

# COMMITTEE ON SUBORDINATE LEGISLATION

(ELEVENTH LOK SABHA)

## FIRST REPORT

Report on the Implementation of Recommendations contained  
in the Fifteenth Report (Tenth Lok Sabha) on Rules/Regulations framed  
under the Advocates Act, 1961

12 DEC 1998 [Presented on



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LOK SABHA SECRETARIAT  
NEW DELHI

Price: Rs. 14.00

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TO

THE FIRST REPORT OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (ELEVENTH LOK SABHA)

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# CONTENTS

	<i>Para No.</i>	<i>Page No.</i>
COMPOSITION OF THE COMMITTEE .....		(iii)
INTRODUCTION .....		(v)
<b>REPORT</b>		
I. Delay in implementation of recommendations contained in the Fifteenth Report — Background .....	1.1—1.15	1
II. Recommendations/Observations of the Committee which have not been accepted by the Government .....	2.1—2.3	5
III. Recommendations/Observations of the Committee which have been accepted by the Government.....	3.1—3.4	8
IV. Recommendations/Observations of the Committee in respect of which final replies of the Government are still awaited .....	4.1—4.2	14
<b>APPENDICES</b>		
I. Summary of main recommendations/ observations made by the Committee ....		19
II. Minutes of the Sixty-fifth, Sixty-seventh and Seventy-first sittings of the Committee (Tenth Lok Sabha) and the Fourth Sitting of the Committee (Eleventh Lok Sabha) .....		25

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LEGISLATION  
(1996-97)**

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## INTRODUCTION

1. The Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this First Report on "Implementation of recommendations contained in the Fifteenth Report of the Committee on rules/regulations framed under the Advocates Act, 1961".

2. The matters covered by this Report were considered by the Committee at their sittings held on 5 December, 1995, 23 January, 1996, 25 March, 1996 and 16 October, 1996.

3. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) regarding implementation of recommendations contained in the Fifteenth Report on rules/regulations framed under the Advocates Act, 1961. The Committee wish to express their thanks to the representatives of the Department of Legal Affairs for furnishing the desired information.

4. The Committee considered and adopted this Report at their sitting held on 16 October, 1996. The Minutes of the sittings relevant to this Report are appended to it.

5. For facility of reference and convenience, recommendations/ observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I to the Report.

NEW DELHI;  
October, 1996

**KRISHAN LAL SHARMA,**  
*Chairman,*  
*Committee on Subordinate Legislation.*

## CHAPTER I

### DELAY IN IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN FIFTEENTH REPORT — BACKGROUND

The Fifteenth Report of the Committee on Subordinate Legislation (Tenth Lok Sabha) was presented to the House on 16 December, 1994. The Report was thereafter forwarded to the Ministry of Law, Justice and Company Affairs/Bar Council of India for implementation, and their attention was drawn to the recommendation of the Committee contained in paragraph 93 of their Sixteenth Report (Fifth Lok Sabha), where the Committee have prescribed a time limit of six months within which the Ministries/Departments of the Government of India should implement the recommendations. In accordance with this recommendation, the Law Ministry/Bar Council were required to implement the recommendations contained in the Fifteenth Report by 16 June, 1995.

1.2 The Ministry of Law, Justice and Company Affairs *vide* their O.M. No. 8(9)/94-I.C. dated 21 June, 1995 stated that the Fifteenth Report of the Committee on Subordinate Legislation was forwarded to the Bar Council of India (BCI) for obtaining their comments. In turn the Bar Council of India considered the Report at their sitting held in February, 1995, where it was opined that the matter, being of utmost importance and urgency, needed to be thoroughly gone into. Accordingly, a Committee of the BCI consisting of its members namely, S/Shri S. Gopakumaran Nair, Jagannath Patnaik, P.C. Jain and Ashok Kumar Deb, was requested to study the matter thoroughly and give a report. According to the Ministry, the said report was still awaited from BCI and the matter was to be examined by the Ministry after the receipt of that report. The Ministry, therefore, sought extension of time upto 31.12.1995 to implement the recommendations contained in the Fifteenth Report.

1.3 The aforesaid request of the Ministry for extension of time was put-up to the Chairman, Committee on Subordinate Legislation. As directed by the Chairman, the Ministry were granted extension of time only upto 16.8.1995 and it was also communicated to the Ministry that if the Action Taken Notes did not reach by that date, the representatives of the Ministry might be asked to appear before the Committee to explain formally the reasons for the delay in implementation of the recommendations.

1.4 The Ministry of Law, Justice and Company Affairs *vide* their O.M. dated 31 August, 1995 stated that:—

“.....the report of the Committee of the Bar Council was considered by the Council on 5 and 6 August, 1995 and the minutes of the

meeting are being finalised. With regard to recommendations of the Committee relating to amendments in the Criminal Procedure Code and Civil Procedure Code, the concerned Ministries have been requested to take necessary action. As regard recommendations relating to legal education, the Ministry propose to hold a meeting of Law Ministries (Working Group) in September, 1995 and the subject of the meeting would be 'Reforms in Legal Education'.

In the circumstances, it is requested that the Lok Sabha Secretariat may kindly take necessary steps to place the matter before the Committee on Subordinate Legislation for favour of extension of time upto 31.12.1995."

1.5 The aforesaid request of the Ministry were placed before the Chairman, Committee on Subordinate Legislation and with the approval of the Chairman, the Ministry were requested to furnish the following information before their request for extension of time could be considered by the Committee:—

(i) The outcome of the meeting of the Bar Council of India held on 5 and 6 August, 1995 during which the Bar Council had considered the report of the Committee of the Council on the implementation of the recommendations contained in the Fifteenth Report.

(ii) The steps taken by them to expedite the matter with the other concerned Ministries regarding implementation of recommendations relating to amendments in the Criminal Procedure Code and the Civil Procedure Code.

(iii) Whether the proposed meeting of the Law Ministers (Working Group) on the subject 'Reforms in Legal Education' scheduled to be held in September, 1995 has since been held. If so, the conclusions of the meeting and the material/literature, if any, considered during the meeting.

1.6 The Ministry *vide* their O.M. dated 27 October, 1995, enclosed the following material:—

(1) Copy of the statement adopted at the Law Ministers (Working Group) meeting at Bhubaneshwar in September, 1995.

(2) Views of the Bar Council of India on the Fifteenth Report of the Committee on Subordinate Legislation.

(3) Copy of the letter dated 11.10.1995 from Director (Judicial), Ministry of Home Affairs to the Deptt. of Legal Affairs and note dated 19.10.1995 received from the Legislative Department on the subject.

1.7 The aforesaid material received from the Ministry was examined and it was observed that the views of the Bar Council of India on some of the

recommendations of the Committee were contradictory. The Committee therefore, decided to hear the views of the representatives of the Ministry of Law, Justice and Company Affairs in that regard and to also ascertain the reasons for delay in the implementation of the recommendations contained in the Fifteenth Report. Accordingly, the representatives of the Ministry appeared before the Committee for oral evidence on 5.12.1995.

1.8 During oral evidence, the attention of the Ministry was drawn to the views expressed by the Bar Council of India on the recommendations of the Committee. The reasons for delay in implementation of recommendations were also discussed during the evidence. The Ministry was granted one months' extension of time to furnish their final Action Taken Note on the implementation of the recommendations of the Committee contained in the Fifteenth Report.

1.9 The Ministry of Law, Justice and Company Affairs *vide* their O.Ms. dated 11 December, 1995 and 3 January, 1996 furnished their Action Taken Note on the recommendations of the Committee. It was observed therefrom that the Ministry had expressed their inability to implement the recommendations of the Committee contained in paras 1.13 and 1.14 regarding Transparency of fees charged by the lawyers and para 4.6 regarding obviating Frivolous Litigation. The Committee, therefore decided to hear the oral evidence of the representatives of the Ministry in that regard. The representatives of the Ministry appeared before the Committee for oral evidence on 23.1.1996.

1.10 During oral evidence, Dr. P.C. Rao, Law Secretary reiterated the Action Taken reply of the Ministry that it would be difficult to enforce such a Law.

1.11 Reacting to it, the Chairman observed that the Government has not considered the aspect as to how much the people will benefit by having transparency of fees. He further said that the Government has considered the interests of the Lawyers only and not the litigants.

1.12 The Committee then heard the views of the Law Secretary with regard to the permitting of advertisements for imparting information to the public in regard to standard cases like divorce, eviction, accident and rent control cases etc. by lawyers who are specialists in these fields in the interest of the rural litigants. The Committee were of the view that advertisements through magazines such as Lawyers Journal and News papers should be given as these are inexpensive and would also enable the litigants to know the field of specialisation of the Lawyers. In reply the Law Secretary stated that under the rules, Lawyers cannot advertise their Services.

1.13 The Committee also suggested that a directory in regional language listing the names of the Lawyers, their phone numbers and their fields of specialisation at Tehsil level or at the District level should be published and some rules could be framed for that purpose so that the



litigants could consult various names from the Tehsil Bar Council or District Bar Council.

1.14 As regards prescribing a stiff penalty against frivolous litigation by making the litigant to compulsorily pay for the actual costs if any incurred by his opponent, as well as to fully pay for the cost incurred by the Court itself, the Law Secretary stated that the matter has been referred to the Law Commission and that the Law Commission is examining the Criminal Procedure Code.

1.15 The Chairman reiterated the recommendation of the Committee that the lawyers should give firm opinion on the prospects of a case to the litigants as it may not be difficult for him to do so after going through the brief of the case and insisted upon the implementation of the recommendations.

## CHAPTER II

### RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE WHICH HAS NOT BEEN ACCEPTED BY THE GOVERNMENT

#### Recommendations contained in paras 1.13 & 1.14 Regarding Transparency of Fees charged by Lawyers

**Para 1.13** The Committee desired that the Government should make the Bar Council of India duty bound to prescribe a scale of fee for different categories of Lawyers for various types of services rendered to clients by them and that information should be available to public also. The Committee strongly feel that such transparency should be there and any client who wants to know about the fees of a Lawyer should be able to know about it before hand. The Committee desire that any activity on the part of any Lawyer charging fees outside the prescribed limits may be brought out as a professional misconduct under the Bar Council of India rules and the responsibility to detect such activity may be prescribed as a duty cast on other Lawyers, Bar Councils and Bar Associations etc.

#### Action Taken Reply of the Ministry

The recommendation of the Committee was examined in consultation with the Bar Council of India. The matter was also considered at the meeting of the Law Ministers working group held in Pondicherry in February, 1993. The Government is of the view that, apart from the difficulties involved in prescribing a scale of fee for different categories of Lawyers for various types of Services rendered to clients by them, it would be extremely difficult to enforce such a law. It is therefore not considered feasible to prescribe by law a scale of fee for different categories of Lawyers for various types of Services as recommended by the Committee.

**2.1** The Committee are not satisfied with the Action taken Reply of the Government. The Committee are of the view that the Government has not gone into the spirit of the recommendation of the Committee as to how much the people will benefit by having transparency of fees charged by the lawyers. It is clear to the Committee that the Government has considered the interest of lawyers only and given scarce thought to the plight of the litigants who get squeezed by unscrupulous advocates in numerous cases. The Committee note that there has been deterioration in the situation in the last two years and, therefore, there is greater urgency to tackle this problem. In this context the Committee lay greater emphasis on transparency of fees charged by the Lawyers. The Committee, therefore, reiterate their recommendation and re-emphasise that the recommendation may again be considered by the Government in letter and spirit taking into

consideration primarily the interest of the litigants. Investigation by the Government will show how this matter is dealt with in other countries particularly the U.K. The knowledge of Government appears insufficient. The Committee recommend that Government should set-up a Committee to go into the matter of prescribing fees as well as ensuring enforcement thereof by exercising, *inter-alia*, the rules and practice in advanced countries.

Para 1.14 The Committee also note that as per the existing provisions of the Bar Council of India Rules, advertisement of the legal profession is prohibited. The Committee are, however, of the view that advertisements by lawyers for imparting information to the public in regard to standard cases like divorce cases, eviction cases, accident cases and rent control cases etc. may be permitted in the interest of the rural litigants and lower middle class litigants who form the majority of litigants.

#### **Action Taken Reply of the Government**

The Bar Council of India is of the view that, except in the Supreme Court, in all other Courts the litigants approach lawyers of their choice through an introduction from some quarters. This is not a field where one requires any information as to who is a specialist in a particular branch through newspapers or television. Advertisements would only make the profession wholly mechanical, commercial and profit oriented. Permitting advertisements by lawyers may only help the media people to make more money at the cost of the lawyers and litigants. In the light of the aforesaid, no action is proposed to be taken.

2.2 The Committee do not agree with the reply of the Ministry that advertisements giving out important information about specialised cases would make the profession mechanical, commercial and profit oriented. The Committee are of the view that advertisements through periodicals such as Lawyer's Journal and even small Newspapers having local circulation within prescribed frequency e.g. once a month or once a quarter could be given which would be quite inexpensive and would also enable the litigants to know the particulars of the lawyers. In this context, the Committee further recommend that a directory in regional languages listing the names of the lawyers, their addresses, phone numbers etc. at Tehsil level or at the District level should be published by the State Bar Councils and appropriate rules could be framed for that purpose so that the litigants could select lawyers out of the various names listed in the Tehsil/District Bar directory prepared by the State Bar Council.

#### **Recommendations contained in Para 4.6 Regarding Frivolous Litigation**

Para 4.6 The Committee suggest that it should be made obligatory on the part of lawyers to give a written opinion to their clients about the

prospects of the case before it is filed and the Indian Advocates Act/Bar Council of India Rules should be suitably amended to achieve this purpose.

#### **Action Taken Reply of the Government**

With regard to the recommendation of the Committee that it should be made obligatory on the part of the lawyers to give a written opinion to their clients about the prospects of the cases before it is filed, the Bar Council of India is of the view that it is very difficult for a lawyer to give a reasonably firm opinion on the prospects of any case and a written opinion, may sometimes be relied on by an unscrupulous client for filing a suit or other proceedings for compensation against his lawyer if he loses the case. In the light of the aforesaid, no action is proposed to be taken.

2.3 The Committee have considered indepth the views of the Bar Council of India and also of the Government on this matter. The Committee is of the view that the Lawyer must give his honest opinion about the strength and weakness of the case to the litigant in respect of writs under Art. 32 and 226 of the constitution and also appeal matters. The Committee, therefore, reiterate their recommendation and desire that the Rules under the Advocates Act should suitably be amended for the purpose.

## CHAPTER III

### RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

#### Recommendations contained in Paras 3.7 and 3.8 Regarding Strikes By Lawyers

**Para 3.7** The Committee note with concern that in the recent years, strikes by the lawyers have become a recurring phenomenon resulting in an accumulation of cases in the courts besides having a very adverse effect on the interests of the helpless litigants. Further, the strikes by lawyers, for whatsoever reasons, bring the legal profession into disrepute. The Committee feel that if a litigant lost the case because his lawyer did not appear at the hearing due to strike, such client should have a right to go to the Consumer Courts to seek damages. Further, the lawyers in their professional capacity have also a bounden duty towards the courts and the clients.

**Para 3.8** The Committee agree with the suggestion made by the Bar Council of India that Boards should be set up at the level of Supreme Court, High Courts and District Courts consisting of the members of judiciary, Bar Councils and Bar Associations of the respective Courts to settle disputes so that the Lawyers may not resort to strikes. The Committee therefore recommend that the Central Government and Bar Council of India should examine the feasibility of setting up of such Committees/Boards and bring appropriate amendment in the Advocates Act, 1961 and frame the rules thereunder at the earliest. The Bar Council of India should also consider making strikes by Advocates a misconduct under the rules under the Advocates Act and alter the rules accordingly.

#### Action Taken Reply of the Ministry

The Bar Council of India has agreed with the proposal for constitution of a Committee of Lawyers and Judges at regional and State levels and the council has been requested to take appropriate steps to implement the recommendation.

With regard to the recommendation regarding amendments to the rules of the Bar Council of India, it is stated that a writ petition regarding strikes by Lawyers has been filed in the Supreme Court and the Court has ordered certain interim measures.

**3.1** The Committee note with satisfaction that the Bar Council of India has agreed with the recommendation of the Committee for constitution of a

Committee of lawyers and Judges at regional and State levels. The Committee desire that the recommendation may be implemented at the earliest. As regards framing of rules in this regard, the Committee note from the Ministry's reply that a writ petition regarding strikes by lawyers has been filed in the Supreme Court. The Committee however desire that in the meantime the draft rules may be framed which may be finalised after the outcome of the Supreme Court Judgement.

#### **Recommendations contained in Paras 5.5 & 5.6 Regarding Identity Cards for Lawyers**

**Para 5.5** The Committee note that their proposal that lawyers should have photo identity card in order to have some kind of identification has been agreed to by the representatives of the Bar Council of India. The Committee also note that though the lawyers practising in the Supreme Court are already in possession of these photo identity cards, yet their display is not compulsory.

**Para 5.6** The Committee desire that the Central Government/Bar Council of India might frame the rules in respect of photo identity cards bearing his name and address, the State Bar Council in whose rolls his name appears and enrolment number of the advocate and the name of the Court in which he is practising. The Committee also desire that the displaying of the photo identity card on the chest of the lawyer when in the Court should be made compulsory.

#### **Action Taken Reply of the Ministry**

The Bar Council of India has accepted in principle the issue of photo identity cards to the advocates but is opposed to the compulsory display of the card on the chest of the lawyer when in court on the ground that such sort of public identity by wearing identity cards may look awkward. The Council is also of the view that the identity of lawyer should be through his eminence and reputation. In the light of the aforesaid, the Council has been requested to take steps for the issue of photo identity cards to all the advocates.

**3.2** The Committee note with satisfaction that the Bar Council of India has accepted in principle the issue of photo identity cards to the advocates as per the recommendation of the Committee. However, as regards the compulsory display of the photo identity cards on the chest of the lawyers, the Committee feel that the Bar Council has taken a totally opposite view of the recommendation as the displaying of photo identity cards on the chests while in the office premises has become a part of the modern day practices not only in Government but in private offices as well. The Committee do not think that such an action would look awkward but, on the other hand it will only benefit the litigants to enable them to distinguish a lawyer from an outsider including a tout. It would also vastly benefit the security aspect in

courts. Even the highest officials of the Government in India and abroad have to display such identity cards in office. The lawyers have to be suitably educated to accept this requirement. The Committee, therefore reiterate their recommendation regarding compulsory display of photo identity cards on the chest of the lawyers while in the courts.

### **Recommendations contained in Para 6.8 Regarding Legal Education and Restructuring of Law Course**

**Para 6.8** The Committee after carefully considering the matters in all its aspects, make the following recommendations:

1. The proliferation of law colleges without adequate number of teachers with competence has resulted in sharp deterioration in the standards of legal education. This has seriously affected legal profession. The Committee feels that the Bar Council should use the powers given to it under the statute and effectively intervene to stop the proliferation of such sub-standard colleges.
2. The Committee note that lack of funds has come in the way of improving legal education in the country. The 8th Finance Commission has made funds available for improving courts infrastructure. The Committee strongly recommend that adequate funds may be made available for bringing about qualitative improvement in the legal education.
3. The Committee feel that the present law course needs to be restructured. The Committee are of the view that part time law course should be discontinued. They agree with the suggestion of the Bar Council and the Supreme Court Bar Association that the Professional Law course should be of the 5 years duration on the pattern of the National Law School functioning under the University of Bangalore. However, the universities can offer a three year Academic Law Course for the benefit of people who want to study law from the academic point of view.
4. In order to maintain professional quality and also to ensure that only serious minded persons come to legal profession, an entrance test of LL.B. standard should be conducted for enrolment as advocate. It is also necessary to have apprenticeship under senior advocates. The attention of the Committee has been drawn to the fact that Section 24(1)(d) of the Advocates Act had provided for this which was repealed in 1974. The Committee feel that in the interest of the quality of legal profession, this provision should be restored in the Act.
5. Syllabus prescribed by the Bar Council should be modernised, so that lawyers get acquainted with modern day commercial practices etc. Bar Council of India should take guidance from the rules prevailing in other countries in this regard.

6. The Committee feel that continuing legal education must be made compulsory. Institutional arrangements should be made so that every practising lawyer can have access to this system. All practising lawyers must attend some courses after every three-four years on which they may be given credit which in turn would be essential for their renewal of registration.

#### **Action Taken Reply of the Ministry**

The recommendations of the Committee on Subordinate Legislation along with the recommendations made by the Law Commission of India in its 14th report, the Committee of Judges, consisting of Hon'ble Shri Justice A.M. Ahmadi (as he then was), Hon'ble Shri Justice M. Jagannatha Rao, the Chief Justice of Delhi High Court and Hon'ble Shri Justice B.N. Kirpal, the Chief Justice of Gujarat High Court (as then he was) in its report of 17th October, 1994, and the University Grants Commission's Reconstituted Panel on Law in its report submitted on 27 December, 1994 were considered by the Law Ministers' Working Group on Legal Education and a statement was made at Bhubaneswar in September 1995. This statement was further considered at the Plenary Meeting of Law Ministers held at Hyderabad on 25 November, 1995 and a resolution was adopted. A copy of the resolution adopted in the Law Ministers' meeting at Hyderabad on 25 November, 1995 is given in the Annexure.

The Bar Council of India has been called upon to take further necessary action to amend their rules with a view to stopping proliferation of sub-standard law colleges, modernising the syllabus prescribed by practising lawyers. Having regard to the inadequate income of the Bar Councils, recommendations have been made in the Resolution adopted by the Law Ministers at Hyderabad for increasing the enrolment fee and also for making provision for renewal of certificate of enrolment on payment of requisite fee. Recommendations have also been made for amendment of the Advocates Act to provide for five year system of law course after 10+2 level and for the introduction of a scheme of one year's apprenticeship under a senior advocate or an advocate with at least 15 years of practice followed by an examination on procedural subjects organised on a six monthly basis by State Bar Councils. Action is being initiated on these recommendations.

Any request received from the Bar Council of India for providing funds for bringing out qualitative improvement in the legal education will be duly considered by the Government.

**3.3 The Committee note with satisfaction that the Ministry has agreed to implement the aforesaid recommendations of the Committee regarding the restructuring of Law Courses and continuing legal education. The Committee desire that the Ministry/Council should implement the same at their earliest. The Committee further recommend that the Ministry may ascertain the funds required by the Bar Council of India for bringing out**



desired improvement in legal education and make necessary provisions for the same.

### **Recommendations/Observations Contained in Paras 7.4 to 7.6 Regarding Renewal of Registration**

**Para 7.4** The Committee note that the existing rules under the advocates Act, 1961 do not prescribe or make it compulsory for an Advocate to have periodic renewal of registration with the Bar Council of India or State Bar Councils. As a result once an Advocate is registered, it is difficult to find out whether he is alive or whether he is abroad or whether he has changed his address and so on. Moreover the registers maintained by the Bar Councils could not be updated.

**Para 7.5** The Committee, therefore, desire that the Central Government/Bar Council of India should prescribe for a compulsory renewal of registration by the Advocates after every five years. It should be provided that the Advocates should inform the Bar Council of India/State Bar Council that they want to continue to have their names on the rolls. If the Council/State Bar Councils do not receive any application for renewal of registration, it should be presumed that the advocate has either gone out of India or out of practice and his registration might be deemed to have lapsed/cancelled. There should be provision in the rules under which he can get his registration with the Bar Council revived as and when he returns from abroad and resumed his practice.

**Para 7.6** The Committee further desire that most of the funds needed by the Bar Council of India/State Bar Council obtained from registration and renewal of registration. For renewal of registration a specific fee as prescribed by the Central Government/Bar Council of India from time to time will be required to be paid. Further, as recommended in Chapter 7 such renewal of registration should also be subject to obtaining prescribed credit for attending the workshop/refresher courses in continuing legal education.

### **Action Taken Reply of the Ministry**

The Bar Council of India has been called upon to take further necessary action to amend their rules in this regard. The Law Ministers in their meeting held at Hyderabad on 25 November, 1995 have also recommended for a periodical renewal of certificate of enrolment atleast every 5 years on payment of requisite fee not exceeding Rupees 500. Action is being initiated on these recommendations.

**3.4** The Committee note with satisfaction that the Ministry have agreed to implement the recommendations of the Committee regarding renewal of registration and the action is being initiated by them to implement those recommendations. The Committee further recommend that fee for periodical renewal of certificates of enrolment may be renewed from time to time to keep the quantum of fee realistic, so that the proceeds of such

fees can bear the whole or atleast substantial part of the expenses of the Bar Council to deploy the expenses of the establishments needed to carry out their function being hitherto carried out and now being added by our recommendation. The new entrants should be exempted from the payment of registration fee for five years.

## CHAPTER IV

### RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

#### **Recommendations Contained in Paras 2.5 to 2.7 Regarding Seeking/Granting of Unnecessary/Deliberate Adjournments in the Law Courts**

**Para 2.5** The Committee carefully considered the views expressed by the representatives of the Government as well as those of the Bar Council of India and the Supreme Court Bar Association. The Committee agree with the observation of the Law Secretary, namely that granting of unnecessary adjournments has become a regular feature. They also agree that in context of mounting arrears of cases in courts this practice has assumed disturbing proportions. The Committee feel that the mere act of passing a resolution in a conference expressing concern about unreasonable adjournments and stating the goal to be achieved, is not enough to remedy the situation. Adjournments are often given on grounds on which no court should give adjournment. It has also been brought to the notice of the Committee that generally the judges do not record the reasons for giving adjournment. The Committee note that a number of lawyers seek adjournment on the ground that they have got another case before another bench or another court, although the Civil Procedure Code (Order 17, rule 1) clearly states that the fact that the pleader of a party is engaged in another court shall not be ground for adjournment.

**Para 2.6** The Committee therefore feel that suitable amendment should be made in the Civil and Criminal Procedure Codes making it obligatory for the judges to record the reasons for adjournment of a case as well as award of actual and not merely notional cost against the party seeking adjournment in favour of the opposite party.

**Para 2.7** The Committee observe that there is broad agreement among the representatives who appeared before it on the need to restrain the lawyers from seeking frequent adjournments on personal grounds through a suitable regulation. The Committee endorses this view and recommend that a prohibition in this regard be incorporated in the code of conduct for Lawyers, so that they do not resort to the device of adjournment except on very reasonable emergency grounds only.

#### **Action Taken Reply of the Ministry**

This recommendation of the Committee has been forwarded to the Ministry of Home Affairs and the Legislative Department for taking further necessary action. The Ministry of Home Affairs has referred this

issue to the Law Commission as part of their proposal that the Commission review the Code of Criminal Procedure. The Legislative Department proposes to examine the recommendation alongwith other proposals for amendment of the Code of Civil Procedure.

4.1 The Committee note that the Ministry of Law, Justice and Company Affairs have taken up the matter with the Ministry of Home Affairs, the Law Commission and the Legislative Department to implement the recommendation. The Committee desire that the Ministry should pursue vigorously with the concerned bodies so that our recommendation could be implemented at the earliest. The Committee further desire that the Ministry should apprise the Committee regularly of the progress made in this regard through quarterly reports.

#### **Recommendations contained in Para 4.7 regarding Frivolous Litigation**

Para 4.7 The Committee is also of the considered opinion that there is need to prescribe a stiff penalty against frivolous litigation by making the litigant compulsorily to pay for the actual costs incurred by his opponent, if any, as well as to fully pay or the cost incurred by the Court itself. This will require amendment of the Civil Procedure Code and Criminal Procedure Code.

#### **Action Taken Reply of the Ministry**

The recommendation regarding amendments to the Code of Criminal Procedure has been referred to the Law Commission as part of the proposal that the Commission review the Code of Criminal Procedure. The Legislative Department proposes to examine the recommendation regarding amendments to the Code of Civil Procedure alongwith other proposals.

4.2 The Committee note that the Ministry has referred the recommendation to the Law Commission and the Legislative Department for amendments in the Code of Criminal Procedure and the Code of Civil Procedure. The Committee desire that the Ministry may pursue the matter with the concerned agencies in order to ensure speedy implementation of the recommendation.

NEW DELHI;  
October, 1996

KRISHAN LAL SHARMA,  
Chairman,  
Committee on Subordinate Legislation.

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## APPENDICES

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## APPENDIX I

(Vide Para 5 of the Introduction)

**Summary of Recommendations made in the First Report of the Committee  
on Subordinate Legislation  
(Eleventh Lok Sabha)**

Sl. No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.	2.1	<p>The Committee are not satisfied with the Action Taken Reply of the Government. The Committee are of the view that the Government has not gone into the spirit of the recommendation of the Committee as to how much the people will benefit by having a transparency of fees charged by the lawyers. It is clear to the Committee that the Government has considered the interest of lawyers only and given scarce thought to the plight of the litigants who get squeezed by unscrupulous advocates in numerous cases. The Committee note that there has been deterioration in the situation in the last two years and therefore, there is greater urgency to tackle this problem. In this context the Committee lay greater emphasis on transparency of fees charged by the lawyers. The Committee, therefore, reiterate their recommendation and re-emphasise that the recommendation may again be considered by the Government in letter and spirit taking into consideration primarily the interest of the litigants. Investigation by the Government will show how this matter is dealt with in other countries particularly the U.K. The knowledge of Government appears insufficient. The Committee recommend that Government should set-up a Committee to go into the matter of prescribing fees as well as ensuring enforcement thereof by exercising, <i>inter-alia</i>, the rules and practice in advanced countries.</p>
2.	2.2	<p>The Committee do not agree with the reply of the Ministry that advertisements giving out important information about specialised cases would make the profession mechanical, commercial and profit</p>

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oriented. The Committee are of the view that advertisements through periodicals such as Lawyer's Journal and even small Newspapers having local circulation within prescribed frequency *e.g.* once a month or once a quarter could be given which would be quite inexpensive and would also enable the litigants to know the particulars of the lawyers. In this context, the Committee further recommend that a directory in regional languages listing the names of the lawyers, their addresses, phone numbers etc. at Tehsil level or at the District level should be published by the State Bar Councils and appropriate rules could be framed for that purpose so that the litigants could select lawyers out of the various names listed in the Tehsil/District Bar directory prepared by the State Bar Council.

3. 2.3

The Committee have considered indepth the views of the Bar Council of India and also of the Government on this matter. The Committee is of the view that the lawyer must give his honest opinion about the strength and weakness of the case to the litigant in respect of writs under article 32 and 226 of the Constitution and also appeal matters. The Committee, therefore, reiterate their recommendation and desire that the Rules under the Advocates Act should suitably be amended for the purpose.

4. 3.1

The Committee note with satisfaction that the Bar Council of India has agreed with the recommendation of the Committee for constitution of a committee of lawyers and Judges at regional and State levels. The Committee desire that the recommendation may be implemented at the earliest. As regards framing of rules in this regard, the Committee note from the Ministry's reply that a writ petition regarding strikes

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by lawyers has been filed in the Supreme Court. The Committee however desire that in the meantime the draft rules may be framed which may be finalised after the outcome of the Supreme Court Judgement.

5. 3.2

The Committee note with satisfaction that the Bar Council of India has accepted in principle the issue of photo identity cards to the advocates as per the recommendation of the Committee. However, as regards the compulsory display of the photo identity cards on the chest of the lawyers, the Committee feel that the Bar Council has taken a totally obsolete view of the recommendation as the displaying of photo identity cards on the chests while in the office premises has become a part of the modern day practices not only in Government but in private offices as well. The Committee do not think that such an action would look awkward but, on the other hand it will only benefit the litigants to enable them to distinguish a lawyer from an outsider including a tout. It would also vastly benefit the security aspect in courts. Even the highest officials of the Government in India and abroad have to display such identity cards in office. The lawyers have to be suitably educated to accept this requirement. The Committee, therefore reiterate their recommendation regarding compulsory display of photo identity cards on the chest of the lawyers while in the courts.

6. 3.3

The Committee note with satisfaction that the Ministry has agreed to implement the aforesaid recommendations of the Committee regarding the restructuring of Law Courses and continuing legal education. The Committee desire that the Ministry Council should implement the same at their earliest. The Committee further recommend that the Ministry may ascertain the funds required by the Bar Council of India for bringing out desired improvement in legal education and make necessary provisions for the same.

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7.	3.4	<p>The Committee note with satisfaction that the Ministry have agreed to implement the recommendations of the Committee regarding renewal of registration and the action is being initiated by them to implement those recommendations. The Committee further recommed that fee for periodical renewal of certificates of enrolment may be renewed from time to time to keep the quantum of fee realistic, so that the proceeds of such fees can bear the whole or atleast substantial part of the expenses of the Bar Council to deploy the expenses of the establishments needed to carry out their function being hitherto carried out and now being added by our recommendation. The new entrants should be exempted from the payment of registration fees for five years.</p>
8.	4.1	<p>The Committee note that the Ministry of Law, Justice and Company Affairs have taken up the matter with the Ministry of Home Affairs, the Law Commission and the Legislative Department to implement the recommendation. The Committee desire that the Ministry should pursuc vigorously with the concerned bodies so that our recommendation could be implemented at the earliest. The Committee further desire that the Ministry should apprise the Committee regularly of the progress made in this regard through quarterly reports.</p>
9.	4.2	<p>The Committee note that the Ministry has referred the recommendation to the Law Commission and the Legislative Department for amendments in the Code of Criminal Procedure and the Code of Civil Procedure. The Committee desire that the Ministry may pursue the matter with the concerned agencies in order to ensure speedy implementation of the recommendation.</p>

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## MINUTES

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## MINUTES OF THE SIXTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Tuesday, 5 December, 1995 from 15.00 to 17.00 hours.

### PRESENT

Shri Amal Datta—*Chairman*

### MEMBERS

2. Shri Prithviraj D. Chavan
3. Shrimati Bhavna Chikhalia
4. Shri Rajendra Kumar Sharma
5. Shri Pratap Singh
6. Shri Ram Sharan Yadav

### SECRETARIAT

1. Shrimati Roli Srivastava — *Joint Secretary*
2. Shri P.D.T. Achary — *Director*
3. Shri Ram Autar Ram — *Deputy Secretary*
4. Shri B.D. Swan — *Assistant Director*

### REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS)

1. Dr. P.C. Rao — *Secretary*
2. Dr. Subhash Chander Jain — *Joint Secretary*
3. Shri P.C. Kannan — *Joint Secretary*

2. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) regarding delay in implementation of recommendations of the Committee contained in their Fifteenth Report on rules framed under the Advocates Act, 1961 which was presented to the Lok Sabha on 16 December, 1994. The Chairman drew the attention of the representatives towards the delay in implementation of recommendations contained in the Fifteenth Report and further on the views expressed by the Bar Council of India on the recommendations contained in that report which were observed by the Committee as contradictory and inconsistent on several points.

3. Explaining the reasons for delay in implementation of the recommendations contained in the Fifteenth Report, Dr. P.C. Rao, Law Secretary stated that the recommendations regarding reforms in legal education were placed before a Plenary Forum of Law Secretaries and Law

Ministers of all States and a series of recommendations were made in that Forum. Those recommendations were afterwards considered by a Working Group of Law Ministers and Law Secretaries. The Chairman desired to know about the formal status of such forums and Working Groups and were not convinced by the reply of the Law Secretary in that regard. The Chairman emphasised that even the basic exercise had not been done by the Ministry of apprising the Committee of the acceptance or otherwise of the recommendations despite the fact that so much discussion had taken place.

4. Explaining further the difficulties in implementing the recommendations, the Law Secretary stated that the Ministry has to consult other interests also concerned with the subject and they take a pragmatic view in the matter. On being asked by the Chairman whether the views of the Bar Council of India about the transparency of fees had been obtained the Law Secretary stated that the views furnished by the Bar Council of India have already been submitted to the Lok Sabha Secretariat.

5. The Committee was not satisfied with this reply and expressed their strong resentment on the question whether the Ministry of Law had gone through the views furnished by the Bar Council of India on the recommendations of the Committee and pointed out to the Law Secretary that the BCI views were contradictory and inconsistent on many points, particularly regarding transparency of fees. The Chairman cited an example that on one hand the BCI has viewed that 'the monopoly of the practice of the Bar has happened because of patronage from certain quarters' and on the other hand they have stated that 'these people must be allowed to earn money like magicians and others by virtue of their talents'. The Chairman desired that the Law Secretary should convey the strong feelings of the Committee on the BCI views to the Chairman of the Bar Council of India.

6. On being asked by the Chairman to explain the reasons for the failure of the representatives of the Bar Council of India to appear before the Committee during the meeting, Dr. P.C. Rao, Law Secretary stated that the Law Ministry had requested the BCI to attend the meeting but the Chairman was out of Delhi. The Committee were not satisfied with the explanation in that regard and observed that BCI had not come before the Committee due to disinclination on their part to appear before it.

7. The Committee were not at all satisfied with the explanation furnished by the Law Secretary for delay in implementation of the

recommendations and conveyed its feelings to the Law Secretary in that regard.

8. The Chairman directed the Law Secretary to furnish their Action Taken Note on the recommendations of the Committee within a week. As regards recommendation of the Committee relating to transparency of fees, the Committee agreed to give extension of time for one month to furnish the Action Taken Reply. The Law Secretary promised to furnish the same to the Committee.

*(The witnesses then withdrew)*

*The Committee then adjourned.*

**MINUTES OF THE SIXTY-SEVENTH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(TENTH LOK SABHA) (1995-96)**

The Committee met on Tuesday, 23 January, 1996 from 14.30 hours to 17.30 hours.

**PRESENT**

**Shri Amal Datta—Chairman**

**MEMBERS**

2. Shri Prithviraj D. Chavan
3. Shri V. Dhananjaya Kumar
4. Shri Rajendra Kumar Sharma
5. Shri Umrao Singh

**SECRETARIAT**

1. Shrimati Roli Srivastava — *Joint Secretary*
2. Shri P.D.T. Achary — *Director*
3. Shri Ram Autar Ram — *Deputy Secretary*
4. Shri B.D. Swan — *Assistant Director*

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS**

1. Dr. P.C. Rao, Law Secretary
2. Dr. S.C. Jain, JS & LA
3. Shri P.C. Kannan, JS & LA
4. Shri Krishna Kumar, Addl. LA.

2. The Committee then took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs) regarding implementation of recommendations contained in the Fifteenth Report on the rules/regulations framed under the Advocates Act, 1961 in order to know the difficulties faced by them in implementation of the recommendation made by the Committee with regard to transparency of fees charged by lawyers.

3. Dr. P.C. Rao, Law Secretary reiterated the Action Taken reply of the Ministry that it would be difficult to enforce such a Law.

4. Reacting to it the Chairman said that the Government has not considered the aspect as to how much the people will benefit by having transparency of fees. He further said that the Government has considered the interest of the lawyers only. The Law Secretary reacted to this statement by saying that he had nothing to say about it.

5. The Committee then heard the views of the Law Secretary with regard to the permitting of advertisements for imparting information to the public in regard to standard cases like divorce, eviction, accident and rent control cases etc. by lawyers who are specialists in these field, in the interest of the rural litigants. The Committee were of the view that advertisements through magazines such as lawyers' journal and newspapers should be given as these are inexpensive and would also enable the litigants to know the field of specialisation of the lawyers. In reply, the Law Secretary stated that under the rules, Lawyers cannot advertise their services.

6. The Committee suggested that a directory in regional language listing the names of the lawyers, their phone numbers and their fields of specialisation at tehsil level or at the District level should be published and some rules could be framed for that purpose so that the litigants could consult various names from the Tehsil Bar Council or District Bar Council. The Law Secretary assured to take up the matter.

7. As regards prescribing a stiff penalty against frivolous litigation by making the litigant to compulsorily pay for the actual costs if any incurred by his opponent, as well as to fully pay for the cost incurred by the court itself, the Law Secretary stated that the matter has been referred to the Law Commission and that the Law Commission is examining the Criminal Procedure Code.

8. The Chairman reiterated the recommendation of the Committee that the lawyer should give a firm opinion on the prospects of a case to the litigant as it may not be difficult for him to do so after going through the brief of the case and insisted upon the implementation of the recommendation.

*The representatives then withdrew.*

*The Committee then adjourned.*

**MINUTES OF THE SEVENTY-FIRST SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(TENTH LOK SABHA) (1996)**

The Committee met on Tuesday, 12 March, 1996 from 15.00 to 15.30 hours.

**PRESENT**

**Shri Amal Datta—Chairman**

**MEMBERS**

2. **Shri Prithviraj D. Chavan**
3. **Shrimati Bhavna Chikhalia**
4. **Shri V. Dhananjaya Kumar**
5. **Shri Dharampal Singh Malik**
6. **Shri M.V.V.S. Murthy**
7. **Shri D. Pandian**
8. **Shri Rajendra Kumar Sharma**
9. **Shri K.G. Shivappa**
10. **Shri Pratap Singh**
11. **Prof. K.V. Thomas**
12. **Shri Umrao Singh**

**SECRETARIAT**

1. **Shri P.D.T. Achary** — *Director*
3. **Shri Ram Autar Ram** — *Deputy Secretary*
4. **Shri B.D. Swan** — *Assistant Director*

2. The Committee considered and adopted their draft twenty-fifth Report.

3. The Committee thereafter decided to hold their next sitting on Tuesday, 26 March, 1996.

*The Committee then adjourned.*



**MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA)  
(1996-97)**

The Committee met on Wednesday, 16 October, 1996 from 11.00 hours to 12.00 hours.

**PRESENT**

**Shri Krishan Lal Sharma—Chairman**

**MEMBERS**

2. Shri V. Alagirisamy
3. Shri Vijay Kumar Khandelwal
4. Shri Thota Gopala Krishna
5. Shri V. Dhananjaya Kumar
6. Shri K.H. Muniyappa
7. Shri M. Baga Reddy
8. Shri Balai Roy

**SECRETARIAT**

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

2. The Committee considered and adopted the draft First and Second Reports with slight modifications.

3. The Committee thereafter decided to postpone their study tour scheduled to be undertaken from 2 November, 1996.

4. The Committee also decided to hold their next sitting at 15.00 hours on 7 November, 1996.

*The Committee then adjourned.*