1977 stated as under:—

> "...this Ministry would not like to amend the above mentioned Regulations so as to specify the precise amount of fee which a candidate has to pay.
>
> The Ministry holds the view that it will not be in the interest of efficiency of the Administration if the Regulations are amended as per the suggestion of the Lok Sabha Secretariat as they will need to be amended every time the amount of fee, payable by the candidate, is altered."

108. Not being satisfied with the reply of the Ministry of External Affairs, the Committee on Subordinate Legislation, in paragraphs 8-9 of their Second Report (Seventh Lok Sabha), presented to the House on 18 November, 1980, observed as under:—

> "8. The Committee note that in the case of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, the Committee was not satisfied with the reply of the Department of Personnel an Administrative Reforms that in case the amount of fee was mentioned in the regulations, those might had to be amended from time to time with every variation in the rate of fee. The Committee in para 51 of their Sixteenth Report (Sixth Lok Sabha) desired the

Department of Personnel and Administrative Reforms to amend the regulations to indicate therein the precise amount of fee which a candidate had to pay. The Committee, therefore, desire the Ministry of External Affairs to incorporate in the Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975, the precise amount of fee which a candidate has to pay. The Committee feel that the difficulty pointed out by the Ministry in regard to amending the regulations every time the amount of fee, payasee by condidates was altered, could be resovled by putting an asterisk on the amount of fee in the regulations and to indicate in a footnote that it was subject to variation.

9. The Committee are also unhappy over the prematory language used by the Ministry of External Affairs in their reply. The Committee observe that the very first sentence of the reply viz., 'this Ministry would not like to amend the above-mentioned Regulation', only reffects a closed mind on the part of the Ministry in the matter. The Committee feel that the Ministries view as to what is in the 'interest of efficiency of Administration' is not final. They desire the Ministry to be more courteous and discreet while attending to references sent by a Parliament Committee."

109. In their action taken note dated 20 October, 1982, the Ministry of External Affairs stated as under:—

"....I would like to invite a reference to our letter No.Q/CAD/729/5/79 dated 30th September, 1982..... regarding a similar recommendation on the Integrated Grades II and III of the General Cadre of Indian Foreign Service Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966,.....

We are awaiting the decision of the Committee on our letter of 30th September, 1982. If the proposal made therein is acceptable to the Committee, we shall initiate action to amend provisions relating to fees in the Indian Foreign Service Branch 'B' (Qualifying Examination for Appointment of Telephone operators to Grade VI) Regulations, 1975 on the same lines as the corresponding provisions of Integrated Grades II and III of the General Cadre of the IFS Branch 'B' (LDCE) Regulations, 1966 quoted above."

110. The Committee have since accepted the suggestion of the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 as the same was specified by the Union Public Service Commission in their notification issued for that particular examination. In view of this, the Committee would not like to press for implementation of their identical recommendation made in respect of the Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975 as well.

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

111. Item VI of Rule 5 of the Indian Post Office (Third Amendment) Rules, 1974 regarding parcels provided that the Director General should, from time to time, declare in the Post Office Guide, Part II, the countries and places to which insured boxes/parcels can be transmitted by the Foreign Post and the rates of post chargeable in each case. It was felt that empowering the Director General to declare places and rates chargeable for transmitting by foreign post amounted to sub-delegation of legislative power. It was also felt that the rates of transmitting parcels and names of countries should be mentioned in the rules to make them self-contained and for the information of all concerned.

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

> "Section 75 of the Indian Post Office Act provides that the Central Government may, by notification in the official Gazette authorise either absolutely or subject to conditions, the Director General to exercise any of the power conferred upon the Central Government by this Act, other than a power to make rules. It may thus be seen that the Director General has no powers to make rules but he can carry on other functions of the Central Government under this provision of the Indian Post Office Act. 'Declare' means 'to make known', 'to announce' and would not 'rule making'. 'Declaring' the rates of postal parcels is different from rate fixing. It may be clarified here that rates are always fixed by Government, in exercise of the power of Central Government. Similarly availability of particular Services with foreign countries is regulated by UPU Agreements|by bilateral Agreements which are executed on the basis of the powers conferred by the

Indian Post Office Act. Thus merely empowering Director General to 'declare' i.e. 'make known' or 'announce' the parcel postage rates or names of countries to which a particular service is available would not, we feel, amount to 'rule making' and sub-delegation of powers to Director General for which there is no authority in the Indian Post Office Act.

Rates of parcel postage depend among, other things on the terminal shares fixed by the country of destination and the transit shares every transitting country is entitled to. If any change is announced in their shares by either of the two, (transit country or country of destination) the rates have to undergo change. Such occasions, obviously, are very frequent. If the rates are included in the rules themselves, it would necessitate very frequent amendment to the Rules. Similarly, the List of countries to which insured boxes/parcels service is available also undergoes change very frequently. The *status quo* in this respect would appear to be better."

113. The matter was also referred to the Ministry of Law, Justice and Company Affairs (Legislative Department) for their comments. In their reply dated 19-8-1975, the Ministry of Law stated as under:—

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

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

Further in so far as the payment of fees on insured boxes is concerned, the rates are required to be fixed by notification under Section 30 of the Act. Rules have been made under this provision read with the general power to make rules. Under rule 5 of the Indian Post Office Rules, 1933, the rates of fees in respect of insured boxes, when they are transmitted to foreign countries, have been indicated in the Table. The only power given to the Director-General is to declare the countries and places to which insured boxes may be transmitted by a foreign letter. The intention is that as and when a country is declared, the rates indicated in Table will be applicable to the transmission of insured boxes to that country. If different rates are proposed to be charged, suitable amendments will be made in the columns. The declaration is made after arrangements as referred to in section 10 of the Act are entered into by the Government of India with foreign countries. Hence, the power to declare the countries and places as contained in rule 5 of the Indian Post Office Rules, 1933, is relatable to section 10 of the Act. This power is to be exercised by the Director-General by virtue of Section 75. It would also be seen that the power to declare under section 10 is not required to be done in any specified manner. It is now settled that a mere omission to a particular provision of law would not render any rules, notification, etc., invalid so long as the power exists.

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

114. On a further reference being made to the Ministry of Law to know whether in view of the provisions of Section 10 of the Indian Post Office Act, it would not be appropriate to lay down the rates of parcels etc. in the rules rather than to leave them to be regulated

separately by Government, in their reply dated 23 October, 1975 stated as under:—

> ".....section 10 of the Indian Post Office Act, 1898 only enables the Central Government to declare the postage rates and other sums to be charged in respect of postal articles. Rules are required to be made under that Section only regarding the scale of weight, terms and conditions subject to which the rates so declared shall be charged. Section 10 does not require the postage rates to be specified in the rule made under the Act. The question whether the rates of parcles etc., may be included in the rules or should be left to be regulated separately by Government is a matter which may be considered by the P&T Department."

115. After considering the matter, the Committee in paragraph 15 of their Twentieth Report (Fifth Lok Sabha) presented to the House on 3 November, 1976 recommended/observed as under:—

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

116. As no reply was received from the Ministry, a reminder was issued on 21 July, 1977 fololwed by another reminder dated 7 April, 1978. As still nothing was heared from the Ministry, a reminder was again issued on 26 March, 1980 followed by a d.o. reminder dated 9 April 1981 an another d.o. reminder dated 16 August, 1982 to the Secretary of the Ministry.

117. In their reply dated 30 August, 1982, received for the first time, the Ministry, while regretting that the communications dated 21st July, 1977, 28 April, 1978 and 26 March, 1980 sent to them were not readily traceable in that office, stated that they were examining the matter again thoroughly in consultation with the Ministry of Law and would report the matter again shortly.

118. In their further d.o. reply dated 6 December, 1982, the Ministry stated as under:—

> "The observations of the Committee on Subordinate Legislation have re-examined in consultation with the Ministry of Law. It has been found that the suggestion of the Committee, if implemented, would lead to severe practical difficulties in the operational contest of the P&T. The rates of parcel postage depend on many factors including terminal shares, transit shares of each country etc. If the rates are included in the rules themselves, then any changes in the above factors, which are quite frequent would necessitate amendment of the rules every time. It is for this reason that sufficient discretion has been left to the executive to take decisions in this regard from time to time.
>
> In this connection, it may also be mentioned that the Insured Boxes service has since been abolished as a separate category of insured items by the Universal Postal Union since 1974. Thus the portions relating to Insured Boxes in the Indian Post Office Rules are no longer relevant.
>
> Taking all these factors into consideration, it is felt that it will be in the fitness of things if the *status quo* in maintained. A copy of the views of the Ministry of Law, Justice and Company Affairs is also enclosed.*"

119. At their sitting held on 30 March, 1983, the Committee considered above reply to the Ministry and decided to hear oral evidence

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*See Appendix III.

As regards the question that the new stadia had probably not

of the representatives of the Ministry of Communications (Posts & Telegraphs Board). The Committee heard said evidence on 23 May, 1983.

120. When enquired during evidence that why no reply was furnished to the Committee even after receiving repeated reminders, the representative of the Ministry stated that the record of those reminders was available in the case file but reminders themselves were not available in the file.

121. The representative further stated that originally the matter was dealt with by the Technical Section of the DG P&T. The relevant file was not traceable and on receipt of reminder from the Lok Sabha Secreretariat in 1981, the file was reconstructed from whatever material was available. When asked who was accountable for that, the representative of the Ministry replied that they shall try to fix responsibility for that.

122. When it was pointed out that Section 75 of the Indian Post Office Act did not empower the Director General to make rules but that he could only make announcement or declare the rates the representative of the Ministry stated that they had all along understood that they had been given power to fix the rates and declare it. He further explained that two distinct things were mentioned in section 10 of the Act. One was to make rules regarding scales of weight and terms and conditions and that was called rule making power regarding weights and conditions for the articles to be sent abroad. The other thing was to declare rates. As regards rates, those were fixed according to the international convention and were decided by the Univeral Postal Congress which meet once in 5 years. The last meeting was held in September-October, 1979 and the rates decided by them came into force on 1-7-1981. The representative further added that the rates were to be revised taking into account various factor such as (i) frieght, which may change many times in a year, (ii) changes levied by receiving countries for making deliveries of parcels; and (iii) in many cases parcels had to be transported through third countries and those countries could increase their rates at their discretion. He also added that the Postal Department did not had any monopoly of parcel traffic and it was done on more or less commercial basis. This could be the rationale for special provision being made only for foreign parcels. The weight slabs were covered by the rule making power. The only power given by Central Government was in respect of the quantum of charges based on the arithmatical calculation.

123. It was pointed out to the representative of the Ministry that Committee were no convinced wih their reply, as well as the views expressed in the matter by the Ministry of Law, Justice and Company Affairs. The Committee were of the firm opinion that the rates could not be divorced from the scales of weight. It was also pointed out to the representative of the Ministry that they had not indicated their practical difficulties in implementing the recommendation of the Committee in their replies. The representative of the Ministry replied that they understod and appreciate the Committee's views and they would try to reconcile both the practical difficulties and the inter-pretation of the Act. They would also propose a scheme for complying with the Committee's recommendation. The representative was then asked to furnish early a written reply to the Committee stating the proposed cheme/guidelines or amendmen of the Act to comply the recommendations of the Committee.

124. In their communication dated 2 June, 1983, the Posts and Telegraphs Board have intimated a set of tentative guidelines, for the Director General to fix and declare the rates of postage chargeable on parcels booked for foreign countries and places, has been drawn by them. These guidelines are reproduced in Appendix IV.

125. The Committee are unhappy over the delay on the part of the Ministry of Communications (P & T Board) in furnishing reply to their recommendation made in paragraph 15 of Twentieth Report (Fifth Lok Sabha) inspite of repeated reminders. The Committee note that a copy of the Twentieth Report (Fifth Lok Sabha) was sent to the Ministry on 5 November, 1976 and after a lapse about 6 years, the Committee for the first time heard on 30 August, 1982, that the Ministry was examining the matter. The Committee feel that the Ministry of Communications (P&T Board) have taken the recommendation of the Committee in a casual and cavalier manner and not given the due importance it deserved.

.. 126. The Committee have time and again emphasised that delay in furnishing final replies not only hamper the smooth working of the Committee, but also result in continuation of the infirmities in the Rules. The Committee would like responsibility to be fixed in this case for not attending to the communications sent by the Committee. The Committee would stress on the Ministry that henceforth they should be prompt in sending their considered replies to the Committee.

127. Committee are constrained to observed that the Ministry are under wrong impression that they have the inherent powers to sub-delegate the power to fix rates to the Director General. The Committee

are of the view that the power to fix rates can only be exercised through the rules framed under the Act and can not be sub-delegated direct under Section 75 of the Indian Posts Office Act, which empowers the Government to sub-delegate powers other than rule-making power. The Committee also feel that if the Government desire to sub-delegate this power to the Director General, then the Act should be amended accordingly.

128. The Committee are happy to note that on the insistance of the Committee the Ministry have proposed to issue guidelines for Director General to fix rates. The Committee would like the Ministry of issue these guidelines without any further delay.

(ix) *The Cement control (Fourth Amendment) Order, 1977 (S.O. 703-E of 1977)—laying of orders framed under Section 18G of Industries (Development and Regulation) Act, 1951*

129. While examining the Cement Control (Fourth Amendment) Order, 1977, it was observed that the Industries (Development and Regulation) Act, 1951 under which the above mentioned Order had been framed did not contain a provision regarding laying of orders framed under Section 18G thereof before each House of Parliament.

130. The Ministry of Industry (Department of Industrial Development) who were asked to state whether they had any objection to amend the Industries (Development and Regulation) Act, 1951 so as to provide for the laying of Orders issued thereunder before Parliament on the lines of the provisions in the Essential Commodities Act, in their reply dated 16 August, 1978, stated as under:—

> ".....Section 30(4) of the IDR Act provides that all rules made under the Section shall be laid for not less than seven days before Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make du ring the Sessions in which they are so laid or the Session immediately following. In accordance with this provision all rules made under Section 30 of the IDR Act are laid before Parliament. Under the various Sections of the IDR Act, a very large number of notified orders are issued by the various Departments of the Government and it will be administratively difficult to lay all such orders issued for appointment of various Development Councils, Central Advisory Councils of Industries, investigation into the working of any constitution of the Councils/Teams etc.

The provisions of the Essential Commodities Act have been gone through in this Ministry. As in the case of the IDR Act where power to make rules has been specifically provided in the Act itself, there ars no such provisions in the Essential Commodities Act. Whereas IDR Act provides for such rules framed under Section 30 of the Act to be laid before Parliament Essential Commodities Act does not provide for the rules framed under that Act to be laid before Parliament.

For the reasons stated above, this Ministry are not in favour of a provision being made in the IDR Act to lay all the orders issued under the provisions of Section 18(G) or other Sections of the Act to be laid before Parliament."

131. After considering the aforesaid reply of the Ministry, the Committee in paragraphs 22 and 23 of their Second Report (7th Lok Sabha), presented to the House on 18 November, 1980, recommended/observed as under :—

"22. The Committee are not convinced by the reply of the Ministry of Industry (Department of Industrial Development) for not favouring a provision being made in the Industries (Development and RegulationA Act, 1951, for laying on the Table of each House of Parliament of all Orders issued under the provisions of section 18-G or other sections of the Act. The Committee are of the view that laying on the Table of all 'Orders' in pursuance of powers delegated by Parliament, is very significant as it affords an opportunity to the Members of Parliament, if they so desire to move any amendment or modification to such Orders including a motion for their annulment. The Committee, therefore, recommend that the Industriese (Development and Regulations) Act, 1951 should be amended at an early date to provide that all rules/regulations|orders framed by the Central Government under the Industries (Development and Regulations) Act, 1951, are laid before each House of Parliament in accordance with thhe following laying formula as approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha) :—

"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 o afrliament, while it is in session, for a total period of thirty days which may be

comprised in one session or two or more successive sessions, and if, before the expiry of the Session immediately following the session or the successive sessions aforesaid, both House agree in making any modification to the rule or both House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

23. After due consideration of the plea of administrative difficulty taken by the Ministry of Industry (Department of Industrial Development) in laying a number of executive orders before Parliament, the Committee are of the view that Orders which are of legislative nature and which are framed under the power delegated by an Act of Parliament or Constitution are required to be laid before. Parliament and not the Orders which are of executive nature."

132. Immediately after the Report was presented to the House a copy thereof was forwarded to the Ministry of Industry (Department of Industrial Development) for implementing the Committee's aforesaid recommendation/observation contained therein. The Ministry, in their O.M. dated 16 December, 1980 stated that the relevant recommendations of the Committee were under consideration.

133. In their further communication dated 24 February, 1981, the Ministry stated as under :—

"In para 23, it has been mentioned that the Committee were of the view that orders which are of legislative nature and which are framed under the powers delegated by an Act of Parliament or Constitution, are required to be laid before Parliament, it may be mentioned, in this connection, that numerous orders are issued under Sections 18(G) and 25 regarding control of prices and distribution of commodity like cement and amendments are made from time to time. Similarly, various notifications are issued exempting certain categories of industrial undertakings from sections 10, 11, 11A and 13 of IDR Act. In case the view expressed by the Committee is accepted, the majority of the orders issued under the various Sections of the Act will have to be placed before Parliament which does not appear to be the intention of legislature. In fact,

Section 30 of the IDR Act enjoins upon the Government that various rules and amendments thereto made under Section 30 may be placed before Parliament. It gives an opportunity to the Parliament to discuss legislation of subordinate character provided in the rules issued under Section 30. In view of this, this Department is of the view that in addition to the orders issued under Section 30 of the Act, no further orders or the notifications issued under the IDR Act may be placed before arliament. No amendment to the IDR Act is therefore considered necessary. This has the approval of Minister of State for Industry."

134. At their sitting held on 30 March, 1983, the Committee considered the matter again and decided to hear the representatives of the Ministry of Industry (Department of Industrial Development).

135. The Committee heard the evidence of the representatives of the Ministry of Industry on 21 May, 1983, on inability expressed by the Ministry to implement their recommendation.

136. On being asked as to whether they had consulted the Ministry of Law before sending their reply dated 24 April, 1981 and if so, what opinion they had given in the matter, the Secretary Ministry of Industry stated that the opinion of the Ministry of Law was obtained by them. He further stated that the question of making laying provision in the Act had since been solved as they had been informed by the Ministry of Law that they proposed to bring forward a legislation before Parliament for the amendment of the Industries (Development and Regulations) Act, 1951 for the purpose and that the Ministry of Industry had indicated their concurrence to them. When pointed out that the amendment of the Act had not been included in the Delegated Legislation Provisions (Amendment) Bill introduced in Rajya Sabha on 5 November, 1982, the Secretary stated that that would be included in the next Bill to be brought for the purpose.

137. The Committee note with satisfaction that the Ministry of Industry (Department of Industrial Development) have agreed to amend the Industries (Development and Regulations) Act, 1951 to implement their recommedation and the proposed amendment of the Act is to be included in the next Delegated Legislotion Provisions (Amendment) Bill to be brought forward by the Ministry of Law.

138. The Committee desire the Ministry of Industry to keep themselves in touch with the Ministry of Law to ensure the inclusion of amendment of the Industries (Development and Regulations) Act, 1951, in the above Bill as also to inform the Committee as soon as such a Bill is introduced in Rajya Sabha|Lok Sabha.

IV

CASES OF RECOMMENDATIONS REPLIES TO WHICH HAVE BEEN FOUND UNSATISFACTORY BY THE COMMITTEE

139. After presentation of the Report of the Committee on Subordinate Legislation to the House, copies of the Reports are made available to the concerned Ministries/Departments of the Government of India for implementing the recommendations of the Committee and the Ministries/Departments are requested to furnish their Action Taken Notes on the various recommendations so as to apprise the Committee accordingly. In the following cases, the action taken or proposed to be taken by the respective Ministries, in implementation of the Committee's recommendations, has not been found satisfactory :

(i) The Exports (Control) Order, 1968 (*S.O.* 927 *of* 1968)

140. Sub-clause (d) of Clause 6 of the Exports (Control) Order, 1968, empowered the licensing authority to refuse to grant a licence if it considered that the grant of the licence would not be in the interest of the country. Sub-clause (e) of Clause 6 of the said Order empowered the licensing authority to refuse to grant a licence if the activities of the applicant were prejudicial to the interest of the country. Further, under the proviso to Clause 9 of the Order, the Central Government or the Chief Controller of Imports and Exports or any other officer, authorised in this behalf, might, if satisfied that it was expedient so to do in the public interest cancel any licence or render it ineffective without assigning any reason.

141. There was no indication in the Order as to the minimum level of the Officer for exercise of powers under the above clauses and whether the licensing authorities were required to record the reasons in writing before refusing the licences under Clause 6 (d) and (e) or cancelling them under the proviso to Clause 9.

142. The Ministry of Commerce, with whom the matter was taken up, stated in their reply as under :—

> "The licensing authority has been defined in sub-clause 2(e) of the Export (Control) Order. The cases falling within the purview of sub-clause (d) and (e) are of two types, namely :
>
> (i) cases in which specific directions have been issued from Government or the CCI&F and the licensing authorities exercise no discretion in dealing with such cases or which do not involve question of any doubt on interpretation of rules; and

(ii) the cases pertaining to which there are no specific directions from Government or the CCI&E and the licensing authorities have to use their judgement in deciding whether the case would fall within the purview of these clauses. The former type of cases can be dealt with by the licensing authorities normally competent but in respect of latter type, instructions will be issued that these powers shall be exercised by an officer not lower than the Joint Chief Controller of Imports and Exports.

Reasons for refusal of a licence are recorded on the file, but their communication to the applicant will depend on whether these could be divulged in public interest as indicated in Office Order No. 25/65.

The reasons for cancelling of a licence are recorded on the file even though these reasons are not to be communicated to the licensee."

143. During evidence, the representative of the Ministry of Commerce stated that the ground of 'public interest' referred to in clause 6(d) invoked during war time. 'Public interest' could also be made a ground for refusal of licence due to security reasons or commercial reasons and also when there was a state of emergency. He further said that the Department had a secret list containing the names of countries and commodities that were not allowed to be exported to those countries, as also the names of parties who were not allowed to deal with these countries. Secret orders were issued to the licence issuing authoritis. Whenever these parties approached for licences, they were refused license on grounds of public interest.

144. Regarding the refusal on ground of being prejudicial to the interest of the country, referred to in clause 6(e), the representative of the Ministry stated that there had been no occasion to invoke the powers under clause 6(e) except in 1962-63, when there had been one or two cases under the Order then in force. A secret list was prepared of those who were black-listed and considered under clause 6(e) for rejection. This list was supplied to the Department by the Home Ministry and was modified from time to time by additon or deletion.

145. Asked whether the power of refusal of licence provided for in Clause 6(d) and (e) could be used arbitrarily by the licensing authority, the representative of the Ministry stated that the powers

under these clauses were exercised by an Officer not below the rank of Chief Controller, Joint Chief Controller or the Deputy Chief Controller.

146. When asked why the reasons were not disclosed before a licence was cancelled or suspended under Clause 9, he stated that the Central Government or the Chief Controller of Imports and Exports exercised that power at the time of emergency. The question of providing guidelines for exercise of that power would, however, be considered.

147. After taking into account the various aspects of the matter, the Committee on Subordinate Legislation (Fifth Lok Sabha) in para 16 of their Eighth Report, presented to the House on 30 August, 1973, observed as under:—

> "The Committee note that in cases where licences are either refused under sub-clauses (d) and (e) of clause 6 or cancelled under the proviso to Clause 9, reasons for refusal or of cancellation as the case may be, are recorded in writing by the competent authority. Disclosure of reasons is normally a safeguard agaainst arbitrary use of powers. In this case the Committee appreciate that disclosure of reasons for refusal or cancellation would depend upon public interest. The Committee, therefore, desire that suitable guidelines should be prescribed for exercise of powers under these Clauses so that they are not misused against innocent persons."

148. In their action-taken note dated 5 February, 1979, the Ministry of Commerce stated as under:—

> ".....suitable guidelines have already been issued to the licensing authorities to the effect that cases of this type should be referred by the licensing authorities to the CCI&E for instructions. This would avoid improper exercise of power at lower levels and meet with the recommendation made by the Committee."

149. The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have since issued suitable guidelines to the licensing authorities asking them to seek the instructions from the Chief Controller of Imports and Exports before refusal or cancellation of licences in public interest.

(B)

150. Clause 6 of the Exports (Control) Order, 1968 empowered the licensing authority to refuse to grant a licence on any of the grounds mentioned therein. There was, however, no provision for communicating the grounds of refusal to an applicant.

151. The Ministry of Commerce, who were asked to State whether they had any objection to making of such a provision in the Order, stated in their reply as under:—

> "No objection. In fact, the Licensing Authorities have been instructed to communicate reasons of rejection to the applicants (*vide* Office No. F.25/68, dated 13-10-1966)."

152. The representatives of the Ministry of Commerce, who appeared before the Committee at their sitting held on 23 May, 1973, stated that they had no objection to a provision being made in the 'Order' in that regard except when it might not be desirable to do so in public interest.

153. The Committee on Subordinate Legislation (Fifth Lok Sabha), after considering the matter in all aspects, observed in para 8 of the Eighth Report (Fifth Lok Sabha), presented to the House on 30 August, 1973 as under:—

> "The Committee note the Ministry's reply that administrative instructions have been already issued to the licensing authorities to communicate to the applicants reasons for refusal to grant licences unless such reasons cannot be divulged in public interest. The Committee desire the Ministry of Commerce to give statutory shape to the same by including them in the Exports (Control) Order, 1968 at an early date."

(C)

154. Clause 10(2) of the Exports (Control) Order, 1968 provided as under:—

> "Where any person is aggreived by any action taken under clause 8 or clause 8A he may prefer an appal against such action to such authority as the Central Government may, by notification in the Official Gazette, constitute

for the purpose of hearing appeals, within thirty days from the date of communication of the action taken."

155. The above clause did not allow the right of appeal to persons aggrieved by an action under other clauses.

156. The Ministry of Commerce, with whom the matter was taken up stated in their reply as under:—

"Such appeals are already being entertained under the inherent administrative powers of the CCI&E. However, there is no objection to make a specific provision allowing the right of appeal against such decisions, with the next higher authority."

157. The Committe on Subordinate Legislation (Fifth Lok Sabha) considered the matter and made the following observation in para 20 of their Eighth Report, presented to the House on 30 August, 1973:—

"The Committee note the reply of the Ministry of Commerce and desire them to amend the Exports (Control) Order at an early date so as to provide statutory right of appeal against decisions of the Licensing Authorities in cases where it does exist at present."

158. In their action taken note dated 5 February, 1979 the Ministry of Commerce stated as under:—

"Having regard to the position that there was a statutory provision under clause 9 of the Export (Control) Order, 1968, for the cancellation of export licences, it was decided to accept the recommendation of the Committee in so far as making a statutory provision for appeal against the cancellation of licences is concerned. The revised Exports (Control) Order, 1977 notified under S. O. 254(E) in the Gazette of India Extraordinary, Part II, Section (ii) dated 24-3-1977 was suitably amended accordingly *vide* Amendment Order No. E(C), 1977|AM (18) dated the 26th August, 1977,... This amendment provides for right of appeal against cancellation of export licences ordered under clause 11(1) except in a case where the cancellation has been ordered in the public interest without assigning any reason.

** ** ** **

In so far as the other recommendations of the Committee for making statutory provisions for communicaon the reasons to the applicant for refusal to grant licences unless such reasons could not be divulged in public interest, and for making appeals against the decisions of the licensing authorities, in the Exports (Control) Order (as referred to in paras 8 and 26 of the Committee's Report) are concerned, it may be mentioned that these have also been examined and the observations made by this Department in this regard, are as under:—

"Although these recommendations of the Committee pertained to the grant of export licences, it was necessary to consider their implications from the point of view of similar amendments in the Imports (Control) Order. The control on exports was confined only to a very limited number of commodities. The vast majority of commodities exported from India did not require any export licence. On the other hand, import control had been extended to almost every commodity. Import and export policies are most every commodity. Import and export policies are liable to change without notice, depending upon the foreign exchange position and the requirements of the economy. In its latest judgement in the case of M/s. Andhra Industrial Works *vs.* Chief Controller of Imports and others, the Supreme Court has held that policy statement i.e. the Red Book, as distinguished from Imports and Export (Control) Act, is not a statutory document. No person can merely on the basis of such a statement claim a right to the grant of an import licence, enforceable at law. The Supreme Court also observed that such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time. Since the import and export trade control statutory and since the proceedings leading to the issue of an import licence or export licence are also of administrative matter and not statutory there need not be a statutory provision for communication of reasons of refusal of licence to the applicant or for an a ppeal against the refusal of a licence. These matters were merely administrative in character and there were

already administrative provisions for appeal and for communication of reasons of refusal, as indicated below:—

(a) Office Order No. 25|66 dated 13.10-1966 was issued by the CCI&E to the licensing authorities requesting them to ensure that the reasons for rejection of an application for an import or export licence or for the isue of a licence for value less than the value applied for were duly communicated to the applicants, unless such reasons could not be divulged in public interest and were based on secret instructions.

(b) Chapter XV of Hand Book of Import-Export Procedures, 1978-79 contains the provisions for appeal against refusal of import/export licence.

In these circumstances, it wos felt that the existing provisions were adequate and there need not be any statutory provision to this effect as recommended by the Committee on Subordinate Legislation.'"

159. The Committee note from the reply that the Ministry of Commerce have implemented their recommendation as contained in paragraph 20 of their Eighth Report (Fifth Lok Sabha) in so far as making a statutory provision for appeal against the cancellation of licences under Clause 9 of the Export (Control) Order, 1968 is concerned. The Ministry have accordingly amended the corresponding provisions in the revised Exports (Control) Order, 1977 (S.O. 254-E of 1977) vide S.O. 554-E of 1977 so as to provide for right of appeal against cancellation of export licences under Clause 11(1) save in cases where the cancellation has been ordered in public interest.

160. In this connection, the Committee observe that relying on the judgement of the Supreme Court in case of M/s Andhra Industrial Works vs. Chief Controller of Imports and others, the Ministry have maintained that the plicy statement, i.e, the Red Book, as distinguished from the Imports and Exports Control Orders issued under Section 3 of the Imports and Exports (Control) Act, is not a statutory document. No person can merely on the basis of such a statement claim a right to the grant of an import licence, enforceable at law. Such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time. The Ministry, therefore, maitain that oll proceedings leading to the issue of import or export licence are also of administrative character.

161. After giving a careful thought to all aspects of the question, the Committee have come to the conclusion that even if the general Import and Export policy of the Govvernment can well be termed as administrative action, it does not in any way affect the operation of the statutory rules framed under the powers delegated by law. The sound principles of subordinate legislation require that no administrative or executive instructions should directly or indirectly set aside or bypass or in any other manner detract from the operation of statutory rules framed under the authority of a Statute. If the whole process of issue of import or export licence is termed as an administrative affair, then the necessity of framing the statutory rules governing these matters will have to be explored afresh. The Committee have time and agaain stressed that the administrative orders or executive instructions are no substitute to the statutory rules, regulations, etc. The Committee, therefore, reiterate their earlier recommendations made in paragraphs 8 and 20 of the Eighth Report (Fifth Lok Sabha) and direct the Ministry to place the administrative instructions, which are already in vogue, on the statutory footing without any further loss of time.

162. The Committee regret to observe that the Ministry of Commerce took a period of more than five years in sending their comments on the recommendations made in their Eighth Report (Fifth Lok Sabha), presented to the House on 30 August, 1973. The Committee deprecate such avoidable long delays on the part of the Ministry in formulating their views on important matters referred to by a Parliamentary Committee. The Committee would like reasons for such long delay to be probed and responsibility fixed.

(ii) The Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S.R. 519 of 1974)

163. Rule 9(3) (b) of the Railway Board Secretariat Clerical Service Rules provided that substantive appointment to the substantive vacancies shall be made in the order of seniority of the temporary officers except when, for reasons to be recorded in writing, a person was not considered fit for substantive appointment in his turn.

164. The Ministry of Railway (Railway Board) were asked to state whether the person, who was not considered fit for substantive appointment, was informed in writing so that he might make up deficiencies. In their reply, the Ministry of Railways stated that

as in the Central Secretariat Clerical Service, in their Office also, it was not the practice to inform the reasons to the person who was not considered fit for substantive appointment.

165. In paragraph 31 of their Seventeenth Report (Fifth Lok Sabha), presented to the House on 7 January, 1976, the Committee on Subordinate Legislation observed as follows on the above reply of the Ministry of Railways:—

> "The Committe are not satisfied with the above reply of the Ministry of Railway (Railway Board). They feel that as the competent authority has to record its reasons in writing, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, recommend that the Ministry of Railways (Railway Board) should take early steps to amend the rules in question to the desired effect."

166. In their action taken note on the above recommendations, the Ministry of Railway (Railway Board) stated as follows:—

> "The matter was considered in detail in consultation with the Department of Personnel and Administrative Reforms, who have framed similar rules in respect of the Central Secretariat Clerical Services.....while considering the case of officers for confirmation, the competent authority takes into account the overall contents of the confidential reports of the officers concerned. Under the existing instructions, adverse entries recorded in the confidential reports, which form the basis of denying confirmation to the officer, are communicated to him and an opportunity afforded to him to represent against the said entries. In view of this position, there does not appear to be any necessity for giving another opportunity to the employee if it is decided not to consider him for confirmation in the grade.
>
> In this connection, it may be added that in the case of promotion on the basis of seniority-cum-fitness, the Government servants are not informed individually the reasons for not promoting them to the next higher grade and thy come to know only after they are passed over."

167. Not being satisfied with the above reply of the Ministry, the Committee on Subordinate Legislation in paragraph 103 of their

Fifth Report (Sixth Lok Sabha), presented to the House on 3 March, 1978, observed as under:—

> "The Committee are not satisfied with the reply of the Ministry of Railway that as, under the existing instructions, adverse entries recorded in confidential reports, which form the basis of denying confirmation to an officer, are communicated to him, there is no necessity of giving another opportunity to the employee if it is decided not to consider him for confirmation in the grade. The Committee reiterate their views expressed in para 31 of their Seventeenth Report (Fifth Lok Sabha) that as the competent authority has to record its reasons in writing for denying confirmation to an employee, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, desire the Ministry to take early steps to amend the rules in question to the desired effect."

168. In an interim reply dated 11 August, 1980, the Ministry of Railways (Railway Board) stated as under:—

> ".....although the observations of the Committee, on Subordinate Legislation as contained in paras 99-103 of Fifth Report of the Sixth Lok Sabha relate to the Railway Board Secretariat Clerical Service only, they have wider repercussion in as much as provisions similar to those contained in rule 9(3) (b) of the Railway Board Secretariat Clerical Service Rules, 1970 as amended under G.S.R. 519 of 1974 are contained in Railway Board Secretariat Service Rules, 1969 and the Railway Board Secretariat Stenographers' Service Rules, 1971. All these rules have been framed on the lines of the corresponding rules framed by the Department of Personnel and Administrative Reforms in respect of the Central Secretariat Services. In view of the general issues having emanated from the observations of the Committee on Subordinate Legislation referred to above, the matter was referred to the Department of Personnel and Administrative Reforms for their advice. As informed by that Department the matter is still under their consideration. In the circumstances the Committee on Subordinate Legislation may be apprised of the above position of the issue under consideration and requested to

grant extension of time for communicating the final decision of the Government in the matter."

169. After three follow-up reminders dated 22 March, 22 April and 28 May, 1982 from the Committee's Secretariat, the Ministry of Railways (Railway Board), in their reply dated 21 June, 1982, stated as under:—

"..... the recommendation contained in para 103 of the Fifth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) has been considered in consultation with the Department of Personnel & Administrative Reforms. The CSCS Rules, 1962 do not contain a provision for communicating the reasons in writing to individual concerned on being found unfit for confirmation. Neither has any amendment in these rules been carried out by the D. O. P. in this regard. The RBSCS Rules, 1970 are based on the CSCS Rules, 1962. Any amendment made by this Ministry alone to implement the recommendations of the Committee on Subordinate Legislation will have repercussion on similar rules and practice in force in the corresponding services in the other Minstries, and in fact in Central Services as a whole in general. The Ministry of Railways, therefore, do not consider it appropriate to take any unilateral action in this matter. In case the Department of Personnel amend CSCS Rules, 1962 on the lines of the recommendations of the Committee on Subordinate Legislation as contained in para 103 of the aforesaid Report, the same will be adopted in the Ministry of Railway too."

170. Consequently, on 19 July, 1982 the Department of Personnel and Administrative Reforms were addressed in the matter to ascertain whether they had any objection to amending the Central Secretariat Clerical Services Rules. 1962 etc. on the lines of the recommendations of the Committee on Subordinate Legislation made in paragraph 103 of their Fifth Report (Sixth Lok Sabha) in order to adopt a uniform practice in the Central Service as a whole. However, no reply was received from the Department in that regard. The Ministry had again been reminded on 13 May, 1983 to expedite the information.

171. The Committee note from the reply that the Ministry of Railways have expressed their inability to take any unilateral action in regard to the amendment of the Railway Board Secretariat Cleri-

cal Service Rules, 1970 unless the general issue of amending the corresponding service rules likewise is decided by the Department of Personnel and Administrative Reforms. In this connection, the Committee very much deplore the inaction on the part of the Department of Personnel and Administrative Reforms who have not cared to send a reply to Committee's reference made to them on 19 July, 1982. Even a D.O. reminder dated 13 May, 1983 to the Secretary in the Department, has failed to elicit any reply. ..

172. The Committee find that the matter is pending on one pretext or the other ever since the presentation of their Seventeenth Report (Fifth Lok Sabha) on 7 January, 1976. Even after reiteration of the recommendation by the Committee in their Fifth Report (Sixth Lok Sabha), presented to the House on 3 March, 1978, the infirmities still continue to exist in the service rules. ..

173. The Committee, therefore, desire the Department of Personnel and Administrative Reforms to issue the necessary instructions to all Ministries/Departments of the Government of India to scrutinize the various service rules with which they are administratively concerned and to incorporate the requisite amendments wherever necessary on the lines of the recommendation of the Committee made in paragraph 103 of their Fifth Report (Sixth Lok Sabha) at an early date.

(iii) *The Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 G.S.R. 1016 of 1977)*

174. Rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 read as under:—

> "13. Removal of difficulties:—The Central Government may, from time to time, issue such general or specific directions as may be necessary to remove difficulties in the operation of any of the provisions of these rules."

175. On 2 December, 1977, the Ministry of Finance were asked to state the considerations for inclusion of the aforesaid provisions in the Rules, especially when Government had power to amend the rules at any time.

176. In their reply dated 20 December, 1977, the Ministry of Finance (Department of Expenditure) stated as under:—

> ".....the rule is based on a similar provision obtaining in the Central Secretariat Service Recruitment Rules

[Rule No. 25(1)]. Directions issued under this rule would be only to remove any difficulties in the operation of the provisions of the rules but this rule cannot be invoked for modification of the basic structure of the rules which can be done only by a regular amendment to the rules."

177. The matter was then referred to the Ministry of Home Affairs on 23 December, 1977 asking them to state the considerations for incorporating a like provision in Rule 25 of the Central Secretariat Service Recruitment Rules.

178. In their reply dated 17 January, 1978, the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) stated as under:—

"In regard to Rule 25, the intention of the Government is made clear in the explanatory memorandum to the rule, reproduced below:

'25.—Under this rule, the Department of Personnel and Administrative Reforms, Ministry of Home Affairs will issue special or general directions, as may be found necessary, to remove difficulties in the way of smooth operation of any of the provisions of the rules in relation to any cadre or cadres.'

This rule only enables the Department to issue general or special directions to remove difficulties in operation of any of the provisions of the main rule as it may not always be necessary or possible to make a rule or amend a rule for all matters."

179. On 15 June, 1978, the attention of the Ministries of Finance and Law were invited to the judgement of the Supreme Court in the case of Jalan Trading Co. Pvt. Ltd. *vs.* Mill Mazdoor Sabha (AIR 1967 SC 691) wherein Section 37 of the Payment of Bonus Act, 1965 relating to the power to remove difficulty, was held invalid. The Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), in a note dated 31 August, 1978, furnished their comments as under:—

"In Jalan Trading Company's case, Section 37 of the Payment of Bonus Act, 1965, authorised the Central Government to provide for Order for removal of doubts and difficulties in giving effect to the provisions of the Act, subject to the qualification that the Order should

not be inconsistent with the purpose of the Act. By a majority of 3-2 it was held that the Section was void for impermissible delegation of legislative powers. Shah J. who delivered the majority judgement observed:—'If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the Legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority.'

Hidayatullah J. and Ramaswamy J. held that Section 37 was validly enacted.

The Supreme Court has not laid down a universal proposition of law in Jalan Trading Company's case. This is clear from the subsequent decision of the Supreme Court in Kalawati Devi *vs.* ITC, West Bengal (1968 SC 162). In that case the Jalan Trading Co. was distinguished and Section 298, Income-tax Act, 1961 which provides for removal of the difficulties was upheld by the Court. The Court distinguished Jalan Trading Company's case and followed earlier decisions where the Supreme Court has held that it is not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of laws.

In view of the above, we cannot consider that Jalan Trading Company's case lays down a universal principle of law applicable to all cases. The provisions of Rule 13 are not to be held invalid merely on the basis of the decision in Jalan Trading Company's case."

180. The Committee on Subordinate Legislation (1978-79), after considering the reply of the Government, observed in paragraphs 45-48 of their Fifteenth Report (Sixth Lok Sabha) as under:—

"45. The Committee note that in the case of Jalan Trading Company *vs.* Mill Mazdoor Sabha the Supreme Court has held that power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. Subsequently, in the case of Kalawati Devi *vs.* I.T.C., West Bengal, the Supreme Court has held that it was not

unconstitutional for the Legislature to leave it to the Executive to determine details relaing to the working of laws. In this connection, the Committee observe that the Supreme Court has made a distinction between taxation laws and other laws and has not disagreed with the decision in Jalan Trading Company's case, and that the language of the section of the rule will also have to be looked into to decide the question. The Committee, therefore, feel that the decision of the Supreme Court in Jalan Trading Company's case is more appropriate as the rules in question do not relate to matters of taxation.

46. The Committee further note that the provision regarding 'removal of difficulties' has always been considered to be an extraordinary provision, in that the area in which it may operate is not delimited and a resort to it may result in circumvention of the rules. The two Conferences of Chairmen of the Committees on Subordinate Legislation of State Legislatures, held in 1960 and 1965, have considered the incorporation of such a provision in the Act and felt strongly about it as it gave wide powers to the Executive. Even in certain Acts where it is incorporated, its operation is generally limited to one or two years after the commencement of the Act, *e.g.*, it is one year in the case of the Delhi Sales Tax Act, 1975 (Section 74) and two years in the case of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (Section 19).

47. The Committee are of the view that while enacting a legislation, Parliament in their wisdom may permit such a provision in the Acts. However, so far as the delegated legislation is concerned, the Executive should not assume powers which are too wide especially when it has got the right to amend the rules themselves. The Committee observe that such orders are not being notified in the Gazette and thereby they escape the notice of the Committee and consequently there is no legislative scrutiny for ensuring that the delegated powers are being exercised within the limits of intended delegation. Besides, the validity of the 'Removal of difficulties' rule is also open to doubt in view of the decision of the Supreme Court in Jalan Trading Company's case.

48. Consequently, the Committee recommend the Ministries concerned to delete rule 13 of the Central Accounts

Service (Pay and Accounts Officers) Recruitment Rules, 1977 and similarly worded rule 25 of the Central Secretariat Service Recruitment Rules."

181. In their action-taken onte dated 27 June, 1979, the Department of Personnel and Administrative Reforms stated as under:—

"..... the suggestion for amendment of rule 25 of the Central Secretariat Service Rules, 1962, has been carefully considered in consultation with the Ministry of Law.

The Law Ministry while referring to the Supreme Court's decision in the case of Jalan Trading Co.—based on which the Committee have recommended the deletion of rule 25(1) of the CCS Rules, 1962—have pointed out in a subsequent decision in the case of Gammon India Ltd. *Vs.* Union of India, the Supreme Court has upheld a provision, similar to rule 25(1) of the CCS Rules contained in Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970 on the ground that it does not amount to excessive delegation. A copy of the advice of the Ministry of Law is enclosed*.

The Committee on Subordinate Legislation may be requested to reconsider their recommendation in the light of Law Ministry's advice."

182. With regard to deletion of Rule 13 of the CAS (P&AO) Recruitment Rules, 1977, the Ministry of Finance (Department of Expenditure—Controller General of Accounts), in their action taken note dated August, 1979, stated as under:—

"The matter was again referred to the Ministry of Law in the light of the observation made by the Committee. Advice of the Law Ministry is reproduced below:

'The said rules are made under proviso to Article 309 of the Constitution. They would have the same force as an Act of Parliament. Sometimes, Parliament authorises the Central Government to remove any difficulty which may arise in giving effect to the provisions of the Act. The purpose of such provision is to enable the executive to remove difficulties in the implementation of the Act and to effectuate its purpose and policy. However, the exercise of this delegated power should be

*See Appendix V.

within the ambit of the rules to make the rules workable. Provision in the rule or Act is made not to nullify or amend any provisions of the Act or the rules but to make those provisions viable.

It is felt that the presence of such provision is intended to make the rules workable and as such should be retained.'

The purpose of the provisions contained in Rule 13 is only to enable the executive to remove difficulties in the implementation of the rules and to effectuate the purposes and policies contained therein as it is not possible to visualise all the difficulties that may arise in implementation of rules, at the time of framing the Recruitment Rules. Such an enabling provision is, therefore, considered necessary to make the rules workable.

* * *

In view of the above, the Committee may be requested to kindly reconsider the matter and agree to the retention of rule 13 of the C.A.S. (P&AO) Recruitment Rules, 1977."

183. The Committee are not satisfied with the reply of the Government. The Committee feel that the rules framed under Article 309 of the Constitution by the President are in the nature of subordinate legislation and cannot be equated with the enactments passed by the Parliament in exercise of their legislative powers. This is one reason that this Committee is required to scrutinize all rules covering service matters.

184. The Committee observet hat Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970 while conferring power on the Central Govevrnment to make order or removal of difficulty, clearly stipulates for publication of such order in the Official Gazette. Whereas Rule 25 of the Central Secretariat Service Rules and Rule 13 of the Central Account Service (Pay and Accounts Officers) Recruitment Rules are faulty on this score too. The Committeeapprehend that the Government intend to acquire powers which are not intended by the parent Act. The Committee have already gone into the depth of the matter and have come to the conclusion that it may not entail much difficulty for the Government to issue a notification in the Gazette whenever they decide to amend the rules. On the other hand, by not publishing the order in the official Gazette, they will be depriv-

ing the Committee from exercising their legislative scrutiny of such an order. The Committee do not see any disadvantage in making a formal amendment to the rules whenever considered necesary rather than leaving the things to be regulated by administrative instructions.

The Committee, therefor, reiterate their earlier recommendations made in paragraphs 45—48 of the Fifteenth Report (Sixth Lok Sabha) and urge upon the Government to implement the same without further loss of time.

V

CASES OF RECOMMENDATIONS WHEREIN PRIOR CONCURRENCE OF THE COMMITTEE HAS BEEN SOUGHT TO THE AMENDMENTS BEFORE THEIR NOTIFICATION IN THE OFFICIAL GAZETTE

(i) *The Boat Notes Regulations*, 1976 (*G.S.R.* 1555 *of* 1976)

185. Sub-regulation (1) of Regulation 3 of the Boat Notes Regulations, 1976 (G.S.R. 1555 of 1976) provided that every boat note shall be issued by the proper officer. Sub-regulation (2) (a) thereof empowered the Collector of Customs to authorise an exporter or his authorised agent to issue a boat note.

186. The Ministry of Finance (Department of Revenue) were asked to state the considerations for authorising an exporter or his authorised agent to issue boat notes and whether they had any objection to lay down guidelines in regard to exercise of their power by the Collector, if not already done so.

187. In their reply dated 26 February, 1977, the Ministry stated as under:—

> ".....Regulation 3(2) of Boat Notes Regulations, 1976, is intended to take care of situations where initial loading points are in the interior and Customs Supervision is not available at all times. The idea is that even in such cases the boat cargo must be covered by a formal document to facilitate surprise or supervisional checks. The requirement under section 34 of Customs Act, 1962, 'that no such goods would be loaded on an export vessel without the permission of a proper officer' is in itself a sufficient safeguard and it does not appear necessary for the Collectors to issue any guidelines. It is, however, proposed to clarify to the Collectors the intention behind regulation 3(2) as mentioned above."

188. After considering the aforesaid reply of the Ministry, the Committee on Subordinate Legislation, in paragraph 23 of their Twelfth Report (Sixth Lok Sabha) observed as under:—

> "The Committee note from the reply of the Ministry of Finance (Department of Revenue) that the intention behind regulation 3(2) (a) of the Boat Notes Regulations, 1976 in empowering the Collectors of Customs to authorise an exporter or his authorised agent to issue a boat note is to take care of the situations where initial loading points are in the interior and Customs Supervision is not available at all times. According to the Ministry, the underlying idea has been that even in such cases the boat cargo must be covered by a formal document to facilitate surprise or supervisional checks. The Committee further note that the Ministry propose to clarify this intention behind regulation 3(2)(a) to the Collectors of Customs for their guidance. The Committee feel that such a clarification should be incorporated in the regulation itself by amending it suitably. The Committee, therefore, desire the Ministry to amend the Boat Notes Regulation so as to clarify the intention behind regulation 3(2)(a) for information of all concerned at an early date. In view of the amendment suggested, the Committee do not insist upon the issue of any more guidelines in this respect."

189. In their action taken note dated 19 April, 1979, the Ministry of Finance (Department of Revenue) forwarded a copy of draft Notification (duly vetted by the Ministry of Law) amending the Board Notes Regulations, 1976 in pursuance of recommendation of Committee on Subordinate Legislation contained in paragraph 23 of their Twelfth Report (Sixth Lok Sabha) for the final clearance by the Committee. The Notification seeks to amend sub-regulation 2(a) of the regulation 3 of the Boat Notes Regulations, 1976 so as to read as under:—

> "(a) Notwithstanding anything contained in sub-regulation (1), where the Collector of Customs is satisfied that the loading of goods is to commence at a place in which supervision by customs authorities round the clock is not, or cannot be made, available, he may, in such cases and in such circumstances as he may consider appropriate authorise an exporter or the authorised agent of the exporter to issue boat notes in the form supplied by the Col-

lector of Customs and bearing the seal of the Customs Department:

Provided that the Collector of Customs shall keep a proper account of the forms supplied to the exporter or the agent."

190. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have agreed to amend sub-regulation 2(a) of regulation 3 of the Boat Notes Regulations, 1976. The Committee approve the proposed amendment and desire the Ministry to issue it expeditiously.

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

"A"

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

"Pre-promotion course: (1) Subject to the provisions of rule 21, every such member of the Force shall, before any promotion, be required to pass a pre-promotion Course referred to in sub-rule (3) or such other examinations as may be specified by the Director General, from time to time.

Provided that if the competent authority is satisfied that due to exigencies of service or other reasons, any such member is not able to pass the pre-promotion course, he may with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available pre-promotion course failing which he may be reverted."

192. During the course of examination of the aforesaid Rules, the Committee on Subordinate Legislation (1975-76) at their sitting held on 14 November, 1975, noticed that sub-rule (1) of rule 5 empowered the Director General to specify from time to time 'such other examinations', in lieu of those laid down in sub-rule (3) of rule 5. The Committee felt that in exercise of the powers conferred under sub-rule (1), the Director General could nullify the provisions of sub-rule (3). The Committee was, therefore, of the opinion that any changes in examination should be prescribed through the rules.

193. The Ministry of Home Affairs, to whom the matter was referred, stated that the intention in using the phrase 'such other exa-

minations' in rule 5(1) was to avoid wasteful expenditure and effort by not sending for lower training courses these members of the Force, who had already cleared advanced courses from some other particular schools or institutions.

194. After considering the reply of the Ministry, the Committee, in paragraph 41 of their Second Report (Sixth Lok Sabha), observed:—

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

195. In their Action-taken note dated 21 March, 1978 on the above observation of the Committee, the Ministry of Home Affairs proposed to amend rule 5(1) as under:—

> "Subject to the provisions of rule 21, every such members of the force shall, before any promotion, be required to pass the pre-promotion course referred to in sub-rule (3) or such trade tests/courses examinations equivalent to the standard prescribed by the Army/Directorate of Co-ordination of Police Wireless for promotion of their personnel of equivalent rank.
>
> Provided that if the competent authority is satisfied that due to exigencies of service or other reasons, any such member is not able to pass the pre-promotion course or such trade tests|Courses|examination prescribed by Army|Directorate of Coordination of Police Wireless for promotion of their personnel of equivalent rank, he may, with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available Course or trade|test|qualifying examination failing which he may be reverted."....

196. After considering the aforesaid Note of the Ministry, the Committee, in paragraphs 58 and 59 of their Thirteenth Report (Sixth Lok Sabha), observed as under:—

"58. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 5(1) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.

59. The Committee approve the proposed amendment and desire the Ministry to issue it an early date."

'B'

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

"Promotion to short-term vacancies.

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

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

199. The Ministry of Home Affairs to whom the matter was referred, agreed to the above suggestion. The Committee, in paragraph 44 of their Second Report (Sixth Lok Sabha), desired the Ministry to issue necessary amendment to the rules at an early date.

200. In their Action-taken note dated 21 March, 1978, the Ministry intimated that they proposed to amend rule 10(a) as under:—

"Promotion to short-term vacancies which shall not ordinarily be for a period of more than four months may be made on an officiating basis if the exigencies of service so require."

201. After considering the proposed amendment the Committee in paragraphs 64 and 65 of their Thirteenth Report (Sixth Lok Sabha) observed as follows:—

"64. The Comimttee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rule 10(a) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975.

65. The Committee approve the proposed amendment and desire the Ministry to issue the same at an early date."

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

"All such nominees shall have—

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

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

203. Similar provision as in (ii) above, has been made in Rules 15(2) (ii), 16(2), (ii), (171), (b), (ii), and 18(2), (ii) of the Rules in question.

204. While examining these rules, the Committee felt that educational standards to be attained by the nominees for the next higher post should be specified in the rules and not left to the discretion of the Director General of Border Security Force.

205. Not satisfied with the reply of the Ministry for not specifying in the rules the minimum educational standards to be attained by the nominees for the next higher post, the Committee, in paragraph 47 of their Second Report (Sixth Lok Sabha) recommended as under:—

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

206. In their Action-taken note dated 21 March 1968 on the above observations of the Committee, the Ministry proposed to amend the aforesaid rules by specifying therein the minimum educational standards to be attained by the nominees for next higher post.

207. Besides, the Ministry also proposed to insert a fresh Rule 22 in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 to read as under :—

"Rule 22 : Exception to the educational qualifications laid down in the aforesaid rules, may, however, be made by

the Director General, Border Security Force, in case of Nagas, Hill Tribes, Scheduled Castes|Scheduled Tribes etc., or any other category prescribed by him in this behalf.

208. In this regard, the Ministry stated as under:—

"The above rule has been proposed to be inserted because it has been experienced that the personnel like Nagas, Sikimies or other State Police Battalions do not posses such standards of education etc. as have been prescribed in the Border Security Force. In the absence of the aforesaid rule it would not be possible to promote such personnel who would be lacking in education as per standards prescribed in the aforesaid rules. The holding up of promotion of such categories will create the problem of discontentment among them which may have adverse reaction in the tribal area. In view of the peculiar administrative problem of the Border Security Force which have already been experienced at the time of taking over Nagas (Ex-RGS) as well as other State Armed Battalions in the Border Security Force, it is strongly recommended that the aforesaid proposed Rule 22 may be agreed to for inclusion in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975."

209. The Committee, after considering the proposed amendments to the rules in question and insertion of new Rule 22 in the Rules, observed in paragraphs 71-73 of the Thirteenth Report (Sixth Lok Sabha) as under :—

"71. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have agreed to amend Rules 14(2) (ii), 15(2) (ii), 16(2) (ii), (171) (b) (ii) and 18(2) (ii) of the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 so as to specify therein the minimum educational standards to be attained by the nominees for next higher post.

72. The Committee desire the Ministry to issue the proposed amendments at an early date.

73. The Committee also note that the Ministry of Home Affairs have proposed to insert a new Rule 22 in the Bor-

der Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1965. In view of the explanation given by the Ministry in regard to the insertion of this new rule, the Committee while approving the same desire the Ministry to amend it so as to provide therein for recording of reasons in writing by the Director General, Border Security Force, before making exceptions to educational qualifications."

210. In their Action-taken note dated 9 December, 1981 on the recommendations/observations of the Committee made in paragraph 58, 59, 64, 65 and 71-73 of their Thirteenth Report (Sixth Lok Sabha), the Ministry of Home Affairs stated as under:—

"In July, 1975, the Ministry of Home Affairs notified the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules in exercise of power conferred by Section 141 of the Border Security Force Act, 1968. The Committee on Subordinate Legislation (Sixth Lok Sabha) in its Second Report made certain recommendation in regard to the said Rules. The Ministry of Home Affairs accepted the recommendations suggested by the Committee. A communication of even number dated 21st March, 1978 was also sent to the Lok Sabha Secretariat indicating amendments proposed to be made in pursuance of the recommendations of the Committee. Unfortunately, while drafting the amendments, the Ministry of Law, who should have been consulted, were not consulted. In addition, it was also indicated to the Secretariat that the Ministry of Home Affairs proposed to insert a relaxation clause by way of a new rule 22.

The Committee further examined the matter and approved all the amendments desiring the Ministry of Home Affairs to issue the said amendments at an early date. The Committee also approved the proposed new rule with the proviso that this rule should also provide recording of reasons in writing by the Director General, Border Security Force before making an exception in educational qualifications.

The Ministry of Home Affairs, accordingly, started follow up action and a draft notification for bringing about the necessary amendments was prepared and referred to the Ministry of Law, Justice and Company Affairs (Legislative Department). That Department felt that the amendments

as suggested by this Ministry were not precise a and referential legislation had been adopted. The proposed draft was, therefore, revised by the Legislative Department, a copy of which is enclosed* for ready reference. The amendments proposed in the draft are, the same in substance as approved by the Committee earlier. However, there is change in phraseology only. The new Rule 22 is on the lines of the general relaxation clause incorporated in all recruitment rules."

211. The Committee note from the reply that the amendments including Rule 22 which the Ministry of Home Affairs proposed to incorporate in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 in pursuance of the recommendations of the Committee, could not be shown to the Ministry of Law at the draft stage prior to sending them for approval of the Committee. After the Committee had approved the proposed amendments and the new Rule 22, in principle, with the slight modification [vide paragraph 73 of their Thirteenth Report (sixth Lok Sabha) presented to the House on 29 November, 1978], these were forwarded to the Legislative Department of the Ministry of Law for vetting before final publication in the Gazette. The Deparment found the amendments and new Rule 22 wanting in some other respect (viz. not being precise and containing referential legislation). The proposed draft was, therefore, revised by the Legislative Department.

212. According to the Ministry, the amendments as contained in the revised notification are the same in substance as approved by the Committee earlier. In the circumstances, the Committee concur in the amendments as set out in the revised notification and desire the Ministry to notify the same without any further delay. The Committee also concur in Rule 22 with the exception of the words 'or posts' occurring at the end. These words ought to be omitted in pursuance of their earlier recommendation made in paragraph 12 of the Sixteenth Report (Seventh Lok Sabha), presented to the House on 3rd March, 1953.

213. Incidentally, it may be mentioned that there had been a few cases in the past wherein the Ministries concerned sought prior concurrence of the Committee to the amendments proposed by them in the rules as a sequal to the Committee's recommendations and the Committee also gave their concurrence as in the above two cases. However, the procedure had not been followed in all cases. In the

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*Appendix VI.

opinion of the Committee, this practice entails the following inherent dangers:

(i) If all the Ministries start seeking concurrence of the Committee to the amendments prior to implementation of their recommendations, it would add a tremendous burden to the Committee's work

(ii) Considering the volume of the work of the Committee and the procedure followed in according prior concurrence by the Committee, such cases are bound to get delayed. The Committee have been giving their concurrence through their Reports being presented to the House from time to time. Many a times, the Committee have to wait for the commencement of a session of Parliament to make a report to the House.

(iii) The recommendations of the Committee have always been quite precise and clear-cut without leaving things to speculate. It will be better if the Ministry concerned implemented their recommendation by way of amendment to the concerned rules, etc. after consulting the Ministry of Law or the Department of Personnel and Administrative Reforms or the Union Public Service Commission as the case may be.

214. The Committee are of the view that unless they have specifically expressed or desired in their recommendations that the amendments should be placed before the Committee prior to their notification in the Official Gazette, the Ministries concerned should normally finalise the amendments in consultation with the Ministry of Law. etc. as may be necessary. The Committee do not wish to get themselves involved in approving the draft notifications below their publication in all cases.

VI

CASES OF RECOMMENDATIONS REPLIES TO WHICH HAVE BEEN FOUND SATISFACTORY

215. With a view to ensure speedy implementation of their recommendations, the Committee had observed as under in paragraph 93 of their Sixteenth Report (Fifth Lok Sabha), presented to the House on 9 May, 1975:—

"..... the Committee fix a time-limit of six months within which the Ministries/Departments of Government of

India should implement their recommendations. If in any particular case it is not possible for a Ministry/ Department to adhere to this time-limit, they should ask for extension of time from the Committee after explaining the difficulties in implementating the recommendations within the prescribed time-limit."

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

General Observations about delay in Implementation

217. The Committee presented their two special Reports, viz. Eighteenth and Nineteenth Reports on old cases of recommendations contained in their various Reports presented to the House during the Fifth, Sixth and Seventh Lok Sabha which had largely remained unimplemented. As all such cases could not be covered in these two Reports, the Committee had decided to present one more Special Report, viz. Twentieth Report (the present one) so as to cover the remaining old cases of implementation/non-implementation. In these Reports the Committee have given their observations about the non-implementation cases and merely reported the satisfactory implementation cases. One thing, however, that strike the Committee is the deay even in cases of satisfactory implementotion of their recommendations.

218. From the perusal of their Eighteenth Report, presented to the House on 9 May, 1983, the Committee find that in all 60 cases including 36 cases of satisfactory action taken by Govvernment were reported to the House. The Committee observe that through Ministries had taken necessary action in respect of these 36 cases, only in 18 cases the recommendations of the Committee were implemented within the time limit of six months prescribed by the Committee and in the other 18 cases the Committee find that there was a delay ranging from 1 to 8 years in implementation thereof. In regard to 24 cases on which action is yet to be taken by Govvernment and which have been individually dealt with in the Eighteenth Report from the point of view of the nature of reply the Committee notice that there has been an inordinate delay ranging between 1 to 8 years.

219. As regards their Nineteenth Report, presented to the House on 10 May, 1983, the Committee find that, in all 45 cases including

12 cases of satisfactory action taken by Government were reported to the House. The Committee observe that so far as 12 cases of action taken are concerned, there was not much delay in implementation thereof as the maximum delay involved was of 9 months. But in respect of the remaining 33 cases, which are yet to be implemented, and which have been individually commented upon in the Nineteenth Report, there has been a delay ranging between 1 to 8 years. . . . .

220. In regard to their present Report, viz. Twentieth Report, the Committee observe that, in all 24 cases including 4 cases of satisfactory action taken by Government, are being reported to the House. The Committee further observe that except the aforesaid 4 cases of recommendations which have been implemented by Government with the prescribed time limit, there has been an inordinate delay ranging between 1 to 10 years in the remaining 20 cases which are yet to be implemented and which have been individually commented upon in each case. . .

221. It is needless to point out that such long delays in implementing the recommendations of the Committee defeat the purpose of the Committee. The Committee had, therefore, desired the Department of Parliamentary Affairs to impress upon all Ministries/Departments of the Government of India to adhere to the time-limit of six months fixed by them for implementing their recommendations. The Committee feel that, in fact, the Ministries should endeavour to implement their recommendations within a period of 3 months of the presentation of their Report as the period of six months fixed by the Committee is the maximum period within which the recommendations must be implemented. . .

NEW DELHI;
June 27, 1983.
Asadha 6, 1905 (Saka)

R. S. SPARROW,
Chairman,
Committe on Subordinate Legislation

APPENDIX I

(*Vide* Paragraph 8 of the Report)

SUMMARY OF RECOMMENDATIONS/OBSERVATIONS MADE BY THE COMMITTEE

S. No.	Paragraph No.	Summary
1	2	3
1	18	The Committee presented their Fifteenth Report (Fifth Lok Sabha) to the House on 15 April, 1975. The Committee considered the action taken reply of the Ministry of Works and Housing on 29 September, 1977. Not being satisfied with the reply, the Committee asked for certain more details in this regard. However, the same still remains to be furnished in spite of several reminders. The Committee cannot but express their unhappiness over the inordinate delay in implementing their recommendation and urge upon the Ministry to expedite the information without further delay to enable them to finalise the action taken on their recommendation, which concerns such important matter as eviction of unauthorised occupants from public premises.
2	26	The Committee cannot but express their grave concern over the inordinate delay in the matter of complying with their recommendations. The Committee feel that such prolonged indecisiveness on the part of the executive, besides diminishing the utility of the Committee's recommendations, results in continuance of the defects in the statutory rules most often resulting in unmitigated harm to the persons concerned. The Committee need hardly emphasize that the matter should not be postponed indefinitely and the lacunae and short comings from the rules should be eliminated without any further delay for which the Ministry have already agreed

(1)	(2)	(3)
		long back. The Committee would like responsibility to be fixed for such inordinate delay in implementing the recommendations.
3 (i)	36	The Committee observe that as early as January, 1976, they had recommended that all statutory orders framed under the Defence of India Rules should be laid before Parliament. The Committee reiterated the recommendation in their Eighth Report (Sixth Lok Sabha), presented to the House on 26 April, 1978. Even after a protracted correspondence for over seven years, the Ministry of Home Affairs have not been able to lay the statutory orders on the Table of Parliament despite categorical findings of the Committee in this regard. The Committee cannot but express grave concern over the inordinate protracted delay in complying with their recommendations. The Committee re-stress that such delays over a long period in laying are contrary to the spirit of the relevant provisions in the Acts which require that the Orders should be laid before Parliament as soon as possible after they are made. The Ministries/Departments exercising rule-making powers should bear in mind that generally the rules become operative as soon as they are published, but Parliament's statutory right of modification/annulment, in terms of the parent statutes, becomes exercisable only after they are laid before it. Unjustified delays such as the one in the present case inevitably result in depriving the Parliament of their statutory right of modification/annulment for unduly long periods.
(ii)	37	The Committee, therefore, again reiterate their recommendations and desire that the Ministry should lay the requisite orders on the Table of the each House of the Parliament without any further loss of time.
4 (i)	46	The Committee note that the matter is pending with the Ministry of Railways since 10 August, 1971 when the Committee made their First Report (Fifth

(1)	(2)	(3)
		Lok Sabha) recommending for the amendment of the Indian Railways Act, 1890 with a view to provide for laying and publication of all rules and regulations made thereunder. Since the Ministry co-related the amendment with their comprehensive review of the Act in all its aspects, the matter has been getting delayed year after year. It is indeed distressing that it has taken the Ministry almost twelve years to process the review of the Act and still it is not precisely known as to when it will actually be brought before Parliament in the near future. Such prolonged indecisiveness and dilatory processes are bound to result in avoidable continuance of the defects in the Legislation and more often than not, result in unintended harm to the cause and objects in view.
4 (ii)	47	The Committee would stress with great emphasis upon the Ministry to bring forth immediately before Parliament an exclusive piece of legislation for in corporating the requisite laying and modification provisions in the Indian Railways Act 1890 within three months of the presentation of this Report, if the proposed comprehensive Bill is further delayed for any reasons whatsoever.
5 (i)	64	The Committee observe that a licensee, during the course of his prospecting operation, obtains valuable information regarding the ore, the mode of occurrence, attitude, likely extent, grade, other lithological and structural control of mineralization at considerable expense of money, labour as well as time. With the fear of disclosure of such valuable data to his competitors, he may not like to part with the full facts in his reports to the State Government. With the result, the State Government will be deprived of this valuable information about the mining area already explored by the prospecting licensee. To do away with such a situation, it has since become a universal practice that the confidential reports are to remain restricted at least for an

(1)	(2)	(3)
		agreed period of time, in order to retain the miner's trust and his confidence regarding future reports.
5 (ii)	65	The Committee note from the reply of the Ministry of Steel and Mines (Department of Mines) that the provisions in Rule 16 of the Mineral Concession Rules are intended to infuse the confidence in the licensee to disclose all the information obtained by him during the prospecting mining to the State Government to enable them to assess the potentialities of the area. To make this intention abundantly clear, Rule 16 and the corresponding Clause 17A in Part II of Form F in Schedule I of the Mineral Concession Rules, 1960 have accordingly been amended *vide* G.S.R. 835 of 1979.
5 (iii)	66	In view of the above, the Committee do not press for implementation of their recommendation and accept the position as stated by the Ministry.
6	73	The Committee note from the reply of the Ministry of Home Affairs that the instructions to be issued by the Central Government or the Inspector General or the Deputy Inspector General under Rule can only be administrative or executive in character for the purpose of day to day functioning of the administration as envisaged under Section 7 of the CISF Act, 1964 and no instructions which are legislative in nature can be issued within the scope of. The Committee would not like to press their recommendation in view of the reasons advanced by the Ministry of Home Affairs.
7	80	The Committee note from the reply of the Ministry of Home Affairs that the second provisos to Clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969 and Clause 10 of the Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969 are intended to safeguard the interests

(1)	(2)	(3)
		of the employees allocated to the successor Corporations on the matter of conditions of their service, against unilateral action by the corporations concerned in the successor States. As such these do not clothe the State Governments with any additional powers and are in the nature of limitations upon the powers already available to the concerned bodies under the relevant State enactments. In views of the reasons given above especially as there would be no check on the Corporations in dealing with the service conditions of allocated employees, the Committee do not like to pursue the matter further.
8 (i)	85	The Committee note with satisfaction that as a consideration to their suggestion, the Reserve Bank of India have agreed to provide for payment of half the face value of a mutilate bank note of a denomination of one hundred rupees or less on which the number is printed at two places on the production of the piece the undivided area of which is not less than half of the area of the note and subject to other requirements of the rules. Rule 6 of the Reserve Bank of India (Note Refund) Rules, 1975 has accordingly been amended on a new sub-rule (3) under Rule 9 of the said Rules has been inserted by the Reserve Bank of India (Note Refund) (Amendment) Rules, 1980 to the above effect.
8 (ii)	86	The Reserve Bank of India have, however, expressed their inability to meet the claim in respect of the lost notes (including those of the denominations of hundred rupees and fifty rupees), whether on the basis of affidavits of the claimant or otherwise, after taking into considertaion all aspects of the matter. In view of the difficulties expressed by the Bank, the Committee do not desire to pursue the matter further.
8 (iii)	87	The Committee are, however, distressed to note that it took the Ministry of Finance (Department of Economic Affairs) more than two and a half years to formulate their views on the suggestion of the

(1)	(2)	(3)
		Committee made in paragraph 63 of their Third Report (Sixth Lok Sabha) presents to the House on 14 December, 1977. The Committee expect the Ministry to be careful in future and finalise all proposals referred to them by the Committee as early as possible and not exceeding six months in any case.
9 (i)	96	The Committee observe that the Cochin Port Pilotage and Other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974) have since been successively superseded by G.S.R. 392-E of 1975 and G.S.R. 639-E of 1977. The Rules, as they stand now, do not vest any power in the Port Trust Board for remission of pilotage fees. According to the Ministry of Shipping and Transport (Transport Wing), the cases for remission of pilotage fees are rare and are decided upon in consultation with the Ministry of Finance. In view of the fact that the powers for remission of pilotage fees are not more vested in the Port Trust Board, the Committee do not like to pursue the matter further.
9 (ii)	97	Compliance with the Committee's observations made in paragraph 12 of their Fifteenth Report (Sixth Lok Sabha) has already been reported to the House *vide* Paragraph 65 of Fourth Report (Seventh Lok Sabha).
10 (i)	103	The Committee accept the plea advanced by the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 as the precise amount of fee payable by a candidate for a particular examination was laid down in the notification issued by the Union Public Service Commission for that particular examination for the information of the prospective candidates. In view of this, the Committee do not like to press for an amendment to that effect in the Regulations.

(1)	(2)	(3)
10 (ii)	104	The Committee however, regret to observe that the Ministry of External Affairs have spent almost 4 years in sending their comments on the recommendation made in paragraph 26 of their Fifteenth Report (Sixth Lok Sabha), presented to the House on 21 December, 1978. The Committee take a serious view of such inordinate delays in the disposal of urgent matters referred to by the Parliamentary Committee and expect the Ministry to be prompt in future.
11	110	The Committee have since accepted the suggestion of the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grade II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations 1966 as the same was specified by the Union Public Service Commission in their notification issued for that particular examination. In view of this, the Committee would not like to press for implementation of their identical recommendation made in respect of the Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975 as well.
12 (i)	125	The Committee are unhappy over the delay on the part of the Ministry of Communications (P & T Board) in furnishing reply to their recommendation made in paragraph 15 of Twentieth Report (Fifth Lok Sabha) inspite of repeated reminders. The Committee note that a copy of the Twentieth Report (Fifth Lok Sabha) was sent to the Ministry on 5 November, 1976 and after a lapse of about 6 years, the Committee for the first time heard on 30 August, 1982, that the Ministry was examining the matter. The Committee feel that the Ministry of Communications (P & T Board) have taken the recommendation of the Committee in a casual and cavalier manner and not given the due importance it deserved.

(1)	(2)	(3)
12 (ii)	126	The Committee have time and again emphasised that delay in furnishing final realies not only hamper the smooth working of the Committee, but also result in continuation of the infirmities in the Rules. The Committee would like responsibility to be fixed in this case for not attending to the communications sent by the Committee. The Committee would stress on the Ministry that henceforth they should be prompt in sending their considered replies to the Committee.
12 (iii)	127	The Committee constrained to observe that the Ministry are under the wrong impression that they have the inherent powers to sub-delegate the power to fix rates to the Director General. The Committee are of the view that the power to fix rates can only be exercised through the rules framed under the Act and cannot be sub-delegated direct under Section 75 of the Indian Posts Office Act, which empowers the Government to sub-delegate powers other than rule-making power. The Committee also feel that if the Government desire to sub-delegate this power to the Director General, then the Act should be amended accordingly.
12 (iv)	128	The Committee are happy to note that on the insistance of the Committee, the Ministry have proposed to issue guidelines for Director General to fix rates. The Committee would like the Ministry of issue these guidelines without any further delay.
13 (i)	137	The Committee note with satisfaction that the Ministry of Industry (Department of Industrial Development) have agreed to amend the Industries (Development and Regulations) Act, 1951 to implement their recommendation and the proposed amendment of the Act is to be included in the next Delegated Legislation Provisions (Amendment) Bill to be brought forward by the Ministry of Law.
13 (ii)	138	The Committee desire the Ministry of Industry to keep themselves in touch with the Ministry of Law

(1)	(2)	(3)
		to ensure the inclusion of amendment of the Industries (Development and Regulations) Act, 1951, in the above Bill as also to inform the Committee as soon as such a Bill is introduced in Rajya Sabha/ Lok Sabha.
14	149	The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have since issued suitable guidelines to the licensing authorities asking them to seek the instructions from the Chief Controller of Imports and Exports before refusal or cancellation of licences in public interest.
15 (i)	159	The Committee note from the reply that the Ministry of Commerce have implemented their recommendation as contained in paragraph 20 of their Eighth Report (Fifth Lok Sabha) in so far as making a statutory provision for appeal against the cancellation of licences under Clause 9 of the Export (Control) Order, 1968 is concerned. The Ministry have accordingly amended the corresponding provisions in the revised Exports (Control) Order, 1977 (S.O. 254-E of 1977) *vide* S.O. 554-E of 1977 so as to provide for right of appeal against cancellation of export licences under Clause 11 (1) save in cases where the cancellation has been ordered in public interest.
15 (ii)	160	In this connection, the Committee observe that relying on the judgment of the Supreme Court in the case of M/s. Andhra Industrial Works *vs.* Chief Controller of Imports and others, the Ministry have maintained that the policy statement, *i.e.* the Red Book, as distinguished from the Imports and Exports Control Orders issued under Section 3 of the Imports and Exports (Control) Act, is not a statutory document. No person can merely on the basis of such a statement claim a right to the grant of an import licence, enforceable at law. Such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any

(1)	(2)	(3)
		time. The Ministry, therefore, maintain that all proceedings leading to the issue of import or export licence are also of administrative character.
15 (iii)	161	After giving a careful thought to all aspects of the question, the Committee have come to the conclusion that even if the general Import and Export policy of the Government can well be termed as administrative action, it does not in any way affect the operation of the statutory rules framed under the powers delegated by law. The sound principles of subordinate legislation require that no administrative or executive instructions should directly or indirectly set aside or bypass or in any other manner detract from the operation of statutory rules framed under the authority of a Statute. If the whole process of issue of import or export licence is termed as an administrative affair, then the necessity of framing the statutory rules governing these matters will have to be explored afresh. The Committee have time and again stressed that the administrative orders or executive instructions are no substitute to the statutory rules, regulations, etc. The Committee, therefore, reiterate their earlier recommendations made in paragraphs 8 and 20 of the Eighth Report (Fifth Lok Sabha) and direct the Ministry to place the administrative instructions, which are already in vogue, on the statutory footing without any further loss of time.
15 (iv)	162	The Committee regret to observe that the Ministry of Commerce took a period of more than five years in sending their comments on the recommendations made in their Eighth Report (Fifth Lok Sabha), presented to the House on 30 August, 1973. The Committee deprecate such avoidable long delays on the part of the Ministry in formulating their views on important matters referred to by a Parliamentary Committee. The Committee would like reasons for such long delay to be probed and responsibility fixed.

(1)	(2)	(3)
16 (i)	171	The Committee note from the reply that that the Ministry of Railways have expressed their inability to take any unilateral action in regard to the amendment of the Railway Board Secretariat Clerical Service Rules, 1970 unless the general issue of amending the corresponding service rules likewise is decided by the Department of Personnel and Administrative Reforms. In this connection, the Committee very much deplore the inaction on the part of the Department of Personnel and Administrative Reforms who have not cared to send a reply to Committee's reference made to them on 19 July, 1982. Even a D.O. reminder dated 13 May, 1983 to the Secretary in the Department, has failed to elicit any reply.
16 (ii)	172	The Committee find that the matter is pending on one pretext or the other ever since the presentation of their Seventeenth Report (Fifth Lok Sabha) on 7 January, 1976. Even after reiteration of the recommendation by the Committee in their Fifth Report (Sixth Lok Sabha), presented to the House on 3 March, 1978, the infirmities still continue to exist in the service rules.
16 (iii)	173	The Committee, therefore, desire the Department of Personnel and Administrative Reporms to issue the necessary instructions to all Ministries/Departments of the Government of India to scrutinize the various service rules with which they are administratively concerned and to incorporate the requisite amendments wherever necessary on the lines of the recommendation of the Committee made in paragraph 103 of their Fifth Report (Sixth Lok Sabha) at an early date.
17 (i)	183	The Committee are not satisfied with the reply of the Government. The Committee feel that the rules framed under Article 309 of the Constitution by the President are in the nature of subordinate legislation and cannot be equated with the enactments passed

(1)	(2)	(3)
		by the Parliament in exercise of their legislative powers. This is one reason that this Committee is required to scrutinize all rules covering service matters.
17 (ii)	184	The Committee observe that Section 54 of the Contract Labour (Regulation and Abolition) Act, 1970 while conferring power on the Central Government to make order for removal of difficulty, clearly stipulates for publication of such order in the official Gazette. Whereas Rule 25 of the Central Secretariat Service Rules and Rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules are faulty on this score too. The Committee apprehend that the Government intend to acquire powers which are not intended by the parent Act. The Committee have already gone into the depth of the matter and have come to the conclusion that it may not entail much difficulty for the Government to issue a notification in the Gazette whenever they decide to amend the rules. On the other hand, by not publishing the order in the official Gazette, they will be depriving the Committee from exercising their legislative scrutiny of such an order. The Committee do not see any disadvantage in making a formal amendment to the rules whenever considered necessary rather than leaving the things to be regulated by administrative instructions. X The Committee, therefore, reiterate their earlier recommendations made in paragraphs 45—48 of the Fifteenth Report (Sixth Lok Sabha) and urge upon the Government to implement the same without further loss of time.
18	190	The Committee note with satisfaction that, on being pointed out, the Ministry of Finance have agreed to amend sub-regulation 2 (a) of regulation 3 of the Boat Notes Regulations, 1976. The Committee approve the proposed amendment and desire the Ministry to issue it expeditiously.

(1)	(2)	(3)
19 (i)	211	The Committee note from the reply that the amendments including Rule 22 which the Ministry of Home Affairs proposed to incorporate in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 in pursuance of the recommendations of the Committee, could not be shown to the Ministry of Law at the draft stage prior to sending them for approval of the Committee. After the Committee had approved the proposed amendments and the new Rule 22, in principle, with the slight modification [*vide* paragraph 73 of their Thirteenth Report (Sixth Lok Sabha) presented to the House on 29 November, 1978], these were forwarded to the Legislative Department of the Ministry of Law for vetting before final publication in the Gazette. The Department found the amendments and new Rule 22 wanting in some other respect (*viz.* not being precise and containing referntial legislation). The proposed draft was, therefore, revised by the Legislative Department.
19 (ii)	212	According to the Ministry, the amendments as contained in the revised notification are the same in substance as approved by the Committee earlier. In the circumstances, the Committee concur in the amendments as set out in the revised notification and desire the Ministry to notify the same without any further delay. The Committee also concur in Rule 22 with the exception of the words 'or posts' occurring at the end. These words ought to be omitted in pursuance of their earlier recommendation made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha), presented to the House on 3rd March, 1983.
19 (iii)	213	Incidentally, it may be mentioned that there had been a few cases in the past wherein the Ministries concerned sought prior concurrence of the Committee to the amendments proposed by hem in the

(1)	(2)	(3)
		rules as a sequal to the Committee's recommendations and the Committee also gave their concurrence as in the above two cases. However, the procedure had not been followed in all cases. In the opinion of the Committee, this practice entails the following inherent dangers. (i) If all the Ministries start seeking concurrence of the Committee to the amendments prior to implemention of their recommendations, it would add a tremendous burden to the Committee's work. (ii) Considering the volume of the work of the Committee and the procedure followed in according prior concurrence by the Committee, such cases are bound to get delayed. The Committee have been giving their concurrence through their Reports being presented to the House from time to time. Many a times, the Committee have to wait for the commencement of a session of Parliament to make a report to the House. (iii) The recommendations of the Committee have always been quite precise and clear-cut without leaving things to speculate. It will be better if the Ministry concerned implemented their recommendation by way of amendment to the concerned rules, etc. after consulting the Ministry of Law or the Department of Personnel and Administrative Reforms or the Union Public Service Commission as the case may be.
19 (iv)	214	The Committee are of the view that unless they have specifically expressed or desired in their recommendations that the amendments should be placed before the Committee prior to their notification in the official Gazette, the Ministries concerned should

(1)	(2)	(3)
		normally finalise the amendments in consultation with the Ministry of Law, etc. as may be necessary. The Committee do not wish to get themselves involved in approving the draft notifications before their publication in all cases.
20	216	The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix VII.
21 (i)	218	From the persual of their Eighteenth Report, presented to the House on 9 May, 1983, the Committee find that in all 60 cases including 36 cases of satisfactory action taken by Government were reported to the House. The Committee observe that though Ministries had taken necessary action in respect of these 36 cases, only in 18 cases the recommendations of the Committee were implemented within the time limit of six months prescribed by the Committee and in the other 18 cases the Committee find that there was a delay ranging from 1 to 8 years in implementation thereof. In regard to 24 cases on which action is yet to be taken by Government and which have been individually dealt with in the Eighteenth Report from the point of view of the nature of reply the Committee notice that there has been an inordinate delay ranging between 1 to 8 years.
21 (ii)	219	As regards their Nineteenth Report, presented to the House on 10 May, 1983, the Committee find that, in all 45 cases including 12 cases of satisfactory action taken by Government were reported to the House. The Committee observe that so far as 12 cases of action taken are concerned, there was not much delay in implementation thereof as the maximum delay involved was of 9 months. But in respect of the remaining 33 cases, which are yet to be implemented, and which have been individually commented upon in the Nineteenth Report, there has been a delay ranging between 1 to 8 years.

(1)	(2)	(3)
21 (iii)	220	In regard to their present Report, *viz.* Twentieth Report, the Committee observe that, in all 24 cases including 4 cases of satisfactory action taken by Government, are being reported to the House. The Committee further observe that except the aforesaid 4 cases of recommendations which have been implemented by Government within the prescribed time limit, there has been an inordinate delay ranging between 1 to 10 years in the remaining 20 cases which are yet to be implemented and which have been individually commented upon in each case.
21 (iv)	221.	It is needless to point out that such long delays in implementing the recommendations of the Committee defeat the purpose of the Committee. The Committee had, therefore, desired the Department of Parliamentary Affairs to impress upon all Ministries/Departments of the Government of India to adhere to the time-limit of six months fixed by them for implementing their recommendations. The Committee feel that, in fact, the Ministries should endeavour to implement their recommendations within a period of 3 months of the presentation of their Report as the period of six months fixed by the Committee is the maximum period within which the recommendations must be implemented.

APPENDIX II

(*Vide* para 54 of the Report)

(Published in the Gazette of India, Part II, Section 3, Sub-Section (i) As G.S.R. No. 835 dated 16-6-1979)

Government of India (Bharat Sarkar)

Ministry of Steel and Mines (Ispat Aur Khan Mantralaya)
Department of Mines (Khan Vibhag)

New Delhi, 31st May, 1979

NOTIFICATION

G.S.R. 835.—In exercise of the power conferred by section 13 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957)), the Central Govenment hereby makes the following rules further amend the Mineral Concession Rules, 1960:—

1. (1) These rules may be called the Mineral Concession (Third Amendment) Rules, 1979;

(2) They shall come into force on the date of their publication in the Official Gazzette.

2. In the Mineral Concession Rules, 1960.—

(1) for rule 16, the following, rule shall be substituted, namely—

"16—Report of the information obtained by the licensee.—

(1) The licensee shall submit to the State Government a quarterly report of the work done by him stating the number of persons engaged and disclosing in full the geological, geophysical or other—valuable data colletced by him during the period. The report shall be submitted within three months of the close of the period to which it relates.

(2) The licensee shall also submit to the State Government within three months of the expiry of the licence, or abandonment of operations or termination of the licence, whichever is earlier, a full report of work done by him and all information relevant to mineral resources acquired by him in the course of prospecting operations in the area covered by the licensee.

(3) while submitting reports under sub-rules (1) or (2), the licensee may specify that the whole or any part of the report or data submitted by him shall be kept confidential; and the State Government shall thereupon keep the specified portions as confidential for a period of two years from the expiry of the licence, or abandonment of operations or termination of the licencee, whichever is earlier."

(2) in Schedule 1, in Form F, in part II, for clause 17A, the following clause shall be substituted, namely:—

Report of information obtained by Licensee:—

17A. (1) The licensee shall submit to State Government:—

(a) a quarterly report of the work done by him stating the number of persons engaged and disclosing in full the geophysical or other valuable data collected by him during the period.

The report shall be submitted within three months of the close of the period to which it relates;

(b) within three months of the expiry of the licence, or abandonment of operations or temination of the licence, whichever is earlier, a full report of the work done by him and all information relevant to mineral resources acquired by him in the course of prospecting operations in the area covered by the licence. "

(2) While submitting reports under clause (1), the licensee may specify that the whole or any part of the report or data submitted by him shall be kept confidential and the State Government shall thereupon keep the specified portions as confidential for a period of two years from the expiry of the licence, or abandonment of operations or termination of the licence, whichever is earlier. '

[File No. 1 (9) |73-MVI|MM]

PARSAN CHANDRA, Under Secretary.

APPENDIX III

(*Vide* paragraph 118 of the Report)

Notes of the Ministry of Law
(Department of Legal Affairs)
Advice (A) Section

We have carefully perused the opinion of the Committee on Subordinate Legislation on the opinion of this Ministry given earlier regarding interpretation of Sections 10 and 75 of the Indian Post Office Act, 1898 and also the observations made by the deptt. to the Committee's note.

2. Subsequent to the notes of this Ministry Legislative Department's notes dt. 10-8-75 and O.M. dt. 18-9-75 placed at p. 21|c and 29|c of file No. 28|35|74-CF, no new facts have been brought to our attention with regard to the amended rules. No decision of the Suprems Court or any of the High Courts, raising any difficulties with regard to amended rules or its interpretation have been referred to. The Department has also further pointed out that if the suggestion of the Committee is implemented, it would lead to severe practical difficulties.

3. We have also carefully gone through the opinion given by this Ministry in the notes referred to above. In the light of the facts mentioned in prepage, we are of the opinion that the view taken by this Ministry is legally in order and as such we have nothing further to add.

sd|-

SMT. LAKSHMI SWAMINATHAN,

Deputy Legal Adviser.

11-11-82

D. G. P &T

Ministry of Law, Justice & Company Affairs (Deptt. of Legal Affairs) U. O. No. 14301 Ad. A dt. 12-11-82.

APPENDIX IV

(*Vide* paragraph 124 of the Report)

Tentative guidelines for fixing and declaration of foreign parcel post rates.

The Director General shall from time to time fix and declare the rates of postage chargeable on parcels booked for foreign countries and places. In so fixing and declaring the rates of postage, the Director General shall be guided by the following:

(i) The conditions governing the rates chargeable on such parcels stipulated in the Postal Parcels Agreement and the Final Protocol to the Postal Parcel Agreement which are drawn up in the Congress of the Universal Postal Union.

(ii) The levels of domestic parcel postage rates.

(iii) The outward and inward land rates fixed by each postal Administration of destination for such parcels and as indicated from time to time to the Indian Postal Administration by International Bureau of the UPU.

(iv) The transit land rates fixed by each foreign postal Administration through which such parcels have conveyed in transit, as intimated by the I.B. of the UPU from time to time.

(v) The sea conveyance rates for such parcels as intimated by the IB of the UPU from time to time.

(vi) The air conveyance charges in respect of air parcels incurred by the Indian Postal Administration.

(vii) The air conveyance charges incurred by foreign Postal Administrations of destination or transit as may be intimated by the I.B. of the UPU from time to time.

APPENDIX V

(*Vide* paragraph 180 of the Report)

MINISTRY OF LAW JUSTICE AND C.A.
(Deptt. of Legal Affairs)

Advice (A) Section

The reference that was made by the Department was whether Rule 25 (1) of the C.S.S. Rules of 1962 which confers power on the Central Government to remove difficulties in the implementation of the Rules framed under Article 309 of the Constitution can be deleted, in view of the fact that it confers wide power on the executive, escaping legislative scrutiny for ensuring that the delegated powers are being exercised within the limits of the intended delegation. The Department also referred to a decision reported in A.L.R. 1967 S.C. at page 691 (M/s. Jalan Trading Co., *Vs.* Mill Mazdoor Sabha) in support of their view.

2. The decision reported in Jalan Trading Company Laws lays down the principle that the power to remove doubts or difficulties in giving effect to the provisions of the Act is a legislative power, and therefore, it cannot be delegated to executive authority.

3. However, there is a decision in Kalawati Devi *Vs.* L.T. Commissioner (reported in AIR 1968 S.C. page 162) which distinguishes the decision reported in Jalan Trading Company. The learned judges upheld a similar provision under the Income-tax Act, of 1961. The learned judge referred to a paragraph in an earlier decision reported in A.I.R. 1961 S.C. page 338 which is as follows:—

> "Further more, the scope and effect of section 12 seems to be that it is for the Central Government to determine if any difficulty of the nature indicated in the section have arisen and then to make such order, or give such direction as appears to be necessary to remove the difficulty. Parliament has left the matter to the Executive but that does not make the notification of 1956 bad."

4. Further in 1975 S.C. page 1007 (N. K. Papaih & Sons *Vs.* Excise Commissioner) the Supreme Court upheld the delegation of legislative function to the executive on the ground that there are sufficient safeguards to control the executive. Therefore, the principle laid-down in Jalan Trading Company is distinguishable.

5. Further, the question that is raised now is whether rule 25 of the C.S.S. Rules of 1962 required to be deleted in view of the observations of the Department.

6. These rules are framed under Article 309 of the Constitution by the President. Rule 25 (1) deals with the power of the Central Government to remove difficulties while implementing the rules.

7. The word Central Government has been defined under section 3 (8) of the General Clauses Act in the following manner:—

"3 (8) (b)

(8) 'Central Government' shall,—

(b) "in relation to anything done or to be done after the commencement of the Constitution, mean the President and shall include,—

8. Therefore, the question of delegation of any power to any authority other than the rule making authority does not arise. Further, the latest position as laid down by the Supreme Court is that such conferment of power is valid even assuming that it amounts to delegation.

9. Further the power conferred on the Central Government only helps the smooth working of the rules made under Article 309. This power is given to Central Government so that litigation may not ensure. Therefore, we are not in favour of removing or deleting the rule. We are also of the opinion that the apprehension expressed by the Committee on the Subordinate Legislation of the Lok Sabha may not be justified.

10. We also request the Legislative Department to offer their comments on the issue.

Sd./- (S. V. MARUTHI),
Asstt. Legal Adviser.
21-2-1979

The recommendation of the Committee on Subordinate Legislation is to delete Rule 25 of the CSS Rules, 1962 in view of the decision of the Supreme Court in Jalan Trading Company *Vs.* Mill Mazdoor Sabha (1967 S.C. 691).

2. Rule 25 (1) states that the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs may, from time to time, issue such general or special directions as may be necessary to remove difficulties in the operation of any of the provisions of these Rules.

3. I generally agree with the conclusions drawn in Miss Maruthi's note on prepage, however, I would like to add that the decision of the Supreme Court in Jalan Trading Company case was not unanimous. Hidayatullah, J., in his dissent in that case pointed out that the device of removal of difficulty clause has been used by the Legislature on numerous occasions from the time of enacting Article 392 of the Constitution onwards and has never been objected to. It stands somewhere in between the substantive power of legislation and power to make subordinate legislation. It is *suit generis.* It is justified by the necessity. It is conditioned legislation and not likely to be abused.

4. A provision similar to Rule 25 of the 1962 Rules is contained in Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970 which reads as follows:—

> "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not in consistant with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty."

5. The validity of the above provision came up for consideration in the recent case of Gammon India Ltd., *Vs.* Union of India [1974—(1) S.C.G. 596 at 607-608]. The Supreme Court considered the decision of the majority in Jalan Trading Company's case and observed that Section 37 of the Bonus Act in that case authorised the Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act. The Court held that it is the Legislature who make provisions for removal of doubts or difficulties. The Section in that case contained a provision that the order must not be inconsistent with the purposes of the Act. Another provision in the Section made the order of the Government final. It was held that in substance there was the vice of delegation of Legislation to executive authority. Two reasons were given. First, the Section authorised the Government to determine for itself what the purpose of the Act were and to make provisions for removal of doubts or difficulties. Second the power to remove the doubts or difficulties by altering the provisions of the Act would in substance amount to exercise of legislative authority and that should not be delegated to an executive authority. In the case of Gammon India Ltd., "neither finality nor altration is contemplated in any order under Section 34 of the Act. Section 34 is for giving effect to the provisions of the Act." In the words of the Court, this provision is "an application of the internal functioning of the administrative machinery. Difficulties can only arise in the implementation of rules. Therefore, Section 34 of the Act does not amount to excessive delegation."

6. Rule 25 (1) closely corresponds to Section 34 of the 1970 Act which was upheld by the Supreme Court in the case of Gammon India Ltd. The latter decision of the Supreme Court clarifies that a revised removal of difficulties clause would be free from the objections to which Section 37 of the Bonus Act was open.

7. In view of the above, we do not see any objection to the retention of Rule 25 in the Rules.

Sd./- (P. K. KARTHA),

Jt. Secretary & Legal Adviser.

22-2-1979

LEGISLATIVE DEPARTMENT-I.

APPENDIX VI

(*Vide* paragraph 210 of the Report)

(*To be published in the Gazette of India Extraordinary in Part II Section (3) Sub-section (i)*

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, 1981.

G.S.R. .—In exercise of the power conferred by Section 141 of the Border Security Force Act, 1968 (47 of 1968), the Central Government hereby makes the following rules to amend the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975, namely:—

1. (1) These rules may be called the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority (Amendment) Rules, 1981.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 (hereinafter referred to as the said rules) in sub-rule (1) of rule 5.

(i) the words "or such other examinations as may be specified by the Director General, from time to time shall be deleted;

(ii) in the table below sub-rule 3, after item (e) and the entries relating thereto in column (2), the following items and entries shall, respectively, be inserted in columns (1) and (2) namely:

(1)	(2)	(3)
(f)	Radio Operator Trade.	
(i)	Constable (Operator to Naik (Operator).	Basic Radio Operators Grade III Course.
(ii)	Naik (Operator) to Head Constable (Operator).	Upgrading Radio Operators' Grade II Course.

(1)	(2)	(3)
(iii)	Head Constable (Operator) to Assistant Sub-Inspector (Operator).	Upgrading Radio Operator Grade I Course.
(iv)	Assistant Sub-Inspector (Operator) to Sub-Inspector (Operator).	Junior Supervisor Course.
(v)	Sub-Inspector (Operator) Subedar (Technical).	Senior Supervicor's Course.
(g)	Radio Mechanic Trade.	
(i)	Constable (Radio Mechanic) to Head Constable (Radio Mechanic).	Basic Radio Mechanic Grade III Course.
(ii)	Naik (Operator)/Head Constable (Fitter) to Head Constable (Radio Mechanic).	Basic Radio Mechanic Grade III Course.
(iii)	Head Constable (Radio Mechanic) to Assistant Sub-Inspector (Radio Mechanic).	Upgrading Radio Mechanic Grade II Course.
(iv)	Assistant Sub-Inspector (Radio Mechanic) to Sub-Inspector (Radio Mechanic).	Upgrading Radio Mechanic Gradee I Course.
(v)	Sub-Inspector (Radio Mechanic) to Subedar (Radio Mechanic).	Senior Supervisor Course.
(h)	Operator for Cipher Duties.	
(i)	Naik (Operator) to Head Constable (Operator) fit for cipher duties as Head constable (Cipher).	Basic Cipher Grade III.
(ii)	Head Constable (Operator) fit for cipher duties to Assistant Sub-Inspector (Operator) fit for cipher duties.	Upgrading Cipher Grade II Course.
(iii)	Assistant Sub-Inspector (Operator) fit for cipher duties to Sub-Inspector (Operator) fit for cipher duties.	Upgrading Cipher Grade I Course.
(iv)	Sub-Inspector (Operator) fit for cipher duties to Subedar (Communication) fit for cipher duties.	Senior Supervisor's course.

(1)	(2)	(3)
	(i) *Fitter trade*	
	(i) Constable (Fitter/Constable (GH) to Head Constable (Fitter).	Basic Fitter Grade III Course.
	(j) Armourer Trade	
	(i) Constable (Armourer) to Lance Naik (Armourer)	Armour's Technical Trade Course Grade IV.
	(ii) Lance Naik (Armourer) to Naik (Armourer).	Armour's Technical Trade Course Grade III.
	(iii) Naik (Armour) to Head Constable (Armourer).	Armour's Technical Trade Course Grade II.
	(iv) Head Constable (Armourer) to Sub-Inspector (Armourer).	Armour's Technical Trade Course Grade I.
	(v) Sub-Inspector (Armourer) to Subedar Armourer.	Specialisation Armourer's Technical Trade Course.
	(k) Vehicle Mechanic Trade.	
	(i) Constable Mechanic) to Lance Naik (Mechanic).	Vehicle Mechanic Grade IV Course.
	(ii) Lance Naik (Mechanic) to Naik (Mechanic).	Vehicle Mechanic Grade III Course.
	(iii) Naik (Mechanic) to Head Constable (Mechanic).	Vehicle Mechanic Grade II Course.
	(iv) Head Constable (Mechanic) to Sub-Inspector (Mechanic).	Vehicle Mechanic Grade I Course.
	(v) Sub-Inspector (Mechanic) to Subedar (Mechanic).	Specialisation (Vehicle Mechanic) Course.
	(l) Electrical Trade.	
	(i) Constable (Electrician) to Lance Naik (Electrician).	Electrician Course Grade IV.
	(ii) Lance Naik (Electrician) to Naik (Electrician).	Electrician Course Grade III.
	(iii) Naik (Electrician) to Head Constable (Electrician).	Electrician Course Grade II.
	(iv) Head Constable (Electrician) to Sub-Inspector (Electrician).	Electrician Course Grade I.
	(v) Sub-Inspector (Electrician) to Subedar (Electrician).	Electrical Supervisor's Course.

5. In rule 10 of the said rules, in clause (a), after the words "short-term vacancies", the words "which shall not ordinarily be for a period of more than four months", shall be inserted.

4. In sub-rule (2) of rule 14 of the said rules, the clause (ii) the following clause shall be substituted, namely:—

"(ii) attained the following educational standards, namely—

(a) Matriculation or Border Security Force Certificate of Education Class I or such equivalent examination thereof as may be specified by the Director-General; and

(b) Map Reading Standard 3".

5. In sub-rule (2) of rule 15 of the said rules, for clause (ii) the following clause shall be substituted, namely:—

"(ii) attain the following educational standards, namely:—

(a) Matriculation or Border Security Force Certificate of Education Class I or such equivalent examination thereof as may be specified by the Director General, and

(b) Map Reading Standard 2".

6. In sub-rule (2) of rule 16 of the said rules, for clause (ii), the following clause shall be substituted, namely:—

"(ii) attained the following educational standards, namely—

(a) Matriculation or Border Security Force Certificate of Education Class I or such equivalent examination thereof as may be specified by the Director General, and

(b) Map Reading Standard 2."

7. In sub-rule (1) of rule 17 of the said rules in clause (b), for sub clause (ii), the following clause shall be substituted, namely:—

"(b) Attained the following educational standard, namely—

(a) Matriculation or Border Security Force Certificate of education Class I or such equivalent examination thereof as may be specified by the Director General, and

(b) Map Reading Standard 1."

8. In sub-rule (2) of rule 18 of the said rules, for clause (ii), the following clause shall be substituted, namely:—

"(ii) Attained the following educational standards, namely—

(a) Matriculation or Border Security Force Certificate of Education Class I or such equivalent examination thereof as may be specified by the Director General, and

(b) Map Reading Standard 1."

9. After rule 21, of the said rules, the following rule shall be inserted, namely:—

"22. Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or posts."

APPENDIX VII

(*vide* paragraph 216 of the Report)

Statement showing the Action taken by Government on the recommendation made by and assurances given to the Committee on Subordinate Legislation

S. No.	Reference to para Nos. of Report & Date of its presentation.	Summary of Recommendations/Assurances	Gist of Government's reply.
1	2	3	4
1	Eleventh Report (Fifth Lok Sabha) 68 9-5-1979	The Committee are satisfied to note from the reply of the Ministry of Health and Family Planning (Department of Health) that explanatory memorandum to the effect that no body will be adversely affected by the restropective effect given to the Rules, which was not published previously, is now being published. They desire the Ministry of Health and Family Planning (Department of Health) to take necessary action in the matter at an early date.	The requisite Explanatory Note stating that the interests of no one would be prejudicially affected by reason of the retrospective operation of Sadarjang Hospital and the Willingdon Hospital and Nursing Home (Non-Medical Gsezetted Posts) Recruitment (Amendment) Rules, 1971, has since been published in the Gazette of India, Part II, Section (i), dated 9 February, 1974 *vide* G.S.R. 150 of 1974.

1	2	3	4
2	Fifth Report (Sixth Lok Sabha) 11 3-3-1978	The Committee note that in terms of the 'Note' inserted below sub-rule (a) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, and the 'Note' inserted below sub-rule (8) of Rule 11 of the Department of Space Employees (Classification, Control and Appeal) Rules, 1976, an employee involved in disciplinary proceedings shall not take the assistance of any other employee or a Government servant belonging to any other Central or State Government Department who has two pending disciplinary cases in hand in which he has to give assistance. The Committee are not convinced by the arguments advanced by the Department of Personnel & Administrative Reforms for insertion of the above 'Notes'. In the opinion of the Committee, the matter has to be viewed in the context that a Government servant involved in disciplinary proceedings is ordinarily precluded from taking the assistance of a legal practitioner; he can take the assistance of only a Government servant including a retired Government servant. The number of Government servants who have the ability or the capacity or the knowledge of defending a Government employee in disciplinary proceedings is very limited and as such the restriction placed by the said 'Notes' may result in virtual deprivation of many Government servants involved in disciplinary proceedings from getting any proper assistance whatsoever. In any event, the reasons given for putting the restriction of not more than two cases at a time imposed on retired Government servants are not at all convincing. The Committee, therefore, recommend that the above-mentioned 'Notes' should be omitted from the Rules in question. The Committee also desire that the provisions for enabling retired Government servants to render assistance in disciplinary cases should be incorporated in the rules at an early date.	(i) A provision to enable retired Government servants to assist accused members of the All India Services in disciplinary proceedings has since been incorporated in the All India Services (Discipline and Appeal) Rules, 1969 *vide* G.S.R. 753, dated 17 June, 1978. (ii) Suitable instructions have since been issued to the State Government etc. to the effect that a retired Government servent can take three cases on hand at a time *vide* Department of Personnel and Administrative Reforms letter No. 11018/12/78-AIS(III) Dated 14 August, 1978.

1	2	3	4
3	Tenth Report (Sixth Lok Sabha) 24 25-7-1978	The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to delete rule 5 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 and for embodying its provision in the Act itself. The Committee desire the Ministry to bring the necessary Bill for amending the Indian Lighthouses Act, 1927 preferably by the end of this year.	Rule 5 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 has accordingly been omitted *vide* G.S.R. 867 of 1979.
4	Tenth Report (Sixth Lok Sabha) 28 25-7-1978	The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 10 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 so as to provide for an opportunity of being heard to a body or association before its representation on the Committee, is suspended or terminated. In this regard, the Committee approve the amendment proposed to the rules *ibid* and desire the Ministry to issue the same at an early date.	The Central Advisory Committee for Lighthouses (Procedural) Rules, 1976 have since been amended to the necessary effect *vide* G.S.R. 867 of 1979.
5	Sixth Report (Seventh Lok Sabha) 61 21-4-1981	The Committee note with satisfaction that, on being pointed out, the Ministry of Railway have agreed to issue corrigenda to correct the sequence of G.S.R. numbers allotted to the First and Second Amendments of 1978 to the Railways Red Tariff Rules. The Committee desire the Ministry to issue the same at an early date if not already done so.	(i) Necessary corrigendum to rectify the error in the short title to the Railway Red Tariff (Second Amendment) Rules, 1978 (G.S.R. 347 of 1978) has accordingly been notified *vide* G.S.R. 347 of 1982. (ii) Necessary corrigendum to rectify the effort in the short title to the Railways Red Tariff (First Amendment) Rule, 1978 (G.S.R. 348 of 1978) has accordingly been notified *vide* G.S.R. 348 of 1982.
6	Sixth Report (Seventh Lok Sabha) 62 21-4-1981	The Committee further note that the Ministry of Railways have since taken certain foolprof measures to avoid recurrence of such lapses in future. The measures include maintenance of a register of amendments, giving of amendment number just before the notification is sent for cyclostyling, sending of not more than one amendment to the Government of India Press at a time and all amendments to the Press to go under separate covering letters, etc. The Committee hope that the Ministry will take care to watch that the new procedure works satisfactorily.	Necessary instructions have since been issued to all Officers and Branches in the Railway Board's Office so as to avoid recurrence of such lapses *vide* Ministry of Railways (Railway Board) Circular No. 81/Parl/21 dated 20 May, 1981.

MINUTES

APPENDIX VIII

(Vide Paragraph 7 of the Report)

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

The Committee met on Thursday, 29 September, 1977 from 10.30 to 13.00 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 Tarun Gogoi
8. Shri K. T. Kosalram
9. Shri P. Rajagopal Naidu
10. Shri N. Sreekantan Nair
11. Shri Trepan Singh Negi
12. Kumari Maniben Vallabhbhai Patel
13. Shri Saeed Murtaza
14. Shri Sachindralal Singha

* * *

SECRETARIAT

Chri Y. Sahai—*Chief Legislative Committee Officer*

* * *

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

Sl. No.	Memo No.	Subject
(1)	(2)	(3)
	*	* *
8.	22	Implementation of recommendation made in Para 86 of the Fifteenth Report of the Com-

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

(1)	(2)	(3)
		mittee on Subordinate Legislation (Fifth Lok Sabha) regarding the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (G.S.R. 1883 of 1971).

* * *

(viii) Implementation of recommendation made in para 86 of the 15th Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) re: the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (G.S.R. 1883 of 1971)—(Memorandum No. 22).

36. The Committee considered the Memorandum for sometime and desired that the Ministry of Works and Housing might be asked to furnish information on the following points:—

(i) Number of cases, year-wise, in which appeals were filed under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the orders of Estate Officer fixing damages for unauthorised occupation of public premises.

(ii) Number of cases in which the amount of damages was reduced in appeal.

(ii) Number of cases in which the orders of the Estate Officer were upheld in appeal.

* * *

The Committee then adjourned.

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

LXX

MINUTES OF THE SEVENTIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1982-83)

The Committee met on Wednesday, 30 March, 1983 from 1530 to 1615 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri N. E. Horo
4. Shri Ashfaq Hussain
5. Shri B. Devarajan
6. Shri C. D. Patel
7. Shri R. S. Sparrow

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

* * * *

(iii) The Cement Control (Fourth Amendment) Order, 1977 (S.O. 703-E of 1977)

9. The Committee decided to hear the oral evidence of the Ministry of Industry (Department of Industrial Development) in the matter.

* * * *

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

14. The Committee decided to hear the oral evidence of the Ministry of Communications in the matter.

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

MINUTES OF THE SEVENTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1982-83)

The Committee met on Saturday, 21 May, 1983 from 11.00 to 11.40 hours.

PRESENT

Shri R. S. Sparrow—*In the Chair*

MEMBERS

2. Shri N. E. Horo
3. Shri Mohammad Asrar Ahmad
4. Shri Ashfaq Hussain
5. Shri M. Ramanna Rai
6. Shri T. Damodar Reddy
7. Shri Satish Prasad Singh

Representatives of the Ministry of Industry

1. Shri S. M. Ghosh—*Secretary, Ministry of Industry, (Department of Industrial Development)*
2. Shri S. L. Kapur—*Joint Secretary.*
3. Shri C. K. Modi—*Joint Secretary.*

SECRETARIAT

1. Shri H. G. Modi—*Joint Secretary.*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

2. In the absence of the Chairman, Shri R. S. Sparrow, M.P. was chosen by the Committee to act as Chairman for the sitting in terms of the provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset the Chairman read out Direction 58 of the Direction by the Speaker, to the witnesses.

4. The Chairman then explained to the witnesses that the Committee at their sitting held on 30 March, 1983 considered the reply dated 24 February, 1981 of the Ministry of Industry expressing their inability to implement the recommendations made by them in paragraphs 22 and 23 of their Second Report (Seventh Lok Sabha) presented to the House on 18 November, 1980 relating to laying before Parliament 'Orders' of legislative nature which are framed under the powers delegated under the provisions of Section 18G or other Sections of the Industries (Development and Regulations) Act, 1951. The Chairman stated that the Committee did not agree with the reasons advanced by the Ministry for not implementing their recommendations but they decided that before recommendations were reiterated, the representatives of the Ministry should be heard for clearing certain doubts.

5. When asked as to whether they had consulted the Ministry of Law before sending their reply dated 24 February, 1981 and if so, what opinion they had given in the matter, the Secretary, Ministry of Industry stated that the opinion of the Minisry of Law was obtained before the reply was submitted to the Committee. He further stated that the question of making laying provision in the Act had since been solved as they had been informed by the Ministry of Law that they proposed to bring forward a legislation before Parliament for the amendment of the Industries (Development and Regulations) Act, 1951 for the purpose and that the Ministry of Industry had indicated their concurrence to them. When pointed out that the amendmen of the Act had not been included in the Delegated Legislation Provisions (Amendment) Bill introduced in Rajya Sabha on 5 November, 1982, the Secretary, that that would be included in the next Bill. The Secretary, Ministry of Industry, also assured in reply to a question that the list of the correspondence that had taken place between the Ministry of Law and their Ministry would be furnished to the Committee to enable them to treat it a satisfactory implementation of their recommendations.

(*The witnesses then withdrew*).

6. After some discussion, the Committee decided to defer consideration of Memoranda Nos. 168 to 171 to their sitting to be held on 23 May, 1983.

The Committee then adjourned.

MINUTES OF THE SEVENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1982-83)

The Committee met on Monday, 23 May, 1983 from 11.00 to 13.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri N. E. Horo
4. Shri Ashfaq Husain
5. Shri Dalbir Singh (Madhya Pradesh)
6. Shri M. Ramanna Rai
7. Shri R. S. Sparrow

REPRESENTATION OF THE MINISTRY OF COMMUNICATIONS (P&T BOARD)

1. Shri A. D. Pisharody—*Member incharge of Postal Operations, P & T Board, Ex-officio Additional Secretary.*
2. Shri R. N. Dey—*Deputy Director General (R) P & T Board.*

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

The Committee took up for consideration the following four Memoranda :—

I. CASES OF RECOMMENDATIONS WHEREIN PRIOR CONCURRENCE OF THE COMMITTEE HAS BEEN SOUGHT TO THE AMENDMENTS BEFORE THEIR NOTIFICATION IN THE OFFICIAL GAZETTE—(MEMORANDUM NO. 168).

3. The Committee considered Memorandum No. 168 containing two cases in respect of which Government had sought prior concur-

rence of the Committee to the amendments before their notification in the Official Gazette. The observations made by the Committee in these cases were as follows :—

(i) *The Boat Notes Regulations,* 1976 (*G.S.R.* 1555 *of* 1976).

4. The Committee noted that the Ministry of Finance had agreed to amend sub-regulation 2(a) of regulation 3 of the Boat Notes Regulations, 1976. The Committee approved the proposed amendment and desired the Ministry to issue it expeditiously.

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

5. The Committee noted from the reply that the amendments including new Rule 22 which the Ministry of Home Affairs had proposed to incorporate in the Border Security Force (Subordinate Officers and Under Officers) Promotion and Seniority Rules, 1975 in pursuance of the recommendations of the Committee, had not been shown to the Ministry of Law at the draft stage prior to sending them for approval of the Committee. The Committee further noted that, after they had conveyed their approval to the proposed amednments and the new Rule 22, in principle, with slight modification [*vide* paragraph 73 of their Thirteenth Report (Sixth Lok Sabha) presented to the House on 29 November, 1978—], these were forwarded to the Legislative Department of the Ministry of Law for vetting before final publication in the Gazette. The Department had found the amendments and new Rule 22 wanting in some other respects (*viz.*, not being precise and containing referential legislation). The proposed draft had been revised by the Legislative Department.

6. The Committee further noted that according to the Ministry, the amendments as contained in the revised notification were the same in substance as approved by the Committee earlier. In the circumstance the Committee decided to concur in the amendments as set out in the revised notification and desired to the Ministry to notify the same without any further delay. The Committee also decided to concur in Rule 22 with the exception of the words 'or posts' occurring at the end. The Committee felt that these words ought to be omitted in pursuance of their earlier recommendation made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha) presented to the House on 3rd March, 1983.

General Observations

7. The Committee observed that there had been a few cases in the past wherein the Ministries concerned had sought prior formal concurrence of the Committee to the amendments proposed by them in the rules in implementation of the Committee's recommendations and the Committee had also given their concurrence as in the above two cases. However, this procedure had not been followed uniformally in all cases. The Committee were of the opinion that the practice entailed the following inherent dangers :—

(i) If all the Ministries started seeking concurrence of the Committee to the amendments prior to implementation of their recommendations, it would a tremendous burden to their work.

(ii) Considering the volume of the work of the Committee and the procedure that had been followed in according prior concurrence by the Committee, such cases were bound to get delayed. The Committee had been giving their concurrence through their Reports being presented to the House from time to time. Many a time, the Committee had to wait for the commencement of a session of Parliament to make a report to the House.

(iii) The recommendations of the Committee had always been quite precise and clear-cut without leaving things to speculate. It would be better if the Ministry concerned had implemented their recommendations by way of amendment to the concerned rules, *etc.* after consulting the Ministry of Law or the Department of Personnel and Administrative Reforms or the Union Public Service Commission as the case might be.

8. The Committee were of the view that unless they had specially expressed or desired in their recommendations that the amendments should have been placed before them prior to their notification in the Official Gazette, the Ministries concerned should have normally finalised the amendments in consultation with the Ministry of Law, *etc.*, as might be necessary. The Committee did not wish to get themselves involved in approving the draft notifications before their, publication in al lcases.

II. CASES OF RECOMMENDATIONS REPLIES TO WHICH HAVE BEEN FOUND UNSATISFACTORY BY THE COMMITTEE—(MEMORANDUM NO. 169).

9. The Committee considered Memorandum No. 169 containing three instances relating to unsatisfactory replies of the Ministries/Departments in regard to the implementation of recommendations of the Committee made in their various Reports. The observations made by the Committee in each case were as follows :—

(i) *The Exports (Control) Order*, 1968, (*S.O.* 927 *of* 1968).

(A)

10. The Committee noted that the Ministry of Commerce had since issued suitable guidelines to the licensing authorities asking them to seek the instructions from the Chief Controller of Imports and Exports before refusal or cancellation of licences in public interest.

(B) & (C)

11. The Committee noted from the reply that the Ministry of Commerce had implemented their recommendation as contained in paragraph 20 of their Eight Report (Fifth Lok Sabha) in so far as making a statutory provision for appeal against the cancellation of licences under Clause 9 of the Export (Control) Order, 1968 was concerned. The Ministry had accordingly amended the corresponding provisions in the revised Exports (Control) Order, 1977 (S.O. 254—E of 1977) *vide* S.O. No. 554—E of 1977 so as to provide for right of appeal against cancellation of export licences under Clause 11(1) save in cases where the cancellation had been ordered in public interest.

12. The Committee observed that relying on the judgement of the Supreme Court in the case of M/s. Andhra Industrial Works V/s. Chief Controller of Imports and others, the Ministry had maintained that the policy statement *i.e.* Red Book, as distinguished from the Imports and Exports Control Orders issued under Section 3 of the Imports and Exports (Control) Act, was not a statutory document. No person could merely on the basis of such a statement claim a right to the grant of an import licence, enforceable at law. Such a policy could be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time. The Ministry, therefore, maintained that all proceedings leading to the issue of import or export licence were also of adminstrative character.

13. After giving a careful though to all aspects of the question, the Committee came to the conclusion that, even if the general Import and Export Policy of the Government could well be termed as administra-

tive action, it did not in any way affect the operation of the statutory rules framed under the powers delegated by law. The sound principles of subordinate legislation required that no administrative or executive instructions should directly or indirectly set aside or bypass or in any other manner detract from the operatian of statutory rules framed under the authority of a Statute. If the whole process of issue of import or export licence was termed as an administrative affair, then the necessity of framing the statutory rules governing these matters would have to be explored afresh. The Committee had time and again stressed that the administrative orders or executive instructions were no substitute to the statutory rules regulations, *etc*. The Committee, therefore, decided to reiterate their earlier recommendations made in paragraphs 8 and 20 of the Eight Report (Fifth Lok Sabha) and to direct the Ministry to place the administrative instructions, which were already in vogue on a statutory footing without any further loss of time.

14. The Committee further observed that the Ministry of Commerce had taken a period of more than five years in sending their comments on the recommendations made in their Eight Report (Fifth Lok Sabha), presented to the House on 30 August, 1973. The Committee decided to deprecate such avoidable long delays on the part of the Ministry in formulating their views on important matters referred to them by a Parliamentary Committee which is a minocosm of Lok Sabha. The Committee also desired that the reasons for such long delay should be probed and responsibility fixed.

(ii) *The Border Security Force (Subordinate Officers .and ment) Rules*, 1974 (*G.S.R.* 519 *of* 1974).

15. The Committee noted from the reply that the Ministry of Railways had expressed their inability to take any unilateral action in regard to the amendment of the Railway Board Secretariat Clerical Service Rules, 1970 unless the general issue of amending the corresponding service rules likewise was decided by the Department of Personnel and Administrative Reforms. The Committee very much deplored the in action on the part of the Department of Personnel and Administrative Reforms who had not cared to send a reply to Committee's reference made to them on 19 July 1982. Even a D.O| reminder dated 13 May, 1983 to the Secretary in the Department, had failed to elicit any reply.

16. The Committee found that the matter was pending on one pretext or the other ever since the presentation of their Seventeenth Report (Fifth Lok Sabha) on 1 January, 1976. Even after reiteration of the recommendation by the Committee in their Fifth Report. (Sixth Lok Sabha), presented to the House on 3 March, 1978, the infirmities still continued to exist in the service rules.

17. The Committee desired the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/ Departments of the Government of India to secrutinise the various service rules with which they were administratively concerned and to incorporate the requisite amendments wherever necessary on the lines of the recommendation of the Committee made in paragraph 103 of their Fifth Report (Sixth Lok Sabha) at an early date.

(iii) *The Central Accunts Service (Pay and Accounts Officers) Recruitment Rules*, 1977 (*G.S.R.* 1016 *of* 1977).

18. The Committee were not satisfied with the reply of the Government. They felt that the rules framed under Article 309 of the Constitution by the President were in the nature of subordinate legislation and could not be equated with the enactments passed by the Parliament in exercise of their legislative powers. That is one reason that the Committee was required to scrutinise all rules covering service matters.

19. The Committee also observed that Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970 while conferring power on the Central Government to make order for removal of difficulty, clearly stipulated for publication of such order in the official Gazette. Whereas Rule 25 of the Central Secretariat Service Rules and Rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules were faulty on those score too. The Committee apprehended that the Government intended to acquire power which were not intended by the parent Act. The Committee had already gone into the depth of the matter and concluded that it might not entail much difficulty for the Government to issue a notification in the Gazette whenever they decided to amend the rules. On the other hand, by not publishing the order in the official Gazette, they would be depriving the Committee from exercising their legislative scrutiny of such an order. The Committee did not see any disadvantage in making a formal amendment to the rules whenever considered necessary rather than leaving the things to be regulated by administrative instructions.

20. The Committee decided to reiterate their earlier recommendations made in paragraphs 45—48 of the Fifteenth Report (Sixth Lok Sabha) and to urge upon the Government to implement the same without further loss of time.

III. CASES OF RECOMMENDATIONS WHEREIN ONLY INTERIM REPLIES HAVE BEEN RECEIVED FROM—(MEMORANDUM NO. 170).

21. The Committee considered Memorandum No. 170 containing 4 cases in respect of which Government had furnished their interim

replies in the matter of implementation of various recommendations of the Committee. The observations made by the Committee in each case were as follows :—

(i) *The Public Premises (Eviction of Unauthorised Occupants) Rules*, 1971 (*G.S.R.* 1883 *of* 1971).

22. The Committee noted that they had presented their Fifteenth Report (Fifth Lok Sabha) to the House on 15 April, 1975. They had considered the action taken reply of the Ministry of Works and Housing on 29 September, 1977. Not being satisfied with the reply, the Committee had asked for crtain more details in this regard. The Committee, however, noted that the same still remained to be furnished inspite of several reminders. The Committee decided to express their unhappiness over the inordinate delay in implementing their rcommndation and to urg upon the Ministry to expedite the information without further delay to enable them to finalise the action taken on their recommendation which concerned such important matter as eviction of unauthorised occupants from public premises.

(ii) (a) The Indian Railway Traffic Service Recruitment Rules, 1968 (G.S.R. 204 of 168); and

(b) The Indian Railway Service of Engineers etc. Rules, 1971 (G.S.R. 550—555 of 1971)

23. The Committee noted that they had presented their Twelfth Report (Fifth Lok Sabha) to the House as early as 10 May, 1974. A period of more than nine years had since elapsed, but the implementation of their recommendation made in paragraph 45 of the said Report was still pending. The Committee decided to express their grave concern over the inordinate delay in the matter of complying with their recommendations. The Committee felt that such prolonged indecisiveness on the part of the executive, besides diminishing the utility of their recommendations in point of time, resulted in continuance of the defects in the statutory rules most often resulting in unmitigated harm to the persons concerned. The Committee decided to emphasize that the matter should not be postopned indefinitely and the lacunae and short comings in the rules should be eliminated without any further delay for which the Ministry had already agreed long back. The Committee felt that responsibility should be fixed for such inordinate delay in implementing the recommendation.

(iii) The Compensation Tribunal Order, 1974 (G.S.R. 149-E of 1974)

24. The Committee observed that as early as January, 1976, they had recommended that all statutory orders framed under the Defence

of India Rules should be laid before Parliament. The Committee had reiterated the recommendations in their Eighth Report (Sixth Lok Sabha), presented to the House on 26 April, 1978. Even after a protracted correspondence for over sevel years, the Ministry of Home Affairs had not been able to lay the statutory orders on the Table of Parliament despite categorical findings of the Committee in this regard. The Committee decided to express their grave concern over the inordinate and protracted delay in complying with their recommendations. The Committee decided to re-stress that such delays over a long period in laying were contrary to the spirit of the relevant provisions in the Acts which required that the 'Orders' should be laid before Parliament as soon as possible, after they were made. The Committee further observed that the Ministries/Departments exercising rule-making powers should bear in mind that generally the rules became operative as soon as they were published, but Parliament's statutory right of modification/amendment, in terms of the parent statutes, became exercisable only after the rules were laid before it. Unjustified delays such as the one in the instant case inevitably resulted in depriving the Parliament of their statutory right of modification/annulment for unduly long periods. The Committee, therefore, decided to again reiterate their recommendations and desired that the Ministry should lay the requisite 'orders' on the Table of the each House of the Parliament without any further loss of time.

(iv) Publication and laying of rules and regulations framed under the Indian Railways Act, 1980.

25. The Committee noted that the matter was pending with the Ministry of Railways since 10 August, 1971 when the Committee made their First Report (Fifth Lok Sabha) recommending for the amendment of the Indian Railway Act, 1890 with a view to provide for laying and publication of all rules and regulations made thereunder. Since the Ministry had co-related the amendment with their comprehensive review of the Act in all its aspects, the matter had been getting delayed year after year. It was indeed distressing that it had takn the Ministry almost twelve years to process the review of the Act and still it was not precisely known as to when it would actually be brought before Parliament in the near future. The Committee were of the firm view that such prolonged indecisiveness and dilatory processes adopted to delay matters were bound to result in avoidable continuance of the defects in the legislation and, more often than not, resulted in unintended harm to the cause and objective in view.

26. The Committee decided to stress again with great emphasis upon the Ministry to bring forth immediately before Parliament an exclusive piece of legislation for incorporating the requisite laying and modification provisions in the Indian Railways Act, 1890 within three months of the presentation of thei rReport, if the proposed comprehensive Bill further delayed for any reasons whatsoever.

IV. CASES OF RECOMMENDATIONS WHEREIN GOVERNMENT HAVE EXPRESSED THEIR IN ABILITY TO IMPLEMENT—(MEMORANDUM NO. 171)

27. The Committee considered Memorandum No. 171 comprising seven cases in regard to which Government had expressed their inability to implement their recommendations made in their various Reports presented to the House during the Fifth, Sixth and Seventh Lok Sabha. The Committee considered each case mentioned in the Memorandum and made their observations as follows:

(i) The Mineral Concession (Second Amendment) Rules, 1971 (G.S.R. 1580 of 1971)

28. The Committee observed that a licensee, during the course of his prospecting operation obtained valuable information regarding the mode of occurance, attitude, likely extent, grade, other lithological and structural control of mineralisation at considerable expense of money, labour as well as time. With the fear of disclosure of such vauable data to his competitors, he might not like to part with the full facts in his report to the State Government. With the result, the State Government wuold be deprived of that valuable information about the mining area already explored by the prospecting licensee. To do away with such a situation, it had since become a universal practice that the confidential reports were to remain restricted at least for an agreed period of time, in order to retain the minor's trust and his confidence regarding future reports.

29. The Committee noted from the reply of the Ministry of Steel and Mines (Department of Mines) that the provisions in Rule 16 of the Mineral Concession Rules were intended to infuse the confidence in the licensee to disclose all the information obtained by him during the prospecting mining to the State Government to enable them to assess the potentialities of the area. To make this intention abundantby clear, Rule 16 and the corresponding Clause 17A in Part II of From F in Schedule I of the Mineral Concession Rules, 1960 had accordingly been amended vide G.S.R. 835 of 1979.

30. In view of the above, the Committee decided not to press for implementation of their recommendation and accept the position as stated by the Ministry.

(ii) The Central Industrial Security Force Rules, 1969 (S.O 4632 of 1969)

31. The Committee noted from the reply of the Ministry of Home Affairs that the instructions to be issued by the Central Government or the Inspector General or the Deputy Inspector General under Rule 23 could only be administrative or executive in character for the purpose of day to day functioning of the administration as envisaged under Section 7 of the Central Industrial Security Force Act, 1968 and no instructions which were legislative in nature, could be issued within the scope of Rules 23 of the Central Industrial Security Force Rules, 1969.

32. The Committee decided not to press that recommendation in view of the reasons advanced by the Ministry of Home Affairs.

(iii) (a) The Punjab State Agricultural Marketing Board and Market Committee (Reconstitution and (Reroganisation) Order, 1969 (S.O. 3021 of 1969) and

(b) The Punjab Zila Parishad Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969 (S.O. 2933 of 1969)

33. The Committee noted from the reply of the Ministry of Home Affairs that the second proviso to Clause 14 of the Punjab State Agricultural Marketing Board and Market Committees Reconstitution and Reorganisation) Order, 1969 and Clause 10 of the Punjab Zila Parishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969 were intended to safeguard the interests of the employers allocated to the successor Corporations in the matter of conditions of their service against unilateral action by the Corporations concerned in the successor States. As such these did not clothe the State Governments with any additional powers and were in the nature of limitations upon the powers already available to the concerned bodies under the relevant State enactments. In view of the reasons given above especially as there would have been no check on the Corporations in dealing with the service conditions of allocated employees, the Committee decided not to pursue the matter further.

(iv) The Reserve Bank of India (Note Refund) Rules, 1975.

34. The Committee noted with satisfaction that as a consideration to their suggestion, the Reserve Bank of India had agreed to provide

for payment of half the face value of a mutilated bank note of a denomination of one hundred rupees or less on which the number was printed at two places on the production of one piece the undivided area of which was not less then half the area of the note and subject to other requirements of the rules. Rule 6 of the Reserve Bank of India (Note Refund) Rules, 1975 had accordingly been amended and a new sub-rule (3) under Rule 9 of the said Rules had been inserted by the Reserve Bank of India (Note Refund) (Amendment) Rules, 1980 to the above effect.

35. The Reserve Ban kof Inia had, however, expressed their inability to meet the claims in respect of the lost notes (including those of the denominations of hundred rupees and fifty rupees), whether on the basis of affidavits of the claimant or other-wise, after taking into consideration all aspects of the matter. I nview of the difficulties expressed by the Bank, the Committee decided not to pursue the matter further.

36. The Committee, were, however, distressed to note that it had taken the Ministry of Finance (Department of Economic Affairs) more than two and a half years to formulate their views on the suggestion of the Committee made in paragraph 63 of their Third Report (Sixth Lok Sabha) presented to the House on 14 December, 1977. The Committee expected the Ministry to be careful in future and finalise all proposals referred to them by the Committee as early as possible and not exceeding six months in any case.

(v) The Cochin Port Pilotage and Other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974)

37. The Committee observed that the Cochin Port Pilotage and other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974) had since been successively superseded by G.S.R. 392-F of 1975 and G.S.R. 639-F of 1977. The Rules, as they stood then, did not vest any power in the Port Trust Board for remission of pilotage fees. According to the Ministry of Shipping and Transport (Transport Wing), the cases for remission of pilotage fees were rare and were decided upon in consultation with the Ministry of Finance. In view of the fact that the powers for remission of pilotage fees were no more vested in the Port Trust Board, the Committee did not like to pursue the matter further.

38. Compliance with the Committee's observations made in paragraph 12 of their Fifteenth Report (Sixth Lok Sabha) had already been reported to the House *vide* paragraph 65 of Fourth Report (Seventh Lok Sabha).

(vi) *The Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competition Examination) Regulations, 1966.*

39. The Committee accepted the plea advanced by the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grades II and III of the Indian Foreign Services, Branch 'B' (Limited Departmental Competitive Examination) regulations, 1966 as the precise amount of fee payable by a candidate for a particular examination had been laid down in the notification issued by the Union Public Service Commission for that particular examination for the information of the prospective candidates. In view of that, the Committee did not like to press for an amendment to that effect in the Regulations.

40. The Committee, however, regretted to observe that the Ministry of External Affairs had spent almost 4 years in sending their comments on the recommendation made in paragraph 26 of their Fifteenth Report (Sixth Lok Sabha) presented to the House on 21 December, 1978. The Committee decided to take a serious view of such inordinate delays in the disposal of urgent matters referred to by the Parliamentary Committee and expected the Ministry to be prompt in future.

(vii) *The Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regulations, 1975 (G.S.R. 616 of 1976)*

41. The Committee noted that they had since accepted the suggestion of the Ministry of External Affairs for not indicating the precise amount of fee in the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 as the same had been specified by the Union Public Service Commission in their notification issued for that particular examination. In view of that, the Committee decided not to press for implementation of their indentical recommendation made in respect of the Indian Foreign Service Branch 'B' (Qualifying Examination for the Appointment of Telephone Operators to Grade VI) Regudations, 1975 as well.

42. The Committee then heard the evidence of the representatives of the Ministry of Communications (P & T Board) regarding inability of the Ministry to implement the recommendation of the

Committee contained in paragraph 15 of their Twentieth Report (Fifth Lok Sabha) in respect of the Indian Post Office (Third Amendment) Rules, 1974 (G.S.R. 281-E of 1974).

43. At the outset, the Committee enquired from the representative of the Ministry as to when did he saw the Twentieth Report (Fifth Lok Sabha) which was presented to the House on 3 November, 1976 and a copy of which was sent to the Ministry for necessary action on 5 November, 1976. The representative stated that he saw that Report in August, 1982, when the case was put up to him. He further stated that he was not dealing with that case previously and started attending that only in 1982.

44. When enquired why no reply was furnished to the Committee even after receiving repeated reminders, the representative of the Ministry stated that the record of those reminders was available in the case file but reminders themselves were not available in the file.

45. Explaining the procedure regarding dealing with Parliamentary references received in the P &T Directorate, the representative stated that each Parliamentary reference received in the Directorate was first sent to the Branch concerned dealing with the subject matter of the reference.

46. On being enquired as to when they consulted the Law Ministry, the representative stated that they referred the file to the Ministry of Law in October, 1982. When it was pointed out that in their reply, dated 30 August, 1982, they stated that the matter was under their examination, in consultation with the Ministry of Law, and they actually referred the matter to them in October, 1982, the representative stated that the whole matter was dealt with in the P & T Directorate and thereafter the case was put to the Member of the Board and to the Secretary. After obtaining their orders, the file was referred to the Ministry of Law in October, 1982. There was no intention on their Part to hide any thing.

47. The representative further stated that originally the matter was dealt with by the Technical Section of the D.G. P.T. The relevant file was not traceable and on receipt of reminder from the Lok Sabha Secretariat in 1981, the file was reconstructed from whatever material was available. When asked who was accountable for that, the representative of the Ministry replied that they shall try to fix responsibility for that.

48. When enquired how many times that rule had ben changed, the representative informed that it had been revised 13 times.

49. When it was pointed out that section 75 of the Indian Post Office Act did not empower the Director General to make rules, but that he could only make announcement or declare the rates, the representative of the Ministry stated that they had all along understood that they had been given power to fix the rates and declare it. He further explained that two distinct things were mentioned in section 10 of the Act. One was to make rules regarding scales of weight and terms and conditions and that was called rule making power regarding weights and conditions for the articles to be sent abroad. The other thing was to declare rates. As regards rates, those were fixed according to the international convention and were decided by the Universal Postal Congress which meet oncein 5 years. The last meeting was held in September-October, 1979 and the rates decided by them came into force on 1.7.1981. The representative further added that the rates were to the revised taking into account various factor such as (i) freight, which may change many times in a years (ii) changes levied by receiving countries for making deliveries of parcels; and (iii) in many cases parcels had to be transported through third countries and those countries could insrease their rates at their discretion. He also added that the Postal Department did not had any monopoly of parcel traffic and it was done on more or less commercial basis. This could be the rationale for special provision being made only for foreign parcels. The weight slabs were covered by the rule making power. The only power given by Central Government was in respect of the quantum of charges based on the arithmatical calculation.

50. When enquired whether it was the Director General or the Central Government which had been given those powers, the representative stated that the powers of the Central Government had been delegated to the Director General. The Committee took serious view of such delegation of power to the Director General. It was pointed out to the representative of the Ministry that under section 75 of the Act the power given to the Director General was to declare and not to make any scheme. It was the Central Government who prepared the scheme. The Director General only makes an announcement or declaration and, if the Ministry wanted to delegate that power to the Director General, then Act should be amended accordingly.

51. The Committee made it clear to the representative or the Ministry that they were not convinced with their reply, as well as the views expressed in the matter by the Ministry of Law, Justice and Company Affairs. The Committee were of the firm opinion that the rates could not be divorced from the scales of weight. It was also

pointed out to the representative of the Ministry that they had not indicated their practical difficulties in implementing the recommendation of the Committee in their replies. The representative of the Ministry replied that they understood and appreciated the Committee's views and they would try to reconcile both the practical difficulties and the interpretation of the Act. They would also prepare a scheme for complying with the Committee's recommendation. The representative was then asked to furnish early a written reply to the Committee stating the proposed scheme/guidelines or amendment of the Act to comply the recommendation of the Committee.

(*The witnesses then withdrew*)

The Committee then adjourned .

MINUTES OF THE SEVENTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA (1983-84)

The Committee met on Monday, 27 June, 1983 from 11.00 to 12.30 hours.

PRESENT

Shri Xavier Arakal—*In the Chair.*

MEMBERS

2. Shri Mohammad Asrar Ahmad.
3. Shri Amal Datta.
4. Shri T. Damodar Reddy.
5. Shri Satish Prasad Singh.
6. Shri Vijay Kumar Yadav.

SECRETARIAT

Shri Xavier Arakal—*In the Chair.*

Officer.

2. In the absence of the Chairman, Shri Xavier Arakal, M.P. was chosen by the Committee to act as Chairman for the sitting in terms of the provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered their draft Twentieth Report and adopted it without any amendment.

** ** ** **

The Committee then adjourned.

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